

DRAFT

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OFFICE OF THE CITY CLERK
OAKLAND

17 MAY 18 PM 4:00

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER DAN KALB

RESOLUTION IN SUPPORT OF SENATE BILL 393, BY STATE SENATORS RICARDO LARA AND HOLLY MITCHELL, THAT WOULD ALLOW PEOPLE TO PETITION A COURT TO SEAL RECORDS OF ARRESTS THAT DID NOT RESULT IN ANY CONVICTION, WITH EXCEPTIONS FOR DOMESTIC VIOLENCE, ELDER ABUSE AND CHILD ABUSE; AND REQUIRE CONSUMER REPORTING AGENCIES TO NOT SHARE SUCH RECORDS.

WHEREAS, existing law authorizes a person who was arrested and has successfully completed a pre-filing diversion program, a person who has successfully completed a specified drug diversion program, and a person who has successfully completed a specified deferred entry of judgment program to petition the court to seal their arrest records. Existing law also specifies that, with regards to arrests that resulted in the defendant participating in certain other deferred entry of judgment programs, the arrest upon which the judgment was deferred shall be deemed not to have occurred; and

WHEREAS, individuals who are arrested may never be charged, or their cases are charged but later dismissed, or their case may go to trial yet they are acquitted by a jury; and

WHEREAS, although California has a comprehensive statutory process to expunge convictions, it has inconsistent standards for sealing arrest records for individuals not convicted; and

WHEREAS, rapid technological advancements makes government information more public than ever and makes it easier for employers, landlords, and others to access it and base decisions on arrests rather than a convictions, creating serious barrier to employment and housing opportunities; and

WHEREAS, California law prohibits employers from asking an applicant about prior arrests that did not lead to convictions, yet many employers simply refuse to consider any applicant who has a criminal arrest record; and

WHEREAS, studies show that people with unsealed arrest records, are disproportionately people of color, have a substantially increased chance of living in poverty, earn lower wages, and having fewer educational opportunities; and

WHEREAS, that California Senate Bill 393 will establish a uniform legal process for sealing records relating to arrests that did not result in a conviction as well as update criminal records at the California Department of Justice. This bill will strengthen the legal architecture protecting the right of persons arrested but not convicted to privacy about their criminal records, as well as promote the lifelong social inclusion of said persons; and

WHEREAS, SB 393 is supported by the ACLU of California, Alliance for Boys and Men of Color, National Association of Social Workers, California Public Defenders Association, and California Attorneys for Criminal Justice; now therefore, be it

RESOLVED: that the Oakland City Council supports Senate Bill (SB) 393 (Senators Lara and Mitchell), that would allow people to petition a court to seal records of arrests that did not result in any conviction, with exceptions for domestic violence, elder abuse and child abuse; and require consumer reporting agencies to not share such records; and be it

FURTHER RESOLVED: that the City Administrator is directed to forward a copy of this enacted Resolution to state legislative elected officials representing Oakland, Governor Jerry Brown, the authors of SB 393, and to the lobbyist for the City of Oakland to advocate for passage of SB 393.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES –

NOES –

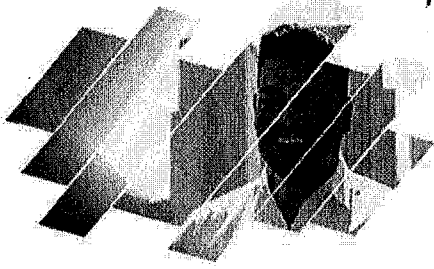
ABSENT –

ABSTENTION –

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California

17 MAY 18 PM 4:00



SENATOR
RICARDOLARA
LEGISLATIVE FACTSHEET

Sealing of Arrests
Senate Bill 393

Summary:

SB 393 will provide a clear legal pathway to sealing an arrest record from public view if the arrest did not result in a conviction, removing a serious barrier to employment and housing opportunities.

Background:

Currently, California law prohibits employers from asking an applicant about prior arrests that did not lead to convictions, yet many employers simply refuse to consider any applicant who has a criminal record. These arrests are not only accessible by government agencies, but are often used by private companies. With the rapid technological advancements of the 21st century, government information is now more public than ever and often compiled into databases by consumer reporting agencies. This makes it easier for employers, landlords, and others to base decisions on an arrest rather than a conviction.

Although California has a comprehensive statutory process to expunge convictions, it has inconsistent standards for sealing arrest records for individuals not convicted. Many individuals who are arrested are never charged, sometimes their cases are charged but later dismissed, or an individual can even take their case to trial and be acquitted by a jury. In each of these examples the record of arrest is still available publicly despite the fact that the individual was never convicted of a crime.

Arrest records that are not sealed can be costly and life-changing. The FBI reports that it has over 77 million individuals on file in their criminal master database, which translates to 1 in 3 adults. Furthermore, studies have found that around 40% of men and 20% of women were likely to be arrested before the age of 23, yet 47% were never convicted. A snapshot of felony filings in the 75 largest U.S. counties, for example, showed that approximately one-third of felony arrests did not lead to conviction. African Americans make-up less than 14 percent of the population, but making up 28 percent of all arrests, the impact of unsealed arrest record is disproportionately impacting communities of color.

According to a 2012 study conducted by the Society for Human Resource Management, 69% of reported organizations used criminal background checks on all job candidates and only 58% allow candidates to explain negative results. Many prospective employees and housing applicants are rejected solely based on having an arrest record on file. Studies also show people with unsealed arrest records have a substantially increased chance of living in poverty, earning lower wages, with fewer educational opportunities.

Problem:

Current record sealing procedures are ineffective and do not provide a mechanism to properly seal arrests from people's records. Some penal code sections provide for the sealing of local records, but do not affect state-level records, which are usually referenced in background checks. Records used for background checks can be outdated. Consumer reporting companies fail to update their databases to reflect court-ordered record sealing, which means that individuals are deprived of the very benefit that the court order is intended to provide.

Solution:

SB 393 will:

- Establish a uniform legal process for sealing records relating to arrests that did not result in a conviction.
- Update criminal records at the California Department of Justice, by doing so consumer reporting agencies will provide updated background reports.

By sealing records of arrest for those who have not been convicted of a crime. SB 393 will remove barriers that are holding back Californians from employment and housing opportunities.

Contact:

Daisy Luna | Daisy.Luna@sen.ca.gov | 916-651-4033

17 MAY 18 PM 4:00

AMENDED IN SENATE MAY 3, 2017
AMENDED IN SENATE APRIL 17, 2017
AMENDED IN SENATE MARCH 20, 2017

SENATE BILL

No. 393

Introduced by Senators Lara and Mitchell

February 15, 2017

An act to amend Section 1786.18 of the Civil Code, and to amend Sections 851.87, 851.90, 1000.4, and 1001.9 of, and to add Sections 851.91 and 851.92 to, the Penal Code, relating to arrests.

LEGISLATIVE COUNSEL'S DIGEST

SB 393, as amended, Lara. Arrests: sealing.

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, and a person who has successfully completed a specified deferred entry of judgment program to petition the court to seal his or her arrest records. Existing law also specifies that, with regards to arrests that resulted in the defendant participating in certain other deferred entry of judgment programs, the arrest upon which the judgment was deferred shall be deemed not to have occurred.

This bill would also authorize a person who has suffered an arrest that did not result in a conviction to petition the court to have his or her arrest sealed. Under the bill, a person would be ineligible for this relief under specified circumstances, including if he or she may still be charged with any offense upon which the arrest was based.

The bill would provide that a person who is eligible to have his or her arrest sealed is entitled, as a matter of right, to that sealing unless

the person has been charged with certain crimes, including, among others, domestic violence if the petitioner's record demonstrates a pattern of domestic violence arrests, convictions, or both, in which case the person may obtain sealing of his or her arrest only upon a showing that the sealing would serve the interests of justice. The bill would specify that the petitioner has the initial burden of proof to show that he or she is either entitled to have his or her arrest sealed as a matter of right or that sealing would serve the interests of justice and, if the court finds that petitioner has satisfied his or her burden of proof, then the burden of proof shall shift to respondent prosecuting attorney.

The bill would require, if the petition is granted, the court to issue a written ruling and order that, among other things, states that the arrest is deemed not to have occurred and that, except as otherwise provided, the petitioner is released from all penalties and disabilities resulting from the arrest. The bill would prohibit, if an arrest is sealed pursuant to the above provisions or pursuant to the specified provisions of existing law that authorize the sealing of arrest records after successfully completing a prefiling diversion program, a specified drug diversion program, or a specified deferred entry of judgment program, or if an arrest is deemed to have never occurred after a defendant participates in certain other deferred entry of judgment programs, the disclosure of the arrest, or information about the arrest that is contained in other records, from being disclosed to the public, consumer reporting agencies, or any other person or entity, except as specified.

The bill would subject a person to a civil penalty if he or she disseminates information relating to a sealed arrest unless he or she is specifically authorized to disseminate that information. Because this bill would impose new 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.

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

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

1 SECTION 1. Section 1786.18 of the Civil Code is amended
2 to read:

3 1786.18. (a) Except as authorized under subdivision (b), an
4 investigative consumer reporting agency may not make or furnish
5 any investigative consumer report containing any of the following
6 items of information:

7 (1) Bankruptcies that, from the date of the order for relief,
8 antedate the report by more than 10 years.

9 (2) Suits that, from the date of filing, and satisfied judgments
10 that, from the date of entry, antedate the report by more than seven
11 years.

12 (3) Unsatisfied judgments that, from the date of entry, antedate
13 the report by more than seven years.

14 (4) Unlawful detainer actions where the defendant was the
15 prevailing party or where the action is resolved by settlement
16 agreement.

17 (5) Paid tax liens that, from the date of payment, antedate the
18 report by more than seven years.

19 (6) Accounts placed for collection or charged to profit and loss
20 that antedate the report by more than seven years.

21 (7) Records of arrest, indictment, information, misdemeanor
22 complaint, or conviction of a crime that, from the date of
23 disposition, release, or parole, antedate the report by more than
24 seven years. These items of information shall no longer be reported
25 if at any time it is learned that, in the case of a conviction, a full
26 pardon has been granted or, in the case of an arrest, indictment,
27 information, or misdemeanor complaint, a conviction did not result;
28 except that records of ~~arrest~~, *an arrest that resulted in an*
29 indictment, information, or misdemeanor ~~complaints~~ *complaint*
30 may be reported pending pronouncement of judgment on the
31 particular subject matter of those records.

32 (8) Records of any arrest that did not result in an indictment,
33 information, or misdemeanor complaint.

34 (9) Any other adverse information that antedates the report by
35 more than seven years.

36 (b) The provisions of subdivision (a) are not applicable in either
37 of the following circumstances:

1 (1) If the investigative consumer report is to be used in the
2 underwriting of life insurance involving, or that may reasonably
3 be expected to involve, an amount of two hundred fifty thousand
4 dollars (\$250,000) or more.

5 (2) If the investigative consumer report is to be used by an
6 employer who is explicitly required by a governmental regulatory
7 agency to check for records that are prohibited by subdivision (a)
8 when the employer is reviewing a consumer's qualification for
9 employment.

10 (c) Except as otherwise provided in Section 1786.28, an
11 investigative consumer reporting agency shall not furnish an
12 investigative consumer report that includes information that is a
13 matter of public record and that relates to an arrest, indictment,
14 conviction, civil judicial action, tax lien, or outstanding judgment,
15 unless the agency has verified the accuracy and completeness of
16 the information during the 30-day period ending on the date on
17 which the report is furnished. In the case of information relating
18 to an arrest, the duty to verify the accuracy and completeness of
19 the information includes the duty to inquire with either the trial
20 court in each county or the Department of Justice on a weekly
21 basis to determine which, if any, arrests have been sealed, as
22 described in paragraph (4) of subdivision (b) of Section 851.92 of
23 the Penal Code or have resulted in a disposition other than
24 conviction.

25 (d) An investigative consumer reporting agency shall not prepare
26 or furnish an investigative consumer report on a consumer that
27 contains information that is adverse to the interest of the consumer
28 and that is obtained through a personal interview with a neighbor,
29 friend, or associate of the consumer or with another person with
30 whom the consumer is acquainted or who has knowledge of the
31 item of information, unless either (1) the investigative consumer
32 reporting agency has followed reasonable procedures to obtain
33 confirmation of the information, from an additional source that
34 has independent and direct knowledge of the information, or (2)
35 the person interviewed is the best possible source of the
36 information.

37 SEC. 2. Section 851.87 of the Penal Code is amended to read:

38 851.87. (a) (1) In any case where a person is arrested and
39 successfully completes a pre-filing diversion program administered
40 by a prosecuting attorney in lieu of filing an accusatory pleading,

1 the person may petition the superior court that would have had
2 jurisdiction over the matter to issue an order to seal the records
3 pertaining to an arrest and the court may order those records sealed
4 as described in Section 851.92. A copy of the petition shall be
5 served on the law enforcement agency and the prosecuting attorney
6 of the county or city having jurisdiction over the offense, who may
7 request a hearing within 60 days of receipt of the petition. The
8 court may hear the matter no less than 60 days from the date the
9 law enforcement agency and the prosecuting attorney receive a
10 copy of the petition. The prosecuting attorney and the law
11 enforcement agency, through the prosecuting attorney, may present
12 evidence to the court at the hearing.

13 (2) If the order is made, the court shall give a copy of the order
14 to the person and inform the person that he or she may thereafter
15 state that he or she was not arrested for the charge.

16 (3) The person may, except as specified in subdivisions (b) and
17 (c), indicate in response to any question concerning the person's
18 prior criminal record that the person was not arrested.

19 (4) Subject to subdivisions (b) and (c), a record pertaining to
20 the arrest shall not, without the person's permission, be used in
21 any way that could result in the denial of any employment, benefit,
22 or certificate.

23 (b) The person shall be advised that, regardless of the person's
24 successful completion of the program, the arrest shall be disclosed
25 by the Department of Justice in response to any peace officer
26 application request, and that, notwithstanding subdivision (a), this
27 section does not relieve the person of the obligation to disclose
28 the arrest in response to any direct question contained in any
29 questionnaire or application for a position as a peace officer, as
30 defined in Section 830.

31 (c) The person shall be advised that an order to seal records
32 pertaining to an arrest made pursuant to this section has no effect
33 on a criminal justice agency's ability to access and use those sealed
34 records and information regarding sealed arrests, as described in
35 Section 851.92.

36 (d) As used in this section, "prefiling diversion" is a diversion
37 from prosecution that is offered to a person by the prosecuting
38 attorney in lieu of, or prior to, the filing of an accusatory pleading
39 in court as set forth in Section 950.

40 SEC. 3. Section 851.90 of the Penal Code is amended to read:

1 851.90. (a) (1) Whenever a person is diverted pursuant to a
2 drug diversion program administered by a superior court pursuant
3 to Section 1000.5 or is admitted to a deferred entry of judgment
4 program pursuant to Section 1000 or 1000.8, and the person
5 successfully completes the program, the judge may order those
6 records pertaining to the arrest to be sealed as described in Section
7 851.92, upon the written or oral motion of any party in the case,
8 or upon the court's own motion, and with notice to all parties in
9 the case.

10 (2) If the order is made, the court shall give a copy of the order
11 to the defendant and inform the defendant that he or she may
12 thereafter state that he or she was not arrested for the charge.

13 (3) The defendant may, except as specified in subdivisions (b)
14 and (c), indicate in response to any question concerning the
15 defendant's prior criminal record that the defendant was not
16 arrested or granted statutorily authorized drug diversion or deferred
17 entry of judgment for the offense.

18 (4) Subject to subdivisions (b) and (c), a record pertaining to
19 an arrest resulting in the successful completion of a statutorily
20 authorized drug diversion or deferred entry of judgment program
21 shall not, without the defendant's permission, be used in any way
22 that could result in the denial of any employment, benefit, or
23 certificate.

24 (b) The defendant shall be advised that, regardless of the
25 defendant's successful completion of a statutorily authorized drug
26 diversion or deferred entry of judgment program, the arrest upon
27 which the case was based shall be disclosed by the Department of
28 Justice in response to any peace officer application request, and
29 that, notwithstanding subdivision (a), this section does not relieve
30 the defendant of the obligation to disclose the arrest in response
31 to any direct question contained in any questionnaire or application
32 for a position as a peace officer, as defined in Section 830.

33 (c) The defendant shall be advised that, regardless of the
34 defendant's successful completion of a statutorily authorized drug
35 diversion or deferred entry of judgment program, an order to seal
36 records pertaining to an arrest made pursuant to this section has
37 no effect on a criminal justice agency's ability to access and use
38 those sealed records and information regarding sealed arrests, as
39 described in Section 851.92.

1 SEC. 4. Section 851.91 is added to the Penal Code, immediately
2 following Section 851.90, to read:

3 851.91. (a) (1) (A) A person who has suffered an arrest that
4 did not result in a conviction may petition the court to have his or
5 her arrest and related records sealed, as described in Section 851.92.

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

8 (i) The statute of limitations has run on every offense upon
9 which the arrest was based and the prosecuting attorney of the city
10 or county that would have had jurisdiction over the offense or
11 offenses upon which the arrest was based has not filed an
12 accusatory pleading based on the arrest.

13 (ii) The prosecuting attorney filed an accusatory pleading based
14 on the arrest, but no conviction occurred, all of the charges have
15 been dismissed, and none of the charges may be refiled.

16 (iii) The prosecuting attorney filed an accusatory pleading based
17 on the arrest, but no conviction occurred and the arrestee has been
18 acquitted of all of the charges.

19 (iv) The prosecuting attorney filed an accusatory pleading based
20 on the arrest, a conviction or convictions occurred, but all of the
21 convictions have been vacated or reversed on appeal and none of
22 the charges may be refiled.

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

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

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

33 (C) The petitioner avoided prosecution by absconding from the
34 jurisdiction in which the arrest took place.

35 (D) The petitioner avoided prosecution by engaging in identity
36 fraud.

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

38 (A) Be verified.

39 (B) Be filed in the court in which the accusatory pleading based
40 on the arrest was filed or, if no accusatory pleading was filed, in

1 a court with criminal jurisdiction in the city or county in which
2 the arrest occurred.

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

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

8 (E) Include all of the following information:

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

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

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

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

13 (v) Any other information identifying the arrest that is available
14 from the law enforcement agency that conducted the arrest or from
15 the court in which the accusatory pleading, if any, based on the
16 arrest was filed, including, but not limited to, the case number for
17 the police investigative report documenting the arrest, and the
18 court number under which the arrest was reviewed by the
19 prosecuting attorney or under which the prosecuting attorney filed
20 an accusatory pleading.

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

24 (vii) The basis identified in subparagraph (B) of paragraph (1)
25 of subdivision (a) upon which the petitioner is eligible for relief.

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

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

34 (c) (1) At a hearing on a petition under this section, the
35 petitioner, the prosecuting attorney, and, through the prosecuting
36 attorney, the arresting agency, may present evidence to the court.
37 Notwithstanding Section 1538.5 or 1539, the hearing may be heard
38 and determined upon declarations, affidavits, police investigative
39 reports, copies of state summary criminal history information and

1 local summary criminal history information, or any other evidence
2 submitted by the parties that is material, relevant, and reliable.

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

8 (3) The court shall not grant the petition unless the court finds
9 that petitioner is eligible pursuant to subdivision (a) and the
10 prosecuting attorney does not successfully rebut the petitioner's
11 eligibility.

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

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

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

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

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

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

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

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

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

39 (ii) Declarations or evidence regarding the petitioner's good
40 character.

1 (iii) Declarations or evidence regarding the arrest.

2 (iv) The petitioner's record of convictions.

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

5 (1) Issue a written ruling and order to the petitioner stating that
6 the record of arrest has been sealed as to petitioner, that the arrest
7 is deemed not to have occurred, that petitioner may answer any
8 question relating to the sealed arrest accordingly, and that, except
9 as provided in paragraph (2) and Section 851.92, the petitioner is
10 released from all penalties and disabilities resulting from the arrest.

11 The court shall give a copy of this written ruling and order to the
12 petitioner, to the prosecuting attorney, to the law enforcement
13 agency that made the arrest, and to the Department of Justice.

14 (2) The written ruling and order shall also state all of the
15 following:

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

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

26 (C) The sealing of an arrest pursuant to this section does not
27 affect petitioner's authorization to own, possess, or have in his or
28 her custody or control any firearm, or his or her susceptibility to
29 conviction under Chapter 2 (commencing with Section 29800) of
30 Division 9 of Title 4 of Part 6, if the arrest would otherwise affect
31 this authorization or susceptibility.

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

35 (f) The Department of Justice shall furnish forms to be utilized
36 by a person applying to have his or her arrest sealed pursuant to
37 this section.

38 SEC. 5. Section 851.92 is added to the Penal Code, to read:
39 851.92. (a) This section applies when an arrest record is sealed
40 pursuant to Sections 851.87, 851.90, 851.91, 1000.4, and 1001.9.

1 (b) After the court has issued an order to seal an arrest, the
2 sealing shall be accomplished as follows:

3 (1) (A) Within 30 days of issuing the order, the court shall
4 forward the order to the Department of Justice, to the law
5 enforcement agency that made the arrest, to any other law
6 enforcement agency that participated in the arrest, and to the law
7 enforcement agency that administers the master local summary
8 criminal history information that contains the arrest record for the
9 arrest that is the subject of the petition. The court shall give a copy
10 of this order to the petitioner, to the prosecuting attorney, and to
11 any law enforcement agency to which the order is issued.

12 (B) The local summary criminal history information and the
13 state summary criminal history information shall include, directly
14 next to or below the entry or entries regarding the sealed arrest, a
15 note stating “arrest sealed” and providing the date that the court
16 issued the order, and the section pursuant to which the arrest was
17 sealed. This note shall be included in all master copies of the arrest
18 record, digital or otherwise.

19 (2) A police investigative report related to the sealed arrest shall,
20 only as to the person whose arrest was sealed, be stamped
21 “ARREST SEALED: DO NOT RELEASE OUTSIDE THE
22 CRIMINAL JUSTICE SECTOR,” and shall note next to the stamp
23 the date the arrest was sealed and the section pursuant to which
24 the arrest was sealed. The responsible local law enforcement
25 agency shall ensure that all digital or master copies of the arrest
26 record for the arrest that was the subject of the petition contain
27 this note.

28 (3) Court records related to the sealed arrest shall, only as to
29 the person whose arrest was sealed, be stamped “ARREST
30 SEALED: DO NOT RELEASE OUTSIDE OF THE CRIMINAL
31 JUSTICE SECTOR,” and shall note next to the stamp the date of
32 the sealing and the section pursuant to which the arrest was sealed.
33 This stamp and note shall be included on all master court dockets
34 relating to the arrest, digital or otherwise.

35 (4) Arrest records, police investigative reports, and court records
36 that are sealed under this section shall not be disclosed to the
37 public, consumer reporting agencies, or any other person or entity
38 except the person whose arrest was sealed or a criminal justice
39 agency, or as otherwise authorized in this section.

1 (5) A criminal justice agency receiving from the public, a
2 consumer reporting agency, or any person or entity except the
3 person whose arrest was sealed or a criminal justice agency, an
4 inquiry regarding the sealed arrest, or a request for arrest records,
5 police investigative reports, or court records, that have been sealed
6 pursuant to this section shall respond in both of the following ways:

7 (A) With a verbal statement that the arrest has been sealed and
8 that no further information is available.

9 (B) By providing a written notice that the arrest has been sealed,
10 is deemed to have never occurred, shall not be used in any way
11 that could result in denial of any employment, benefit, license, or
12 certificate, and that any records of the arrest in the possession of,
13 or obtained from, a consumer reporting agency for the purpose of
14 providing or obtaining background checks on the person whose
15 arrest has been sealed shall be destroyed and that the failure to
16 destroy the records may subject the consumer reporting agency to
17 criminal and civil liability.

18 (6) Notwithstanding the sealing of an arrest, a criminal justice
19 agency may continue, in the regular course of its duties, to access,
20 furnish to other criminal justice agencies, and use, including, but
21 not limited to, by discussing in open court and in unsealed court
22 filings, sealed arrests, sealed arrest records, sealed police
23 investigative reports, sealed court records, and information relating
24 to sealed arrests, to the same extent that would have been permitted
25 for a criminal justice agency if the arrest had not been sealed.

26 (7) With regard to any record or information relating to an arrest
27 that is in the possession of a consumer reporting agency, the
28 consumer reporting agency shall, on a weekly basis, inquire with
29 the criminal court having jurisdiction in the county or city in which
30 the arrest took place, whether the arrest has been sealed. When a
31 consumer reporting agency learns that an arrest upon which it
32 possesses information has been sealed by inquiring with the
33 criminal court in the applicable jurisdiction, because the petitioner
34 sent a copy of the court order to the consumer reporting agency,
35 or in another manner, the consumer reporting agency shall delete
36 and destroy all records in its possession relating to the sealed arrest,
37 shall cease to pursue, store, or disseminate any information relating
38 to the sealed arrest, except that it shall notify any person or entity
39 to which it previously provided information relating to the arrest
40 that the arrest has been sealed, is deemed not to have occurred,

1 and shall not be used in any way that could result in the denial of
2 any employment, benefit, license, or certificate.

3 (c) Unless specifically authorized by this section, a person who
4 disseminates information relating to a sealed arrest is subject to a
5 civil penalty of not less than five hundred dollars (\$500) and not
6 more than two thousand five hundred dollars (\$2,500) per violation.
7 The civil penalty may be enforced by a city attorney, district
8 attorney, or the Attorney General. This subdivision does not limit
9 any existing private right of action. A civil penalty imposed under
10 this section shall be cumulative to civil remedies or penalties
11 imposed under any other law.

12 (d) As used in this section and Sections 851.87, 851.90, 851.91,
13 1000.4, and 1001.9, all of the following terms have the following
14 meanings:

15 (1) "Arrest record" and "record pertaining to an arrest" mean
16 information about the arrest or detention that is contained in either
17 of the following:

18 (A) The master, or a copy of the master, local summary criminal
19 history information, as defined in subdivision (a) of Section 13300.

20 (B) The master, or a copy of the master, state summary criminal
21 history information as defined in subparagraph (A) of paragraph
22 (2) of subdivision (a) of Section 11105.

23 (2) "Consumer reporting agency" means a person or entity that
24 is not a criminal justice agency that provides background screening
25 services or criminal history information on identified individuals
26 to the public or to those outside the criminal justice sector or that
27 aggregates into databases that are open to the public or those
28 outside the criminal justice sector upon request or charge, but
29 which are not created or maintained by a criminal justice agency,
30 criminal history information on identified individuals that are open
31 to the public or to a criminal justice agency. For the purposes of
32 this paragraph, a consumer reporting agency includes an
33 investigative consumer reporting agency, as defined in Section
34 1786.2 of the Civil Code, and a consumer credit reporting agency,
35 as defined in Section 1785.3 of the Civil Code.

36 (3) "Court records" means records, files, and materials created,
37 compiled, or maintained by or for the court in relation to court
38 proceedings, and includes, but is not limited to, indexes, registers
39 of actions, court minutes, court orders, court filings, court exhibits,
40 court progress and status reports, court history summaries, copies

1 of state summary criminal history information and local summary
2 criminal history information, and any other criminal history
3 information contained in any of those materials.

4 (4) "Criminal justice agency" means an agency at any level of
5 government that performs, as its principal function, activities
6 relating to the apprehension, prosecution, defense, adjudication,
7 incarceration, or correction of criminal suspects and criminal
8 offenders. A criminal justice agency includes, but is not limited
9 to, any of the following:

10 (A) A court of this state.

11 (B) A peace officer, as defined in Section 830.1, subdivisions
12 (a) and (e) of Section 830.2, subdivision (a) of Section 830.3,
13 subdivision (a) of Section 830.31, and subdivisions (a) and (b) of
14 Section 830.5.

15 (C) A district attorney.

16 (D) A prosecuting city attorney.

17 (E) A city attorney pursuing civil gang injunctions pursuant to
18 Section 186.22a or drug abatement actions pursuant to Section
19 3479 or 3480 of the Civil Code or Section 11571 of the Health
20 and Safety Code.

21 (F) A probation officer.

22 (G) A parole officer.

23 (H) A public defender or an attorney representing a person, or
24 a person representing himself or herself, in a criminal proceeding,
25 a proceeding to revoke parole, mandatory supervision, or
26 postrelease community supervision, or in proceeding described in
27 Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part
28 3.

29 (I) An expert, investigator, or other specialist contracted by a
30 prosecuting attorney or defense attorney to accomplish the purpose
31 of the prosecution, defense, or representation in the criminal
32 proceeding.

33 (J) A correctional officer.

34 (5) "Police investigative report" means intelligence, analytical,
35 and investigative reports and files created, compiled, and
36 maintained by a law enforcement criminal justice agency and
37 relating to a potential crime, violation of the law, arrest, detention,
38 prosecution, or law enforcement investigation.

39 SEC. 6. Section 1000.4 of the Penal Code is amended to read:

1 1000.4. (a) Any record filed with the Department of Justice
2 shall indicate the disposition in those cases deferred pursuant to
3 this chapter. Upon successful completion of a deferred entry of
4 judgment program, the arrest upon which the judgment was
5 deferred shall be deemed to have never occurred and the court may
6 issue an order to seal the records pertaining to the arrest as
7 described in Section 851.92. The defendant may indicate in
8 response to any question concerning his or her prior criminal record
9 that he or she was not arrested or granted deferred entry of
10 judgment for the offense, except as specified in subdivision (b).
11 A record pertaining to an arrest resulting in successful completion
12 of a deferred entry of judgment program shall not, without the
13 defendant's consent, be used in any way that could result in the
14 denial of any employment, benefit, license, or certificate.

15 (b) The defendant shall be advised that, regardless of his or her
16 successful completion of the deferred entry of judgment program,
17 the arrest upon which the judgment was deferred may be disclosed
18 by the Department of Justice in response to any peace officer
19 application request and that, notwithstanding subdivision (a), this
20 section does not relieve him or her of the obligation to disclose
21 the arrest in response to any direct question contained in any
22 questionnaire or application for a position as a peace officer, as
23 defined in Section 830.

24 (c) The defendant shall be advised that, regardless of the
25 defendant's successful completion of a deferred entry of judgment
26 program, an order to seal records pertaining to an arrest made
27 pursuant to this section has no effect on a criminal justice agency's
28 ability to access and use those sealed records and information
29 regarding sealed arrests, as described in Section 851.92.

30 SEC. 7. Section 1001.9 of the Penal Code is amended to read:

31 1001.9. (a) Any record filed with the Department of Justice
32 shall indicate the disposition in those cases diverted pursuant to
33 this chapter. Upon successful completion of a diversion program,
34 the arrest upon which the diversion was based shall be deemed to
35 have never occurred and the court may issue an order to seal the
36 records pertaining to the arrest as described in Section 851.92. The
37 divertee may indicate in response to any question concerning his
38 or her prior criminal record that he or she was not arrested or
39 diverted for the offense, except as specified in subdivision (b). A
40 record pertaining to an arrest resulting in successful completion

1 of a diversion program shall not, without the divertee's consent,
2 be used in any way that could result in the denial of any
3 employment, benefit, license, or certificate.

4 (b) The divertee shall be advised that, regardless of his or her
5 successful completion of diversion, the arrest upon which the
6 diversion was based may be disclosed by the Department of Justice
7 in response to any peace officer application request and that,
8 notwithstanding subdivision (a), this section does not relieve him
9 or her of the obligation to disclose the arrest in response to any
10 direct question contained in any questionnaire or application for
11 a position as a peace officer, as defined in Section 830.

12 (c) The divertee shall be advised that, regardless of the
13 defendant's successful completion of a deferred entry of judgment
14 program, an order to seal records pertaining to an arrest made
15 pursuant to this section has no effect on a criminal justice agency's
16 ability to access and use those sealed records and information
17 regarding sealed arrests, as described in Section 851.92.

18 SEC. 8. If the Commission on State Mandates determines that
19 this act contains costs mandated by the state, reimbursement to
20 local agencies and school districts for those costs shall be made
21 pursuant to Part 7 (commencing with Section 17500) of Division
22 4 of Title 2 of the Government Code.