

Date of Hearing: April 6, 2021
Counsel: Cheryl Anderson

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 898 (Lee) – As Amended April 5, 2021

SUMMARY: Provides that if probation is transferred to another county, and a prosecutor or probation department in either county is seeking to file a petition to prohibit the Department of Justice (DOJ) from granting automatic conviction record relief, the petition must be filed in the county of current jurisdiction, and expands notice provisions regarding conviction record relief to include probation transfer cases. Specifically, **this bill**:

- 1) Requires DOJ, in cases where probation has been transferred, to electronically submit notice of conviction record relief to both the transferring court and any subsequent receiving court.
- 2) Requires a receiving court that reduces a felony to a misdemeanor or dismisses a conviction under specified provisions to provide a disposition report to DOJ with the original case number from the transferring court; DOJ must electronically submit a notice to the court that sentenced the defendant.
- 3) Provides that if probation was transferred multiple times, DOJ must electronically submit notice to all involved courts.
- 4) States that any court receiving notice of a reduction or dismissal must update its records to reflect the same.
- 5) Prohibits a court receiving notification of dismissal, as specified, from disclosing information concerning the dismissed conviction except to the person whose conviction was dismissed or a criminal justice agency, as specified.
- 6) States that a prosecuting attorney or probation department, in either the receiving county or transferring county, seeking to file a petition to prohibit the department from granting automatic conviction record relief must file the petition in the county of current jurisdiction.
- 7) Requires DOJ, in cases where relief is denied, to electronically submit notice to the transferring court, and, if probation was transferred multiple times, to all other involved courts. Requires DOJ to provide similar notice if relief is subsequently granted.
- 8) Requires the receiving court to provide a receipt of records from the transferring court, including the new case number.
- 9) Provides that the transferring court must report to the DOJ that probation was transferred and identify the receiving court and new case number, if applicable.

EXISTING LAW:

- 1) Requires the DOJ, as of July 1, 2022, and subject to an appropriation in the annual Budget Act, on a monthly basis, to review the records in the statewide criminal justice databases, and based on information in the state summary criminal history repository and the Supervised Release File, identify persons with convictions that meet specified criteria and are eligible for automatic conviction record relief. (Pen. Code § 1203.425, subd. (a)(1)(A).)
- 2) States that a person is eligible for automatic conviction relief if they meet all of the following conditions:
 - a) The person is not required to register pursuant to the Sex Offender Registration Act;
 - b) The person does not have an active record for local, state, or federal supervision in the Supervised Release File;
 - c) Based upon the information available in the department's record, including disposition dates and sentencing terms, it does not appear that the person is currently serving a sentence for any offense and there is no indication of any pending criminal charges;
 - d) Except as otherwise provided, there is no indication that the conviction resulted in a sentence of incarceration in the state prison; and,
 - e) The conviction occurred on or after January 1, 2021, and meets either of the following criteria:
 - i) The defendant was sentenced to probation and, based upon the disposition date and the term of probation specified in the department's records, appears to have completed their term of probation without revocation.
 - ii) The defendant was convicted of an infraction or misdemeanor, was not granted probation, and, based upon the disposition date and the term specified in the department's records, the defendant appears to have completed their sentence, and at least one calendar year has elapsed since the date of judgment. (Pen. Code § 1203.425, subd. (a)(1)(A)(B).)
- 3) Requires the DOJ to grant relief, including dismissal of a conviction, to a person who is eligible, without requiring a petition or motion by a party for that relief if the relevant information is present in the department's electronic records. (Pen. Code § 1203.425, subd. (a)(2)(A).)
- 4) Requires the DOJ, as of July 1, 2022, and subject to an appropriation in the annual Budget Act, on a monthly basis, to electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which a complaint was filed in that jurisdiction and for which relief was granted. (Pen. Code § 1203.425, subd. (a)(3)(A).)
- 5) Allows the prosecuting attorney or probation department to, no later than 90 calendar days before the date of a person's eligibility for relief, to file a petition to prohibit the department

from granting automatic relief, based on a showing that granting the relief would pose a substantial threat to public safety. (Pen. Code § 1203.425, subd. (b)(1).)

- 6) Requires the court to notify the defendant of the petition and conduct a hearing within 45 days. (Pen. Code § 1203.425, subd. (b)(2).)
- 7) Provides that if the court grants the petition, the court must furnish a disposition report to DOJ. (Pen. Code § 1203.425, subd. (b)(6).)
- 8) States that if relief is denied, but subsequently granted under a different provision, as specified, the court must submit a disposition report to the DOJ. (Pen. Code § 1203.425, subd. (b)(7).)
- 9) Provides, except as specified, that whenever a person is released on probation or mandatory supervision, the court, upon noticed motion, must transfer the case to the superior court in any other county in which the person resides permanently with the stated intention to remain for the duration of probation or mandatory supervision, unless the transferring court determines the transfer would be inappropriate and states its reasons on the record. (Pen. Code § 1203.9, subd. (a)(1).)
- 10) Requires law enforcement agencies to report every arrest to DOJ, and to include in the report personal identifying information and arrest data, as specified, and fingerprints, except as otherwise provided by law or as prescribed by the DOJ. (Pen. Code, § 13150, subd. (a).)
- 11) Requires a court to send to DOJ a disposition report regarding every case it disposes of resulting from an arrest that was reported to DOJ. The court must similarly report when it orders actions subsequent to the initial disposition of the case. (Pen. Code, § 13151, subd. (a).)
- 12) Requires a court to grant expungement relief, with specified exceptions, for a misdemeanor or felony conviction for which the sentence included a period of probation if the petitioner is not serving a sentence for, on probation for, or charged with the commission of any offense. (Pen. Code, § 1203.4, subd. (a).)
- 13) Requires DOJ, on or before July 1, 2019, to review the records in the state summary criminal history information database and identify past marijuana convictions that are potentially eligible for recall or dismissal of sentence, dismissal and sealing, or redesignation, as specified. Requires DOJ to notify the prosecution of all cases in their jurisdiction that are eligible for recall or dismissal of sentence, dismissal and sealing, or redesignation. (Health & Saf. Code, § 11361.9, subd. (a).)
- 14) Requires the prosecution by July 1, 2020, to review all cases and determine whether to challenge the recall or dismissal of sentence, dismissal and sealing, or redesignation. (Health & Saf. Code, § 11361.9, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "No statutes or rules of court currently ensure that transferring and receiving courts communicate to ensure expungements and reductions of felonies to misdemeanors are correctly represented in both courts' records. Two courts become involved in a case if someone is charged in a different jurisdiction than where they live, or if they move. In these instances, the case needs to be transferred if the person is placed on formal probation. If one of the courts is not notified that someone is granted relief, publicly accessible conviction information may remain."

"AB 898 will ensure that expungements and reductions of felonies to misdemeanors are correctly represented on a person's record if there are multiple courts involved. Currently, inaccurate publicly accessible information about a person's conviction can linger after automatic relief is granted, which can make it difficult for people to obtain employment and housing."

- 2) **Background:** According to information provided by the author's office:

Two courts become involved in a case if someone is convicted in a different jurisdiction than where they live, or if they move. In these instances, the case needs to be transferred to the county of residence if the person is on formal probation, and generally, the receiving court has considered and granted criminal record relief.

If a receiving court reduces or dismisses a conviction but does not notify the transferring court, publicly accessible conviction documents in a transferring court's case file may be inaccurate. This can make it difficult for people to obtain employment and housing, among other things. Absent statutory direction, there is no consistency among transferring and receiving courts on how records are maintained or updated when a reduction or dismissal occurs.

In 2018 and 2019, the Legislature passed significant automated record relief bills, which transferred the burden of seeking record relief from a defendant-petitioner to government agencies. AB 1793 (Bonta; Stats. 2018, ch. 993) provided automated relief for marijuana convictions under Proposition 64, which reduced or repealed designated marijuana-related offenses. AB 1076 (Ting; Stats. 2019, ch. 578) required the Department of Justice (DOJ) to grant automatic record relief to individuals who have completed probation without revocation and not currently serving a sentence for any offense. A court may not disclose information concerning a conviction granted automatic record relief or a dismissal under this legislation except in limited circumstances.

Because DOJ has disposition information only from the county of conviction (the transferring court), if a probation transfer case is granted automated relief in the transferring court and the receiving court is not notified, the receiving court may have inaccurate publicly accessible conviction documents in its case file. This inaccurate information could hamper the ability of individuals eligible for relief to obtain employment and housing, among other things.

3) **Argument in Support:** According to the California Public Defender's Association: "It is an unfortunate truth that a single arrest or conviction can act as a lifelong barrier to employment, housing, and education. The consequences of conviction are so significant, in fact, that these secondary effects are often far more severe than the actual punishment permitted by law.

"Recognizing that is not in our shared community's best interest to prevent those who have already served their time from pursuing their education, finding a job, or seeking stable housing, California has long allowed Californians convicted of specified offenses to apply to the court for the expungement of their prior conviction and the sealing of related court records.

"One problem with current expungement law is that it does not take into account the way in which conviction records are kept in California. A former defendant who was supervised in two courts for the same offense, for example, may have two sets of conviction records, making the expungement of only one court's records effectively useless.

"AB 898 addresses this issue by clarifying the expungement procedure so that a defendant who was supervised for the same expungeable [sic] offense in two different court systems will get both sets of records sealed following the grant of an expungement order."

4) **Related Legislation:**

- a) AB 1308 (Ting) allows an arrest or conviction that occurred on or after January 1, 1973, to be considered for automatic record relief. AB 1308 is pending before this committee.
- b) SB 731 (Durazo) extends automatic record relief to specified felony convictions that occurred on or after January 1, 1973. SB 731 is scheduled to be heard in the Senate Committee on Public Safety on April 6, 2021.

5) **Prior Legislation:**

- a) SB 118 (Committee on Budget and Fiscal Review), Chapter 29, Statutes of 2020, adjusted the timeline for implementation of AB 1076 (Ting), Chapter 578, Statutes of 2019.
- b) AB 88 (Committee on Budget), of the 2019-2020 Legislative Session, would have adjusted the timeline for implementation of AB 1076 (Ting), Chapter 578, Statutes of 2019. AB 88 died on the Senate inactive file.
- c) AB 1076 (Ting), Chapter 578, Statutes of 2019, requires the DOJ, as of January 1, 2021, and subject to an appropriation, 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 required the DOJ to grant that relief to the eligible person without a petition or motion to being filed on the person's behalf.
- d) AB 1331 (Bonta), Chapter 581, Statutes of 2019, expanded the data that law enforcement entities are required to report to the Department of Justice related to every arrest to

include the Criminal Investigation and Identification (CII) number and incident report number.

- e) AB 2978 (Ting), of the 2019-2020 Legislative Session, would have required that an arrest or conviction have occurred on or after January 1, 1973, rather than January 1, 2021, in order to be considered for automatic record relief. AB 2978 was not heard in this committee.
- f) AB 2438 (Ting), of the 2017-2018 Legislative Session, would have required automatic expungements of certain convictions, as specified. AB 2438 was held on the Assembly Appropriations suspense file.
- g) AB 1793 (Bonta), Chapter 993, Statutes of 2018, requires the court to automatically resentence, redesignate, or dismiss cannabis-related convictions.

REGISTERED SUPPORT / OPPOSITION:**Support**

Judicial Council of California (Sponsor)
American Civil Liberties Union
California for Safety and Justice
California Public Defenders Association (CPDA)
Initiate Justice
Re:store Justice
San Francisco Public Defender

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