
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 898 **Hearing Date:** July 6, 2021
Author: Lee
Version: April 5, 2021
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Criminal records: automatic conviction record relief*

HISTORY

Source: The Judicial Council

Prior Legislation: AB 1076 (Ting) Chapter 578, Stats. 2019
AB 1793 (Bonta) Chapter 993, Stats. 2018

Support: ACLU California Action; Alameda County District Attorney's Office; California Attorneys for Criminal Justice; California Public Defenders Association; Initiate Justice; National Association of Social Workers, California Chapter; San Francisco Public Defender

Opposition: None known

Assembly Floor Vote: 76 - 0

PURPOSE

The purpose of this bill is to provide 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

Existing law 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. (Penal Code § 1203.425 (a)(1)(A).)

Existing law states that a person is eligible for automatic conviction relief if they meet all of the following conditions:

- The person is not required to register pursuant to the Sex Offender Registration Act;
 - The person does not have an active record for local, state, or federal supervision in the Supervised Release File;
- 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;

- Except as otherwise provided, there is no indication that the conviction resulted in a sentence of incarceration in the state prison; and,
- The conviction occurred on or after January 1, 2021, and meets either of the following criteria:
 - 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.
 - 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. (Penal Code § 1203.425 (a)(1)(A)(B).)

Existing law 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. (Penal Code § 1203.425 (a)(2)(A).)

Existing law 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. (Penal Code § 1203.425 (a)(3)(A).)

Existing law 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. (Penal Code § 1203.425 (b)(1)).)

Existing law requires the court to notify the defendant of the petition and conduct a hearing within 45 days. (Penal Code § 1203.425 (b)(2).)

Existing law provides that if the court grants the petition, the court must furnish a disposition report to DOJ. (Penal Code § 1203.425 (b)(6).)

Existing law 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. (Penal Code § 1203.425 (b)(7).)

Existing law 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. (Penal Code § 1203.9 (a)(1).)

Existing law 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. (Penal Code, § 13150 (a).)

Existing law 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. (Penal Code § 13151 (a).)

Existing law 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. (Penal Code, § 1203.4 (a).)

Existing law 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 & Safety Code, § 11361.9 (a).)

Existing law 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 & Safety Code § 11361.9 (b).)

This bill 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.

This bill 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.

This bill provides that if probation was transferred multiple times, DOJ must electronically submit notice to all involved courts.

This bill states that any court receiving notice of a reduction or dismissal must update its records to reflect the same.

This bill 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.

This bill 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.

This bill 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.

This bill requires the receiving court to provide a receipt of records from the transferring court, including the new case number.

This bill 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.

COMMENTS

1. Need for This Bill

According to the author:

No statutes or rules of the court currently ensure that transferring and receiving courts communicate to ensure expungements and reductions of felonies to misdemeanors are correctly represented in both courts. 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. Information from transferred

If a person is convicted of an offense in a county where he or she does not live, the case is generally transferred to the county of residence if the person is on formal probation.

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. There is currently nothing in statute that makes how courts notify DOJ or the original court in these situations consistent.

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) Chapter 993, Stats. 2018, provided automated relief for marijuana convictions under Proposition 64, which reduced or repealed designated marijuana-related offenses. AB 1076 (Ting) Chapter 578, Stats. 2019, 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 bill clarifies that in situations where a case is transferred one or more times between courts, the courts shall communicate any changes in disposition of the case with all the other prior courts so that all the records are accurate and DOJ will have the information necessary to grant automatic relief where appropriate.

3. Arguments in Support

ACLU California Action supports this bill stating:

Two courts become involved in a case if someone is convicted in a different jurisdiction than where they live. In these instances, the case is transferred to the county of residence if the person is on formal probation. 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.

Existing law requires that when probation is transferred from one jurisdiction to another, the receiving court accepts jurisdiction over the case. However, no authority addresses how the courts notify each other of subsequent actions on the case, and how to update records accordingly.

In order to ensure that people on probation do not miss opportunities due to inaccurate court records, transferring and receiving courts must both have current information on expungements and charge reductions. AB 898 will achieve this by requiring that probation transfers be reported to DOJ and that DOJ provide notification of reductions of felonies to misdemeanors and dismissals of convictions in probation transfer cases between receiving and transferring courts, so that both courts maintain accurate records of the case.

The Alameda District Attorney's Office supports this bill stating:

Existing law requires that when probation is transferred from one jurisdiction to another, the receiving court accepts jurisdiction over the case. However, no authority addresses how the courts notify each other of subsequent actions on the case, and how to update records accordingly. 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 certify that conviction expungements and reductions of felonies to misdemeanors are correctly represented on a person's record if there are multiple courts involved in a case due to a probation transfer. In order to ensure that people

on probation do not miss opportunities due to inaccurate court records, transferring and receiving courts must both have current information on expungements and charge reductions.

This bill will also ensure that people eligible for relief are not held back from housing or employment opportunities due to outdated and inaccurate court records. AB 898 will achieve this by requiring that probation transfers be reported to DOJ and that DOJ provide notification of reductions of felonies to misdemeanors and dismissals of convictions in probation transfer cases between receiving and transferring courts, so that both courts maintain accurate records of the case.

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