
SENATE COMMITTEE ON APPROPRIATIONS

Senator Ricardo Lara, Chair
2017 - 2018 Regular Session

SB 393 (Lara) - Arrests: sealing

Version: May 3, 2017

Urgency: No

Hearing Date: May 15, 2017

Policy Vote: PUB. S. 6 - 1, JUD. 7 - 0

Mandate: Yes

Consultant: Shaun Naidu

This bill meets the criteria for referral to the Suspense File.

Bill Summary: SB 393 would allow a person to petition the court to seal a record of an arrest that did not lead to a conviction, as specified.

Fiscal Impact:

- Local sealing: Unknown, potentially-reimbursable workload costs possibly in the hundreds of thousands of dollars (local funds/General Fund) for law enforcement agencies to make notations to seal the physical and electronic arrest records, as applicable. The workload is dependent on the number of successful petitions granted by the court, which itself is dependent on the number of people who choose to pursue this remedy.
- Courts: Unknown, potentially-significant workload costs (General Fund*) to review and verify all new petitions to seal arrest records and conduct hearings when contested, as specified,
- DOJ: Minor and absorbable costs to furnish forms.

*Trial Court Trust Fund

Background: 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 his or her arrest records. 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.

Existing law also prohibits, except in certain limited situations, an investigative consumer reporting agency from making or furnishing any investigate consumer report with certain items of information, including records of arrests and convictions for crimes that are more than seven years old or such records if it is learned that no conviction resulted or a full pardon has been granted. An investigative consumer reporting agency also is restricted from furnishing an investigative consumer report that includes information that is a matter of public record and that relates to an arrest, indictment, or conviction, unless the agency has verified the accuracy of the information during the 30-day period ending on the date on which the report is furnished.

Additionally, a public agency or private individual or corporation is prohibited from asking an applicant for employment to disclose information regarding an arrest or

detention that did not result in a conviction or that was dismissed or ordered sealed or any information regarding any pretrial or post-trial diversion programs.

Proposed Law: This bill would:

- Allow 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. 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.
- 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.
- 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 shifts to the prosecuting attorney.
- 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.
- Require the court to give a copy of the written ruling and order to the petitioner, the prosecuting attorney, and the law enforcement agency that made of the arrest.
- Requires DOJ to furnish forms to be utilized by a person applying to have his or her arrest sealed pursuant to this measure.
- Require law enforcement agencies, as specified, to notate the sealing of the arrest on the physical and electronic records of the arrest in their possession.
- Prohibit, if an arrest is sealed pursuant to this measure 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.
- 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.

Prior Legislation: SB 513 (Hancock, Ch. 798, Stats. 2013) providing for the sealing of records upon completion of a prefiling diversion program administered by a prosecuting attorney.

SB 599 (Perata, Ch. 792, Stats. 2003) provided for the sealing of records upon completion of a drug diversion program administered by a superior court or a deferred entry of judgment program.

Staff Comments: According to information from the California Law Enforcement Association of Records Supervisors, record sealing takes an average of 30 minutes. Staff must search all agency systems to determine what records are in the agency's possession, and then once located, must delete them. In the case with this bill, the agency would have to notate that the record was sealed and that it is not to be released outside of the criminal justice sector. This would have to be done with all physical (by stamp) and electronic (by notation) records.

While it is unknown how many individuals would make use of the arrest sealing remedy in this measure, there is a potential for a significant increase in workload for local law enforcement agencies given the number of arrests that could meet the criteria for sealing under this bill.

Recommended Amendments: This bill would require that DOJ furnish arrest sealing forms to people looking to submit a petition to the court. The Judicial Council usually develops forms such as these. The bill, however, does not indicate who shall develop that form. Is the intention that DOJ should develop the form also or should the Judicial Council? The author may wish to clarify who should develop these forms.

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