

AMENDED IN ASSEMBLY AUGUST 6, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 513

Introduced by Senator Hancock

February 21, 2013

An act to add Section 851.87 to the Penal Code, relating to diversion programs.

LEGISLATIVE COUNSEL'S DIGEST

SB 513, as amended, Hancock. Diversion programs: sealed records.

Existing law provides that, upon successful completion of a drug diversion program or deferred entry of judgment program, the court may order the sealing of court and arrest records of the diverted charges where the interests of justice would be served, as specified.

This bill would provide that in any case where a person is arrested and successfully completes a diversion program administered by a prosecuting attorney in lieu of filing an accusatory pleading, the person may petition the superior court that would have had jurisdiction over the matter for an order to seal the records of the arresting agency and related court files and records, and the court may issue that order if the court finds that doing so will be in furtherance of justice. The bill would provide that the Department of Justice shall continue to be able to maintain and disseminate any records or documents received or maintained by it, as authorized by law.

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. The Legislature finds and declares that in order
2 to allow a person who has been arrested and who successfully
3 completes a diversion program administered by a prosecuting
4 attorney in lieu of filing an accusatory pleading to become a law
5 abiding and productive member of society, the records of the
6 arresting agency and related court files and records shall be sealed.

7 SEC. 2. Section 851.87 is added to the Penal Code, to read:

8 851.87. (a) (1) In any case where a person is arrested and
9 successfully completes a diversion program administered by a
10 prosecuting attorney in lieu of filing an accusatory pleading, the
11 person may, two years after successful completion of the diversion
12 program as determined by the prosecuting attorney, petition the
13 superior court that would have had jurisdiction over the matter to
14 issue an order to seal the records of the arresting agency and related
15 court files and records, and the court may order those records
16 sealed if the court finds that doing so will be in furtherance of
17 justice. A copy of the petition shall be served on the law
18 enforcement agency and the prosecuting attorney of the county or
19 city having jurisdiction over the ~~offense at least 10 days prior to~~
20 ~~the hearing.~~ *offense, who may request a hearing within 60 days of*
21 *receipt of the petition. The court may hear the matter no less than*
22 *60 days from the date the law enforcement agency and the*
23 *prosecuting attorney receive a copy of the petition.* The prosecuting
24 attorney and the law enforcement agency, through the prosecuting
25 attorney, may present evidence to the court at the hearing.

26 (2) If the order is made, the clerk of the court shall thereafter
27 not allow access to any records concerning the case, including the
28 court file, index, register of actions, or other similar records.

29 (3) If the order is made, the court shall give a copy of the order
30 to the person and inform the person that he or she may thereafter
31 state that he or she was not arrested for the charge.

32 (4) The person may, except as specified in subdivisions (b), (c),
33 and (d), indicate in response to any question concerning the
34 person's prior criminal record that the person was not arrested.

35 (5) Subject to subdivisions (b), (c), and (d), a record pertaining
36 to the arrest shall not, without the person's permission, be used in
37 any way that could result in the denial of any employment, benefit,
38 or certificate.

1 (6) A sealing order made pursuant to this subdivision shall not
2 be forwarded to the Department of Justice to be included or notated
3 in the department's manual or electronic fingerprint image or
4 criminal history record systems. Any sealing order made pursuant
5 to this subdivision and received by the Department of Justice need
6 not be processed by the department.

7 (b) The person shall be advised that, regardless of the person's
8 successful completion of the diversion program, the arrest shall
9 be disclosed by the Department of Justice in response to any peace
10 officer application request, and that, notwithstanding subdivision

11 (a), this section does not relieve the person of the obligation to
12 disclose the arrest in response to any direct question contained in
13 any questionnaire or application for a position as a peace officer,
14 as defined in Section 830.

15 (c) The person shall be advised that, regardless of the person's
16 successful completion of the diversion program, the arrest shall
17 be disclosed by the Department of Justice or the court in which
18 the matter was heard in response to any subsequent inquiry by the
19 district attorney, court, probation department, or counsel for the
20 person concerning the person's eligibility for any diversion
21 program administered by a prosecuting attorney in the future.

22 (d) A sealing order made pursuant to this section shall not apply
23 to any record or document received or maintained by the
24 Department of Justice. Upon issuing the sealing order, the court
25 shall advise the person that, notwithstanding the issuance of a
26 sealing order pursuant to this section, the Department of Justice
27 shall continue to be able to maintain and disseminate any records
28 or documents received or maintained by the department, as
29 authorized by law.