

AMENDED IN ASSEMBLY AUGUST 22, 2013

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 *prefiling* 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 *prefiling* diversion program administered by a
4 prosecuting attorney in lieu of filing an accusatory pleading to
5 become a law abiding and productive member of society, the
6 records of the arresting agency and related court files and records
7 shall be sealed.

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

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

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

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

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

36 (5) Subject to subdivisions (b), (c), and (d), a record pertaining
37 to the arrest shall not, without the person's permission, be used in

1 any way that could result in the denial of any employment, benefit,
2 or certificate.

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

9 (b) The person shall be advised that, regardless of the person’s
10 successful completion of the ~~diversion~~ program, the arrest shall
11 be disclosed by the Department of Justice in response to any peace
12 officer application request, and that, notwithstanding subdivision
13 (a), this section does not relieve the person of the obligation to
14 disclose the arrest in response to any direct question contained in
15 any questionnaire or application for a position as a peace officer,
16 as defined in Section 830.

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

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

32 (e) *As used in this section, “prefiling diversion” is a diversion*
33 *from prosecution that is offered to a person by the prosecuting*
34 *attorney in lieu of, or prior to, the filing of an accusatory pleading*
35 *in court as set forth in Section 950.*