

Senate Bill No. 513

CHAPTER 798

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

[Approved by Governor October 13, 2013. Filed with
Secretary of State October 13, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

SB 513, 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.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares that in order to allow a person who has been arrested and who successfully completes a prefiling diversion program administered by a prosecuting attorney in lieu of filing an accusatory pleading to become a law abiding and productive member of society, the records of the arresting agency and related court files and records shall be sealed.

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

851.87. (a) (1) 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, two years after successful completion of the program as determined by the prosecuting attorney, petition the superior court that would have had jurisdiction over the matter to issue an order to seal the records of the arresting agency and related court files and records, and the court may order those records sealed if the court finds that doing so will be in furtherance of justice. A copy of

the petition shall be served on the law enforcement agency and the prosecuting attorney of the county or city having jurisdiction over the offense, who may request a hearing within 60 days of receipt of the petition. The court may hear the matter no less than 60 days from the date the law enforcement agency and the prosecuting attorney receive a copy of the petition. The prosecuting attorney and the law enforcement agency, through the prosecuting attorney, may present evidence to the court at the hearing.

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

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

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

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

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

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

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

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

(e) As used in this section, "prefiling diversion" is a diversion from prosecution that is offered to a person by the prosecuting attorney in lieu

of, or prior to, the filing of an accusatory pleading in court as set forth in Section 950.

O