

# LEGISLATIVE ADVISORY: AB 1076 (Ting) Chapter 578, Statutes of 2019 - Criminal Records: Automatic Relief.

**OPERATIVE DATE OF LEGISLATION: JANUARY 1, 2021**

## Attention Board of Psychology (Board) stakeholders:

Assembly Bill (AB) 1076 (Ting, Chapter 578, Statutes of 2019) was signed by Governor Gavin Newsom on October 8, 2019, and becomes operative January 1, 2021. This legislation will, upon an appropriation in the annual Budget Act, require the California Department of Justice (DOJ) to automatically seal specified arrest and conviction records that meet certain criteria and timeframes without requiring the individual to petition the court. This bill also prohibits DOJ from providing the Board with information on arrests or convictions that have been sealed. Additionally, the bill prohibits the courts from disclosing to the Board any information concerning arrests that were sealed pursuant to the bill's provisions, or convictions that have been sealed. This bill also now prohibits the Board from denying an application for licensure based on a conviction, or the acts underlying the conviction, that has been sealed pursuant to the bill's provisions.

## SUMMARY OF CHANGES:

### APPLICANTS

Once AB 1076 is fully implemented, some applicants for licensure or registration with the Board may find that their criminal conviction record(s) or arrest record(s) have been automatically sealed by the DOJ and cannot be considered by the Board as part of its determination of fitness to be granted a license or registration by the Board.

Disclosure of criminal convictions in an application for licensure or registration continues to be required until July 1, 2020. After July 1, 2020, the requirement to disclose criminal conviction information will be removed from applications for licensure and registration by the Board, but arrests and convictions not sealed under AB 1076, Penal Code Sections 1203.4, 1203.4(a), 1203.41, 1203.42, or 1203.42, or a comparable dismissal or expungement method, would still be reported to the Board by DOJ after the submission of fingerprints. Any non-sealed arrests and convictions reported to the Board will be evaluated to determine if an applicant is fit to be licensed or registered by the Board. In determining fitness for licensure, the Board will apply its Substantial Relationship Criteria (Title 16 California Code of Regulations (CCR) section 1394) and Rehabilitation Criteria for Denials and Reinstatements (16 CCR section 1395). The text of these regulations is available at the following links:

- Substantial Relationship Criteria - [https://govt.westlaw.com/calregs/Document/IA45AAE09AB4048CE9832C5AB1EBCB325?viewType=FullText&originatonContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/IA45AAE09AB4048CE9832C5AB1EBCB325?viewType=FullText&originatonContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)), and
- Rehabilitation Criteria for Denials and Reinstatements - [https://govt.westlaw.com/calregs/Document/IF5DEA856A6A847F3886F348276F40EA9?viewType=FullText&originatonContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)&bhcp=1](https://govt.westlaw.com/calregs/Document/IF5DEA856A6A847F3886F348276F40EA9?viewType=FullText&originatonContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)&bhcp=1).

Note: As part of the Governor's Proposed 2020-2021 Budget, the implementation of AB 1076 may be delayed until July 1, 2022. Therefore, if an arrest or criminal conviction was not sealed under AB 1076, Penal Code Sections 1203.4, 1203.4(a), 1203.41, 1203.42, or 1203.42, or a comparable dismissal or expungement method, the arrest and/or conviction may be reported to the Board and evaluated as a basis for denial of licensure.

### Arrest Records Eligible for Automatic Sealing under AB 1076

A person is eligible for automatic sealing of an arrest included in their state summary criminal history report under AB 1076 if the arrest occurred on or after January 1, 2021, and meets any of the following conditions:

- The arrest was for a misdemeanor offense and the charge was dismissed.
- The arrest was for a misdemeanor offense, there is no indication that criminal proceedings have been initiated, at least one calendar year has elapsed since the date of the arrest, and no conviction occurred, or the arrestee was acquitted of any charges that arose, from that arrest.
- The arrest was for an offense that is punishable by imprisonment pursuant to paragraph (1) or (2) of Penal Code Section 1170(h), there is no indication that criminal proceedings have been initiated, at least three calendar years have elapsed since the date of the arrest, and no conviction occurred, or the arrestee was acquitted of any charges arising, from that arrest.
- The person successfully completed any of the following relating to that arrest:
  - A prefiling diversion program, as defined in Penal Code Section 851.87, administered by a prosecuting attorney in lieu of filing an accusatory pleading.

- A drug diversion program administered by a superior court pursuant to Penal Code Section 1000.5, or a deferred entry of judgment program pursuant to Penal Code Section 1000 or 1000.8.
- A pretrial diversion program pursuant to Penal Code Section 1000.4.
- A diversion program pursuant to Penal Code Section 1001.9.
- Any diversion program described in Chapter 2.8 (commencing with Penal Code Section 1001.20), Chapter 2.8A (commencing with Penal Code Section 1001.35), Chapter 2.81 (commencing with Penal Code Section 1001.40), Chapter 2.9 (commencing with Penal Code Section 1001.50), Chapter 2.9A (commencing with Penal Code Section 1001.60), Chapter 2.9B (commencing with Penal Code Section 1001.70), Chapter 2.9C (commencing with Penal Code Section 1001.80), Chapter 2.9D (commencing with Penal Code Section 1001.81), or Chapter 2.92 (commencing with Penal Code Section 1001.85), of Title 6.

Sealed arrest records will show “arrest relief granted” on criminal history reports to law enforcement and other limited entities, but will not be disclosed to the Board.

As a result of the automated sealing of eligible arrest records under AB 1076, applicants whose arrest records are sealed are also released from any penalties and disabilities resulting from the arrest and may answer any question by the Board related to that arrest accordingly.

### **Conviction Records Eligible for Automatic Sealing under AB 1076**

A person is eligible for automatic sealing of a conviction included in their state summary criminal history report under AB 1076 if the person and the conviction 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 on DOJ records, 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 below, there is no indication that the conviction resulted in a sentence of incarceration in a state prison.
- 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 DOJ’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 DOJ’s records, the defendant appears to have completed their sentence and at least one calendar year has elapsed since the date of judgment.

Sealed conviction records will show “relief granted” on criminal history reports to law enforcement and other limited entities but will not be disclosed to the Board.

As a result of the automated sealing of eligible conviction records under AB 1076, applicants whose conviction records are sealed are also released from all penalties and disabilities resulting from the offense of which the person has been convicted. Note: The prosecuting attorney or probation department may, no later than 90 calendar days before the date of a person’s eligibility for automated sealing, file a petition to prohibit DOJ from granting automatic relief based on a showing that granting such relief would pose a substantial threat to the public safety. AB 1076 provides for a specified process to hear these petitions in Penal Code 1203.425(h).

### **LICENSEES**

Board applicants are fingerprinted prior to licensure or registration and therefore the Board receives subsequent arrest and conviction notifications from DOJ when arrests and convictions are entered into the state summary criminal history repository for a licensee or registrant.

Licensees should be aware that AB 2138’s (Chapter 995, Statutes of 2018) prohibition against requiring an applicant for licensure to disclose information or documentation on the applicant’s criminal history does not apply to a licensee or registrant’s renewal application. Therefore, until an arrest or conviction is sealed pursuant to AB 1076, or the other available means to seal an arrest or conviction record, licensees and registrants must continue to disclose on their renewal application any pleas, convictions, or discipline by a government agency or other disciplinary body that occurred since their last renewal.

For the purposes of renewal applications, the following should be reported unless otherwise specified:

- Pleas and convictions for misdemeanors and felonies, traffic infractions involving drugs or alcohol, and all other infractions resulting in fines of \$500 or more.
  - Excluded from disclosure are charges that were dismissed under Penal Code Section 1000.3 or equivalent non-California laws, or convictions two years or older under Health and Safety Code Sections 11357(b), (c), (d), (e), or Section 11360(b).
- License discipline by a government agency or other disciplinary body, including but not limited to, suspension, revocation, voluntary surrender, probation, reprimand, or any other restriction on any license or registration held.

## **IMPLEMENTATION:**

The Board does not have any implementation activities associated with AB 1076.

The Board is in the process implementing AB 2138's (Chapter 995, Statutes of 2018) requirements. For more information and updates on those implementation activities, please see the AB 2138 Legislative Advisory here [https://www.psychology.ca.gov/laws\\_regs/leg\\_ab2138.shtml](https://www.psychology.ca.gov/laws_regs/leg_ab2138.shtml).