

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Petition to Seal and Destroy Arrest Records - Penal Code § 851.8 Information and Instructions

There are two instances in which a person may petition the court under this code section:

- No complaint has been or will be filed and the arresting agency has denied a previous petition. These will be filed with the court that has territorial jurisdiction over the matter.
- A complaint was filed, the action was dismissed and the court has determined that the person was factually innocent. These will be filed with the court that dismissed the action.

The following information is not intended as full comprehensive instruction. For additional information we recommend you seek legal advice from a qualified attorney or review the Penal Code Section in its entirety.

An adult who is found to be factually innocent may petition the court to have his or her arrest record sealed for three years and then subsequently destroyed. If a civil action is pending against the law enforcement agency the record may be sealed but not destroyed. If the Court grants the petition, the arrest or other proceeding is deemed not to have occurred. Note: the arrest record is different from the court record; destruction of the court record is controlled by the Government Code section 68152.

Factual Innocence: *no reasonable cause exists to believe that the person committed the offense for which the arrest was made. A person is not considered to be factually innocent when there is a dismissal in the interest of justice or an acquittal due to insufficient evidence or lack of prosecution.*

Qualifications:

1. You must have been found factually innocent of the crime for which you were arrested.
2. You must have been an adult when arrested or detained.
3. The arrest or detention cannot have been for an infraction.
4. You cannot have been convicted of any other crime connected to the arrest or detention.

Deadlines:

Petitions may be filed up to **two years** following the arrest date or the date the complaint was filed. Time restrictions may be waived upon a showing of good cause by the petitioner.

Hearings:

Once the hearing scheduled, it is the responsibility of the petitioner to show that no reasonable cause exists to believe that the arrestee committed the offense. The Prosecuting Attorney has a right to respond to the petition and your request for a finding of factual innocence.

Instructions:

If a complaint has not been filed you will be asked to provide the court with a copy of your booking and/or arrest information and the denied petition from the arresting agency. If you are unable to obtain the arrest information from the arresting agency you may need to contact the California Department of Justice at (916) 227-3835.

1. Complete items 1 through 5 of the *Petition and Order to Seal and Destroy Arrest Records*. Incomplete forms will not be processed and will be returned for correction.
2. A copy of the petition must be mailed or delivered to the District Attorney or the City Attorney and Law Enforcement Agency who has jurisdiction over the offense:
 - a. If mailed, the person mailing must complete the Proof of Service, see page 3 of the petition.
 - b. If delivered, the prosecutor may acknowledge its receipt by stamping the original petition to be filed with the court.
3. Return the original petition and the completed Proof of Service to the Criminal Operations Division of the Justice Center that has jurisdiction over the case. The District Attorney or the City Attorney has 10 days to submit a response to the petition.

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