

# **PETITION TO SEAL AND DESTROY ARREST RECORDS UNDER PENAL CODE §851.8 TO REQUEST A DETERMINATION OF FACTUAL INNOCENCE**

## **SELF-HELP FORM PACKET**



SHC-CRIM-05 (Rev. 08/06/2021)

Self-Help Services can review your completed forms before you file them with the Court. To request review of your completed forms:

1. Complete the attached forms in black ink.
2. Scan your completed forms and save as a single PDF file.
3. Go to **[www.occourts.org/self-help](http://www.occourts.org/self-help)** (click the blue button labeled *Click Here to Contact Self-Help Services*), attach the PDF, and complete the online request form. Make sure to select CRIMINAL/TRAFFIC as the case type on the form.



# PETITION TO SEAL AND DESTROY ADULT ARREST RECORDS

(Per Penal Code section 851.8)

**Print or type required information**

**Note: DOJ does NOT accept petitions or documents from the public**

FULL NAME OF PETITIONER		LAST			FIRST		MIDDLE	
ALIASES			DATE OF BIRTH	DRIVER LICENSE NUMBER		SOCIAL SECURITY (OPTIONAL)		
STREET NUMBER			STREET NAME			APARTMENT OR UNIT NUMBER		
CITY			COUNTY	STATE		ZIP CODE		
DATE(S) OF ARREST		NAME OF ARRESTING AGENCY		AGENCY CASE NUMBER	CHARGE(S)	DISPOSITION		

\_\_\_\_\_  
SIGNATURE OF PETITIONER

\_\_\_\_\_  
DATE

**SECTION TO BE COMPLETED BY LAW ENFORCEMENT AGENCY/COURT WITH JURISDICTION FOR OFFENSE(S)**

I have verified the above information to be accurate.

\_\_\_\_\_  
PRINT NAME (GRANTOR)

\_\_\_\_\_  
PHONE NUMBER / EMAIL ADDRESS

\_\_\_\_\_  
SIGNATURE OF AGENCY (GRANTOR)

\_\_\_\_\_  
DATE

NAME OF LAW ENFORCEMENT AGENCY OR COURT

LAW ENFORCEMENT AGENCY CASE NUMBER OR COURT CASE NUMBER

CII NUMBER OF PETITIONER

FBI NUMBER OF PETITIONER

**SECTION TO BE COMPLETED BY LAW ENFORCEMENT AGENCY (851.8(a) PC)**

PETITION GRANTED (Send to DOJ)

PETITION DENIED (Do NOT send to DOJ)

\_\_\_\_\_  
PRINT OR TYPE NAME OF AGENCY AND GRANTOR

\_\_\_\_\_  
PHONE NUMBER / EMAIL ADDRESS

\_\_\_\_\_  
SIGNATURE OF AGENCY (GRANTOR)

\_\_\_\_\_  
DATE

**SECTION TO BE COMPLETED BY COURT OF JURISDICTION (851.8(b), (c), or (d) PC)**

PETITION GRANTED (Send to DOJ)

PETITION DENIED (Do NOT send to DOJ)

\_\_\_\_\_  
PRINT NAME OF AGENCY OR COURT OFFICIAL

\_\_\_\_\_  
PHONE NUMBER / EMAIL ADDRESS

\_\_\_\_\_  
SIGNATURE OF AGENCY OR COURT OFFICIAL

\_\_\_\_\_  
DATE

**WAIVER: TIME RESTRICTION ON FILING WAIVED (851.8 (I) PC)**

\_\_\_\_\_  
PRINT NAME OF AGENCY OR COURT OFFICIAL

\_\_\_\_\_  
SIGNATURE OF AGENCY OR COURT OFFICIAL

\_\_\_\_\_  
DATE

Submit Approved Petition to:  
Department of Justice  
Record Sealing Unit  
PO Box 903417  
Sacramento, CA 94203-4170

Also Distribute to:  
District Attorney  
Petitioner

AREA FOR AGENCY/COURT SEAL OR ADDITIONAL REMARKS

**(SEE REVERSE SIDE FOR MORE INFORMATION ON PENAL CODE § 851.8)**



## PETITION TO SEAL AND DESTROY ADULT ARREST RECORDS

(Per Penal Code section 851.8)

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### PETITIONER:

Penal Code (PC) section 851.8 provides that a person who has been arrested or detained, and is determined to be factually innocent, may petition the law enforcement agency or the court having jurisdiction over the matter to provide for the sealing and destruction of the record of that arrest. Petitions concerning arrests occurring on or after January 1, 1981, or accusatory pleadings filed on or after January 1, 1981, may be filed for up to two years following the arrest filing date. Until January 1, 1983, petitions can be filed for arrests which occurred or accusatory pleadings which were filed up to five years prior to the statute's effective date of September 29, 1980. **Note:** DOJ does not accept denied petitions or record sealing documents from the public.

### PETITION THE ARRESTING AGENCY (851.8(a) PC)

PC section 851.81(a) provides in part: "In any case where a person has been arrested and no accusatory pleadings have been filed, the person arrested may petition the law enforcement agency having jurisdiction over the offense to destroy its record of the arrest. A copy of such petition shall be served upon the district attorney of the county having jurisdiction over the offense."

### PETITION DENIED OR NO RESPONSE TO PETITION (851.8(b) PC)

PC section 851.8(b) provides in part: "If, after receipt by both the law enforcement agency and the district of a petition for relief under subdivision (a), the law enforcement agency and district attorney do not respond to the petition by accepting or denying such petition within 60 days after the running of the relevant statute of limitations or within 60 days after receipt of the petition in cases where the statute of limitations has previously lapsed, then the petition shall be deemed to be denied. In any case where the petition of an arrestee to the law enforcement agency to have an arrest record destroyed is denied, petition may be made to the municipal or justice court. A copy of such petition shall be served on the district attorney of the county having jurisdiction over the offense at least 10 days prior to the hearing." Note: The petitioner shall be responsible for obtaining the original petition from the law enforcement agency and submission to the court of jurisdiction.

### PETITION TO THE COURT OF JURISDICTION (851.8(c) PC)

PC section 851.8(c) provides in part: "In any case where a person has been arrested, and an accusatory pleading has been filed, but where no conviction has occurred, the defendant, may, at any time after dismissal of the action, petition the court which dismissed the action for a finding that the defendant is factually innocent of the charges for which the arrest was made. A copy of such petition shall be served on the district attorney of the county in which the accusatory pleading was filed at least 10 days prior to the hearing on the petitioner's factual innocence."

It is the responsibility of the petitioner to submit any declarations, affidavits, police reports, or other evidence, which may exist to support the petition to appropriate the arresting agency or court and to serve a copy of the petition and supporting papers on the district attorney.



## PETITION TO SEAL AND DESTROY ADULT ARREST RECORDS

(Per Penal Code section 851.8)

### Privacy Notice

As Required by Civil Code §1798.17

**Collection and Use of Personal Information.** The Bureau of Criminal Information and Analysis's Record Sealing Unit in the Department of Justice collects the information requested on this form as authorized by Penal Code section 851.8. The Record Sealing Unit uses this information so that a person who has been arrested or detained, and is determined to be factually innocent, may petition the law enforcement agency or the court having jurisdiction over the matter to provide for the sealing and destruction of the record of that arrest. In addition, any personal information collected by state agencies is subject to the limitations in the Information Practices Act and state policy. The Department of Justice's general privacy policy is available at <http://oag.ca.gov/privacy-policy>.

**Providing Personal Information.** All the personal information requested in the form must be provided. This form may not be processed for failure to provide the requested personal information.

**Access to Your Information.** You may review the records maintained by the Record Sealing Unit in the Department of Justice that contain your personal information, as permitted by the Information Practices Act. See below for contact information.

**Possible Disclosure of Personal Information.** In order to process this information so that a person who has been arrested or detained, and is determined to be factually innocent, may petition the law enforcement agency or the court having jurisdiction over the matter to provide for the sealing and destruction of the record of that arrest, the Department of Justice may need to share your information with other government agencies.

The information you provide may also be disclosed in the following circumstances:

- o With other persons or agencies where necessary to perform their legal duties, and their use of your information is compatible and complies with state law, such as for investigations or for licensing, certification, or regulatory purposes;
- o To another government agency as required by state or federal law.

**Contact Information.** For questions about this notice or access to your records, you may contact the Record Sealing Unit by mail at:

Department of Justice  
Bureau of Criminal Information & Analysis  
Record Sealing Unit  
P.O. Box 903417  
Sacramento, CA 94203-4170

# 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.

## PETITION TO SEAL AND DESTROY ARREST RECORDS

### Information and Instructions

ATTORNEY OR PARTY WITHOUT ATTORNEY ( <i>Name, Address.</i> )  Telephone No.: _____ Bar No. _____ Facsimile No.: _____ E-Mail address ( <i>optional</i> ): _____ ATTORNEY FOR ( <i>Name</i> ): _____	FOR COURT USE ONLY
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE</b> JUSTICE CENTER: <input type="checkbox"/> Central - 700 Civic Center Dr. West, Santa Ana, CA 92701 <input type="checkbox"/> Harbor-Newport Beach - 4601 Jamboree Rd., Newport Beach, CA 92660 <input type="checkbox"/> North - 1275 N. Berkeley Ave., P. O. Box 5000, Fullerton, CA 92838-0500 <input type="checkbox"/> West - 8141 13th Street, Westminster, CA 92683	
PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: _____	
<b>PETITION AND ORDER TO SEAL AND DESTROY ARREST RECORDS</b> Penal Code § 851.8	CASE NUMBER _____

**Read the Information and Instructions before completing this petition. The petition must be completed in its entirety and served upon the Prosecuting Attorney before filing with the court.**

1. Information relating to the arrest:

<i>Last</i>	<i>First</i>	<i>Middle</i>
Name: _____		
Date of Birth: _____	Driver's License No: _____	
Date of Arrest: _____	Arresting Agency: _____	
Booking Number: _____	Charges: _____	
Disposition: _____		

2. The offense was a  misdemeanor  felony.

3. A finding of factual innocence has has not\* been made on the above case or record of arrest.

\*If a finding has not been made, this petition serves as a request for a ruling that the petitioner is factually innocent of the charges for which the arrest was made. If a hearing is scheduled it will be the petitioner's responsibility to prove that no reasonable cause exists to believe that he or she committed the offense.

4.  No complaint was filed. The law enforcement agency denied my petition on: \_\_\_\_\_; a copy of the denied petition is attached.

A complaint was filed on: \_\_\_\_\_. The case was dismissed on: \_\_\_\_\_.

5.  The petitioner requests relief from the two year time restriction\*\* because:

\_\_\_\_\_

\_\_\_\_\_

\*\*from the date of the arrest or filing of the accusatory pleading, whichever is later (Penal Code section 851.8(l))

**PETITION AND ORDER TO SEAL AND DESTROY ARREST RECORDS**

Case Name:	Case Number:
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

▶ \_\_\_\_\_  
TYPE OR PRINT NAME

▶ \_\_\_\_\_  
(SIGNATURE OF PETITIONER)

Date:

▶ \_\_\_\_\_  
TYPE OR PRINT NAME OF ATTORNEY FOR PETITIONER

▶ \_\_\_\_\_  
(SIGNATURE OF ATTORNEY FOR PETITIONER)

**ORDER**

A hearing is set on \_\_\_\_\_ at \_\_\_\_\_ in Department \_\_\_\_\_ .  
(Date) (Time)

Petition Granted.

The Court finds the defendant factually innocent of the charge(s) for which the arrest was made.

The Court orders the law enforcement agency having jurisdiction over the offense, the Department of Justice, and any law enforcement agency which arrested the petitioner or participated in the arrest of the petitioner for an offense for which the petitioner has been found factually innocent under Penal Code section 851.8 to seal their records of the arrest and the court order to seal and to destroy such records, for three years from the date of the arrest and thereafter to destroy their records of the arrest and the court order to seal and destroy such records.

The Court orders the law enforcement agency having jurisdiction over the offense and the Department of Justice to request the destruction of any records of the arrest which they have given to any local, state, or federal agency, person or entity.

Petition Denied.

Other orders: \_\_\_\_\_  
\_\_\_\_\_

Date:

\_\_\_\_\_  
JUDGE/COMMISSIONER OF THE SUPERIOR COURT

**CLERK'S CERTIFICATE**

I certify that this document is a correct copy of the original on file in the court.

Date: \_\_\_\_\_ David H. Yamasaki, Clerk of the Court

By: \_\_\_\_\_  
Deputy Clerk

# of pages: \_\_\_\_\_ David H. Yamasaki

(seal)

**PETITION AND ORDER TO SEAL AND DESTROY ARREST RECORDS**

Case Name:	Case Number:
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**PROOF OF SERVICE**

**Personal Service**    **Service by Mail**

1. Person serving: I am over the age of 18 and not a party to this action.

Name:

Address:

Telephone:

2. I served a copy of the Petition and Order to Seal and Destroy Arrest Records as follows (*check one*):

a.  **Personal Service:** I personally delivered the Petition and Order to Seal and Destroy Arrest Records to the person at the address listed below:

(1) Law Enforcement Agency:

(2) Address where served:

(3) Date served:

(4) Time served:

b.  **Service by Mail:** I deposited the Petition and Order to Seal and Destroy Arrest Records in the United States mail, in a sealed envelope with first class postage fully prepaid. The envelope was addressed as follows:

(1) Law Enforcement Agency:

(2) Address:

(3) Date of Mailing:

(4) Place of Mailing (city and state):

3. I served a copy of the Petition and Order to Seal and Destroy Arrest Records as follows (*check one*):

a.  **Personal Service:** I personally delivered the Petition and Order to Seal and Destroy Arrest Records to the person at the address listed below:

(1) Name of person served:

**Office of the District Attorney**

**Office of the City Attorney**

(2) Address where served:

(3) Date served:

(4) Time served:

b.  **Service by Mail:** I deposited the Petition and Order to Seal and Destroy Arrest Records in the United States mail, in a sealed envelope with first class postage fully prepaid. The envelope was addressed as follows:

(1) Name of person served:

**Office of the District Attorney**

**Office of the City Attorney**

(2) Address:

(3) Date of Mailing:

(4) Place of Mailing (city and state):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

\_\_\_\_\_  
TYPE OR PRINT NAME

\_\_\_\_\_  
(SIGNATURE OF DECLARANT)

**PETITION AND ORDER TO SEAL AND DESTROY ARREST RECORDS**