

SAN DIEGO POLICE DEPARTMENT PROCEDURE

DATE: JUNE 10, 2019

NUMBER: 1.27 - ADMINISTRATION

SUBJECT: PETITION TO SEAL RECORDS – PENAL CODE SECTION 851.8

RELATED POLICY: N/A

ORIGINATING DIVISION: TRAINING & EMPLOYEE DEVELOPMENT
COMMAND: HUMAN RESOURCES

NEW PROCEDURE:
PROCEDURAL CHANGE: **EXTENSIVE CHANGES**
SUPERSEDES: DP 1.27 – 04/06/2017

I. PURPOSE

This Department procedure establishes guidelines for handling requests to seal records pursuant to California Penal Code section 851.8.

II. SCOPE

This Department procedure applies to all members of the Department.

III. BACKGROUND

NEW

Penal Code Section 851.8 provides procedures for a person who has been arrested for a felony or misdemeanor offense to petition either the arresting law enforcement agency or the superior court for a finding of factual innocence along with sealing and destruction of the arrest record.

IV. DEFINITION

NEW

Factually Innocent – a person is factually innocent when there is no reasonable cause to believe he or she committed the offense for which the arrest was made. Penal Code § 851.8(b). It does not mean a lack of proof of guilt beyond a reasonable doubt, or even a preponderance of evidence. An arrestee must show he or she should have never been subjected to the compulsion of criminal law or that

subsequently disclosed facts establish the arrestee's innocence. *People v. Adair*, 29 Cal. 4th 895, 905, fn. 4, 909 (2003).

V. **PROCEDURES**

A. In any case where a person has been arrested and no accusatory pleading has been filed, the person arrested may petition the law enforcement agency having jurisdiction over the offense to destroy its records of the arrest. Penal Code § 851.8(a).

1. The arrestee must complete a Petition to Seal and Destroy Records form (BCII8270) and submit it to Records Division.
2. Records Division will attach the Petition to Seal form a copy of the arrest report, along with any associated information, to the petition, and send it to the appropriate investigative command for review.
3. The petition and all supporting documentation shall be reviewed by the Captain or Lieutenant of the appropriate command.
4. The reviewer shall contact the appropriate prosecuting agency to seek concurrence with a determination of factual innocence.
5. If the reviewer and the prosecutor concur the arrestee is factually innocent, the petition should be granted. The reviewer will complete the section on the petition indicating the petition is granted, date and sign the petition, and return all documents to Records Division.
6. If the reviewer determines the arrestee is **not** factually innocent and the statute of limitations for the offense has expired, the petition may be denied by completing the section on the petition indicating the petition has been denied, dating and signing the petition, and returning all documents to Records Division. The reviewer may contact the appropriate prosecuting agency if unsure whether the statute of limitations has expired.
7. If the reviewer determines the arrestee is **not** factually innocent and the statute of limitations has **not** expired, the petition and all supporting documentation shall be returned to Records Division with no action taken. The reviewer may contact the appropriate prosecuting agency if unsure whether the statute of limitations has expired.
8. A petition not accepted or denied by the law enforcement agency and prosecuting attorney within 60 days after the statute of limitations expires is deemed denied and the arrestee may petition the superior court for relief. Penal Code § 851.8(b).

NEW

NEW

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NEW

B. Procedures for Records Division

NEW

1. If the petition is granted, Records Division will seal the arrest record by removing the report from CRMS and the arrest information from the ARJIS system and linking databases. Records will stamp the word “**exonerated**” over the suspect’s name for the related crime report(s) and retain in the file. Records will also notify the arrestee, the Department of Justice, Sheriff's Records and the prosecuting agency that the sealing has been completed. The sealed record will be held for three years from the date of arrest and then destroyed.

However, if the arrestee or a codefendant has filed a civil action against the peace officers or law enforcement jurisdiction (which made the arrest or instituted the prosecution) and Records has received a certified copy of the complaint, the record will not be destroyed until the civil action has been resolved. Penal Code § 851.8(k).

NEW

2. If the petition is denied, Records Division will notify the arrestee. The arrestee may then petition to the superior court for relief.
3. If no action is taken on the petition, Records Division will send a letter of no action to the arrestee.

NEW

- C. 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 petition the court directly for a finding of factual innocence on the charge(s) for which the arrest was made. A copy of such petition shall be served on the prosecuting attorney. If the court finds the defendant factually innocent, the court will order the sealing and destruction of the arrest record. Penal Code § 851.8(c).

NEW

Upon receipt of a court order for sealing and destruction of an arrest record pursuant to Penal Code section 851.8(c), Records Division will follow the sealing procedures outlined above in section B.1, as well as any specific instructions in the court order.