

Information on How to File a Petition to Seal Arrest and Related Records Under Penal Code Section 851.91

This information sheet does not cover all of the questions that may arise in a case. Do *not* deliver this information sheet to the court clerk.

What is a petition to seal arrest and related records?

The petition is a request to the court to seal arrest and related records under Penal Code section 851.91. A separate petition must be filed for each arrest for which sealing is requested.

What happens if the court grants my petition (request)?

If the court grants the petition, it will send a copy of the order to law enforcement and the California Department of Justice to update the arrest record, noting that the arrest is sealed. Records that are sealed under the court's order will not be disclosed except to you or a criminal justice agency (which includes courts, peace officers, prosecuting attorneys, city attorneys pursuing specific actions, defense attorneys, probation officers, parole officers, and correctional officers). Criminal history providers may disclose information to other criminal history providers. For more information, see Penal Code section 851.92.

What information do I include in the petition?

Read the petition carefully and fill out all parts of the petition. The court may deny the petition based on incomplete information.

How will the court makes its decision?

To have the arrest sealed as a matter of right, the court will determine whether the arrest did not result in a conviction (Pen. Code, § 851.91(a)(1)). The court will not seal the arrest as a matter of right if (1) you may still be charged with any of the offenses upon which the arrest was based;

(2) the arrest or case was filed for murder or any other offense for which there is no statute of limitations (except if you have been acquitted or found factually innocent), or
(3) you intentionally evaded law enforcement efforts to prosecute the arrest, including by engaging in identity fraud. (Pen. Code, § 851.91(a)(2).)

To have the arrest sealed in the interests of justice (Pen. Code, § 851.91(c)(2)(B)), you must describe how sealing the arrest is in the interests of justice through a personal statement and/or statements from others.

What do I do with the petition once I fill it out?

If a criminal case was filed based on the arrest you want to have sealed, serve a copy of the completed Petition, inclusive of court hearing date, time and department on the District Attorney of the county where the arrest happened *and* the law enforcement agency that made the arrest.

The person who delivers the Petition to the District Attorney *and* law enforcement agency must complete the Proof of Service showing that a copy of the Petition has been served on these agencies.

Take or mail the original Petition and the original Proof of Service to the clerk's office in the court where the case was filed at least 15 days prior to the hearing on the Petition.

If no criminal case was filed or charged against you, the Petition/Proof of Service must be provided to the clerk's office in the court that handles criminal matters for the city or county where the arrest happened. If you don't know which court this is, you may want to contact a court in the county to ask.

It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

Prepare for, and attend, the court hearing.

Does anyone else get the petition?

A copy of the petition must be served (delivered by hand or by mail) on the District Attorney of the county where the arrest happened *and* the law enforcement agency that made the arrest at least 15 days before the hearing on the petition.

Are there other ways to seal or limit arrest records?

Yes. You may request the court to deem an arrest a detention under Penal Code section 849.5; request a determination of factual innocence under section 851.8; receive an acquittal and a determination of factual innocence under section 851.85; have your conviction set aside based on a determination of factual innocence under section 851.86; and request relief after completion of a pre-filing diversion program under section 851.87.

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.

(1) Name: _____

(2) Address: _____

(3) Telephone: _____

2. I served a copy of the Petition for Sealing of Arrest Records as follows (*check one*):

a. Personal Service: I personally delivered the Petition for Sealing of Arrest Records to the person at the address listed below:

(1) Name of person served: _____

(2) Address where served: _____

(3) Date Served: _____

(4) Time Served: _____ AM PM

b. Service by Mail: I deposited the Petition for Sealing of 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: _____

(2) Address: _____

(3) Date of Mailing: _____

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

I declare to the best of my information and belief that the foregoing is true and correct.

Date: _____

(Signature of Declarant)

(Printed Name of Declarant)