

# SAN DIEGO POLICE DEPARTMENT PROCEDURE

**DATE:** APRIL 6, 2017

**NUMBER:** 1.27 - ADMINISTRATION

**SUBJECT:** PETITION TO SEAL RECORDS

**RELATED POLICY:** N/A

**ORIGINATING DIVISION:** RECORDS DIVISION

**NEW PROCEDURE:**

**PROCEDURAL CHANGE:**

**SUPERSEDES:** DP 1.27 – 08/02/2013

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## **I. PURPOSE**

This Department procedure establishes guidelines for the handling of requests to seal records.

## **II. SCOPE**

This Department procedure applies to all members of the Department.

## **III. BACKGROUND**

Penal Code Section 851.8 provides that a person who has been arrested or detained for felony or misdemeanor offenses, and is determined to be factually innocent, may petition the law enforcement agency or court having jurisdiction over the matter to provide for the sealing and destruction of the record of that arrest.

## **IV. DEFINITION**

Factually Innocent – a person is factually innocent when the person did not commit a crime. An example would be incorrect identity or when no crime was committed. It does not mean a lack of proof of guilt beyond a reasonable doubt, or even a preponderance of evidence, nor does the term encompass those situations where an accusatory pleading is not issued for technical reasons such as search and seizure issues (People vs. Glimps 92 Cal. App. 3d, 315, 321, 1979).

## V. PROCEDURES

A. According to Penal Code Section 851.8 (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.

1. The subject of arrest must complete a Petition to Seal and Destroy Records form (BCII8270), and submit to Records with a processing fee for each arrest being petitioned.
2. Records will attach a copy of the arrest report, along with any associated information, to the petition, and send it to the appropriate investigative command.
3. The ranking officer of the concerned unit, upon review and determination of whether the subject is factually innocent, will then make contact with the criminal division of the appropriate prosecuting agency to seek concurrence. Once concurrence is obtained, the ranking officer will complete the section indicating whether the petition is granted or denied, date and sign the petition, returning all documents to Records Division.
4. If the petition is granted, Records will seal the arrest record 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 file.** Records will also notify the subject, as well as the Department of Justice, Sheriff's Records and the prosecuting agency that the sealing has taken place. The sealed record will be held for three years from the date of arrest and then destroyed. However, per Penal Code section 851.8(k), 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.
5. If the petition is denied, Records will notify the subject. In any case where the law enforcement agencies deny a petition, the subject may then submit their petition to the court. First, the petitioner must prove that no reasonable cause exists to believe that the arrestee committed the offense for which the arrest was made. If proven, then the burden of proof shifts to the respondent to show reasonable cause exists. If the court finds the petitioner factually innocent, the court will order the sealing and destruction of the record.
6. According to Penal Code section 851.8 (b), if there is no response to the petition within 60 days, the petition shall be deemed to be denied.

B. According to Penal Code Section 851.8 (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 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 who may present evidence to the court. If the court finds the petitioner factually innocent, the court will order the sealing and destruction of the record.