

CHAPTER 12
SEALING AND DESTRUCTION OF CRIMINAL RECORDS

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TABLE OF CONTENTS

<u>PURPOSE</u>	12-3
<u>AUTHORITY</u>	12-3
<u>DEFINITIONS</u>	12-3
Factual Innocence	12-3
Petitioner	12-4
BCIA 8270, Petition to Seal and Destroy Adult Arrest Records	12-4
<u>PETITION TO SEAL AND DESTROY ADULT ARREST RECORDS</u>	12-4
General.....	12-4
Procedures	12-4
<u>SEALING AND DESTRUCTION OF ARREST RECORDS</u>	12-6
Sealing Electronic Data Files.....	12-6
Sealing of Hard Copy Files	12-7
Destruction of Electronic and Hard Copy Files	12-8
Exceptions	12-8
<u>PETITION TO SEAL ARREST RECORDS ONLY</u>	12-8
General.....	12-8
Procedures	12-9
<u>PETITION TO SEAL AND DESTROY JUVENILE RECORDS</u>	12-9
Procedures	12-9
Destruction of Records	12-12

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CHAPTER 12

SEALING AND DESTRUCTION OF CRIMINAL RECORDS

1. PURPOSE. The purpose of this chapter is to establish policy and procedures for sealing and destruction of arrest records.

2. AUTHORITY.

a. Section 851.8 of the Penal Code (PC) allows a person to seek a petition to have their arrest records sealed and destroyed by reason of factual innocence under the following circumstances:

(1) Any case where a person has been arrested and no accusatory pleading has been filed by the district attorney (DA). The petition must be filed within two years of the arrest.

(2) Any case where a person has been arrested and an accusatory pleading has been filed, but the charges were later dismissed. **The arresting agency cannot declare factual innocence** in this instance. The arrestee must petition the court for relief within two years from the date of the filing of the accusatory pleading.

b. When an accusatory pleading has been filed but no conviction has occurred, the court may, with the concurrence of the DA, grant the sealing and destruction of the arrest records.

c. When a person is acquitted of a charge, and it appears to the judge presiding at the trial that the defendant was factually innocent of the charge, the judge may order the sealing and destruction of arrest records.

d. In any case where a person has been arrested and an accusatory pleading has been filed, but no conviction has occurred, the defendant may petition the court for a finding of factual innocence.

3. DEFINITIONS.

a. Factual Innocence. A term used to define a person who was arrested for a crime, but charges were never filed; charged with a crime, but charges were dismissed in court; or charged with a crime, but found not guilty.

b. Petitioner. Person seeking factual innocence and requesting their arrest/detainment record to be sealed/destroyed.

c. BCIA 8270, Petition to Seal and Destroy Adult Arrest Records. Pursuant to Section 851.8(g) PC, the Department of Justice (DOJ) shall furnish forms to be utilized by persons petitioning to have their arrest records sealed and destroyed. The BCIA 8270 is available on the CHP Intranet site under the Forms tab, in the directory labeled Other Forms.

4. PETITION TO SEAL AND DESTROY ADULT ARREST RECORDS.

a. General. Upon request, an Area office shall furnish a copy of the BCIA 8270 to persons applying for the destruction of their arrest records. It is the responsibility of the petitioner to:

(1) Complete and sign the upper portion of the BCIA 8270.

(2) Provide the completed and signed BCIA 8270 to the Area office. The Area office will verify whether the DA has an objection to the petition.

b. Procedures.

(1) Petition to Seal and Destroy Adult Arrest Records. In a case where a person has been arrested and no charges have been filed, the person may petition to have their arrest records sealed and destroyed. Section 851.8(a) PC does not require the court to sign off if the DA and law enforcement grant the petition for factual innocence. If the DA and the Area concur that the petition should be granted, upon receipt of a completed BCIA 8270 form and after verifying the DA has no objection, an Area shall complete a search of all records pertaining to the arrest of the individual named on the BCIA 8270. If records are located, the Area shall have the following options:

(a) Grant the Petition.

1 Complete the shaded boxes on the BCIA 8270 labeled, "Section to be Completed by Law Enforcement Agency/Court with Jurisdiction for Offense(s)" and "Section to be Completed by Law Enforcement Agency (851.8(a) PC)"; check the box indicating the petition is granted.

2 Send the completed and approved BCIA 8270 to the DOJ at the address listed on the BCIA 8270.

3 Forward copies of the completed and approved BCIA 8270 to the DA, to the petitioner, and to any other law enforcement agency who participated in the arrest.

4 Seal and destroy the arrest records as outlined in paragraph 5. of this chapter.

(b) Deny the Petition. If the arrest was made more than two years prior to receipt of the petition, the petition shall be denied, unless charges were filed within two years from receipt of the petition. If the petition is denied, the Area shall:

1 Complete the shaded boxes on the BCIA 8270 labeled, "Section to be Completed by Law Enforcement Agency/Court with Jurisdiction for Offense(s)" and "Section to be Completed by Law Enforcement Agency (851.8(a) PC)"; check the box indicating the petition is denied.

2 Return the BCIA 8270 to the petitioner.

a For a denied petition, the petitioner may petition the superior court having jurisdiction over the matter for relief. In this case, the petitioner is required to serve a copy of the petition to the Area and the DA at least ten days prior to a hearing concerning the matter.

1/ The DA and the Area (through the DA) may present evidence to the court at the hearing.

a/ If the DA declines to present evidence or argue the petition, the CHP may not present directly to the court and will have no ability to participate in the hearing.

2/ Any judicial determination of factual innocence may be determined upon declarations, affidavits, police reports, or any other evidence submitted by the parties which is material, relevant, and reliable. 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 the appropriate arresting agency or court and to serve a copy of the petition and supporting papers on the DA.

3/ If the court finds the petitioner factually innocent, the arrest records shall be sealed and destroyed following the procedures outlined in paragraph 5. of this chapter.

(c) No Action/Decision on the Petition within 60 days.

1 If no decision is made or action taken, the petition is deemed denied 60 days after receipt (Section 851.8[b] PC).

(d) No Records Found. If the Area has no records pertaining to the named individual, or cannot locate records on the individual, the Area shall return the BCIA 8270 to the petitioner with a notation that no records were found. The Area shall maintain a copy of the BCIA 8270 for two years plus current.

(2) Court Order to Seal and Destroy Records. Upon receipt of a court order to seal and destroy arrest records, an Area office shall complete a search of all records pertaining to the arrest of the individual named on the court order.

(a) If the Area has no records pertaining to the named individual, or cannot locate records on the individual, the order shall be returned to the court with the date and a notation to that effect on the court order.

(b) If records are found, proceed to paragraph 5. of this chapter to seal and destroy the arrest records as required.

5. SEALING AND DESTRUCTION OF ARREST RECORDS. If a petition to seal arrest records has been granted, or if a court having jurisdiction over the matter orders arrest records sealed, the following procedures shall be followed unless other action is specifically ordered by the court:

a. Sealing Electronic Data Files.

(1) Area Information System (AIS) files.

(a) The AIS shall be updated to reflect a status of closed with a final disposition of "Sealed." The date of sealing along with the associated PC with which the arrest was sealed shall be noted in the comments section.

(b) The court order or petition to seal records shall be scanned into the AIS as a PDF and will replace the original PDF of the arrest report.

(c) Only the original PDF of the arrest report shall be deleted from the AIS. All other associated documents shall remain unaltered.

(2) Record Management System.

- (a) From Dashboard, select “Seal” from the dropdown menu.
- (b) Fill in the appropriate information.
- (c) The system allows for the entire record or individual portions of the record to be sealed.

b. Sealing of Hard Copy Files.

(1) The hard copy of the arrest report along with any criminal records and the court order/petition to seal shall be sealed in an envelope in such a manner as to make noticeable any opening or attempt to open. The front of the envelope shall be labeled “arrest sealed,” with the subject’s name, date of arrest, date of sealing, the associated PC with which the arrest was sealed, and date when destruction shall occur (if applicable).

(2) If a document contains a criminal record of more than one individual, a copy of the complete report shall be made. Then the name and other identifiers of the individual specified in the petition/court order shall be completely obliterated (i.e., redacted) on all pages of the original report. The original (redacted) can then be maintained according to established procedures. The copy of the complete report (not redacted), along with the petition and court order, shall be placed in the sealed envelope, labeled as indicated in paragraph 5.b.(1), and filed and stored next to the original modified record.

(3) The sealed record shall be placed back in the file and will continue to be retained and then destroyed three years from the date of arrest (Section 851.8[a] PC).

(4) Absent a court order, a record sealed pursuant to Section 851.8 PC shall not be opened prior to destruction.

(5) Any subsequent inquiry regarding the person whose records were ordered sealed by the court shall be answered with the statement, “We have no record on the named individual.”

c. Destruction of Electronic and Hard Copy Files.

(1) Three years from the date of arrest, the sealed records shall be destroyed (if applicable). Destruction of the record shall be carried out to the extent that the identity of the subject can no longer be ascertained.

(2) Destruction of computer-based files shall be accomplished by ensuring permanent deletion of the original PDF of the arrest report from the AIS and Mark 43. All other associated documents that do not include criminal activity (e.g., crash reports) are to remain unaltered.

(3) Destruction of records of arrest shall be accomplished by permanent obliteration of all entries or notations upon the records pertaining to the arrest; the record shall be prepared again so that it appears that the arrest never occurred (Section 851.8[j] PC).

(a) When the only entries on the record pertain to the arrest, and the record can be destroyed without affecting other records, then the document constituting the record shall be physically destroyed.

(4) Per Highway Patrol Manual (HPM) 40.4, Information Security and Administration Manual, Chapter 6, California Law Enforcement Telecommunications System, paragraph 3.b.(2), all information obtained via the California Law Enforcement Telecommunications System (CLETS) shall be cross- or confetti-cut shredded.

(5) Documentation of arrest records destroyed that are contained in investigative reports shall bear the notation "Exonerated" whenever reference is made to the arrestee (Section 851.8[h] PC).

(6) Pursuant to Section 851.8(h) PC, the arrestee shall be notified in writing by the command over the sealing and destruction of the arrest records.

d. Exception. Pursuant to Section 851.8(k) PC, no record shall be destroyed if the petitioner or codefendant has filed a civil action against the peace officer(s) or law enforcement agency who made the arrest until the civil action has been resolved.

6. PETITION TO SEAL ARREST RECORDS ONLY.

a. General. There are several occasions where a petitioner may request an arrest record be sealed but it is not authorized to be destroyed:

(1) After completing a prefiling diversion program (Section 851.87 PC).

(2) After successful completion of a drug diversion program or the subject is admitted to a deferred entry of judgment program (Section 851.90 PC).

(3) When arrested but not convicted of a crime (Section 851.91 PC).

(4) Upon completion of a pretrial diversion program (Section 1000.4 PC).

b. Procedures. When an Area office receives an order from the court to seal an arrest record per Section 851.87, 851.90, 851.91, or 1000.4 PC, the following shall occur:

(1) Seal the electronic and hard copy arrest files as described in paragraph 5.(a) through 5.(b) of this chapter.

(2) The arrest will no longer show on public background checks.

(3) The petitioner will be informed that, although the record is sealed, it is not completely erased. It can still be used against them if they are prosecuted for a new offense.

(4) Once sealed, the arrest will be deemed not to have occurred, and the petitioner can answer as such when asked by prospective landlords, employers, etc.

(5) If applying for certain jobs, the petitioner is obligated to disclose the arrest. These jobs include law enforcement, public office, or obtaining a state license.

(6) The sealing of these records has no effect on a criminal justice agency's ability to access and use these records and information.

7. PETITION TO SEAL AND DESTROY JUVENILE ARREST RECORDS.

a. Procedures.

(1) Record Sealing by Petition. Section 781 of the Welfare and Institutions Code (WIC) stipulates if a person was arrested, involved in a juvenile court case, or contacted by the juvenile court system while a juvenile, that person may petition the court for sealing of their records. There are several stipulations to this. The petitioner must either be 18 years of age or older or it must be five years or more since the jurisdiction of the juvenile court has terminated; the petitioner must not have been convicted as an adult of a felony or misdemeanor that involves "moral turpitude;" the petitioner must be rehabilitated to the satisfaction of the court; and the petitioner must have no civil litigation pending. If the court grants the petition, it will notify the Area office to seal the juvenile records of the petitioner. Upon receipt of notification, the Area office will perform the following:

(a) Seal any records regarding the arrest of the juvenile as outlined in paragraph 5. of this chapter.

(b) Once records are sealed, the Area office shall notify the court in writing of its compliance with the order.

(c) The records shall remain unopened except under certain circumstances:

1 If the subject is part of a defamation suit, the juvenile documents may be accessed and admitted as proof at the time of the hearing.

2 The Department of Motor Vehicles may let an auto insurer inspect the subject's driving record to establish if they qualify for insurance.

3 The prosecuting attorney in a criminal case may access sealed records to locate and disclose exculpatory facts.

(2) Petition for Factual Innocence. Pursuant to Section 781.5 WIC, in a case where a juvenile has been cited to appear before a probation officer or taken before any officer of a law enforcement agency and no charges have been filed, the petitioner may request in writing that the law enforcement agency and probation officer destroy their records; a copy of the request will be served on the DA.

(a) Grant the Petition. Upon a determination that the juvenile is factually innocent, and with the DA's concurrence, the Area office shall:

1 Seal any records regarding the arrest of the juvenile as outlined in paragraph 5. of this chapter.

2 The Area shall issue a written declaration in letter format to the juvenile stating it is the determination of the CHP the juvenile is factually innocent of the charges for which they were arrested or cited, and the juvenile is exonerated.

3 The Area shall notify the DOJ in writing that the juvenile has been found factually innocent under Section 781.5 WIC at the following address:

Department of Justice
Record Sealing Unit
P.O. Box 903417
Sacramento, CA 94203-4170

4 Documentation of arrest or citation records that are destroyed but remain in investigative reports shall bear the notation “Exonerated” whenever reference is made to the juvenile.

5 Upon the court’s dismissal of the charges, the arrest shall be deemed not to have occurred.

6 The record shall remain sealed for **three years** and then destroyed.

7 A record sealed pursuant to Section 781.5 WIC shall not be destroyed if the juvenile has filed a civil action against an officer or the law enforcement agency that made the arrest until the civil action has been resolved. Any records sealed by the court may be opened and submitted into evidence. Immediately following the final resolution of the civil action, the records shall be sealed and destroyed.

(3) Court-Ordered Sealing After Completion of Informal Program of Supervision.

Pursuant to Section 786 WIC, if a juvenile is the ward of the court and has satisfactorily completed an informal program of supervision or probation, the court shall order the charges dismissed and arrest records sealed. The subject does not have to petition for dismissal of charges or sealing of records.

(a) When an Area receives a court order to seal all records pertaining to a juvenile, the Area shall seal any records regarding the arrest of the juvenile as outlined in paragraph 5. of this chapter.

(b) Upon the court’s dismissal of the charges, the arrest shall be deemed not to have occurred.

(c) A record sealed pursuant to Section 786 WIC may be accessed only by court order.

(4) Probation Department Sealing of Records. Section 786.5 WIC stipulates the probation department shall seal the arrest record of a juvenile who, in lieu of being charged a ward of the juvenile court, has completed a program of diversion or supervision.

(a) The probation department shall notify the command to seal the arrest record of the juvenile once they have completed a diversion or supervision program.

(b) A court order is **not needed** in a case where a juvenile was placed on probation or sent to a diversion program in lieu of being charged a ward of the court.

(c) The command shall, **no later than 60 days** from the date of notification by the probation department, seal any records regarding the arrest of the juvenile as outlined in paragraph 5. of this chapter.

(d) After sealing the records, the Area office shall notify the probation department in writing that the records have been sealed. The Area will make a copy of the order to seal, notate the date of sealing on the order, and mail the copy back to the probation department.

(e) Upon sealing of the records, the arrest shall be deemed not to have occurred.

(f) A record sealed pursuant to Section 786.5 WIC may be accessed by the prosecuting attorney in a criminal case in order to locate and disclose exculpatory facts.

b. Destruction of Records. Destruction of juvenile records shall be accomplished within the time frame set forth by the court or probation department as outlined in paragraph 5.c. through 5.d.