

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue . San Francisco, California 94102-3688

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INVITATION TO COMMENT SPR20-10

Title	Action Requested
Criminal Procedure: Automatic Record Relief	Review and submit comments by June 9, 2020
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise forms CR-180, CR-181, CR-400, CR-409, and CR-409-INFO	January 1, 2021
Proposed by	Contact
Criminal Law Advisory Committee Hon. J. Richard Couzens, Chair	Sarah Fleischer-Ihn, 415-865-7702 Sarah.Fleischer-Ihn@jud.ca.gov

Executive Summary and Origin

The Criminal Law Advisory Committee recommends revising optional criminal forms used to petition for dismissals and reductions of convictions and request sealing of arrest records to reflect statutory changes allowing for automatic record relief.

Background

Proposition 64, effective November 9, 2016, includes resentencing and dismissal provisions that permit persons previously convicted of designated marijuana-related offenses to obtain a reduced conviction or sentence, if they would have received the benefits of the law had it been in effect when the crime was committed. To implement Prop. 64, the Judicial Council approved forms to be used to petition the court for relief and make the appropriate orders under Health and Safety Code section 11361.8 (Link A).

Assembly Bill 1793 (Stats. 2018, ch. 993) (Link B) added section 11361.9 to the Health and Safety Code (Link C), which removed the burden of seeking relief for marijuana-related convictions from a defendant-petitioner and made it the responsibility of government agencies. Section 11361.9 requires the state Department of Justice to identify past convictions potentially eligible for relief under Health and Safety Code section 11361.8 and notify the relevant prosecuting agency, which may or may not challenge granting relief based on ineligibility or a perceived public safety risk. If a court grants relief, it must notify the state Department of Justice, which must update the defendant's criminal information accordingly.

*This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee.
It is circulated for comment purposes only.*

Assembly Bill 1076 (Stats. 2019, ch. 578) (Link D) added sections 851.93 (Link E) and 1203.425 to the Penal Code (Link F), requiring the state Department of Justice to review statewide criminal history records to identify persons who are eligible to have their arrest or criminal conviction records withheld from disclosure without requiring a petition or motion. This new law generally prohibits courts from disclosing information concerning an arrest or conviction dismissed under these new statutes and other existing conviction dismissal statutes. These provisions are subject to a budget appropriation, and if funded would go into effect on January 1, 2021.¹

A trailer bill to push back the effective date of key provisions of Penal Code sections 851.93 and 1203.425 to August 1, 2022, is pending (Link G). If the trailer bill passes, the committee intends to withdraw the proposal and re-circulate it for public comment closer to the new effective date.

The Proposal

The Judicial Council has petition-based criminal record cleaning forms that would be unnecessary for persons granted automatic record relief. This proposal would update the following criminal forms to notify petitioners that their arrest or conviction may have already been granted automatic record relief, as well as revise the forms to avoid the use of gendered pronouns.

- **Petition/Application (Health and Safety Code, § 11361.8) Adult Crimes (form CR-400):** Add a notice that the conviction may have already been automatically dismissed or redesignated, explain how to find out if automatic relief was granted, revise items 2 and 4 to avoid the use of gendered pronouns, and make minor technical amendments.
- **Petition for Dismissal (form CR-180):** Add a notice that the state Department of Justice may have already granted automatic relief under Penal Code section 1203.425 and that a petition for dismissal under Penal Code sections 1203.4 or 1203.4a may be unnecessary if automatic relief has been granted, explain how to find out if automatic relief was granted, and revise items 4 and 7 to avoid the use of gendered pronouns.
- **Order for Dismissal (form CR-181):** Add a statement that, except as provided in Penal Code section 1203.425(d), if relief is granted under Penal Code sections 1203.4, 1203.4a, 1203.41, or 1203.42, the court will not disclose information concerning a conviction granted relief to any person or entity, in any format, except to the person whose conviction was granted relief or a criminal justice agency, revise item 9 to avoid the use of gendered pronouns, and make minor technical amendments.

¹ As of March 2020, the Governor's proposed budget includes an appropriation to the Department of Justice for automatic record relief purposes.

- **Petition to Seal Arrest and Related Records (Pen. Code, § 851.91) (form CR-409) and information sheet (CR-409-INFO):** Add a notice that an arrest may qualify for automatic arrest record relief under Penal Code section 851.93 and that a petition to seal is unnecessary if automatic relief has been granted, explain how to find out if automatic relief was granted, and make minor technical amendments.

Alternatives Considered

Because the form revisions are necessitated by statutory changes, the committee did not consider any alternatives.

Fiscal and Operational Impacts

Expected costs are limited to training, possible case management system updates, and the production of new forms. No other implementation requirements or operational impacts are expected.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Forms CR-400, CR-180, CR-181, CR-409, and CR-409-INFO, at pages 5–13
2. Link A: Health & Saf. Code, § 11361.8,
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=11361.8.&lawCode=HSC
3. Link B: Assem. Bill 1793 (Stats. 2018, ch. 993),
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1793

4. Link C: Health & Saf. Code, § 11361.9,
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=11361.9.&lawCode=HSC
5. Link D: Assem. Bill 1076 (Stats. 2013, ch. 787),
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1076
6. Link E: Pen. Code, § 851.93,
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=851.93.&lawCode=PEN
7. Link F: Pen. Code, § 1203.425,
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1203.425&lawCode=PEN
8. Link G: Trailer bill language to the Governor's proposed 2020-21 budget, amending Sections 851.93 and 1203.425 of the Penal Code (RN 20 08745);
<https://esd.dof.ca.gov/dofpublic/public/trailerBill/pdf/36>

ATTORNEY OR PARTY WITHOUT ATTORNEY: NAME: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NO.: STATE: ZIP CODE: FAX NO.:	<i>FOR COURT USE ONLY</i>
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:		DRAFT Not approved by the Judicial Council
PETITION/APPLICATION (HEALTH AND SAFETY CODE, § 11361.8) ADULT CRIME(S)		CASE NUMBER:
<input type="checkbox"/> RESENTENCING OR DISMISSAL (Health & Saf. Code, § 11361.8(b)) <input type="checkbox"/> REDESIGNATION OR DISMISSAL/SEALING (Health & Saf. Code, § 11361.8(f))		<i>FOR COURT USE ONLY</i> Date: Time: Department.:

Notice: Petitioner's conviction may have already been automatically dismissed or redesignated. To find out if automatic relief was granted, check with the superior court or public defender's office in the county of conviction, or request petitioner's Record of Arrest and Prosecution (RAP) sheet from the Department of Justice.

1. CONVICTION INFORMATION (*check all that apply*)

- 11357 - Possession of Marijuana
- 11358 - Cultivation of Marijuana
- 11359 - Possession of Marijuana for Sale
- 11360 - Transportation, Distribution, or Importation of Marijuana
- 11362.1 - Personal Use of Marijuana

2. REQUEST (*check all that apply*)

- PETITION: Petitioner is currently serving a sentence in the above-captioned case and now requests that the court recall/resentence/dismiss the conviction.
- APPLICATION: Applicant has completed the sentence in the above-captioned case and now requests that the court dismiss and seal/redesignate the conviction.

3. WAIVER OF HEARING BY ORIGINAL SENTENCING JUDGE

- Petitioner/applicant waives the right to have this matter heard by the original sentencing judge. The presiding judge of the court may designate any judge to rule on this matter.

4. WAIVER OF APPEARANCE

- Petitioner/applicant understands there is a right to personally attend any hearing held in this matter. Petitioner/applicant gives up that right; the matter may be heard without petitioner/applicant's appearance.

Dated:



SIGNATURE OF PETITIONER/APPLICANT

Proof of Service for Petition/Application—Adult Crimes (form CR-401) may be used to provide proof of service of this petition/application.

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ATTORNEY OR PARTY WITHOUT ATTORNEY: NAME: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NO.: STATE: ZIP CODE: FAX NO.:	<i>FOR COURT USE ONLY</i>
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:		DRAFT Not approved by the Judicial Council
		CASE NUMBER:
PETITION FOR DISMISSAL (Pen. Code, §§ 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, 1203.42, 1203.43, 1203.49)		<i>FOR COURT USE ONLY</i> DATE: TIME: DEPARTMENT:

Notice: The Department of Justice may have already granted automatic relief if the conviction happened on or after January 1, 2021, and petitioner either 1) completed the term of probation without revocation, or 2) completed the sentence without probation and at least one calendar year has passed since the judgment date. (Pen. Code, § 1203.425.) A petition for dismissal under Penal Code sections 1203.4 or 1203.4a may be unnecessary if automatic relief has been granted. To find out if automatic relief was granted, check with the superior court in which the conviction happened, or request petitioner's Record of Arrest and Prosecution (RAP) sheet from the Department of Justice.

1. On (date): , the petitioner (*the defendant in the above-entitled criminal action*) was convicted of a violation of the following offenses or was granted deferred entry of judgment for the following offenses:

Code	Section	Type of offense (<i>felony, misdemeanor, or infraction</i>)	Eligible for reduction to misdemeanor under Penal Code, § 17(b) (yes or no)	Eligible for reduction to infraction under Penal Code, § 17(d)(2) (yes or no)

If additional space is needed for listing offenses, use *Attachment to Judicial Council Form* (form MC-025).

2. **Felony or misdemeanor with probation granted (Pen. Code, § 1203.4)**

Probation was granted on the terms and conditions stated in the docket of the above-entitled court; the petitioner is not serving a sentence for any offense, on probation for any offense, or under charge of commission of any crime, and the petitioner (*check all that apply*)

- a. has fulfilled the conditions of probation for the entire period thereof.
- b. has been discharged from probation prior to the termination of the period thereof.
- c. should be granted relief in the interests of justice. (*Please note: You may explain why granting a dismissal would be in the interests of justice. You can provide that information by writing in the space below, or by attaching a letter or other relevant documents. If you need more space for your writing, you can use the Attached Declaration (form MC-031) and attach it to this petition.*)

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3. **Misdemeanor or infraction with sentence other than probation (Pen. Code, § 1203.4a)**

Probation was not granted; more than one year has elapsed since the date of pronouncement of judgment. Petitioner has complied with the sentence of the court and is not serving a sentence for any offense or under charge of commission of any crime; and the petitioner (*check one*):

- a. has lived an honest and upright life since pronouncement of judgment and conformed to and obeyed the laws of the land; **or**
- b. should be granted relief in the interests of justice. (*Please note: You may explain why granting a dismissal would be in the interests of justice. You can provide that information by writing in the space below or by attaching a letter or other relevant documents. If you need more space for your writing, you can use the Attached Declaration (form MC-031) and attach it to this petition.*)

4. **Misdemeanor conviction under Penal Code section 647(b) (Pen. Code, § 1203.49)**

Petitioner has completed a term of probation for a conviction under Penal Code section 647(b) and should be granted relief because the petitioner can establish by clear and convincing evidence that the conviction was the result of **petitioner's status as a victim of human trafficking**.

(Please note: You may provide evidence that the conviction was the result of your status as a victim of human trafficking. You can provide that information by writing in the space below or by attaching a letter or other relevant documents. If you need more space for your writing, you can use the Attached Declaration (form MC-031) and attach it to this petition.)

5. **Felony county jail sentence under Penal Code section 1170(h)(5) (Pen. Code, § 1203.41)**

Petitioner is not under supervision under Penal Code section 1170(h)(5)(B); is not serving a sentence for, on probation for, or charged with the commission of any offense; and should be granted relief in the interests of justice, and (*check one*)

- a. more than one year has elapsed since petitioner completed the felony county jail sentence **with** a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(B); **or**
- b. more than two years have elapsed since petitioner completed the felony county jail sentence **without** a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(A).

(Please note: You may explain why granting a dismissal would be in the interests of justice. You can provide that information by writing in the space below or by attaching a letter or other relevant documents. If you need more space for your writing, you can use the Attached Declaration (form MC-031) and attach it to this petition.)

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
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6. **Felony prison sentence that would have been eligible for a felony county jail sentence after 2011 under Penal Code section 1170(h)(5) (Pen. Code, § 1203.42)**

Petitioner is not under supervision and is not serving a sentence for, on probation for, or charged with the commission of any offense; more than two years have elapsed since petitioner completed the felony prison sentence; and petitioner should be granted relief in the interests of justice.

(Please note: You may explain why granting a dismissal would be in the interests of justice. You can provide that information by writing in the space below or by attaching a letter or other relevant documents. If you need more space for your writing, you can use the Attached Declaration (form MC-031) and attach it to this petition.)

7. **Deferred entry of judgment (Pen. Code, § 1203.43)**

Petitioner performed satisfactorily during the period in which deferred entry of judgment was granted. The criminal charge(s) were dismissed under former Penal Code section 1000.3 on (date): . Furthermore (check one),

- a. court records are available showing the case resolution; **or**
- b. petitioner declares under penalty of perjury that the charges were dismissed after he or she completed the requirements for deferred entry of judgment. Petitioner (check one)
 - (1) has
 - (2) has not

attached a copy of petitioner's state summary criminal history information.

8. Petitioner requests that the eligible felony offenses listed above be reduced to misdemeanors under Penal Code section 17(b) and eligible misdemeanor offenses be reduced to infractions under Penal Code section 17(d)(2).
9. Petitioner requests that he or she be permitted to withdraw the plea of guilty, or that the verdict or finding of guilt be set aside and a plea of not guilty be entered and the court dismiss this action under the Penal Code section(s) noted above.

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

Date:



(SIGNATURE OF PETITIONER OR ATTORNEY)

(ADDRESS OF PETITIONER)

(CITY)

(STATE)

(ZIP CODE)

ATTORNEY OR PARTY WITHOUT ATTORNEY:	STATE BAR NUMBER:	FOR COURT USE ONLY
NAME:		
FIRM NAME:		
STREET ADDRESS:	STATE:	ZIP CODE:
CITY:		
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		
ATTORNEY FOR (name):		
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:		
ORDER FOR DISMISSAL (Pen. Code, §§ 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, 1203.42, 1203.43, 1203.49)		CASE NUMBER:

DRAFT
Not approved by
the Judicial Council

The court finds from the records on file in this case, and from the foregoing petition, that the petitioner (*the defendant in the above-entitled criminal action*) is eligible for the following requested relief:

1. The court **GRANTS** the petition for reduction of a felony to a misdemeanor (maximum punishment of 364 days per Pen. Code, § 18.5) under Penal Code section 17(b) and/or for reduction of a misdemeanor to an infraction under Penal Code section 17(d)(2) and reduces
 - a. ALL FELONY CONVICTIONS in the above-entitled action.
 - b. ALL MISDEMEANOR CONVICTIONS in the above-entitled action.
 - c. only the following convictions in the above-entitled action (*specify charges and date of conviction*):
2. The court **DENIES** the petition for reduction of a felony to a misdemeanor under Penal Code section 17(b) and/or for reduction of a misdemeanor to an infraction under Penal Code section 17(d)(2) for
 - a. ALL FELONY CONVICTIONS in the above-entitled action.
 - b. ALL MISDEMEANOR CONVICTIONS in the above-entitled action.
 - c. only the following convictions in the above-entitled action (*specify charges and date of conviction*):
3. The court **GRANTS** the petition for dismissal regarding the following convictions under Penal Code Section (*check all that apply*)
 § 1203.4 § 1203.4a § 1203.41 § 1203.42 § 1203.43 § 1203.49
 and it is ordered that the pleas of guilty or nolo contendere or verdicts or findings of guilt be set aside and vacated and a plea of not guilty be entered and that the complaint or information be, and is hereby, dismissed for (*check one*)
 - a. ALL CONVICTIONS OR PLEAS FOR DEFERRED ENTRY OF JUDGMENT in the above-entitled action.
 - b. only the following convictions or pleas for deferred entry of judgment in the above-entitled action (*specify charges and date of conviction or plea for deferred entry of judgment*):

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CASE NUMBER:

4. The court **DENIES** the petition for dismissal under Penal Code Section (*check all that apply*)
 § 1203.4 § 1203.4a § 1203.41 § 1203.42 § 1203.43 § 1203.49 for (*check one*)
 a. ALL CONVICTIONS OR PLEAS FOR DEFERRED ENTRY OF JUDGMENT in the above-entitled action.
 b. only the following convictions or pleas for deferred entry of judgment in the above-entitled action (*specify charges and date of conviction or plea for deferred entry of judgment*):
5. In granting this order under the provisions of Penal Code section 1203.49, the court finds that the petitioner was a victim of human trafficking when he or she committed the crime. The court orders (*check one*)
 a. the relief described in section 1203.4.
 b. the relief described in section 1203.4, with the following exceptions:
6. If the order is granted under the provisions of Penal Code section 1203.49, the Department of Justice is hereby notified that the petitioner was a victim of human trafficking when he or she committed the crime and **notified** of the relief ordered.
7. If this order is granted under the provisions of Penal Code section 1203.4, 1203.41, or 1203.42,
 a. the petitioner is required to disclose the above conviction in response to any direct question contained in any questionnaire or application for public office, or for licensure by any state or local agency, or for contracting with the California State Lottery Commission; and
 b. dismissal of the conviction does not *automatically* relieve the petitioner from the requirement to register as a sex offender. (See, e.g., Pen. Code, § 290.5.)
8. If the order is granted under the provisions of Penal Code section 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.49, the petitioner is released from all penalties and disabilities resulting from the offense except as provided in Penal Code sections 29800 and 29900 (formerly sections 12021 and 12021.1) and Vehicle Code section 13555. In any subsequent prosecution of the petitioner for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed. The dismissal does not permit a person to own, possess, or have in petitioner's control a firearm if prevented by Penal Code sections 29800 or 29900 (formerly sections 12021 and 12021.1). Dismissal of a conviction does not permit a person prohibited from holding public office as a result of that conviction to hold public office.
9. In addition, as required by Penal Code section 299(f), relief under Penal Code sections 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.49 does *not* release petitioner from the separate administrative duty to provide specimens, samples, or print impressions under the DNA and Forensic Identification Database and Data Bank Act (Pen. Code, § 295 et seq.) if petitioner was found guilty by a trier of fact, not guilty by reason of insanity, or pled no contest to a qualifying offense as defined in Penal Code section 296(a).
10. The basis for an order of dismissal granted under the provisions of Penal Code section 1203.43 is the invalidity of defendant's prior plea due to misinformation in former Penal Code section 1000.4 regarding the actual consequences of making a plea and successful completion of a deferred entry of judgment program.
11. Except as provided in Penal Code section 1203.425(d), if this order is granted under Penal Code section 1203.4, 1203.4a, 1203.41, or 1203.42, the court shall not disclose information concerning a conviction granted relief to any person or entity, in any format, except to the person whose conviction was granted relief or to a criminal justice agency.

FOR COURT USE ONLY

Date:

(JUDICIAL OFFICER)

Notice: Arrests that happened on or after January 1, 2021, may qualify for automatic arrest record relief if they meet certain conditions and are (1) an arrest for a misdemeanor (2) an arrest for a felony punishable by imprisonment in county jail or (3) an arrest for which the defendant successfully completed diversion. (Pen. Code, § 851.93.) A petition to seal is unnecessary if automatic relief has been granted. To find out if automatic relief was granted, request the petitioner's Record of Arrest and Prosecution (RAP) sheet from the Department of Justice.

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Fill in the name and street address of the court that you are filing the petition in:

Superior Court of California, County of**1 Your Information**

- a. Petitioner (*the person who is filing this petition*):

Name: _____
 Last _____ First _____ MI _____

Date of birth: _____ (mm/dd/yyyy)

Street address: _____
 Street _____

City _____ State _____ Zip _____

Mailing address (*if you have a lawyer for this case, give your lawyer's information*):

Street _____

City _____ State _____ Zip _____

Phone: _____

E-mail (*if available*): _____

State Bar number: _____

Fill this out if a criminal complaint was filed or charged against the petitioner and there is a case number and case name for that criminal case. Do not fill this out if an arrest happened but no criminal complaint was filed or charged in court:

Trial Court Case Number:

Trial Court Case Name:
People of the State of California
 v. _____

2 Notice of Court Hearing

A court hearing is scheduled on this petition as follows:

Hearing Date → Date: _____ Time: _____
 Dept.: _____ Room: _____

Name and address of court if different from above:

If an interpreter is needed, please specify the language: _____

3 Information About Your Case

- a. Date of the arrest you are requesting to be sealed: _____ (mm/dd/yyyy)
- b. Where did the arrest happen? Include the city and county: _____
- c. What law enforcement agency made the arrest? If it was a police department, include the city (*for example, ABC City Police Department*). If it was a county sheriff, list the county (*for example, XYZ County Sheriff*):

- d. What is the arrest report number or police report number, if available?

Trial Court Case Name: _____

Trial Court Case Number: _____

- (3) e. Include any other information about the arrest that is available from the prosecutor (district attorney/city attorney) or the court, including the case number that the prosecutor used to review the arrest or used to file a case against you. If you would like to explain the information provided, please do so below, or complete and attach the *Attached Declaration* (form MC-031) or submit other relevant documents.
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-

- f. Add any information on offenses or charges based on the arrest. If you would like to explain the information provided, please do so below, or complete and attach the *Attached Declaration* (form MC-031) or submit other relevant documents.
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-
-

- g. If the prosecutor filed a case against you, please include what the charges were (*for example, Pen. Code, § 242, for battery*).
-
-
-

- h. Choose one:

I am entitled to have this arrest (the arrest described in item (3) of this petition) sealed as a matter of right because the arrest did not result in a conviction, and I satisfy the requirements of Penal Code section 851.91.

OR

I am requesting to have the arrest sealed in the interests of justice (Pen. Code, § 851.91(c)(2)(B)).
(Describe below how this is in the interests of justice. In deciding whether to grant this request, the court may consider any important factors, including hardship and difficulties caused by the arrest, statements or evidence regarding your good character, statements or evidence regarding the arrest, your record of convictions, or any other important factors. You may provide statements or evidence from you, others, or both.)

Please attach any additional signed and dated statements with the petition.

I declare under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: _____



Signature of petitioner or attorney

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 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 make 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 from you 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, take or mail this petition to the clerk's office in the court where the case was filed.

If no criminal case was filed or charged against you, take or mail this petition 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. The clerk will give you a court date for the hearing, which should be at least 15 days from the date you file the petition. 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.

Must anyone else get the petition?

A copy of the petition must be served (delivered by hand or by mail) on the prosecutor of the city or county where the arrest happened *and* the law enforcement agency that made the arrest at least 15 days before the hearing on the petition. After you have served the petition on the prosecutor and the law enforcement agency, you will need to file a "proof of service" with the court.

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.

Are translations of the petition available?

Translations of the petition are available in Spanish, Chinese, Vietnamese, and Korean at the California Courts website at www.courts.ca.gov/forms.htm.

Are there other ways to seal or limit arrest records?

Yes. Arrests that happened on or after January 1, 2021, may qualify for automatic arrest record relief if they meet certain conditions and are an arrest (1) for a misdemeanor, (2) for a felony punishable by imprisonment in county jail, or (3) for which the defendant successfully completed diversion. (Pen. Code, § 851.93.) A petition to seal is unnecessary if automatic relief has been granted. To find out if automatic relief was granted, request the petitioner's Record of Arrest and Prosecution (RAP) sheet from the Department of Justice. You may also 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 pretrial diversion program under section 851.87.