3-09/120.00 - Sealing and Destroying of Arrest Records - Factually Innocent Subjects Only

Penal Code section 851.8 allows an adult who has been detained or arrested by this Department, and who is factually innocent, to petition to have all records of that arrest sealed and destroyed. The provisions of 851.8 PC shall not apply to any offense classified as an infraction.

These procedures shall apply to subjects wrongly arrested for warrants regardless of the charge on the warrant.

Petitions must be filed within two years from the date of the arrest or two years from the date of filing of the accusatory pleading, whichever is the later date. Any time restrictions on filing may be waived without prejudice upon showing good cause by the petitioner.

In circumstances where a person has been detained or arrested and it is reasonable to assume that the person is factually innocent, the handling or investigating deputy shall inform the person of the petition process and assist with its preparation. The station detective/unit lieutenant shall ensure that the investigating deputy issues said person a Certificate of Release (SH-AD-516 Rev. 4/71).

If an arrestee bonds out or is released O.R. prior to the investigating officer's determination that he is factually innocent, the deputy is required to follow due diligence (due diligence is defined as two attempts) in attempting to locate the arrestee to offer assistance in completing a Petition to Seal and Destroy Arrest Records (form BCID 8270).

Unit commanders are responsible for establishing a detective unit log which lists all persons filing a petition (form BCID 8270).

Petitioners shall be advised to apply at the unit that initiated their detention/arrest and this original handling unit shall provide a Petition to Seal and Destroy Arrest Records (BCID 8270). If the case records are no longer available at the unit, the Records and Identification Bureau will provide them to the unit upon request so that the investigating officer can make his decision.

The petitioner, with assistance as required, shall complete the top part of the Petition to Seal and Destroy Arrest Records (BCID 8270), which must include a print of his right thumb. The petitioner shall then be advised of the process time involved (60 days) and the method of notification of the action taken on the petition.

Copies of the petition (BCID 8270) shall be distributed as follows:

1 - Petitioner.
1 - Deputy district attorney having jurisdiction over the offense.
1 - Station detective/unit lieutenant.
1 - Investigating deputy.
1 - Detective unit log.

It is the responsibility of the investigating officer or the supervisor of the investigating unit, in concurrence with

the Deputy District Attorney, to determine if the petitioner is factually innocent. Any case for which there was a finding of factual innocence shall not be admissible as evidence in any future action.

The investigating deputy shall evaluate the petitioner's request and, in concurrence with the Deputy District Attorney, within 60 days from the date of the petition, shall determine if the petitioner is "Found Factually Innocent" or "Denied Petition." If not acted upon within 60 days, the petition is deemed denied by the Department.

> **NOTE:** Upon the Department denying the request, the petitioner has the right to petition the municipal court which would have had jurisdiction, per section 851.8(b) P.C.

The investigating officer shall complete the bottom half of the BCID 8270, indicating a finding of factual innocence or denial of the petition. Copies shall be distributed as follows:

1 - Petitioner.
1 - Department of Justice.
1 - Deputy District Attorney.
1 - Station detective/unit lieutenant.
1 - Detective unit log.
1 - Records and Identification Bureau.

When the petitioner is found factually innocent, the investigating officer shall prepare a Declaration of Factual Innocence (BCID 8271), indicating that the subject is exonerated. Copies of BCID 8271 shall be distributed as follows:

1 - Petitioner.
1 - Station detective/unit lieutenant.
1 - Investigating deputy.
1 - Detective unit log.
1 - Records and Identification Bureau.

In addition, the investigating deputy, along with the Department of Justice, shall request the destruction of any and all records of the arrest which were given to any local, state, federal agency or to any other person or entity.

The station detective/unit lieutenant is responsible for ensuring the following records are noted for a three-year retention from the date of the incident/arrest of the petitioner, with destruction thereafter:

Form BCID 8270
Form BCID 8271
Investigator's related records

Records and Identification Bureau shall be responsible for noting "Exonerated" and sealing all Department records of that incident of the factually innocent petitioner's detention/arrest for three years from the date of the incident/arrest, and thereafter destroy their records and the BCID 8270. No records shall be destroyed if the arrestee or a codefendant has filed a civil action against the deputy or this Department until the civil action has been resolved.

In those cases where the petitioner is not the sole suspect or subject, all references to the petitioner as a suspect/subject shall be redacted and the concerned report shall be maintained as indicated by existing policies.