



Judicial Council of California

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

courts.ca.gov/policy-administration/invitations-comment

INVITATION TO COMMENT

[ITC prefix as assigned]-__

Title

Judicial Council–Sponsored Legislation:
Procedures for Sealing Arrest Records

Action Requested

Review and submit comments by June 8,
2026, to invitations@jud.ca.gov

Proposed Rules, Forms, Standards, or Statutes

Amend Penal Code sections 851.92,
1001.33, 1001.55, 1001.75, 1001.80, and
1001.97

Proposed Effective Date

January 1, 2028

Contact

Sarah Fleischer-Ihn, 415-865-7702
sarah.fleischer-ihn@jud.ca.gov

Proposed by

Criminal Law Advisory Committee
Hon. Lisa Rodriguez, Chair

Executive Summary and Origin

The Criminal Law Advisory Committee recommends that the Judicial Council sponsor legislation amending several Penal Code statutes to improve consistency in how arrest records are sealed when a person is granted specified criminal record relief.

Background

California law provides for arrest record sealing under a variety of circumstances. For example, a person whose arrest did not result in a conviction may affirmatively petition the court to have their arrest records sealed if they meet certain eligibility requirements.¹ Additionally, upon successful completion of certain forms of diversion, the arrest upon which the diversion is based is “deemed to have never occurred,” and the court is authorized to issue an order to seal records under Penal Code section 851.92 pertaining to the arrest.²

¹ See Pen. Code, § 851.91.

² See §§ 851.87 (pretrial diversion), 851.90 (drug diversion), 1000.4 (pretrial drug diversion), 1001.9 (misdemeanor diversion), 1001.36 (mental health diversion), and 1001.83 (primary caretaker diversion). All further references are to the Penal Code unless otherwise specified.

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 It is circulated for comment purposes only.

Section 851.92, in turn, describes procedural requirements that apply when an arrest record is sealed under the arrest sealing and diversion statutes cited earlier, such as providing copies to law enforcement agencies and directing the agencies to update their records to indicate that the record is sealed.³ The statute also states that sealed arrest records cannot be disclosed except to the person whose arrest was sealed or an authorized criminal justice agency—but criminal justice agencies are generally authorized to access and use sealed arrest records to the same extent as if the arrest had not been sealed.⁴ Lastly, section 851.92 provides that unauthorized dissemination of a sealed arrest is subject to a civil penalty.⁵

Concurrently, there exist several other diversion statutes that can also result in an arrest being “deemed to have never occurred” but which do not reference section 851.92 or otherwise specify whether an arrest sealing order is required or to whom copies of any arrest sealing order must be provided.⁶ As a result, it is not clear whether courts should issue an arrest sealing order upon the defendant’s successful completion of these forms of diversion—and if so, whether the court can or should provide a copy of the order to law enforcement agencies. It appears that some courts will simply advise the defendant of the statutory language,⁷ while others issue sealing orders like those issued under section 851.92.

A threshold question is whether the two categories of diversion statutes described above (i.e., those that reference the sealing procedures outlined in section 851.92 and those that do not) should be understood as functionally providing the same form of arrest record relief. The committee believes that they do, given that each of the diversion statutes similarly provides that (1) the arrest is deemed to have never occurred; (2) the person may thereafter state that they were not arrested, except that the arrest must be disclosed in response to a direct question contained in a questionnaire or application for a peace officer position as defined in section 830; (3) the arrest cannot, without the person’s permission, be used in any way that could result in the denial of any employment, license (except under sections 851.87 and 851.90), benefit, or certificate; and (4) the California Department of Justice must disclose the arrest in response to any peace officer application request.⁸ Generally, the distinction between the categories is that after stating that the arrest is deemed to have never occurred, some of the statutes have the following additional language: “and the court may issue an order to seal the records pertaining to the arrest as

³ § 851.92(b)(1), (2)–(4).

⁴ § 851.92(b)(5)–(6).

⁵ § 851.92(c).

⁶ See §§ 1001.33(a) (cognitive developmental disabilities diversion), 1001.55(a) (misdemeanor offender diversion), 1001.75(a) (parental diversion), 1001.80(i) (military diversion), 1001.97(a) (court-initiated misdemeanor diversion).

⁷ See §§ 1001.33(a)–(b), 1001.55(a)–(b), 1001.75(a)–(b), 1001.80(i)–(j), 1001.97(a)–(b) (defendant may indicate in response to a question concerning their prior criminal record that they were not arrested for the offense, except for specified peace officer–related inquiries; records pertaining to an arrest resulting in successful completion of a diversion program shall not, without the defendant’s consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate).

⁸ See §§ 851.87(a)–(b), 851.90(a)–(b), 1000.4(a)–(b), 1001.9(a)–(b), 1001.36(h)–(j), 1001.83(g)–(i), 1001.33(a)–(b), 1001.55(a)–(b), 1001.75(a)–(b), 1001.80(i)–(j), 1001.97(a)–(b).

described in section 851.92.” Additionally, these statutes state that the court must advise the defendant that regardless of the defendant’s successful completion of a statutorily authorized diversion program, an order to seal arrest records has no effect on a criminal justice agency’s ability to access and use those sealed records and information regarding sealed arrests, as described in section 851.92.⁹

Given that one set of diversion statutes includes a cross-reference to section 851.92, while the other set does not, it could be argued that the omissions were intentional. However, because the diversion statutes across both categories provide substantially the same form of arrest record relief, the committee did not identify any obvious reason why some include a cross-reference to the sealing procedures in section 851.92, while others do not. Adding a cross-reference to section 851.92 to the diversion statutes that do not currently have one would promote consistency in arrest record relief.

The committee was concerned that these inconsistencies could arise again if a future diversion statute states that an arrest is deemed to have never occurred but does not cross-reference section 851.92. In response, the committee also proposes including a catchall provision applying the procedures in section 851.92 to future diversion statutes that deem an arrest to never have occurred due to successful completion of diversion and the authorizing statute mandates or permits sealing of the record.

The Proposal

The committee proposes adding a cross-reference to section 851.92 and an advisement about access to the sealed records by a criminal justice agency to the diversion statutes that do not currently include one: sections 1001.33, 1001.55, 1001.75, 1001.80, and 1001.97. The committee further proposes amending section 851.92 to specify that its provisions and definitions apply when an arrest sealing order is made (1) under these diversion statutes, or (2) when an arrest upon which diversion was imposed is deemed to have never occurred due to successful completion of a statutorily granted diversion program and the authorizing statute mandates or permits sealing of the record.

Alternatives Considered

The committee considered different variations of the catchall provision, aiming to balance consistency in court procedures for substantially similar types of relief while not getting in front of the legislative process. The committee initially discussed including a provision applying section 851.92 procedures anytime an arrest upon which diversion is imposed is deemed to have never occurred due to successful completion of a statutorily granted diversion program. This was intended to address diversion statutes where a cross-reference to section 851.92 seemed inadvertently left out, as with the five diversion statutes addressed in this proposal. However, the legislative language in the diversion statutes that include a reference to section 851.92 states that the “arrest is deemed to have never occurred *and* the court *may* issue an order to seal the records

⁹ See §§ 851.87(c), 851.90(c), 1000.4(d), 1001.9(c), 1001.36(j)(2), 1001.83(i)(2).

pertaining to the arrest as described in section 851.92.” (Emphasis added.) The committee discussed how this language could be interpreted as giving courts the discretion to order sealing, rather than mandating it, and that the proposed catchall could get ahead of the legislative process by mandating sealing. To resolve this concern, the committee added an additional provision stating that the authorizing statute mandates or permits sealing of the record.

Fiscal and Operational Impacts

The proposed amendments are expected to have minimal operational impacts on courts due to new procedures requiring copies of an order to seal to be provided to the impacted person and relevant law enforcement agencies, as well as updates to court records related to the sealed arrest.

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 two 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. Pen. Code, §§ 851.92, 1001.33, 1001.55, 1001.75, 1001.80, and 1001.97, at pages 5–11

Sections 851.92, 1001.33, 1001.55, 1001.75, 1001.80, and 1001.97 of the Penal Code would be amended, effective January 1, 2028, to read:

1 **§ 851.92**

2
3 (a) This section applies when an arrest record is sealed pursuant to Sections 851.87,
4 851.90, 851.91, 1000.4, 1001.33, 1001.55, 1001.75, 1001.80, and 1001.97, or
5 when an arrest upon which diversion was imposed is deemed to have never occurred due
6 to successful completion of a statutorily granted diversion program and the authorizing
7 statute mandates or permits sealing of the record.

8
9 (b) When the court issues an order to seal an arrest, the sealing shall be accomplished as
10 follows:

11
12 (1) The court shall provide copies of the order and a report on the disposition of the
13 arrest, as follows:

14
15 (A) Upon issuing the order, the court shall provide a copy to the person
16 whose arrest was sealed and to the prosecuting attorney.

17
18 (B) Within 30 days of issuing the order, the court shall forward a copy of the
19 order to the law enforcement agency that made the arrest, to any other law
20 enforcement agency that participated in the arrest, and to the law enforcement
21 agency that administers the master local summary criminal history
22 information that contains the arrest record for the sealed arrest.

23
24 (C) Within 30 days of issuing the order, the court shall furnish a disposition
25 report to the Department of Justice indicating that relief has been ordered and
26 providing the section of the Penal Code under which that relief was granted
27 and the date that relief was granted.

28
29 (D) A sealing order made pursuant to this subdivision shall not be forwarded
30 to the Department of Justice to be included or notated in the department's
31 manual or electronic fingerprint image or criminal history record systems.
32 Any sealing order made pursuant to this subdivision and received by the
33 Department of Justice shall not be processed by the department.

34
35 (2) The arrest record shall be updated, as follows:

36
37 (A) The local summary criminal history information shall include, directly
38 next to or below the entry or entries regarding the sealed arrest, a note stating
39 "arrest sealed" and providing the date that the court issued the order, and the
40 section pursuant to which the arrest was sealed. This note shall be included in
41 all master copies of the arrest record, digital or otherwise.
42

1 (B) The state summary criminal history information shall include, directly
2 next to or below the entry or entries regarding the sealed arrest, a note stating
3 “arrest relief granted,” providing the date that the court issued the order and
4 the section of the Penal Code pursuant to which the relief was granted. This
5 note shall be included in all master copies of the arrest record, digital or
6 otherwise.

7
8 (3) A police investigative report related to the sealed arrest shall, only as to the
9 person whose arrest was sealed, be stamped “ARREST SEALED: DO NOT
10 RELEASE OUTSIDE THE CRIMINAL JUSTICE SECTOR,” and shall note next
11 to the stamp the date the arrest was sealed and the section pursuant to which the
12 arrest was sealed. The responsible local law enforcement agency shall ensure that
13 this note is included in all master copies, digital or otherwise, of the police
14 investigative report related to the arrest that was sealed.

15
16 (4) Court records related to the sealed arrest shall, only as to the person whose
17 arrest was sealed, be stamped “ARREST SEALED: DO NOT RELEASE
18 OUTSIDE OF THE CRIMINAL JUSTICE SECTOR,” and shall note next to the
19 stamp the date of the sealing and the section pursuant to which the arrest was
20 sealed. This stamp and note shall be included on all master court dockets, digital or
21 otherwise, relating to the arrest.

22
23 (5) Arrest records, police investigative reports, and court records that are sealed
24 under this section shall not be disclosed to any person or entity except the person
25 whose arrest was sealed or a criminal justice agency. Nothing shall prohibit
26 disclosure of information between criminal history providers.

27
28 (6) Notwithstanding the sealing of an arrest, a criminal justice agency may
29 continue, in the regular course of its duties, to access, furnish to other criminal
30 justice agencies, and use, including, but not limited to, by discussing in open court
31 and in unsealed court filings, sealed arrests, sealed arrest records, sealed police
32 investigative reports, sealed court records, and information relating to sealed
33 arrests, to the same extent that would have been permitted for a criminal justice
34 agency if the arrest had not been sealed.

35
36 (c) Unless specifically authorized by this section, a person or entity, other than a criminal
37 justice agency or the person whose arrest was sealed, who disseminates information
38 relating to a sealed arrest is subject to a civil penalty of not less than five hundred dollars
39 (\$500) and not more than two thousand five hundred dollars (\$2,500) per violation. The
40 civil penalty may be enforced by a city attorney, district attorney, or the Attorney
41 General. This subdivision does not limit any existing private right of action. A civil
42 penalty imposed under this section shall be cumulative to civil remedies or penalties
43 imposed under any other law.

1
2 (d) As used in this section, ~~and~~ Sections 851.87, 851.90, 851.91, 1000.4, 1001.33,
3 1001.55, 1001.75, 1001.80, and 1001.9, and 1001.97, or when an arrest upon which
4 diversion was imposed is deemed to have never occurred due to successful completion of
5 a statutorily granted diversion program and the authorizing statute mandates or permits
6 sealing of the record, all of the following terms have the following meanings:
7

8 (1) “Arrest record” and “record pertaining to an arrest” mean information about the
9 arrest or detention that is contained in either of the following:
10

11 (A) The master, or a copy of the master, local summary criminal history
12 information, as defined in subdivision (a) of Section 13300.
13

14 (B) The master, or a copy of the master, state summary criminal history
15 information as defined in subparagraph (A) of paragraph (2) of subdivision
16 (a) of Section 11105.
17

18 (2) “Court records” means records, files, and materials created, compiled, or
19 maintained by or for the court in relation to court proceedings, and includes, but is
20 not limited to, indexes, registers of actions, court minutes, court orders, court
21 filings, court exhibits, court progress and status reports, court history summaries,
22 copies of state summary criminal history information and local summary criminal
23 history information, and any other criminal history information contained in any of
24 those materials.
25

26 (3) “Criminal history provider” means a person or entity that is not a criminal
27 justice agency and that provides background screening services or criminal history
28 information on identified individuals to the public or to those outside the criminal
29 justice sector upon request, charge, or pursuant to a contractual agreement or that
30 aggregates into databases that are open to the public or to those outside the criminal
31 justice sector upon request or charge, or pursuant to a contractual agreement, that
32 are not created or maintained by a criminal justice agency, criminal history
33 information on identified individuals. For the purposes of this paragraph, a criminal
34 history provider includes an investigative consumer reporting agency, as defined in
35 Section 1786.2 of the Civil Code, a consumer credit reporting agency, as defined in
36 Section 1785.3 of the Civil Code, and a consumer reporting agency, as defined in
37 Section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).
38

39 (4) “Criminal justice agency” means an agency at any level of government that
40 performs, as its principal function, activities relating to the apprehension,
41 prosecution, defense, adjudication, incarceration, or correction of criminal suspects
42 and criminal offenders. A criminal justice agency includes, but is not limited to,
43 any of the following:

- 1
2 (A) A court of this state.
3 (B) A peace officer, as defined in Section 830.1, subdivisions (a) and (e) of
4 Section 830.2, subdivision (a) of Section 830.3, subdivision (a) of Section
5 830.31, and subdivisions (a) and (b) of Section 830.5.
6 (C) A district attorney.
7 (D) A prosecuting city attorney.
8 (E) A city attorney pursuing civil gang injunctions pursuant to Section
9 186.22a, drug abatement actions pursuant to Section 3479 or 3480 of the
10 Civil Code or Section 11571 of the Health and Safety Code, or a city attorney
11 or county counsel pursuing gun violence restraining orders pursuant to
12 Division 3.2 (commencing with Section 18100) of Title 2 of Part 6.
13 (F) A probation officer.
14 (G) A parole officer.
15 (H) A public defender or an attorney representing a person, or a person
16 representing themselves, in a criminal proceeding, a proceeding to revoke
17 parole, mandatory supervision, or postrelease community supervision, or in a
18 proceeding described in Chapter 3.5 (commencing with Section 4852.01) of
19 Title 6 of Part 3.
20 (I) An expert, investigator, or other specialist contracted by a prosecuting
21 attorney or defense attorney to accomplish the purpose of the prosecution,
22 defense, or representation in the criminal proceeding.
23 (J) A correctional officer.
24

25 (5) "Police investigative report" means intelligence, analytical, and investigative reports
26 and files created, compiled, and maintained by a law enforcement criminal justice agency
27 and relating to a potential crime, violation of the law, arrest, detention, prosecution, or
28 law enforcement investigation.
29

30 **§ 1001.33 (cognitive developmental disabilities diversion)**

31
32 (a) Any record filed with the Department of Justice shall indicate the disposition in those
33 cases diverted pursuant to this chapter. Upon successful completion of a diversion
34 program, the arrest upon which the diversion was based shall be deemed to have never
35 occurred, and the court may order those records pertaining to the arrest to be sealed as
36 described in Section 851.92. The divertee may indicate in response to any question
37 concerning ~~his or her~~ their prior criminal record that ~~he or she was~~ they were not arrested
38 or diverted for the offense, except as specified in subdivision (b). A record pertaining to
39 an arrest resulting in successful completion of a diversion program shall not, without the
40 divertee's consent, be used in any way that could result in the denial of any employment,
41 benefit, license, or certificate.
42

43 (b) The divertee shall be advised that, regardless of ~~his or her~~ the divertee's successful
44 completion of diversion, the arrest upon which the diversion was based may be disclosed

1 by the Department of Justice in response to any peace officer application request and that,
2 notwithstanding subdivision (a), this section does not relieve ~~him or her~~ the divertee of
3 the obligation to disclose the arrest in response to any direct question contained in any
4 questionnaire or application for a position as a peace officer, as defined in Section 830.

5
6 (c) The divertee shall be advised that, regardless of the divertee's successful completion
7 of diversion, an order to seal records pertaining to an arrest made pursuant to this section
8 has no effect on a criminal justice agency's ability to access and use those sealed records
9 and information regarding sealed arrests, as described in Section 851.92.

10
11 **§ 1001.55 (misdemeanor offender diversion)**

12
13 (a) Any record filed with the Department of Justice shall indicate the disposition in those
14 cases diverted pursuant to this chapter. Upon successful completion of a diversion
15 program, the arrest upon which the diversion was based shall be deemed to have never
16 occurred, and the court may order those records pertaining to the arrest to be sealed as
17 described in Section 851.92. The divertee may indicate in response to any question
18 concerning ~~his or her~~ their prior criminal record that ~~he or she was~~ they were not arrested
19 or diverted for the offense, except as specified in subdivision (b). A record pertaining to
20 an arrest resulting in successful completion of a diversion program shall not, without the
21 divertee's consent, be used in any way that could result in the denial of any employment,
22 benefit, license, or certificate.

23
24 (b) The divertee shall be advised that, regardless of ~~his or her~~ the divertee's successful
25 completion of diversion, the arrest upon which the diversion was based may be disclosed
26 by the Department of Justice in response to any peace officer application request and that,
27 notwithstanding subdivision (a), this section does not relieve ~~him or her~~ the divertee of
28 the obligation to disclose the arrest in response to any direct question contained in any
29 questionnaire or application for a position as a peace officer, as defined in Section 830.

30
31 (c) The divertee shall be advised that, regardless of the divertee's successful completion
32 of diversion, an order to seal records pertaining to an arrest made pursuant to this section
33 has no effect on a criminal justice agency's ability to access and use those sealed records
34 and information regarding sealed arrests, as described in Section 851.92.

35
36 **§ 1001.75 (parental diversion)**

37
38 (a) Any record filed with the Department of Justice shall indicate the disposition in those
39 cases diverted pursuant to this chapter. Upon successful completion of a diversion
40 program, the arrest upon which the diversion was based shall be deemed to have never
41 occurred, and the court may order those records pertaining to the arrest to be sealed as
42 described in Section 851.92. The divertee may indicate in response to any question
43 concerning ~~his or her~~ their prior criminal record that ~~he or she was~~ they were not arrested
44 or diverted for that offense, except as specified in subdivision (b). A record pertaining to
45 an arrest resulting in successful completion of a diversion program shall not, without the

1 divertee’s consent, be used in any way that would result in the denial of any employment,
2 benefit, license, or certificate.

3
4 (b) The divertee shall be advised that, regardless of ~~his or her~~ the divertee’s successful
5 completion of diversion, the arrest upon which the diversion was based may be disclosed
6 by the Department of Justice in response to any peace officer application request and that,
7 notwithstanding subdivision (a), this section does not relieve ~~him or her~~ the divertee of
8 the obligation to disclose the arrest in response to any direct question contained in any
9 questionnaire or application for a position as a peace officer, as defined in Section 830.

10
11 (c) The divertee shall be advised that, regardless of the divertee’s successful completion
12 of diversion, an order to seal records pertaining to an arrest made pursuant to this section
13 has no effect on a criminal justice agency’s ability to access and use those sealed records
14 and information regarding sealed arrests, as described in Section 851.92.

15
16 **§ 1001.80 (military diversion)**

17
18 (a)-(j) * * *

19
20 (k) A record filed with the Department of Justice shall indicate the disposition of those
21 cases diverted pursuant to this chapter. Upon successful completion of a diversion
22 program, the arrest upon which the diversion was based shall be deemed to have never
23 occurred, and the court may order those records pertaining to the arrest to be sealed as
24 described in Section 851.92. The defendant may indicate in response to a question
25 concerning their prior criminal record that they were not arrested or diverted for the
26 offense, except as specified in subdivision (l). A record pertaining to an arrest resulting in
27 successful completion of a diversion program shall not, without the defendant’s consent,
28 be used in a way that could result in the denial of any employment, benefit, license, or
29 certificate.

30
31 (l) The defendant shall be advised that, regardless of their successful completion of
32 diversion, the arrest upon which the diversion was based may be disclosed by the
33 Department of Justice in response to a peace officer application request and that,
34 notwithstanding subdivision (k), this section does not relieve them of the obligation to
35 disclose the arrest in response to a direct question contained in a questionnaire or
36 application for a position as a peace officer as defined in Section 830.

37
38 (m) The defendant shall be advised that, regardless of their successful completion of
39 diversion, an order to seal records pertaining to an arrest made pursuant to this section
40 has no effect on a criminal justice agency’s ability to access and use those sealed records
41 and information regarding sealed arrests, as described in Section 851.92.

42
43 ~~(n)~~(n) * * *

44
45 ~~(n)~~(o) * * *

1 ~~(p)~~ * * *

2
3 ~~(q)~~ * * *

4
5 **§ 1001.97 (court-initiated misdemeanor diversion)**

6
7 (a) Upon successful completion of the terms, conditions, or programs ordered by the
8 court pursuant to Section 1001.95, the arrest upon which diversion was imposed shall be
9 deemed to have never occurred, and the court may order those records pertaining to the
10 arrest to be sealed as described in Section 851.92. The defendant may indicate in
11 response to any question concerning their prior criminal record that they were not
12 arrested. A record pertaining to an arrest resulting in successful completion of the terms,
13 conditions, or programs ordered by the court shall not, without the defendant's consent,
14 be used in any way that could result in the denial of any employment, benefit, license, or
15 certificate.

16
17 (b) The defendant shall be advised that, regardless of their successful completion of
18 diversion, the arrest upon which the diversion was based may be disclosed by the
19 Department of Justice in response to a peace officer application request and that,
20 notwithstanding subdivision (a), this section does not relieve them of the obligation to
21 disclose the arrest in response to a direct question contained in a questionnaire or
22 application for a position as a peace officer, as defined in Section 830.

23
24 (c) The defendant shall be advised that, regardless of their successful completion of
25 diversion, an order to seal records pertaining to an arrest made pursuant to this section
26 has no effect on a criminal justice agency's ability to access and use those sealed records
27 and information regarding sealed arrests, as described in Section 851.92.
28