

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT SPR18-19

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Title	Action Requested
Criminal Procedure: Petition to Seal Arrest and Related Records	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Approve forms CR-409, CR-409-INFO, and CR-410	January 1, 2019
Proposed by	Contact
Criminal Law Advisory Committee	Eve Hershcopf, 415-865-7961
Hon. Tricia A. Bigelow, Chair	<a href="mailto:Eve.Hershcopf@jud.ca.gov">Eve.Hershcopf@jud.ca.gov</a>

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### Executive Summary and Origin

Senate Bill 393 (Lara; Stats. 2017, ch. 680), effective January 1, 2018, added section 851.91 to the Penal Code, which outlines how an individual who suffered an arrest that did not lead to a conviction can file a petition to have the arrest and related records sealed. The Criminal Law Advisory Committee proposes the development of a petition to seal arrests as directed by Penal Code section 851.91(b)(3), which requires the Judicial Council to furnish forms.

### The Proposal

The proposal recommends approval of two optional forms and an informational form. It is likely that a significant number of petitioners may be self-represented. The forms strive to use plain language (also known as “plain English”) so that users can readily understand the forms on their first reading.<sup>1</sup>

**Petition.** Optional *Petition to Seal Arrest and Related Records (Pen. Code, § 851.91)* (form CR-409) allows the petitioner to:

- Provide information about the arrest the petitioner is requesting to be sealed;

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<sup>1</sup> The federal government has recognized the benefit of plain language and embraced its use to improve citizen engagement. The Plain Writing Act of 2010 (Pub.L. No. 111-274, 124 Stat. 2861), for example, requires federal agencies to write “clear Government communication that the public can understand and use.” In addition, since 2004, the Judicial Council has used plain language writing and formatting on many of its family law forms.

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

- Request relief as a matter of right; and
- Request relief in the interests of justice.

**Information sheet.** *Information on How to File a Petition to Seal Arrest and Related Records Under Penal Code Section 851.91* (form CR-409-INFO) provides the petitioner with information on:

- What is a petition to seal arrest and related records;
- What happens if the court grants the petition;
- What information should be included in the petition;
- When the petition should be filed;
- Who should be served;
- Whether translations of the petition are available; and
- Other means to seal or limit arrest records.

**Order.** Optional *Order to Seal Arrest and Related Records* (*Pen. Code*, §§ 851.91, 851.92) (form CR-410) provides the court with the ability to:

- Grant the relief; or
- Deny the relief and state the reasons for the denial.

### **Alternatives Considered**

The committee considered making the forms mandatory but determined that optional forms would allow courts the flexibility of developing their own forms to fit their own unique needs, while still providing the convenience of a standard form for those courts that choose to use them. Courts will still be required to accept petitions submitted on the proposed optional Judicial Council forms even if they develop their own forms, under rule 1.35(a) of the California Rules of Court.

The committee considered including all the qualifying factors for relief as a matter of right in the petition, so that a petitioner could address why he or she qualified for relief as a matter of right. However, the committee decided that simplifying the request for relief as a matter of right would be more accessible to a petitioner without placing an undue burden on the court. CR-409-INFO, *Information on How to File a Petition to Seal Arrest and Related Records Under Penal Code Section 851.91*, lists the qualifying factors for relief as a matter of right that are not included in the petition.

### **Implementation Requirements, Costs, and Operational Impacts**

It is anticipated that the volume of petitions for relief under Penal Code section 851.91 will be significant. Courts will have to process and act on the requests for relief by setting and conducting hearings, reviewing evidence, and issuing written orders. The proposed forms can help mitigate workload burdens by streamlining some of this process.

## 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?
- Are the forms written in a way that would be understandable to a typical self-represented court user?

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 3 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-409, CR-409-INFO, and CR-410, at pages 4–7
2. SB 393 (Stats. 2017, ch. 680),

[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180SB393](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB393)

**DRAFT**  
**Not approved by the**  
**Judicial Council**  
**2018-03-19**

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

**Superior Court of California, County of**

*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.  
\_\_\_\_\_

**1 Your Information**

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

Name: \_\_\_\_\_

Date of birth: \_\_\_\_\_

Street address: \_\_\_\_\_  
*Street*

\_\_\_\_\_  
*City State Zip*

Mailing address (*if different*): \_\_\_\_\_  
*Street*

\_\_\_\_\_  
*City State Zip*

Phone: \_\_\_\_\_

E-mail (*if available*): \_\_\_\_\_

b. Petitioner's lawyer (*skip this if petitioner has no lawyer*):

Name: \_\_\_\_\_ State Bar number: \_\_\_\_\_

Street address: \_\_\_\_\_  
*Street*

\_\_\_\_\_  
*City State Zip*

Mailing address (*if different*): \_\_\_\_\_  
*Street*

\_\_\_\_\_  
*City State Zip*

Phone: \_\_\_\_\_

E-mail (*if available*): \_\_\_\_\_

**2 Information About Your Case**

a. Date of the arrest you are requesting to be sealed: \_\_\_\_\_

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?

\_\_\_\_\_

e. Include any other information about the arrest that is available from the prosecutor 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.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Trial Court Case Name: \_\_\_\_\_

Trial Court Case Number: \_\_\_\_\_

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.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 the arrest described in item ② 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 the following factors and anything else you consider important: hardship and difficulties caused by the arrest; statements or evidence regarding your good character, from you, others, or both; statements or evidence regarding the arrest, from you, others, or both; your record of convictions.)*

\_\_\_\_\_  
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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 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.

### **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 makes 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 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. 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.

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.

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.

### **Does 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.

### **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](http://www.courts.ca.gov/forms.htm).

### **Are there other ways to seal or limit arrest records?**

Yes. You may 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 pre-filing diversion program under section 851.87.

*Clerk stamps date here when form is filed.***DRAFT  
not approved by the  
Judicial Council  
2018-03-19**

① The court finds that the petitioner is eligible for the following requested relief and makes the following order:

- The court **GRANTS** the petition. The record of arrest in the following matters shall be sealed and the arrest deemed not to have occurred:

Law enforcement agency report number: \_\_\_\_\_

Prosecuting agency report number: \_\_\_\_\_

Court case number: \_\_\_\_\_

Other: \_\_\_\_\_

Petitioner may answer any question relating to the sealed arrest as though it did not happen, and petitioner is released from all penalties and disabilities resulting from the arrest, except as follows:

- The sealed arrest may be pleaded and proved in any later prosecution of the petitioner for any other offense, and will have the same effect as if it had not been sealed.
- The sealing of an arrest under section 851.91 does not relieve the petitioner of the obligation to disclose the arrest, if otherwise required by law, in response to any direct question contained in a questionnaire or application for public office, for employment as a peace officer, for licensure by any state or local agency, or for contracting with the California State Lottery Commission.
- The sealing of an arrest under this section does not affect petitioner's authorization to own, possess, or have in his or her custody or control any firearm, or his or her susceptibility to conviction under Chapter 2 (commencing with section 29800) of Division 9 of Title 4 of Part 6, if the arrest would otherwise affect this authorization or susceptibility.
- The sealing of an arrest under this section does not affect any prohibition from holding public office that would otherwise apply under law as a result of the arrest.

*Clerk fills in the name and street address of the court.***Superior Court of California, County of***Clerk fills in the number and name of the case.***Trial Court Case Number:****Trial Court Case Name:***People of the State of California**v.*

②  The court **DENIES** the petition (*check one*):

a.  The petition does not meet the requirements listed in Penal Code section 851.91(b)(1).

b.  Petitioner's arrest does not qualify under Penal Code section 851.91(a).

c.  The court finds that sealing the arrest would not serve the interests of justice under Penal Code section 851.91(c)(2).

d.  Other: \_\_\_\_\_

Date:



\_\_\_\_\_  
*Signature of trial court judicial officer*