

1 **Research Guide: Motion for Sealing and Destroying Arrest Records**

2 **Law Library for San Bernardino County**

3 Research Guide, www.sblawlibrary.org, (909) 885-3020. Updated as of March 2021

4 **Disclaimer**

5 The information in this research guide is intended to assist patrons with their legal research and is in
6 no way intended to replace the counsel of an Attorney. Any decisions about how to proceed must be
7 determined by the patron. The library staff can recommend and refer you to print and web-based
8 resources that will help you find answers to your law-related questions. The staff at the Law Library
9 for San Bernardino County cannot explain or interpret the law itself and we are not permitted to give
10 legal advice.

11 **I want to seal and destroy my arrest records. Do I have any options?**

12 According to California [Penal Code § 851.8](#), the court has authority to order the records be
13 destroyed:

14 Penal Code § 851.8

15 (a) In any case where a person has been arrested and no accusatory pleading has been
16 filed, the person arrested may petition the law enforcement agency having jurisdiction
17 over the offense to destroy its records of the arrest. The law enforcement agency having
18 jurisdiction over the offense, upon a determination that the person arrested is factually
19 innocent, shall, with the concurrence of the prosecuting attorney, seal its arrest records,
20 and the petition for relief under this section for three years from the date of the arrest and
21 thereafter destroy its arrest records and the petition.

22 The full text of the code can be reviewed at the law library or online at
23 <https://leginfo.legislature.ca.gov/faces/codesTOCSelected.xhtml?tocCode=PEN&tocTitle=+Penal+Code++PEN>.

24 **Is there a form for this procedure?**

25 The Judicial Council has not provided a form for mandatory or optional use for this procedure.

26 **There is no form available, now what?**

27 When there is no Judicial Council Form available this usually means that you have to draft your
28 own form. The Judicial Council has created an information guide to help you understand the
[Basics of Court Forms](http://www.courts.ca.gov/selfhelp-forms.htm) at <http://www.courts.ca.gov/selfhelp-forms.htm>.

How do I draft my own form?

First you need to do some research to see what the law says you can and cannot do. Based on the law you can decide if the courts have provided a remedy for your legal situation. Usually this means drafting a motion with all of the necessary parts.

For more information about motions see

http://www.sblawlibrary.org/uploads/7/3/1/1/7311175/sbell_what_is_a_motion.pdf

For information on how to draft your own pleading form see our guide on [Forms](#) at http://www.sblawlibrary.org/uploads/7/3/1/1/7311175/sbell_forms.pdf.

So how do I draft a Motion to Seal and Destroy Arrest Records?

A sample of what a Motion might look like is provided below. But you will have to decide whether the sample is the correct form for your situation. You may need to modify the forms for your specific case. Blank Pleading paper is available at http://www.sblawlibrary.org/uploads/7/3/1/1/7311175/sbell_forms.pdf.

What are the different parts of the motion?

- Generally, the **Notice of Motion** tells the court what you want to do. In other words, it notifies the court of the action you want the court to take.
- The **Memorandum of Points and Authorities** tells the court the law or authority you are relying on for your motion request.
- In the **Declaration** you should tell the court how you have fulfilled the terms of the law. Provide your statement of the facts and how they relate to your motion.
- The **Proposed Order** is for the judge to sign. Generally, the order is the document that allows your arrest record to be sealed and destroyed.

What do I do after I draft my forms?

Once you have drafted the forms to your specifications you can file them with the court. Typically, the clerk will assign a hearing date for your motion. You will need to serve the District Attorney and the arresting agency and file a **Proof of Service**. Some courts will serve the papers for you.

For information about service of papers and proof of service, please refer to one of the following research guides:

- *Personal Service of Court Papers*, published by the Sacramento County Public Law Library, <http://www.saclaw.org/Uploads/files/Step-by-Step/PersonalService.pdf>

- Local San Bernardino County Proof of Service Form:
<https://www.courts.ca.gov/documents/pos040.pdf>
- Judicial Council Proof of Service Forms: <http://courts.ca.gov/forms.htm?filter=POS>

Additional Resources for Reference

California Criminal, Practice, Motions, Jury Instructions and Sentencing, 3rd edition, volume 5, chapter 60 on Sealing Arrest Records.

Tips and Tricks on Filling out the Form:

For the Blank Lines at the top of the Notice of Motion and the Order:

You need to fill in your Name and Address on the lines that are provided.

What does Defendant in Pro Per mean?

It means the person filing the motion is representing himself/herself without the help of an attorney.

Who is the Defendant?

For this particular motion the person asking for the motion is the defendant.

Fill in your name on any lines that require the name of the defendant.

What is the Date, Time, and Department?

Your motion will be assigned a date, time and a department. The date, time, and department will be assigned when you file the papers with the Court Clerk. You may fill in the information at that time.

Supporting Memorandum of Points and Authorities on page 2:

The points and authorities on page 2 have already been listed, you do not need to add anything to this page.

You may however want to visit the law library and review the code and the case law in its entirety for your own research on the subject.

The Declaration, page 3:

Write your name so that you are the one making the declaration. I, write your name, declare:.

1 The declaration is your opportunity to explain your factual innocence and anything you think
2 might be relevant.

3 The declaration is also your opportunity to provide information about anything you believe is
4 relevant for the Judge to decide in your favor.

5 Executed on, enter today's date, at enter the city, California.

6 Date and sign at the bottom.

7
8 **The Order:**

9 Fill in the information required for the order. Insert your name on the blank line for “Name of the
10 Defendant”.

11 Leave the Date line and the line for the Judge to sign blank. The Judge will sign and date the
12 order.

13 **Filing with the Court and Serving Interested Parties:**

14 Once you have filled out the form you can file it with the Court Clerk at the appropriate court
15 house.

16 You may be required to pay a filing fee. You can inquire at the Courthouse about court filing
17 fees.

18 Make a minimum of three (3) copies of your documents. One of these copies is to be served on
19 the District Attorney, one of the copies is to be served to the Arresting Agency, one copy will be
20 kept for your own records, and the original will be for the court.

21 The Court will certify the copies to be served to the other parties. Once you have served the other
22 parties with the motion you will have to provide a proof of service to the court. See “*What do I
do after I draft my forms?*” section above.

23 Local San Bernardino County Proof of Service Form by Mail:

<https://www.sb-court.org/sites/default/files/Forms%20and%20Rules/SB-37.pdf>

24 Local San Bernardino County Proof of Service Form Personal Service:

<https://www.sb-court.org/sites/default/files/Forms%20and%20Rules/SB-37.pdf>

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Defendant in Pro Per

IN THE SAN BERNARDINO SUPERIOR COURT
STATE OF CALIFORNIA

IN THE MATTER OF
THE APPLICATION OF

) Case No.: _____
)
) MOTION TO SEAL AND DESTROY
) RECORD OF ARREST; SUPPORTING
) MEMORANDUM OF POINTS AND
) AUTHORITIES; SUPPORTING
) DECLARATION. (Pen. Code § 851.8.)
)
) Date: _____
) Time: _____
) Place: _____
)

TO THE DISTRICT ATTORNEY OF _____ County:
PLEASE TAKE NOTICE that on date, time and department listed above, or as soon thereafter as
counsel may be heard in the courtroom of the above-entitled court, the defendant will move for
an order for an order sealing and thereafter destroying the record of arrest of the defendant on
_____ [date], by the _____ [arresting agency] on a
charge of violation of _____ Code § _____.

The motion will be made on the ground that no reasonable cause exists to believe that the
petitioner committed the offense for which the arrest was made.

The motion will be based on the attached declaration and memorandum of points and
authorities served and filed herewith, on all the papers and records on file in this action and on
such oral and documentary evidence as may be presented at the hearing of the motion.

Dated: _____.

Defendant in Pro Per

1 **Petitioner submits the following POINTS AND AUTHORITIES in support of the motion to**
2 **seal and destroy the record of petitioner’s arrest:**

3 **I**

4 **WHENEVER A PERSON HAS BEEN ARRESTED AND NO ACCUSATORY PLEADING**
5 **HAS BEEN FILED, AND A PETITION TO SEAL AND DESTROY HAS BEEN DENIED**
6 **BY THE ARRESTING AGENCY, THE COURT MAY ORDER THE RECORD OF**
7 **ARREST DESTROYED IF IT DETERMINED THAT THE ARRESTEE IS FACTUALLY**
8 **INNOCENT OF THE CHARGES.**

9 Penal Code [§ 851.8 \(a\)](#) provides in part:

- 10 (a) In any case where a person has been arrested and no accusatory pleading has been
11 filed, the person arrested may petition the law enforcement agency having jurisdiction
12 over the offense to destroy its records of the arrest. A copy of the petition shall be
13 served upon the prosecuting attorney of the county or city having jurisdiction over the
14 offense. The law enforcement agency having jurisdiction over the offense, upon a
15 determination that the person arrested is factually innocent, shall, with the
16 concurrence of the prosecuting attorney, seal its arrest records, and the petition for
17 relief under this section for three years from the date of the arrest and thereafter
18 destroy its arrest records and the petition. The law enforcement agency having
19 jurisdiction over the offense shall notify the Department of Justice, and any law
20 enforcement agency that arrested the petitioner or participated in the arrest of the
21 petitioner for an offense for which the petitioner has been found factually innocent
22 under this subdivision, of the sealing of the arrest records and the reason therefor. The
23 Department of Justice and any law enforcement agency so notified shall forthwith
24 seal their records of the arrest and the notice of sealing for three years from the date
25 of the arrest, and thereafter destroy their records of the arrest and the notice of
26 sealing. The law enforcement agency having jurisdiction over the offense and the
27 Department of Justice shall request the destruction of any records of the arrest which
28 they have given to any local, state, or federal agency or to any other person or entity.
Each agency, person, or entity within the State of California receiving the request
shall destroy its records of the arrest and the request, unless otherwise provided in this
section.

The court’s findings may be made upon “declarations, affidavits, police reports or any other
evidence submitted by the parties which is material, relevant and reliable.” The court must hold a
hearing to consider material, relevant, and reliable evidence a defendant offers before it can
apply the requisite objective legal standard to determine whether reasonable cause exists to
believe the defendant committed the offense. People v. Chagoyan, 107 Cal. App 4th 810, 129
Cal. Rptr. 2d 419 (2003).

