



SACRAMENTO POLICE DEPARTMENT GENERAL ORDERS



527.07

DETERMINATION OF FACTUAL INNOCENCE

03-06-12

PURPOSE

The purpose of this order is to establish procedures for when a person petitions to have their arrest records destroyed.

POLICY

It shall be the policy of the Sacramento Police Department that all petitions for destruction of arrest or detention records be investigated in a quick and thorough manner consistent with the following procedures.

PROCEDURE

A. GENERAL

1. Penal Code § 851.8 permits individuals to petition the arresting agency to have arrest information removed from their record.
2. A person who has been detained or arrested and no accusatory pleading has been filed, and who is factually innocent, may petition the law enforcement agency having jurisdiction over the matter to destroy any records of the arrest upon a finding of factual innocence and with the concurrence of the District Attorney.
3. If the petitioner would like to initiate proceedings under Penal Code §851.8 they shall:
 - a. File a completed petition (BCID 8270) with the Records Division of the arresting agency.
 - b. Provide a copy of their Government issued photo ID and pay the current factual innocence review fee. NOTE: This fee shall be reimbursed if they are found to be factually innocent.
4. Petitioners shall be advised to await final action and notification of disposition. This time line can be protracted depending upon the age of the reports involved and the current workload.
5. Petitions shall not be shall not be accepted for arrests occurring before September 29,1980.
6. Arrests occurring from September 29, 1980, through December 31, 1980, do not establish any limitation for filing of a petition due to apparent legislative oversight.
7. Arrests occurring on or after January 1, 1981, require petitions be filed within two years after the arrest. NOTE: Extensions of time for filing of a petition may be extended in the absence of prejudice on the showing of good cause by the arrestee.
8. The petitioner has the option to request factual innocence through the court of jurisdiction. The burden of proof of innocence rests with the petitioner. No action shall be taken by the Department until the court may find the arrestee factually innocent and orders the records sealed and destroyed.
9. Upon receipt of such notification, the records shall be sealed and later destroyed in the same manner as if the Department found the arrestee factually innocent and review fee will be reimbursed.

B. RESPONSIBILITIES

1. Records Division Section shall:
 - a. Review each petition for completeness and accuracy to include verification of arrest and that no accusatory pleading has been filed.
 - b. Date, time stamp and log all petitions upon receipt.
 - c. Complete the law enforcement portion of the petition through the arrest/disposition block. Copies of all pertinent data including; the arrest report, crime report, 849(b)(1) P.C. release, District Attorney 849.5 P.C. release or letter indicating that no complaint will be filed, shall be attached to the petition.



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- d. make a copy of the original petition. The original petition shall be filed and a copy of the petition and all copies of pertinent reports sent to the Captain of Detectives
2. Office of Investigations (OOI), shall complete and return the petition and the attached reports to Records by the date indicated.

C. PETITION DENIED

1. If, after review of all pertinent data by OOI, it is determined no reasonable cause exists to believe the petitioner committed the offense, the petition shall be signed by the Captain, OOI.
2. Indication shall be noted on the petition that the petitioner has been determined to be factually innocent and returned to Records Division.
3. if factual innocence cannot be clearly established the petition shall be denied, signed and returned to Records.
4. The signed and dated petition (BCID 8270) shall be returned by Records Division by mail to the petitioner indicating the petition was denied.
5. A copy of the BCID 8270 petition and proof of paid review fee shall be retained by the Records Division pending possible future notification from the court.

D. PETITION GRANTED

1. A copy of the signed petition and all associated data shall be sent, by the Records Division to the District Attorney for their concurrence.
2. After return of the petition, and with District Attorney approval, the Records Division shall seal all affected records including a copy of the petition for three years from the date of arrest and thereafter the records and petition shall be pulled and destroyed.
 - a. No records shall be destroyed if the arrestee or the co-defendant has filed a civil action against the Department until the civil action has been resolved.
 - b. Any records which are not destroyed but indicate the petitioner as the arrestee, shall be partially sealed and shall bear the notation "exonerated" wherever reference to the arrestee is made.
3. After complete sealing of all records, including a copy of the petition, the Department of Justice shall be notified, as well as any other agencies whom copies of arrest/crime reports were sent.
4. In addition to sending the petitioner a copy of the approved BCID 8270 form, a declaration of factual innocence form (BCID 8271) shall be mailed to the petitioner indicating they are thereby exonerated.