

## [Cal Pen Code § 851.92](#)

Deering's California Codes are current through Chapter 1-74, and 84 of the 2021 Regular Session, including all urgency legislation effective July 15, 2021 or earlier.

*Deering's California Codes Annotated > PENAL CODE (§§ 1 — 34370) > Part 2 Of Criminal Procedure (§§ 681 — 1620) > Title 3 Additional Provisions Regarding Criminal Procedure (Chs. 1 — 7) > Chapter 5 Arrest, by Whom and How Made (§§ 833 — 851.93)*

### **§ 851.92. Procedures pursuant to court order to seal arrest record; Penalty for unauthorized disclosure of sealed arrest; Definitions**

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(a) This section applies when an arrest record is sealed pursuant to [Sections 851.87](#), [851.90](#), [851.91](#), [1000.4](#), and [1001.9](#).

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

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

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

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

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

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

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

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

(B) The state summary criminal history information shall include, directly next to or below the entry or entries regarding the sealed arrest, a note stating "arrest relief granted,"

providing the date that the court issued the order and the section of the Penal Code pursuant to which the relief was granted. This note shall be included in all master copies of the arrest record, digital or otherwise.

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

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

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

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

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

**(d)** As used in this section and [Sections 851.87](#), [851.90](#), [851.91](#), [1000.4](#), and [1001.9](#), all of the following terms have the following meanings:

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

**(A)** The master, or a copy of the master, local summary criminal history information, as defined in subdivision (a) of [Section 13300](#).

**(B)** The master, or a copy of the master, state summary criminal history information as defined in subparagraph (A) of paragraph (2) of subdivision (a) of [Section 11105](#).

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

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

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

**(A)** A court of this state.

**(B)** A peace officer, as defined in [Section 830.1](#), subdivisions (a) and (e) of [Section 830.2](#), subdivision (a) of [Section 830.3](#), subdivision (a) of [Section 830.31](#), and subdivisions (a) and (b) of [Section 830.5](#).

**(C)** A district attorney.

**(D)** A prosecuting city attorney.

**(E)** A city attorney pursuing civil gang injunctions pursuant to [Section 186.22a](#) or drug abatement actions pursuant to [Section 3479 or 3480 of the Civil Code](#) or [Section 11571 of the Health and Safety Code](#).

**(F)** A probation officer.

**(G)** A parole officer.

**(H)** A public defender or an attorney representing a person, or a person representing himself or herself, in a criminal proceeding, a proceeding to revoke parole, mandatory supervision, or postrelease community supervision, or in proceeding described in Chapter 3.5 (commencing with [Section 4852.01](#)) of Title 6 of Part 3.

**(I)** An expert, investigator, or other specialist contracted by a prosecuting attorney or defense attorney to accomplish the purpose of the prosecution, defense, or representation in the criminal proceeding.

**(J)** A correctional officer.

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

## History

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Annotations

## **Research References & Practice Aids**

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### **Hierarchy Notes:**

[Cal Pen Code Pt. 2, Title 3, Ch. 5](#)

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