

9/10/84

Fourth Supplement to Memorandum 84-68

Subject: Topics and Priorities for 1985 (Penal Code Section 851.8)

Attached as Exhibit 1 is a letter suggesting a technical correction in a Penal Code section. The Commission is not authorized to study this suggestion. It is not one that merits a Commission study. I had hoped to find a bill amending the Penal Code section so I could provide the author of the bill with the letter. This did not occur. The staff suggests that a copy of this letter be sent to the Chairperson of the Senate Committee on Judiciary and the Chairperson of the Assembly Committee on Criminal Law and Public Safety for such action as they consider appropriate.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary

**Municipal Court  
Southeast Judicial District**

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January 2, 1984

Mr. John H. DeMouilly  
Executive Secretary  
California Law Revision  
Commission  
Stanford Law School  
Stanford, CA 94305

Dear Mr. DeMouilly:

**PENAL CODE SECTION 851.8**

Penal Code section 851.8 establishes a procedure for an arrested person to be declared "factually innocent" and to have the records of his or her arrest sealed and ultimately destroyed.

Subdivisions (a) and (b) of Penal Code section 851.8 provide for cases in which a person is arrested and no accusatory pleading is filed. Under subdivision (a), an arrested person can petition the arresting agency for a determination of factual innocence. If the arresting agency finds the arrested person factually innocent, it must seal and destroy, after a period of three years, the records of the arrest.

Under subdivision (b), an arrested person whose petition to the arresting agency is denied or deemed denied by operation of law can petition the proper court for a finding of factual innocence. If the court finds the arrested person factually innocent, it must grant the following relief:

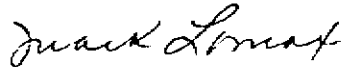
"[T]he court shall order the law enforcement agency having jurisdiction over the offense, the Department of Justice, and any law enforcement agency which arrested the petitioner or participated in the arrest of the petitioner for an offense for which the petitioner has been found factually innocent under this section to seal their records of the arrest and the court order to seal and destroy such records, for three years from the date of the arrest and thereafter to destroy their records of the arrest and the court order to seal and destroy such records."  
(Subd. (b), emphasis added.)

Subdivisions (c), (d), and (e) provide for cases in which an accusatory pleading is filed. Each of those subdivisions states that on a finding of factual innocence, the court may "grant the relief provided in subdivision (b)." However, the relief

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provided in subdivision (b) is limited to sealing and destroying the records of the law enforcement agency; subdivision (b) makes no provision for sealing and destroying court records. Therefore, an arrested person found factually innocent after an accusatory pleading was filed could obtain an order to seal and destroy the arrest records but not the court records. Penal Code section 851.8, by incorporating part of subdivision (b) in subdivisions (c), (d), and (e), presents the anomalous situation of the court's having the authority to order the records of the law enforcement agency sealed and destroyed but not having the authority to order its own records sealed and destroyed. This is an obvious omission, which I bring to your attention pursuant to Government Code section 10330.

Very truly yours,



MARK LOMAX  
Senior Administrative Assistant

ML:dw/01