

Staff Memorandum 2026-07

Updates on Staff Research and Preliminary Proposals: Diversion, Record Relief, and Related Matters

This memorandum provides research updates and preliminary staff proposals for topics discussed at the April 2026 Committee meeting.

Research Updates

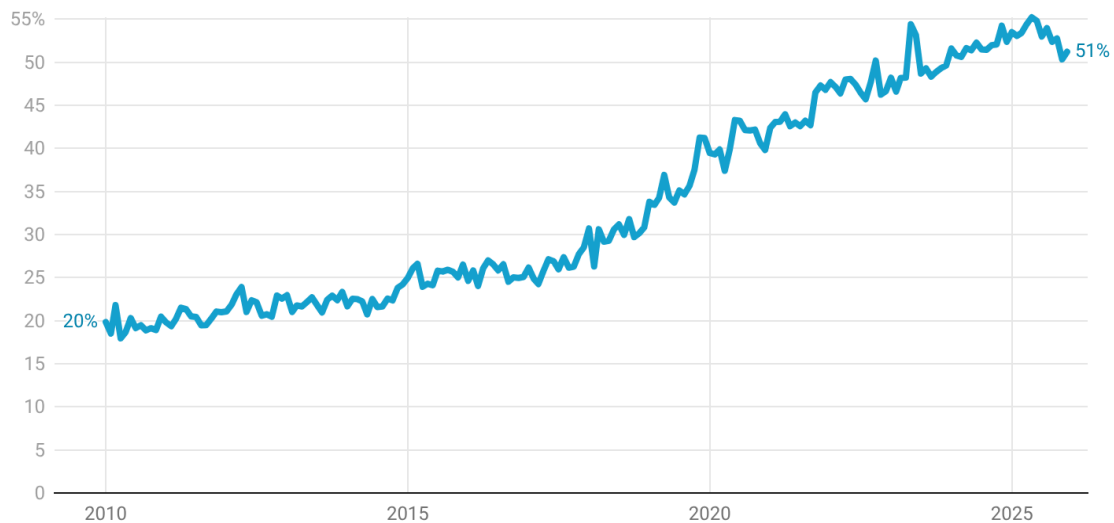
Additional data on mental health jail and prison populations

As part of its discussion of diversion programs, including mental health diversion under Penal Code section 1001.36, the Committee wanted more data on the mental health populations in California’s jails and prisons.

In California’s jails, the percentage of the population that is considered a “mental health case” has increased significantly since 2010. In 2010, around 20% of the jail population was a mental health case; it is now closer to 50%.¹ This same dynamic — a smaller overall population but greater concentration of mental health needs — has also occurred in the prison population, as explored by the Committee at the April meeting.

California jail mental health population as percentage of average daily population, 2010–2025

Data is mental health cases open at the end of each month as a percentage of average daily population.



In any given month, only jurisdictions that reported both ADP and open mental health cases are included.

Chart: Committee on Revision of the Penal Code • Source: BSCC Jail Profile Survey • Created with Datawrapper

¹ BSCC Jail Profile Survey. See also Magnus Lofstrom and Brandon Martin, *County Jails House Fewer Inmates but Over Half Face Mental Health Issues*, Public Policy Institute of California, October 25, 2023.

For prisons, data provided on CDCR’s “Offender Data Points” dashboard shows that Black people are overrepresented in the mental health population — making up 35% of it — compared to their proportion in the overall CDCR population, where they are 28% of the population.² The opposite is true for Hispanic and Mexican people, who collectively make up 47% of the CDCR population but only 35% of the mental health population. White people are also overrepresented in the mental health population: 24% of the mental health population but 19% of the overall population.

The data also shows that a higher proportion of the female prison population are in the mental health population compared to the male population: 64% of women compared to only 40% of men. But women who are receiving mental health treatment are more likely to be receiving a lower level of care: of women receiving mental health treatment, 90% are at the lowest level of care while only 74% of men are.

Appellate review of mental health diversion

The Committee also expressed interest in possibly recommending updates to how appellate courts review mental health diversion cases.

A trial court’s decision on whether to grant or deny mental health diversion is reviewed on appeal for abuse of discretion. A court abuses its discretion “when it makes an arbitrary or capricious decision by applying the wrong legal standard or bases its decision on express or implied factual findings that are not supported by substantial evidence.”³ In this context, “[s]ubstantial evidence includes circumstantial evidence and any reasonable inferences drawn from that evidence. However, a reasonable inference may not be based on suspicion alone, or on imagination, speculation, supposition, surmise, conjecture, or guesswork; a finding of fact must be an inference drawn from evidence rather than a mere speculation as to probabilities without evidence.”⁴

Committee staff reviewed recent appellate decisions – both published and unpublished – to determine how frequently appellate courts reversed a trial court’s grant of diversion. We located only one case in the last six months doing

² Data from Offender Data Points is for March 2026.

³ *People v. Moine*, 62 Cal.App.5th 440, 449 (2021).

⁴ *Vaughn v. Superior Court*, 105 Cal.App.5th 124, 135 (2024) (cleaned up and alteration removed).

so.⁵ The most frequent appellate outcomes were either an appellate court reversing a denial of diversion⁶ or affirming denials of diversion.⁷

Record relief and new arrests

At the April meeting, Committee members inquired about how a new arrest would delay automatic record relief. Under existing law, a person is not eligible for automatic record relief of a conviction if there is a pending criminal charge.⁸ In theory, once the charge is resolved, a person would be entitled to record relief if they met the other eligibility requirements, but many records linger as pending without disposition data. (A person is, however, eligible for automatic record relief of an arrest no matter whether there is a pending charge.)⁹

A pending bill, SB 1342 (Durazo), would clarify what DOJ should do when charges are pending indefinitely without a resolution. The bill would require the California Department of Justice to grant automatic record relief when at least 3 years have elapsed since proceedings were initiated and no other activity on that charge has taken place.

Record relief and immigration

While California's automatic record relief laws seal many arrest and conviction records, they do not erase convictions for immigration purposes under federal law.¹⁰ Federal immigration law does not recognize expungements and sealing

⁵ *People v. Superior Court of Los Angeles County (Taylor)*, 118 Cal.App.5th 1153 (2026) (Court of Appeal held that substantial evidence existed that defendant would pose an unreasonable risk of danger to public safety and thus the trial court abused its discretion in granting defendant pretrial mental health diversion)..

⁶ Appellate courts commonly find that trial courts abused their discretion by applying the wrong legal standard or find that substantial evidence did not support the court's findings on either suitability or eligibility. See, e.g., *People v. Tourville*, __ Cal.App.5th __, 2026 WL 1223627 (Ct App. 2026), *People v. Simpson*, C102041, 2026 WL 798861 (Ct. App. 2026) (non-published opinion), *People v. Ryan*, F088831, 2026 WL 573694 (Ct. App. 2026) (non-published opinion), *Flareau v. Superior Court*, 118 Cal.App.5th 681, 692-693 (2026), *Siam v. Superior Court*, 118 Cal.App.5th 67 (2026), *People v. Calabar*, 117 Cal.App.5th 41 (2025).

⁷ Appellate courts also commonly find that a trial court's decision to deny mental health diversion was not an abuse of discretion and was supported by substantial evidence. See e.g. *People v. Viera*, B344152, 2026 WL 972181 (Ct. App. 2026) (non-published opinion), *People v. Salinas*, B346284, 2026 WL 867019 (Ct. App. 2026) (non-published opinion), *People v. Gardner*, B340350, 2026 WL 733268 (Ct. App. 2026) (non-published opinion), *People v. Shryack*, D084802, 2026 WL 523054 (Ct. App. 2026) (non-published opinion), *People v. Matheson*, C103945, 2026 WL 445512 (Ct. App. 2026) (non-published opinion), *People v. Dates*, B342998, 2026 WL 183678 (Ct. App. 2026) (non-published opinion).

⁸ Penal Code § 1203.425(a)(1)(B)(iii).

⁹ Penal Code § 851.93(a)(2)(B).

¹⁰ Immigrant Legal Resource Center, *Recent California "Clean Slate" Initiatives & Immigrants*, August 14, 2023.

under state law. A conviction may only be “erased” under immigration law if it is found to be legally invalid. The Legislature created a separate statute to address this in Penal Code section 1473.7, which allows a person to ask a court to vacate their conviction if they were not informed of or did not understand the immigration consequences of their plea.

Record destruction

At the April meeting, staff recommended that the Committee consider a recommendation that certain misdemeanor criminal records be destroyed some period of time after they are given automatic record relief by the California Department of Justice. Staff is continuing to research this proposal with the goal of making a recommendation that would expand the existing automatic record relief regime while still preserving a convicted person’s ability to access their own records and addressing other issues raised by stakeholders.

Preliminary Staff Proposals

After hearing witness testimony and reviewing legal developments at the Committee’s April 2026 meeting, staff propose the following recommendations for further discussion and analysis.

Expand judicial diversion to low-level felonies.

Summary Staff Proposal

Expand existing misdemeanor judicial diversion in Penal Code section 1001.95 to low-level felonies.

Current Law

A trial court may grant diversion in misdemeanor cases, excluding certain offenses, but is unable to do so in felony cases.¹¹

Background

The Committee has long recommended expanding and strengthening diversion programs, which allow a person to avoid a criminal conviction and potential incarceration by fulfilling certain conditions.

Since January 2021, California judges have had the ability to grant diversion in many misdemeanor cases.¹² Excluded from the court’s consideration are domestic violence, stalking, and DUI offenses and misdemeanors that require

¹¹ Penal Code § 1001.95(b)–(c).

¹² This program was created by AB 3234 (Ting 2020), which added Penal Code §§ 1001.95–97.

sex offender registration.¹³ The court has discretion to set conditions of diversion, which may last up to 24 months.¹⁴

This proposal is to extend the same judicial discretion to low-level felony offenses. AB 1231, a bill pending in the Legislature from Committee member Assemblymember Elhawary, would implement this recommendation.

Staff Proposal

The Committee should consider a recommendation that would expand judge-led misdemeanor diversion to low-level felonies.

Allow DMV to assess points for vehicular-manslaughter diversion.

Summary Staff Proposal

Require the DMV to assign points to a driver's license when a vehicular manslaughter charge is resolved by judicial diversion.

Current Law

The DMV typically only assigns points to a driver's license with a conviction. A misdemeanor offense for vehicular manslaughter without gross negligence is eligible for judicial diversion¹⁵ and without a conviction the DMV is unable to assess points on a driver's license. With a conviction, the convicted person would accrue two points on their license.

Background

In California, the Department of Motor Vehicles (DMV) monitors a driver's record. Each time a driver is convicted of a moving traffic violation the court notifies the DMV and the conviction is placed on a driver's record. The DMV assigns points depending on the type of conviction.¹⁶ If a driver receives too many points in a certain amount of time they are considered a negligent driver and the DMV will suspend or revoke their driving privilege.

While some consequences of a conviction for a misdemeanor offense may apply to people who receive diversion, such as paying victim restitution, some do not. This is also true for points assigned by the DMV. The DMV may only assign points when there is a conviction so cases resolved by diversion do not receive points, including for vehicular manslaughter.¹⁷

¹³ See Penal Code § 1001.95(e); Vehicle Code § 23640(a). See also, e.g., *Tan v. Superior Court of San Mateo County*, 76 Cal.App.5th 130 (2022).

¹⁴ Penal Code § 1001.95(b)–(c).

¹⁵ *Bobo v. Appellate Division of Superior Court of San Diego County*, __ Cal.App.5th __, 2026 WL 1102519 (Ct. App. 2026) (trial court abused its discretion by denying misdemeanor diversion to a defendant charged with vehicular manslaughter by relying only on the fact that her conduct caused the death of another person).

¹⁶ Vehicle Code § 12810.

¹⁷ Vehicle Code § 12810(d)(1).

Staff Proposal

The Committee should consider a recommendation that would require the DMV to assign points to a driver's record if they are charged with vehicular manslaughter and the case is resolved by judicial diversion.

Specify the evidence a court may consider for misdemeanor military diversion.*Summary Staff Proposal*

Clarify what evidence a trial may consider for misdemeanor military diversion.

Current Law

Current and former members of the U.S. military who may be suffering from a mental or substance abuse issue as a result of their military service may be eligible for diversion.¹⁸ A veteran charged with a felony must show that their condition was a significant factor in committing the charged offense, while a veteran charged with a misdemeanor does not need to demonstrate this connection.¹⁹

Background

Military diversion was limited to misdemeanors until January 2025, when most felony offenses became eligible.²⁰ Updates to the statute expanding it to felony offenses created an inconsistency between misdemeanor and felony cases, as recently flagged by an appellate court.²¹

On a misdemeanor charge, a defendant has the low burden to show that they may be suffering from a qualifying condition as a result of their military service.²² But since the relevant portion of the statute does not describe what evidence a court may consider for a misdemeanor, the court must default to rules of evidence, which do not include statements of counsel or other hearsay. In contrast, the portion of the diversion statute addressing felony cases states that “a court may consider any relevant and credible evidence,” while providing a non-exclusive list of examples: “a police report, preliminary hearing transcript, witness statement, statement by the defendant’s mental health treatment provider, medical record, or record or report by qualified medical expert.”²³

¹⁸ Penal Code § 1001.80. The program was created by SB 1227 (Hancock 2014).

¹⁹ Penal Code § 1001.80(c)(2)(A).

²⁰ SB 1025 (Eggman 2024). Ineligible felonies are the same as those ineligible for mental health diversion and include sex offenses, murder, and voluntary manslaughter. Penal Code § 1001.80(o).

²¹ *People v. Holliday*, 116 Cal.App.5th 664, 675 (2025).

²² *Holliday*, 116 Cal.App.5th at 673.

²³ Penal Code § 1001.80(c)(2)(C).

As a result, the evidence needed to establish eligibility on a misdemeanor charge is more stringent than that needed for a felony charge. The appellate court called on the Legislature to fix this inconsistency.”²⁴

Staff Proposal

The Committee should consider a recommendation that incorporates the language on evidence to be considered from the felony provision into the misdemeanor provision of the diversion statute..

Conduct a comprehensive mental health diversion study.

Summary Staff Proposal

Conduct a comprehensive state-wide study on outcomes related to mental health diversion.

Current Law

Created in 2018, mental health diversion allows people with mental health diagnoses to complete a court-ordered treatment plan instead of receiving a criminal conviction.²⁵

Background

California’s mental health diversion has been in effect statewide for more than 7 years. Data from the Judicial Council shows that some counties make little use of the program.²⁶ The Legislature also has routinely considered bills to adjust the statutory scheme for mental health diversion. Despite this continued interest, there is only known study evaluating outcomes from a mental health diversion program. This study, conducted by the RAND Corporation, showed very promising recidivism rates for people who completed the program — 91% did not have a new case filed against them.²⁷

From a research point of view, studying mental health diversion is challenging because data on who completes the program, the length of their participation, and other key information is maintained at the local level by trial courts, probation departments, and other agencies. There is no state-wide data source that can be used to evaluate the effectiveness of mental health diversion programs.

In similar contexts following new state-wide initiatives, such as prosecutor-initiated resentencings, the Legislature and Governor funded a study

²⁴ Id. at 675.

²⁵ Penal Code § 1001.36.

²⁶ Judicial Council of California, *2025 Mental Health Diversion Data Summary Report*, July 1, 2025.

²⁷ Stephanie Brooks Holliday, Elizabeth Marsolais, and Samantha Matthews, *Process Evaluation of the Los Angeles County Rapid Diversion Program*, RAND, 39, September 30, 2024.

to measure the impact of the program and required data to be disclosed to the evaluator.²⁸

While the Committee typically prefers to undertake such studies itself, working with the California Policy Lab, mental health diversion requires coordination between many different stakeholders and there is insufficient research infrastructure to allow a study of different counties. The study should also include military diversion under Penal Code section 1001.80, which addresses a similar population and has a similar statutory structure.

Staff Proposal

The Committee should recommend that the Legislature fund a study to measure the impact of mental health and military diversion.

Allow requests for mental health diversion to be made until sentencing.

Summary Staff Proposal

Allow requests for mental health diversion to be made until sentencing occurs.

Current Law

An application for mental health diversion can be brought “until adjudication,” which means until a jury is sworn for a trial or plea of guilty or no contest is entered.²⁹

Background

Mental health diversion is intended to remove appropriate defendants from the criminal adjudication process so they can receive mental health treatment that will ultimately improve public safety. A successful diversion application typically means a defendant will be released from jail if incarcerated and have the case against them suspended until treatment is complete or diversion is revoked. For those reasons, almost all defendants are heavily incentivized to make a diversion request as early as possible in a case.

But the mental health diversion statute was drafted to allow requests for diversion to be made “until adjudication” of the case. In 2023, the California Supreme Court interpreted the language “until adjudication” to mean the request can be made until a jury is sworn for a trial or a defendant enters a guilty plea.³⁰ Justices Kelli Evans and Goodwin Liu dissented because, in their view, “until adjudication” was better interpreted to mean until sentencing occurred.³¹

²⁸ Penal Code §§ 1172(a) & (j).

²⁹ Penal Code § 1001.36(f)(1). *People v. Braden*, 14 Cal.5th 791, 819 (2023).

³⁰ *People v. Braden*, 14 Cal.5th 791, 819 (2023).

³¹ *Id.* at 825 (Evans, J., dissenting).

According to Justice Evans, the decision to enter mental health treatment is not always made “on a neat and tidy timeline.”³² The defendant in the case at issue had a schizophrenia diagnosis and had represented himself at trial and been convicted; as soon as counsel was appointed after trial, a request for mental health diversion was made.³³ Justice Evans also pointed out that in rare cases “a trial court may determine it is only capable of making an informed determination regarding this eligibility factor [about the connection between the mental health disorder and the offense] or the defendant’s suitability for diversion for the first time during trial.”³⁴

Staff Proposal

The Committee should consider a recommendation that implements the dissenting opinion from Justices Evans and Liu in the California Supreme Court case *People v. Braden*,³⁵ and allows a defendant to request mental health diversion until sentencing.

Notify new recipients of automatic record relief.

Summary Staff Proposal

Require DOJ to notify new recipients of automatic record relief via a telephone number collected at sentencing if the defendant chooses to disclose it.

Current Law

DOJ must identify eligible records and grant automatic relief for those eligible records on a monthly basis. A recipient is not notified and may only discover whether relief was granted by providing fingerprints and requesting a new copy of their criminal record.

Background

Current law requires the California Department of Justice to search its Automated Criminal History System (ACHS) for eligible arrest and conviction records on a monthly basis.³⁶ Once identified, the California Department of Justice then adds a notation to each eligible arrest or conviction stating that relief has been granted pursuant to the relevant Penal Code section, either 851.92 (arrests) or 1203.425 (convictions), and then sends an electronic notification to the court that relief was granted.³⁷ The court then cannot disclose information about an arrest or conviction given relief, except to the person whose conviction or arrest was granted relief or a criminal justice agency.³⁸

³² Id. at 837 (Evans, J., dissenting).

³³ Id. at 825 (Evans, J., dissenting).

³⁴ Id. at 832 (Evans, J., dissenting).

³⁵ Id. at 825 (Evans, J., dissenting).

³⁶ Penal Code §§ 1203.425(a)(1)(A), 851.93(a)(1).

³⁷ Penal Code §§ 1203.425(a)(2)(B), 1203.425(a)(3)(A), 851.93(b)(2).

³⁸ Penal Code §§ 1203.425(a)(3)(A), 851.93(c).

According to a report from California Policy Lab, almost 90% of Californians with criminal records are likely to benefit from automatic record relief, largely because most people with conviction records have misdemeanors.³⁹

A limitation of automatic record relief is that individuals are not notified once their record is relieved — in contrast to the petition-based process where petitioners receive notice of the court’s decision. Under automatic record relief, an individual can only know what has been automatically relieved by requesting their own criminal record from the California Department of Justice, which requires submitting LiveScan fingerprint images and a processing fee.⁴⁰ As a result, some people may continue to disclose criminal convictions or arrests that have in fact been relieved.

To begin to remedy this lack of notification, people who are convicted of an offense that may be eligible for automatic record relief should have the option of providing contact information, including a cell phone number for text messages, to receive updates about automatic record relief. Courts are already required to inform people at sentencing about automatic record relief and this notification option would build on that process.⁴¹

Staff Proposal

The Committee should consider a recommendation that would allow people who receive automatic record relief to be notified or updated about any automatic record relief that they receive.

Require courts to explain the denial of a discretionary relief petition.

Summary Staff Proposal

Require a court to state on the record why a petition for relief under 1203.4 is not in the interest of justice.

Current Law

Almost all criminal convictions are eligible for record relief if the court finds it is in the interest of justice.

Background

Penal Code section 1203.4 and related statutes allow relief for convictions that are not covered by automatic record relief.⁴² All convictions are now eligible for relief at the court’s discretion, including felonies with state prison sentences,

³⁹ Alissa Skog et al., *Who Benefits from Automatic Record Relief in California*, California Policy Lab, 4 (October 2024).

⁴⁰ California Department of Justice, Criminal Records – Request Your Own.

⁴¹ Penal Code § 1203.425(c).

⁴² Some offenses are exempted from relief entirely under Penal Code § 1203.4, including several sex offenses. Penal Code § 1203.4(b).

excluding felonies that resulted in a requirement to register as a sex offender.⁴³ The standard is the same across circumstances — whether to grant the petition is left up to an individual judge’s discretion and only guided by the “interests of justice.”⁴⁴

If a court grants relief under these statutes, the conviction is “dismissed” and replaced with a “not guilty” plea. However, as described above in automatic record relief, this modification of the conviction does not actually erase the conviction and it is still available for law enforcement — including for use as a prior conviction — and many licensing purposes.⁴⁵

There is no statutory requirement for the court to explain why it is denying discretionary record relief. A person is entitled to file more than one petition on a conviction⁴⁶ so they may be denied again for the same reason without knowing why, such as the judge wanting more evidence of rehabilitation or more time following the conviction. Requiring an explanation of why relief was not granted would allow people to take the rehabilitative steps necessary to obtain future relief.

Staff Proposal

Require a court to state on the record why a petition for relief under 1203.4 or its related statutes is not in the interest of justice.

Harmonize sealing obligations after diversion is completed.

Summary Staff Proposal

Harmonize the statutes for mental health, military, and court-led misdemeanor diversion so that they consistently specify how arrests and related records should be sealed following successful completion of diversion.

Current Law

Charges are dismissed when a person successfully completes a mental health, military, or misdemeanor diversion program. These diversion statutes all mandate that unless a person is applying to be a peace officer, “the arrest upon which diversion was imposed shall be deemed to have never occurred.”⁴⁷

⁴³ Penal Code § 1203.41(a)(6). Arrests can be given relief by a separate petition process. See, e.g., Penal Code § 851.91 (arrests that did not result in a conviction).

⁴⁴ *People v. McLernon*, 174 Cal.App.4th 569, 573 (2009).

⁴⁵ Penal Code § 1203.4(a)(1). This process is sometimes referred to as “expunging” a conviction, but this is an imprecise description. See, e.g., *People v. Guillen*, 218 Cal. App. 4th 975, 996 (2013).

⁴⁶ See *People v. Myers*, 2025 WL 3676918, Dec. 18, 2025 (because rehabilitation may take years to achieve, denying a petition with prejudice frustrates these legislative goals).

⁴⁷ See, e.g., Penal Code § 1001.36(h).

Background

The statutes for mental health diversion, military diversion, and misdemeanor diversion similarly intend for access to criminal records related to the arrest to be limited after successful completion of diversion, but the statutes are not consistent with each other on how this legal finding is to be implemented.

The mental health diversion statute is the most detailed as it directs notice to the California Department of Justice about the successful diversion and also requires a general sealing of the arrest records.⁴⁸ The military diversion statute directs notice to DOJ, but does not directly address sealing arrest records.⁴⁹ The misdemeanor diversion statute does not directly address notice to the DOJ or sealing of arrest records.⁵⁰ These inconsistencies in notice may delay or impede record relief, which would apply automatically in some of these scenarios.⁵¹

This inconsistency has also come to the attention of the Judicial Council's Criminal Law Advisory Committee, which has requested public comment on a legislative proposal to improve consistency in how arrest records are sealed after diversion.⁵² The proposal would amend the diversion statutes to cross-reference the statute on sealing of arrest records and by adding an advisement about access to the sealed records.

Staff Proposal

Harmonize the statutes for mental health, military, and court-led misdemeanor diversion so that they consistently specify how arrests and related records should be sealed following successful completion of diversion.

Conclusion

Staff looks forward to discussing the research and proposals presented in this memorandum with the Committee.

Respectfully submitted,

Thomas M. Nosewicz
Legal Director

Joy F. Haviland
Senior Staff Counsel

⁴⁸ Penal Code § 1001.36(h).

⁴⁹ Penal Code § 1001.80(k).

⁵⁰ Penal Code § 1001.97(a).

⁵¹ Penal Code § 851.93(a)(2)(D).

⁵² Judicial Council of California, *Invitation to Comment, Judicial Council-Sponsored Legislation: Procedures for Sealing Arrest Records*, May 2026.