

Staff Memorandum 2026-10
Update on Staff Proposal for Enhanced Sealing of Misdemeanor Records

This memorandum provides an updated staff proposal for the criminal record relief topics discussed at the April 2026 meeting.

At that meeting, staff recommended that certain misdemeanor criminal records be destroyed some period of time after they are given automatic record relief by the California Department of Justice. The permanent destruction of criminal records raises several complex issues, including the difficulty of actual destruction when records exist in multiple locations — law enforcement agencies, courts, and other state agencies — and the possibility that a person may need access to their own record after it is destroyed.

In light of these issues, staff now proposes the enhanced sealing of misdemeanor criminal records, which builds on existing automatic record relief to achieve most of the goals of destruction while avoiding practical issues associated with destruction.

Grant enhanced sealing to misdemeanor criminal records after automatic record relief.

Summary Staff Proposal

Misdemeanor arrest and conviction records that have received automatic record relief (which only limits access to records) should be granted additional sealing after automatic relief. Individual defendants may request enhanced sealing at any time at a court's discretion. Automatic enhanced sealing would occur no more than 5 years after automatic relief has been granted, but extended to no more than 10 years for any requests related to employment or licensing with vulnerable populations.

Misdemeanor convictions that can be relied on later to enhance punishment (including DUI and domestic violence) should be exempted from this new process and prosecutors should be able to object to enhanced sealing of any record on public safety grounds.

Current Law

Whether relief is obtained automatically or through court action, an “expunged” or “sealed” criminal record always remains accessible to law enforcement and courts and to certain employers and state agencies for employment, licensing, or certification purposes that are allowed by law to conduct fingerprint-based background checks.¹ Record relief in California limits *public* disclosure of

¹ Penal Code § 11105(k)-(p).

relieved records and, for those entities still able to access relieved records, requires notating the record that certain relief has been provided.

Background

Automatic record relief does not erase the actual record that a person had been convicted or arrested of a crime; it merely relieves the person from many civil penalties and disabilities as a result of the conviction.² While California has taken significant steps to simplify the process of obtaining record relief — including recently automating the process — many underlying burdens of having a criminal record remain even after automatic relief. The relieved conviction or arrest remains accessible to law enforcement, courts, and certain government entities, especially when seeking a professional license.

California provides for the obliteration or destruction of records in three separate contexts:

- **Factual innocence:** Penal Code section 851.8 allows a court to order the destruction of criminal records when a person is found to be factually innocent.³ Once granted, the court orders the DOJ and any law enforcement agency that participated in the arrest of the person to seal their records for 3 years and then “destroy” the records.⁴
- **Marijuana offenses:** Health and Safety Code section 11361.5 mandates the destruction or permanent obliteration of arrest and conviction records for certain marijuana offenses after 2 years, including that the records be “purged from the statewide criminal databases.” By statute, the person’s criminal record must be prepared in a manner as if the arrest or conviction never occurred. This is different from automatic record relief, which leaves the arrest or conviction in place on the criminal record but with a notation.
- **Victims of human trafficking, intimate partner violence, and sexual violence.** Penal Code sections 236.14 and 236.15 allow survivors of human trafficking, intimate partner violence, sexual violence who committed a crime as a direct result of being a victim to ask a court for the complete erasure of nonviolent arrests and convictions. The court may vacate the conviction, declare it invalid, and order the California Department of Justice and law enforcement to seal and destroy all related arrest and

² *Adams v. County of Sacramento*, 235 Cal.App.3d 872, 877–878 (1991). See also *People v. E.B.*, 51 Cal.App. 5th 47, 57 (2020) (“It does not, in other words, act to nullify, annul, cancel, or make void a conviction.”).

³ Penal Code § 851.8.

⁴ Penal Code § 851.8(b).

court records. The conviction may not be distributed to any state licensing board.

An unsuccessful bill introduced this year — AB 2384 (Lowenthal) — would have allowed any person convicted of an eligible offense to petition a court to have their records sealed in a similar manner as victims of trafficking. However, a person would have to wait 4 years after their conviction, sentence, or arrest, and remain conviction free during that time.

Staff Proposal

The Committee should consider a recommendation that would build on the existing automatic record relief regime to permanently seal eligible misdemeanor records.

- **Effect of enhanced sealing.** Misdemeanor arrests and convictions that receive enhanced sealing relief will be sealed from any and all public view and should not be listed on any RAP sheet or criminal background check from California entities. This builds on automatic record relief, which only provides a notation on California Department of Justice-provided RAP sheets and background checks that relief was granted and prevents local courts from providing public access to records.

As allowed under other laws, any arrest or conviction that receives enhanced sealing would not be considered to be accurate for any purposes by any agency or person.⁵ However, the arrest or conviction itself should still be made available for a person or their authorized legal representative to retrieve their own record and in a deidentified manner for research purposes.

- **Individuals may apply to a court immediately but relief would apply automatically following a waiting period.** Individual defendants may request enhanced sealing from a court at any time which would be granted at a court's discretion. The ceiling of the waiting period before automatic enhanced sealing should be 5 years after automatic relief is granted. For requests related to employment or licensing with vulnerable populations — such as those listed in Penal Code sections 11105(k)-(o), such as foster care, child care, nursing homes, and law enforcement, and requests related to healthcare professions — the waiting period should be no more than 10 years.

⁵ See Health & Safety Code § 11361.7 (marijuana records that are subject to destruction “shall not be considered to be accurate, relevant, timely, or complete for any purposes by any agency or person.”).

- **Waiting period must be conviction-free.** A person must not receive any new criminal convictions, felony or misdemeanor, during the waiting period in order to receive enhanced relief. The waiting period would restart in the event a person is convicted of a new offense during the waiting period.
- **Ineligible offenses.** Misdemeanor convictions that can be relied on later to enhance punishment — most prominently DUI and domestic violence offenses — should be exempted altogether from enhanced sealing.
- **Public safety objections.** As is the case with automatic record relief, prosecutors should be able to object to enhanced sealing of any record on public safety grounds.

Conclusion

Staff looks forward to discussing this proposal with the Committee.

Respectfully submitted,

Thomas M. Nosewicz
Legal Director

Joy F. Haviland
Senior Staff Counsel