

Findings of Factual Innocence and Certificates of Release

602.1 DETERMINATION OF FACTUAL INNOCENCE

In any case where a person has been arrested by officers of the Yolo County Probation Department and no accusatory pleading has been filed, the person arrested may petition the Department to destroy the related arrest records. Petitions should be forwarded to the Chief Probation Officer or designee. The Chief Probation Officer or designee should contact the prosecuting attorney promptly and request a written opinion as to whether the petitioner is factually innocent of the charges. (Pen. Code § 851.8.) Factual innocence means the accused person did not commit the crime.

Upon receipt of a written opinion from the prosecuting attorney affirming factual innocence, the Chief Probation Officer or designee should forward the petition to the County Counsel for review. After such review and consultation with the County Counsel, the Chief Probation Officer or designee shall decide whether a finding of factual innocence is appropriate.

Upon determination that a finding of factual innocence is appropriate, the Chief Probation Officer or designee shall ensure that the arrest record and petition are sealed for later destruction and the required notifications are made to the petitioner and the California DOJ and other law enforcement agencies. (Pen. Code § 851.8.)

The Chief Probation Officer or designee should respond to a petition with the Probation Department's decision within 60 days of receipt. Responses should include only the decision of the Probation Department, not an explanation of the analysis leading to the decision.

602.2 ARREST WITHOUT FILING OF ACCUSATORY PLEADING

The Chief Probation Officer or designee should ensure a process is in place for when an individual is arrested and released and no accusatory pleading is filed so that the following occurs (Pen. Code §§ 849.5 and 851.6):

- (a) The individual is issued a certificate describing the action as a detention. * Reference Certificate of Release
- (b) All references to an arrest are deleted from the arrest records of the Probation Department and the record reflects only a detention.
- (c) The Bureau of Criminal Identification and Investigation of the DOJ is notified.