

Cite and Release Policy

409.1 PURPOSE AND SCOPE

This policy provides guidance on when to release adults who are arrested for a criminal misdemeanor offense on a written notice to appear (citation) and when to hold for court or bail.

409.2 POLICY

It is the policy of the California Department of State Hospitals (DSH) to release all persons arrested on misdemeanor or other qualifying charges on a citation with certain exceptions (Pen. Code § 853.6).

If there is a reason for non-release, the Department's mission to protect the community will be the primary consideration when determining whether to release any individual in lieu of holding for court or bail.

409.3 RELEASE BY CITATION

Except in cases where a reason for non-release as described below exists, adults arrested for a misdemeanor offense, including a private persons arrest, shall be released from custody on a citation (Pen. Code § 853.6).

The citing officer shall, at the time the defendant signs the notice to appear, call attention to the time and place for appearance and take any other steps he/she deems necessary to ensure that the defendant understands his/her written promise to appear.

409.3.1 FIELD CITATIONS

In most cases an adult arrested for a misdemeanor offense may be released in the field on a citation in lieu of physical arrest when booking and fingerprinting is not practicable or immediately required provided the individual can be satisfactorily identified, there is no outstanding arrest warrant for the individual and none of the below described

disqualifying circumstances are present (Pen. Code § 853.6; Pen. Code § 1270.1). In such cases the arresting officer should check the booking required box on the citation form to indicate that the person will be photographed and fingerprinted at a later time when ordered by the court.

When a booking photo or fingerprints are needed for the furtherance of any investigation, the person should be released on citation after booking instead of on a field citation.

409.3.2 RELEASE AFTER BOOKING

In some cases it may not be feasible or desirable to release a person in the field. The person should instead be released on citation after booking at the jail. All bookings shall be approved by the Watch Commander or the authorized designee.

409.4 NON-RELEASE

409.4.1 DISQUALIFYING OFFENSES

An adult arrested on any of the following disqualifying charges shall not be released on citation and shall be transported to the appropriate detention facility or held for court or bail after booking:

Disqualifying offenses include (Pen. Code § 1270.1):

- (a) Misdemeanor domestic battery (Pen. Code § 243(e)(1)).
- (b) Felony domestic battery (Pen. Code § 273.5).
- (c) Serious or violent felonies (Pen. Code § 1270.1(a)(1)).
- (d) Felony intimidation of witnesses and victims (Pen. Code § 136.1).
- (e) Rape of a spouse (Pen. Code § 262).
- (f) Violation of a protective order and the arrested person has made threats, used violence or has gone to the protected person's workplace or residence (Pen. Code § 273.6).
- (g) Stalking (Pen. Code § 646.9).
- (h) Misdemeanor violations of a protective order relating to domestic violence if there is a reasonable likelihood the offense will continue or the safety of the individuals or property would be endangered (Pen. Code § 853.6).

409.4.2 REASONS FOR NON-RELEASE

A person arrested for a misdemeanor shall be released on a citation unless there is a reason for non-release. The Watch Commander may authorize a release on citation regardless of whether a reason for non-release exists when it is determined to be in the best interest of the Department and does not present an unreasonable risk to the community (e.g., release of an intoxicated or ill person to a responsible adult).

Reasons for non-release include (Pen. Code § 853.6(i)):

- (a) The person arrested is so intoxicated that he/she could be a danger to him/herself or to others. Release may occur as soon as this condition no longer exists.
 - (b) The person arrested requires medical examination or medical care or is otherwise unable to care for his/her own safety
 - (a) The California Department of State Hospitals shall not release an arrestee from custody for the purpose of allowing that person to seek medical care at a hospital, and then immediately re-arrest the same individual upon discharge from the hospital, unless the hospital determines this action will enable it to bill and collect from a third-party payment source (Pen. Code § 4011.10).
 - (c) The person is arrested for one or more of the offenses listed in Vehicle Code sections 40302, 40303 and 40305.
 - (d) The person has been cited, arrested, or convicted for theft from a store or vehicle in the previous six months, or there is probable cause to believe the person is guilty of committing organized retail theft, as defined in Penal Code section 853.6.
 - (e) There are one or more outstanding arrest warrants for the person or failures to appear in court on previous misdemeanor citations that have not been resolved (see Misdemeanor Warrants elsewhere in this policy).
 - (f) The person could not provide satisfactory evidence of personal identification.
 - (a) If a person released on citation does not have satisfactory identification in his/her possession, a right thumbprint or fingerprint should be obtained on the citation form.
 - (g) The prosecution of the offense or offenses for which the person was arrested or the prosecution of any other offense or offenses would be jeopardized by the immediate release of the person arrested.
 - (h) There is a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by the release of the person arrested
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- (i) The person arrested demands to be taken before a magistrate or has refused to sign the notice to appear
- (j) There is reason to believe that the person would not appear at the time and place specified in the notice to appear. The basis for this determination shall be specifically documented. An arrest warrant or failure to appear that is currently pending shall constitute reason to believe that the person will not appear. Other reasons may include:
 - 1. Previous failure to appear is on record
 - 2. The person lacks ties to the area, such as a residence, job or family
 - 3. Unusual circumstances lead the officer responsible for the release of prisoners to conclude that the suspect should be held for further investigation

When a person is arrested on a misdemeanor offense and is not released by criminal citation, the reason for non-release shall be noted on the booking form. This form shall be submitted to the Watch Commander for approval and included with the case file in the Records Bureau.

409.5 MISDEMEANOR WARRANTS

An adult arrested on a misdemeanor warrant may be released, subject to Watch Commander approval, unless any of the following conditions exist:

- (a) The misdemeanor cited in the warrant involves violence
- (b) The misdemeanor cited in the warrant involves a firearm
- (c) The misdemeanor cited in the warrant involves resisting arrest
- (d) The misdemeanor cited in the warrant involves giving false information to a peace officer
- (e) The person arrested is a danger to him/herself or others due to intoxication or being under the influence of drugs or narcotics
- (f) The person requires medical examination or medical care or was otherwise unable to care for his/her own safety
- (g) The person has other ineligible charges pending against him/her
- (h) There is reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be immediately endangered by the release of the person
- (i) The person refuses to sign the notice to appear
- (j) The person cannot provide satisfactory evidence of personal identification
- (k) The warrant of arrest indicates that the person is not eligible to be released on a notice to appear

Release under this section shall be done in accordance with the provisions of this policy.

409.6 JUVENILE CITATIONS

Completion of criminal citations for juveniles is generally not appropriate with the following exceptions:

- Misdemeanor traffic violations of the Vehicle Code
- Violations of the Office of Protective Services - Department of State Hospitals State codes

All other misdemeanor violations for juveniles shall be documented with a case number and the case should be referred to the Office of Special Investigations for further action including diversion.

409.7 REQUESTING CASE NUMBERS

Many cases involving a criminal citation release can be handled without requesting a case number. Traffic situations and local code violations can be documented on the reverse side of the records copy of the citation. Most Penal Code sections will require a casenumber to document the incident properly in a report. This section does not preclude an officer from requesting a case number if he/she feels the situation should be documented more thoroughly in a case report.

409.7.1 WARRANT ARRESTS

In all cases involving an arrest pursuant to an warrant arrest, an officer shall draw a case number and prepare an incident report.