

Cite and Release Policy for Misdemeanor Non-Warrant (Street) Arrests

327.1 PURPOSE AND SCOPE

The purpose of this policy is to make deputies aware of the statutory requirements related to the handling of misdemeanor street arrests in order to facilitate the proper disposition of these cases.

This policy does not apply to misdemeanor warrant arrests, which are governed by Penal Code § 827.1.

327.2 STATUTORY REQUIREMENTS

Penal Code § 853.6 is the operative section to determine if a misdemeanor street booking may be cited and released. It requires that, unless an exception applies, arresting officers cite and release all persons arrested for an offense "declared to be a misdemeanor" (the "declared to be a misdemeanor" language means arresting officers cannot cite and release for offenses which could be charged either as a felony or a misdemeanor).

There are statutory exceptions to the general rule that misdemeanor street arrestees are subject to cite and release. Cite and release is prohibited if:

1. The person was arrested for a misdemeanor violation of a protective order involving domestic violence as defined in subdivision (b) of Penal Code § 13700; or,
2. The person was arrested pursuant to a policy as described in Penal Code § 13701 which mandates law enforcement agencies response to domestic violence calls. (See Field Operations Manual § 55).

These prohibitions against cite and release apply unless the arresting officer determines that there is not a reasonable likelihood that the offense will continue or resume or that the safety of persons or property would be imminently endangered by release of the person arrested. (Penal Code § 853.6(a)(2).)

Cite and release is also prohibited for crimes specified in Penal Code § 1270.1, including crimes defined in each of the following: (1) paragraph (1) of subdivision (e) of Penal Code § 243; (2) Penal Code § 273.5; (3) Penal Code § 273.6 if the detained person made threats to kill or harm, has engaged in violence against, or has gone to the residence or workplace of, the protected party; and (4) Penal Code § 646.9. (Penal Code § 853.6(a)(3).)

As explained below in Policy Manual § 327.3.2, if the arresting officer indicates on the Pre-Booking Record that any of the provisions in Penal Code § 853.6 (i) apply to the person, those are additional grounds to not cite and release.

327.3 HANDLING MISDEMEANOR STREET ARRESTS

The following procedure will be followed to comply with Penal Code § 853.6:

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327.3.1 FIELD CITATIONS

In most misdemeanor street arrests an arrestee 18 years or older shall be released on citation in the field provided the individual can be satisfactorily identified, there is no outstanding arrest warrant for the individual and none of the statutory exceptions or disqualifying circumstances are present (Penal Code 853.6 and Penal Code 1270.1).

Any misdemeanor arrestee who is the subject to a use of force, shall receive medical treatment in accordance with Policy Manual 300.5 and be transported to the jail for booking or citation and release.

EXCEPTION : After the misdemeanor arrestee who is the subject of a use of force is treated by medical personnel, the Department Commander or Watch Commander may direct that the arrestee be cited and released in the field. The Department Commander or Watch Commander will document the event in a memo to the appropriate Commander to be forwarded to their Assistant Sheriff.

327.3.2 DISQUALIFYING CIRCUMSTANCES

If one of the statutory exceptions which prohibit cite and release set forth above in Policy Manual § 327.2 does not apply, a misdemeanor street arrestee shall be cited and released unless the arresting officer determines to not cite and release because one of the following reasons applies (Penal Code § 853.6(i)):

1. 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.
2. The person arrested requires medical examination or medical care or is otherwise unable to care for his/her own safety.
3. The person is arrested for one or more of the offenses listed in Vehicle Code §§ 40302 and 40303.
4. There are one or more outstanding arrest warrants for the person.
5. The person could not provide satisfactory evidence of personal identification.
6. 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.
7. 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.
8. The person arrested demands to be taken before a magistrate or has refused to sign the notice to appear.
9. 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 pending at the time of the current offense shall constitute reason to believe that the person would not appear as specified in the notice.

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10. The charges fall under Penal Code § 1270.1 (Statutory exception prohibiting cite and release for serious or violent felonies, domestic violence, etc.)
11. The person has been cited, arrested, or convicted for misdemeanor or felony theft from a store or from a vehicle in the previous 6 months.
12. There is probable cause to believe that the person arrested is guilty of committing organized retail theft, as defined in subdivision (a) of Section 490.4.

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 Pre-Booking Record on the back of the deputy's copy by checking one of the boxes. The deputy's copy of the Pre-Booking Record shall be submitted with the arrest report and maintained as a part of the original report. The reason for non-release should also be noted in the narrative of the arrest report.

327.3.3 JAIL RELEASE

In rare cases, it may be impractical to release a person arrested for misdemeanor offenses in the field as required by Policy Manual § 327.3.1 above. The deputy has the option to book the arrestee into the jail, to be cited and released after the booking process, only with Department Commander approval. The deputy shall articulate the reason for the request on the Pre-Booking Record on the back of the deputy's (yellow) copy. The deputy shall seek approval from the Department Commander through the field supervisor. If the Department Commander approves the booking the deputy shall indicate the name of the Department Commander that approved the request along with the date and time on the back of the Pre-Booking Record.

Any person arrested for a misdemeanor offense who has been subjected to a use of force shall be medically evaluated prior to booking in accordance with Policy Manual § 300.5. If the person is medically cleared for booking, the person shall then be booked, cited and released after the booking process in accordance with this section.

327.3.4 INSTRUCTIONS TO THE CITED PERSON

The citing deputy shall, at the time he/she asks the defendant to sign 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.