

BERKELEY POLICE DEPARTMENT

DATE ISSUED: May 27, 2005

GENERAL ORDER C-10

SUBJECT: CITATION RELEASES

PURPOSE

- 1 - This order establishes policies and procedures to implement Penal Code Section 853.6, which authorizes the issuance of a citation release for any misdemeanor offense in which the officer has arrested a person pursuant to Penal Code Section 836 or where he/she has taken custody of a person on a private person's arrest pursuant to Penal Code Section 847.

POLICY

- 2 - It shall be the policy of this Department that misdemeanor citations shall be issued in lieu of physical arrest and incarceration whenever it is possible to do so within the framework of this Order. Every effort shall be made for field citation release of misdemeanor offenders pursuant to Penal Code Section 853.6.

DEFINITIONS

- 3 - "Misdemeanor," as used in this Order, shall mean any offense punishable by fine or imprisonment in a county jail for not more than one year.
 - (a) Those offenses that are punishable as either a misdemeanor or a felony shall be handled as felonies.
- 4 - The term "arrest," as used in this Order, shall mean the taking of a person into custody either by actual restraint of the person or their submission to custody. A citation does not substitute for an arrest; it is issued after an arrest. Citations may be issued in the field or in the Public Safety Building.
 - (a) "Physical arrest" shall mean the taking of a person into custody and the transportation of that person to the Public Safety Building.
- 5 - The term arrest "booking," as used in this Order, shall mean the completion of a CORPUS Consolidated Arrest Report, taking of fingerprints and a photograph of the arrested person and the completion of the Alameda County Sheriff's Department's Prisoner Property Receipt (Form 230-1) prior to physically incarcerating a person into the jail. This process shall be conducted in the jail booking area.
- 6 - The term "field citation release" as used in this Order, shall mean the release of an offender in the field after completion of a Wanted Person Systems name check accessed through the Automated Warrant System (AWS) and the National Criminal Information Center (NCIC) and without the defendant being fingerprinted and photographed.

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- 7 - The term "station citation release," as used in this Order shall mean the release of an offender from the Public Safety Building following the completion of the CORPUS arrest record and a Wanted Person Systems name check accessed through AWS, CLETS and NCIC.
- 8 - Under Penal Code 853.6(i), whenever any person (18 years or older) is arrested by a peace officer for a misdemeanor, that person shall be released according to the procedures set forth in Penal Code section 853.6, unless one of the 9 reasons listed below (a through i) is a reason for non-release. If one of the 9 reasons for non-release listed below applies, the arresting officer still has the discretion to cite-release the person, but if the person is not cite-released, the officer must state on the Consolidated Arrest Report which of the following 9 reasons was/were the reason(s) for the non-release. In addition, please note that being arrested for multiple misdemeanors is NOT one of the 9 reasons for non-release.
- (a) The person arrested was so intoxicated that he or she could have been a danger to himself or herself or to others. Persons too inebriated to make their way to safety must be physically arrested. The law in effect provides that a person shall never be arrested for intoxication alone unless his/her own safety or the safety of another is jeopardized. A person shall never be cited in the field for intoxication. (See also General Order I-15, care of Intoxicated Persons). Persons arrested for 647(f) PC may be released per 849(b) PC when sober.
- (1) Prior Corpus arrest history: No arrest for 647(f) PC in the past 30 days history: Arrest for 647 (f) past 30 days – – cite-release when sober. Service Bureau staff shall issue the citation only after a complete records check has been made.
- (2) Prior Corpus arrest may cite-release. If bail posted, the person shall not be released until sober.
- (b) The person arrested required medical examination or medical care or was otherwise unable to care for his or her own safety. When it is necessary to transport the arrested person to a hospital, a citation may be issued at the hospital in accordance with Departmental policy.
- (c) The person was arrested under one or more of the circumstances listed in Sections 40302 and 40303 of the Vehicle Code.
- (1) When the person arrested fails to present his/her driver's license or other satisfactory evidence of his/her identity for examination.

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- (2) When the person arrested refuses to give his/her written promise to appear in court.
 - (3) When the person arrested demands an immediate appearance before a magistrate.
 - (4) When the person arrested is charged with violating Section 23152.
- (d) There were one or more outstanding arrest warrants for the person. When there are any outstanding warrants for the person, they shall not be released on the citation unless so authorized by a supervisory officer. In any event, the outstanding warrant(s) shall be cleared prior to release on citation. In accordance with 827.1 PC, a person who is specified or designated in a warrant of arrest for a misdemeanor offense may be released upon the issuance of a citation, in lieu of physical arrest unless one of the following conditions exists:
- (1) The misdemeanor cited in the warrant involves violence.
 - (2) The misdemeanor cited in the warrant involves a firearm.
 - (3) The misdemeanor cited in the warrant involves resisting arrest.
 - (4) The misdemeanor cited in the warrant involves giving false information to a peace officer.
- (e) The person could not provide satisfactory evidence of personal identification.
- (f) 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 immediate release of the person arrested.
- (1) This criterion provides a practical device in allowing physical arrest for legitimate investigative purposes.
 - (2) If the arresting officer is to interrogate the person about the offense for which he/she was arrested, the citation decision may be delayed until a reasonable opportunity to admonish and interrogate has occurred.
 - (3) Physical arrest is proper if evidence of the crime for which the Person was arrested might otherwise be destroyed.

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- (g) There was 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 release of the person arrested.
 - (1) **Assault** and battery and disturbing the peace are examples of emotionally charged crimes that may continue or resume unless an enforcing cooling-off period is accomplished by physical arrest. The same offense, however committed under some circumstances might be suitable for citation release; for example, if there is no apparent likelihood that the offense or resume, a citation should be issued.
- (h) The person arrested demanded to be taken before a magistrate or refused to sign the notice to appear.
 - (1) State law prohibits the citation release of any person who demands to be taken before a magistrate.
 - (2) The signature of the person arrested is required for the citation release. The citizen shall be advised that signing the citation is not an admission of guilt, but only a promise to appear on the assigned date.
 - (3) Minor offenses may also be handled by the complaint-warrant process, even though the person refuses to give his/her promise to appear. The complaint-warrant process may be followed when a person refuses to sign a citation for such minor violations as littering, illegal possession, posting handbills or various animal control regulations.
 - (i) There is reason to believe that the person would not appear at the time and place specified in the notice. The basis for this determination shall be specifically stated on the Consolidated Arrest Report.
 - (4) **Persons who have been arrested previously as defaulting defendants shall not be released on citation because of their demonstrated propensity for failing to appear in court.**
 - (5) **The fact that an arrested person may have an extensive arrest record shall not in and of itself, constitute reasonable cause to believe that they will not appear in court if released on citation.**

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- 9 - The Consolidated Arrest Report stating the reason or reasons for non-release shall be made available to any party having custody of the arrested person, subsequent to the arresting officer, and to any person authorized by law to release him or her from custody before trial.

FIELD CITATION PROCEDURES

- 10 - Immediately after making an arrest, the arresting officer shall determine if the subject meets the criteria for a field citation release. Persons eligible for field citation release shall be cited and released at the location of arrest.
- 11 - A Wanted Person Systems name check accessed through AWS, CLETS and NCIC shall be conducted by phone or radio for the subject's clearance prior to a field citation release. If communications or data base difficult prevents such clearance, the subject will be transported to the Public Safety Building until such clearance can be completed, whereby the subject will be released as a station citation release.
- 12 - The citation is to be fully completed by the arresting officer and signed by the person arrested. The officer shall check the box that is located between lines 12 and 13 of the citation marked "BOOKING REQUIRED" as notification that the misdemeanor was not processed into the CORPUS system and is in need of formal booking.
- (a) When filing out a Field Citation, the arresting officer shall also write in a "booking" date and check the "booking required box" between lines 12 and 13 of the form. This date should be at least one week prior to the court date assigned in box # 24 of the citation. The booking date should be written in just below or just above the "booking required" box.
- (1) The arresting officer shall explain to the cited individual that he/she must report to the Front Counter of the Public Safety Building prior to the "booking date."
- (2) Compliance with this process enables the individual to make arrangements to be processed BEFORE going to court and provides them proof of booking to present to the judge in court.
- (3) Departmental personnel assigned to process such bookings shall insure the individual is provided with a copy of the "Booking Verification Form."

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- 13 - In receiving a person arrested for a misdemeanor by a private person, officers shall, if the person is eligible for citation release, promptly cite and release the person. A citizen's insistence on custodial arrest shall not influence the officer's decision to cite and release.
- 14 - Except as provided below in (a), an Offense Report is required whenever a citation is issued under this Order. The arresting officer shall check the appropriate boxes on the Offense Report that indicate that the responsible was cited in the field and provide the citation number and the assigned date and time of the court appearance. A CORPUS Consolidated Arrest Report shall not be completed for a field citation.
 - (a) Field citations for BMC **infraction** sections such as Drinking in Public (13.36.070) that are referred to the Berkeley Traffic Court do not require an Offense Report. The violation must be clearly described on the citation. For example, "BMC 13.36.070 - drinking from 16 oz brand X malt liquor." The citation does require a case number and the violation and subject's information shall be entered into an MSC/Cad report. Patrol Supervisors will be responsible for reviewing MSC/CAD reports of these field citations in order to ensure all the proper information is included.
 - (b) **All misdemeanor field citations would require a police report and be sent to the District Attorney's Office for charging considerations with a court date in Oakland.**
- 15 - The case number will be recorded on line 19 of the citation and the original shall be routed along with the police report to the District Attorney's office via the supervisory report review process. Review by the District Attorney's Office will be in accordance with Section 41 of this order.
- 16 - Criminal investigation reports submitted by investigating officers to the District Attorney for complaint review and prosecution of adult offenders should include a CORPUS and/or CII criminal history printout for each listed offender.
- 17 - The arresting officer shall enter the subject's name and other required information in the automated Adult Field Citation log.
- 18 - In all cases where a subject arrested on a misdemeanor charge does not meet the immediate criteria for a field citation release, the subject shall be brought to the Public Safety Building for either a station citation release or physical incarceration.

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VEHICLE CODE SECTIONS THAT REQUIRE A WRITTEN OFFENSE REPORT

- 19 - Citations issued for Sections 20002 VC, 23152 VC, 23103 VC, 23109 VC and 23110 VC should be attached to the face sheet of the original report and routed to the appropriate Team Sergeant.
- 20 - Citations and face sheets will be reviewed by the Team Sergeant for accuracy and thoroughness and routed to the Report Review Unit.
- 21 - The Report Review Unit will assemble the citation, face sheet and supplemental narrative (if any) and route to the District Attorney for charging.

STATION CITATION PROCEDURES

- 22 - At the Public Safety Building, the arresting officer shall attempt to have the subject resolve whatever problem prevented a field citation release, i.e., satisfactory evidence of identity, outstanding warrant(s), etc. Once the problem is cleared, the subject may be released on a station citation release.
- 23 - If any of the circumstances addressed in Section 8 of this order cannot be resolved in a timely manner, the subject shall be booked into the City jail and the issue of citation release handled according to Section 42 of this order.
- 24 - A CORPUS Consolidated Arrest Record (CAR) shall be completed by the arresting officer for a station citation release. The officer shall deposit the CAR in the designated Telecommunications operator in-tray.
- 25 - A Corpus Consolidated Arrest Record (CAR) shall be completed by the arresting officer for a station citation release.
- 26 - A Wanted Person Systems name check, accessed through the Automated Warrant Systems (AWS), the California Law Enforcement Teletype System (CLETS) and the National Crime Information Center (NCIC), shall be completed by the assigned Telecommunications Operator. If the arrested subject has any outstanding warrants refer to 8(d) of this order.
- 27 - Fingerprinting and photographing of the arrested subject is required station citation releases and will be completed in the Public Safety Building by the Jail Community Service Officers (CSOs). Fingerprints shall be cleared by the Alameda County Consolidated Criminal Record Bureau prior to a station citation release.

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- 28- The Consolidated Arrest Report (CAR) is to be left with the Jail Community Service Officers. The officer is to obtain a photocopy of the Consolidated Arrest Report (CAR) and attach it to the offense report prior to submitting it to their Superior for review.
- 29 - The citation is to be fully completed by the arresting officer and signed by the person arrested. The officer shall NOT check the box on the citation marked "BOOKING REQUIRED" since the prisoner is being processed in the CORPUS system.
- 30 - Authorization for release from custody will rest with the Jail Community Service Officers once sections 22-25 of the citation have been completed.
- 31 - All jail Community Service Officers assuming the Corpus position shall be required to conduct a thorough check of a prisoners arrest history prior to he completion of the citation release process. If there is questionable information within this history which may mitigate such a release, i.e., prior convictions or enhancements, an indication that a State Prison Term has been prescribed, etc, the jail CSO shall immediately contact his or her supervisor who shall advise the arresting officer of this new information.
- 32 - If the Corpus history reveals that a State Prison Term has been prescribed, the Community Service Officer shall immediately contact the California Department of Corrections to determine the prisoners parole status and inquire as to the propriety of a parole hold.
- 33 - Whenever a citation is issued under this order, an Offense Report is required. The arresting officer shall mark the appropriate boxes on the Offense Report that indicate that the responsible was cited at the station and provide the citation number and the assigned date and time of the court appearance.
- 34 - The case number will be recorded on the citation and the original shall be routed with the corresponding police reports and CAR photocopy to the Patrol Team report tray. See Section 41 of this Order.
- 35 - CSOs assigned to the jail on the third platoon shift shall enter the subject's name in the automated Jail arrest log, with the "Disposition" entered as Cite Release.

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- 36 - In all cases of citation release, citation copy #2 shall be given to the defendant. The issuing officer shall explain all necessary procedures to the defendant.

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- 37 - The third copy of the citation may be retained for the arresting officer's use.
- 38 - When a citation is issued, the officer shall set the date and time of appearance as set by the following court schedule:
- (a) Court dates for criminal matters heard at the Wiley Manuel Courthouse, 661 Washington Street, Oakland, CA., 94607 should be set as follows:
- Misdemeanors Dept. 107, 2 P.M., 21 days from release, 2 P.M.
- Felonies Dept. 112, 2 P.M., 7 days from release, 2 P.M.
- Citation Arrests/Misdemeanor
Dept. 107, 9 A.M., 21 days from release, 9 A.M.
- BMC Misdemeanors will be referred to Berkeley Traffic Court below:
- Traffic matters/ BMC violations/Infraction marijuana offenses are referred to the Berkeley Traffic Court, 2000 Center Street, Department 205. Set an appearance date for 30 days from release at 10:00 A.M.
- (b) Check appropriate box in Section 26 of the citation as noted above.
- (c) If the appearance date falls on a court holiday, set for the first court date thereafter.
- (d) A copy of the up-to-date citation appearance schedule is maintained in the Warrant Detail.
- 39 - When more than one person is charged with the commission of a misdemeanor arising out of one incident and the officer determines that all of the persons should be cited, each shall be cited to appear in court on the same date.
- 40 - When a person is booked under one of the exceptions to the citation release policy, the booking officer shall include in the narrative portion of the Consolidated Arrested Report (CAR) and Offense Report a brief statement explaining why the person was booked, rather than cited.

RESPONSIBILITY OF SUPERVISORS

- 41 - Supervising officers reviewing offense reports shall:

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- (a) Review all physical arrest events and/or citation release event to insure that officers are utilizing field citation release whenever possible.
- (a) Ascertain that offense reports for misdemeanor custodial booking cases indicate the reason why a field citation release or station citation release was not done.
- (b) Ascertain that the original citation is submitted, fully legible and complete and that the court appearance date is not scheduled for a court holiday or weekend. The supervisor shall promptly route the citation with the corresponding police reports covering the incident to the in-custody report box.

CITATION CRITERIA FOR INCARCERATED PERSONS – JAIL PROCEDURES

- 42 - Misdemeanants, initially not eligible for release on citation and booked, may qualify for release at a later time (i.e., intoxicated persons, emotionally excited arrestee). Such persons may be released on a citation by Jail Community Service Officers in accordance with the provisions of this Order.
- 43 - No person incarcerated shall be released on a citation from the jail without the approval of a Community Service Officer Supervisor or Sergeant or above. When released on a citation, the court appearance will be set according to Section 38 of this Order.
- 44 - If a citation is issued to a person who has not been booked and incarcerated in the jail, the arresting officer shall provide the citation number and court appearance date in the appropriate space on the report form.

References: California Penal Section 827.1, 834, 835, 836, 847, 849 (b) and 853.6
California Vehicle Code Sections 40302 and 40303
General Orders I-3, J-1, H-2, I-15 and O-5