

ASSEMBLY BILL

No. 688

Introduced by Assembly Member Eng

February 26, 2009

An act to amend Section 853.6 of the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

AB 688, as introduced, Eng. Misdemeanors.

Existing law provides that in any case in which a person is arrested for a misdemeanor violation of a protective court order involving domestic violence, as defined, or arrested pursuant to a policy relating to domestic violence, the person shall be taken before a magistrate rather than being released, 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.

This bill would delete the above language authorizing the arresting officer to release a person upon determining 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. By requiring that additional defendants be kept in jail or taken before a magistrate, the bill would impose a state-mandated local program.

Under existing law, in any case in which a person is arrested for a misdemeanor, including a violation of any city or county ordinance, and does not demand to be taken before a magistrate, the person is required to be released according to specified procedures. Existing law also specifies that those provisions are not to be construed to affect a

defendant's ability to be released on bail or on his or her own recognizance.

This bill would instead provide that those provisions are not to be construed to affect a defendant's ability to be released on bail or on his or her own recognizance except as provided in another provision prohibiting release, except as specified, for certain charges, including specified misdemeanor domestic violence offenses.

Under existing law, whenever a person is arrested for a misdemeanor, that person is required to be released according to certain procedures unless one of specified reasons exists for nonrelease. These reasons include that the person was so intoxicated so as to pose a danger, the person required medical care, and there were outstanding arrest warrants for the person.

This bill would specify as a reason for nonrelease that the person was subject to a separate provision that forbids release of a person on any basis except payment of the scheduled bail for specified offenses, including certain misdemeanor domestic violence violations, prior to a hearing held in open court before a magistrate or judge.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 853.6 of the Penal Code is amended to
2 read:
3 853.6. (a) In any case in which a person is arrested for an
4 offense declared to be a misdemeanor, including a violation of any
5 city or county ordinance, and does not demand to be taken before
6 a magistrate, that person shall, instead of being taken before a
7 magistrate, be released according to the procedures set forth by
8 this chapter. If the person is released, the officer or his or her
9 superior shall prepare in duplicate a written notice to appear in
10 court, containing the name and address of the person, the offense

1 charged, and the time when, and place where, the person shall
2 appear in court. If, pursuant to subdivision (i), the person is not
3 released prior to being booked and the officer in charge of the
4 booking or his or her superior determines that the person should
5 be released, the officer or his or her superior shall prepare a written
6 notice to appear in a court.

7 In any case in which a person is arrested for a misdemeanor
8 violation of a protective court order involving domestic violence,
9 as defined in subdivision (b) of Section 13700, or arrested pursuant
10 to a policy, as described in Section 13701, the person shall be taken
11 before a magistrate instead of being released according to the
12 procedures set forth in this chapter, ~~unless the arresting officer~~
13 ~~determines that there is not a reasonable likelihood that the offense~~
14 ~~will continue or resume or that the safety of persons or property~~
15 ~~would be imminently endangered by release of the person arrested.~~
16 Prior to adopting these provisions, each city, county, or city and
17 county shall develop a protocol to assist officers to determine when
18 arrest and release is appropriate, rather than taking the arrested
19 person before a magistrate. The county shall establish a committee
20 to develop the protocol, consisting of, at a minimum, the police
21 chief or county sheriff within the jurisdiction, the district attorney,
22 county counsel, city attorney, representatives from domestic
23 violence shelters, domestic violence councils, and other relevant
24 community agencies.

25 Nothing in this subdivision shall be construed to affect a
26 defendant's ability to be released on bail or on his or her own
27 recognizance, *except as specified in Section 1270.1.*

28 (b) Unless waived by the person, the time specified in the notice
29 to appear shall be at least 10 days after arrest if the duplicate notice
30 is to be filed by the officer with the magistrate.

31 (c) The place specified in the notice shall be the court of the
32 magistrate before whom the person would be taken if the
33 requirement of taking an arrested person before a magistrate were
34 complied with, or shall be an officer authorized by that court to
35 receive a deposit of bail.

36 (d) The officer shall deliver one copy of the notice to appear to
37 the arrested person, and the arrested person, in order to secure
38 release, shall give his or her written promise to appear in court as
39 specified in the notice by signing the duplicate notice which shall
40 be retained by the officer, and the officer may require the arrested

1 person, if he or she has no satisfactory identification, to place a
2 right thumbprint, or a left thumbprint or fingerprint if the person
3 has a missing or disfigured right thumb, on the notice to appear.
4 Except for law enforcement purposes relating to the identity of the
5 arrestee, no person or entity may sell, give away, allow the
6 distribution of, include in a database, or create a database with,
7 this print. Upon the signing of the duplicate notice, the arresting
8 officer shall immediately release the person arrested from custody.

9 (e) The officer shall, as soon as practicable, file the duplicate
10 notice, as follows:

11 (1) It shall be filed with the magistrate if the offense charged is
12 an infraction.

13 (2) It shall be filed with the magistrate if the prosecuting attorney
14 has previously directed the officer to do so.

15 (3) The duplicate notice and underlying police reports in support
16 of the charge or charges shall be filed with the prosecuting attorney
17 in cases other than those specified in paragraphs (1) and (2).

18 If the duplicate notice is filed with the prosecuting attorney, he
19 or she, within his or her discretion, may initiate prosecution by
20 filing the notice or a formal complaint with the magistrate specified
21 in the duplicate notice within 25 days from the time of arrest. If
22 the prosecution is not to be initiated, the prosecutor shall send
23 notice to the person arrested at the address on the notice to appear.
24 The failure by the prosecutor to file the notice or formal complaint
25 within 25 days of the time of the arrest shall not bar further
26 prosecution of the misdemeanor charged in the notice to appear.
27 However, any further prosecution shall be preceded by a new and
28 separate citation or an arrest warrant.

29 Upon the filing of the notice with the magistrate by the officer,
30 or the filing of the notice or formal complaint by the prosecutor,
31 the magistrate may fix the amount of bail that in his or her
32 judgment, in accordance with Section 1275, is reasonable and
33 sufficient for the appearance of the defendant and shall endorse
34 upon the notice a statement signed by him or her in the form set
35 forth in Section 815a. The defendant may, prior to the date upon
36 which he or she promised to appear in court, deposit with the
37 magistrate the amount of bail set by the magistrate. At the time
38 the case is called for arraignment before the magistrate, if the
39 defendant does not appear, either in person or by counsel, the
40 magistrate may declare the bail forfeited, and may, in his or her

1 discretion, order that no further proceedings shall be had in the
2 case, unless the defendant has been charged with a violation of
3 Section 374.3 or 374.7 of this code or of Section 11357, 11360,
4 or 13002 of the Health and Safety Code, or a violation punishable
5 under Section 5008.7 of the Public Resources Code, and he or she
6 has previously been convicted of a violation of that section or a
7 violation that is punishable under that section, except in cases
8 where the magistrate finds that undue hardship will be imposed
9 upon the defendant by requiring him or her to appear, the
10 magistrate may declare the bail forfeited and order that no further
11 proceedings be had in the case.

12 Upon the making of the order that no further proceedings be
13 had, all sums deposited as bail shall immediately be paid into the
14 county treasury for distribution pursuant to Section 1463.

15 (f) No warrant shall be issued for the arrest of a person who has
16 given a written promise to appear in court, unless and until he or
17 she has violated that promise or has failed to deposit bail, to appear
18 for arraignment, trial, or judgment or to comply with the terms
19 and provisions of the judgment, as required by law.

20 (g) The officer may book the arrested person prior to release or
21 indicate on the citation that the arrested person shall appear at the
22 arresting agency to be booked or indicate on the citation that the
23 arrested person shall appear at the arresting agency to be
24 fingerprinted prior to the date the arrested person appears in court.
25 If it is indicated on the citation that the arrested person shall be
26 booked or fingerprinted prior to the date of the person's court
27 appearance, the arresting agency at the time of booking or
28 fingerprinting shall provide the arrested person with verification
29 of the booking or fingerprinting by making an entry on the citation.
30 If it is indicated on the citation that the arrested person is to be
31 booked or fingerprinted, the magistrate, judge, or court shall, before
32 the proceedings begin, order the defendant to provide verification
33 that he or she was booked or fingerprinted by the arresting agency.
34 If the defendant cannot produce the verification, the magistrate,
35 judge, or court shall require that the defendant be booked or
36 fingerprinted by the arresting agency before the next court
37 appearance, and that the defendant provide the verification at the
38 next court appearance unless both parties stipulate that booking
39 or fingerprinting is not necessary.

1 (h) A peace officer shall use the written notice to appear
2 procedure set forth in this section for any misdemeanor offense in
3 which the officer has arrested a person without a warrant pursuant
4 to Section 836 or in which he or she has taken custody of a person
5 pursuant to Section 847.

6 (i) Whenever any person is arrested by a peace officer for a
7 misdemeanor, that person shall be released according to the
8 procedures set forth by this chapter unless one of the following is
9 a reason for nonrelease, in which case the arresting officer may
10 release the person, *except as provided in subdivision (a)*, or the
11 arresting officer shall indicate, on a form to be established by his
12 or her employing law enforcement agency, which of the following
13 was a reason for the nonrelease:

14 (1) The person arrested was so intoxicated that he or she could
15 have been a danger to himself or herself or to others.

16 (2) The person arrested required medical examination or medical
17 care or was otherwise unable to care for his or her own safety.

18 (3) The person was arrested under one or more of the
19 circumstances listed in Sections 40302 and 40303 of the Vehicle
20 Code.

21 (4) There were one or more outstanding arrest warrants for the
22 person.

23 (5) The person could not provide satisfactory evidence of
24 personal identification.

25 (6) The prosecution of the offense or offenses for which the
26 person was arrested, or the prosecution of any other offense or
27 offenses, would be jeopardized by immediate release of the person
28 arrested.

29 (7) There was a reasonable likelihood that the offense or offenses
30 would continue or resume, or that the safety of persons or property
31 would be imminently endangered by release of the person arrested.

32 (8) The person arrested demanded to be taken before a
33 magistrate or refused to sign the notice to appear.

34 (9) There is reason to believe that the person would not appear
35 at the time and place specified in the notice. The basis for this
36 determination shall be specifically stated.

37 (10) *The person was subject to Section 1270.1.*

38 The form shall be filed with the arresting agency as soon as
39 practicable and shall be made available to any party having custody
40 of the arrested person, subsequent to the arresting officer, and to

1 any person authorized by law to release him or her from custody
2 before trial.

3 (j) Once the arresting officer has prepared the written notice to
4 appear and has delivered a copy to the person arrested, the officer
5 shall deliver the remaining original and all copies as provided by
6 subdivision (e).

7 Any person, including the arresting officer and any member of
8 the officer's department or agency, or any peace officer, who alters,
9 conceals, modifies, nullifies, or destroys, or causes to be altered,
10 concealed, modified, nullified, or destroyed, the face side of the
11 remaining original or any copy of a citation that was retained by
12 the officer, for any reason, before it is filed with the magistrate or
13 with a person authorized by the magistrate to receive deposit of
14 bail, is guilty of a misdemeanor.

15 If, after an arrested person has signed and received a copy of a
16 notice to appear, the arresting officer determines that, in the interest
17 of justice, the citation or notice should be dismissed, the arresting
18 agency may recommend, in writing, to the magistrate that the
19 charges be dismissed. The recommendation shall cite the reasons
20 for the recommendation and shall be filed with the court.

21 If the magistrate makes a finding that there are grounds for
22 dismissal, the finding shall be entered in the record and the charges
23 dismissed.

24 Under no circumstances shall a personal relationship with any
25 officer, public official, or law enforcement agency be grounds for
26 dismissal.

27 (k) (1) A person contesting a charge by claiming under penalty
28 of perjury not to be the person issued the notice to appear may
29 choose to submit a right thumbprint, or a left thumbprint if the
30 person has a missing or disfigured right thumb, to the issuing court
31 through his or her local law enforcement agency for comparison
32 with the one placed on the notice to appear. A local law
33 enforcement agency providing this service may charge the requester
34 no more than the actual costs. The issuing court may refer the
35 thumbprint submitted and the notice to appear to the prosecuting
36 attorney for comparison of the thumbprints. When there is no
37 thumbprint or fingerprint on the notice to appear, or when the
38 comparison of thumbprints is inconclusive, the court shall refer
39 the notice to appear or copy thereof back to the issuing agency for

1 further investigation, unless the court finds that referral is not in
2 the interest of justice.

3 (2) Upon initiation of the investigation or comparison process
4 by referral of the court, the court shall continue the case and the
5 speedy trial period shall be tolled for 45 days.

6 (3) Upon receipt of the issuing agency's or prosecuting
7 attorney's response, the court may make a finding of factual
8 innocence pursuant to Section 530.6 if the court determines that
9 there is insufficient evidence that the person cited is the person
10 charged and shall immediately notify the Department of Motor
11 Vehicles of its determination. If the Department of Motor Vehicles
12 determines the citation or citations in question formed the basis
13 of a suspension or revocation of the person's driving privilege, the
14 department shall immediately set aside the action.

15 (4) If the prosecuting attorney or issuing agency fails to respond
16 to a court referral within 45 days, the court shall make a finding
17 of factual innocence pursuant to Section 530.6, unless the court
18 finds that a finding of factual innocence is not in the interest of
19 justice.

20 (5) The citation or notice to appear may be held by the
21 prosecuting attorney or issuing agency for future adjudication
22 should the arrestee who received the citation or notice to appear
23 be found.

24 (l) For purposes of this section, the term "arresting agency"
25 includes any other agency designated by the arresting agency to
26 provide booking or fingerprinting services.

27 SEC. 2. If the Commission on State Mandates determines that
28 this act contains costs mandated by the state, reimbursement to
29 local agencies and school districts for those costs shall be made
30 pursuant to Part 7 (commencing with Section 17500) of Division
31 4 of Title 2 of the Government Code.