

AMENDED IN SENATE AUGUST 17, 2009

AMENDED IN SENATE JUNE 8, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 688

Introduced by Assembly Member Eng
(Principal coauthor: Senator Benoit)

February 26, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

AB 688, as amended, 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 for a misdemeanor 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. Existing law requires that before any person who has been arrested for commission of certain crimes, including specified domestic violence offenses, stalking, and criminal threats, is released on bail in an amount other than that specified in the schedule of bail or is released on his or her own recognizance, a hearing be held at which the court shall consider certain enumerated factors including the potential danger the detained person poses to other persons.

This bill would clarify that the provisions authorizing the arresting officer to release a person arrested for a misdemeanor without regard to scheduled bail do not apply to those specified crimes.

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.

Existing law requires that whenever a person is arrested for a misdemeanor, that person shall be released according to certain procedures unless one of specified reasons exists for nonrelease and requires the arresting officer to indicate the reason for nonrelease, as specified.

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

This bill would incorporate additional changes to Section 853.6 of the Penal Code proposed by AB 1209 contingent on the prior enactment of that bill.

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

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) (1) 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

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

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

28 (3) This subdivision shall not apply to the crimes specified in
29 Section 1270.1, including crimes defined in each of the following:

30 (A) Paragraph (1) of subdivision (e) of Section 243.

31 (B) Section 273.5.

32 (C) Section 273.6, if the detained person made threats to kill or
33 harm, has engaged in violence against, or has gone to the residence
34 or workplace of, the protected party.

35 (D) Section 646.9.

36 (4) Nothing in this subdivision shall be construed to affect a
37 defendant's ability to be released on bail or on his or her own
38 recognizance, except as specified in Section 1270.1.

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

4 (c) The place specified in the notice shall be the court of the
5 magistrate before whom the person would be taken if the
6 requirement of taking an arrested person before a magistrate were
7 complied with, or shall be an officer authorized by that court to
8 receive a deposit of bail.

9 (d) The officer shall deliver one copy of the notice to appear to
10 the arrested person, and the arrested person, in order to secure
11 release, shall give his or her written promise to appear in court as
12 specified in the notice by signing the duplicate notice which shall
13 be retained by the officer, and the officer may require the arrested
14 person, if he or she has no satisfactory identification, to place a
15 right thumbprint, or a left thumbprint or fingerprint if the person
16 has a missing or disfigured right thumb, on the notice to appear.
17 Except for law enforcement purposes relating to the identity of the
18 arrestee, no person or entity may sell, give away, allow the
19 distribution of, include in a database, or create a database with,
20 this print. Upon the signing of the duplicate notice, the arresting
21 officer shall immediately release the person arrested from custody.

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

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

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

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

31 If the duplicate notice is filed with the prosecuting attorney, he
32 or she, within his or her discretion, may initiate prosecution by
33 filing the notice or a formal complaint with the magistrate specified
34 in the duplicate notice within 25 days from the time of arrest. If
35 the prosecution is not to be initiated, the prosecutor shall send
36 notice to the person arrested at the address on the notice to appear.
37 The failure by the prosecutor to file the notice or formal complaint
38 within 25 days of the time of the arrest shall not bar further
39 prosecution of the misdemeanor charged in the notice to appear.

1 However, any further prosecution shall be preceded by a new and
2 separate citation or an arrest warrant.

3 Upon the filing of the notice with the magistrate by the officer,
4 or the filing of the notice or formal complaint by the prosecutor,
5 the magistrate may fix the amount of bail that in his or her
6 judgment, in accordance with Section 1275, is reasonable and
7 sufficient for the appearance of the defendant and shall endorse
8 upon the notice a statement signed by him or her in the form set
9 forth in Section 815a. The defendant may, prior to the date upon
10 which he or she promised to appear in court, deposit with the
11 magistrate the amount of bail set by the magistrate. At the time
12 the case is called for arraignment before the magistrate, if the
13 defendant does not appear, either in person or by counsel, the
14 magistrate may declare the bail forfeited, and may, in his or her
15 discretion, order that no further proceedings shall be had in the
16 case, unless the defendant has been charged with a violation of
17 Section 374.3 or 374.7 of this code or of Section 11357, 11360,
18 or 13002 of the Health and Safety Code, or a violation punishable
19 under Section 5008.7 of the Public Resources Code, and he or she
20 has previously been convicted of a violation of that section or a
21 violation that is punishable under that section, except in cases
22 where the magistrate finds that undue hardship will be imposed
23 upon the defendant by requiring him or her to appear, the
24 magistrate may declare the bail forfeited and order that no further
25 proceedings be had in the case.

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

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

34 (g) The officer may book the arrested person prior to release or
35 indicate on the citation that the arrested person shall appear at the
36 arresting agency to be booked or indicate on the citation that the
37 arrested person shall appear at the arresting agency to be
38 fingerprinted prior to the date the arrested person appears in court.
39 If it is indicated on the citation that the arrested person shall be
40 booked or fingerprinted prior to the date of the person's court

1 appearance, the arresting agency at the time of booking or
2 fingerprinting shall provide the arrested person with verification
3 of the booking or fingerprinting by making an entry on the citation.
4 If it is indicated on the citation that the arrested person is to be
5 booked or fingerprinted, the magistrate, judge, or court shall, before
6 the proceedings begin, order the defendant to provide verification
7 that he or she was booked or fingerprinted by the arresting agency.
8 If the defendant cannot produce the verification, the magistrate,
9 judge, or court shall require that the defendant be booked or
10 fingerprinted by the arresting agency before the next court
11 appearance, and that the defendant provide the verification at the
12 next court appearance unless both parties stipulate that booking
13 or fingerprinting is not necessary.

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

19 (i) Whenever any person is arrested by a peace officer for a
20 misdemeanor, that person shall be released according to the
21 procedures set forth by this chapter unless one of the following is
22 a reason for nonrelease, in which case the arresting officer may
23 release the person, except as provided in subdivision (a), or the
24 arresting officer shall indicate, on a form to be established by his
25 or her employing law enforcement agency, which of the following
26 was a reason for the nonrelease:

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

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

31 (3) The person was arrested under one or more of the
32 circumstances listed in Sections 40302 and 40303 of the Vehicle
33 Code.

34 (4) There were one or more outstanding arrest warrants for the
35 person.

36 (5) The person could not provide satisfactory evidence of
37 personal identification.

38 (6) The prosecution of the offense or offenses for which the
39 person was arrested, or the prosecution of any other offense or

1 offenses, would be jeopardized by immediate release of the person
2 arrested.

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

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

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

11 (10) The person was subject to Section 1270.1.

12 The form shall be filed with the arresting agency as soon as
13 practicable and shall be made available to any party having custody
14 of the arrested person, subsequent to the arresting officer, and to
15 any person authorized by law to release him or her from custody
16 before trial.

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

21 Any person, including the arresting officer and any member of
22 the officer's department or agency, or any peace officer, who alters,
23 conceals, modifies, nullifies, or destroys, or causes to be altered,
24 concealed, modified, nullified, or destroyed, the face side of the
25 remaining original or any copy of a citation that was retained by
26 the officer, for any reason, before it is filed with the magistrate or
27 with a person authorized by the magistrate to receive deposit of
28 bail, is guilty of a misdemeanor.

29 If, after an arrested person has signed and received a copy of a
30 notice to appear, the arresting officer determines that, in the interest
31 of justice, the citation or notice should be dismissed, the arresting
32 agency may recommend, in writing, to the magistrate that the
33 charges be dismissed. The recommendation shall cite the reasons
34 for the recommendation and shall be filed with the court.

35 If the magistrate makes a finding that there are grounds for
36 dismissal, the finding shall be entered in the record and the charges
37 dismissed.

38 Under no circumstances shall a personal relationship with any
39 officer, public official, or law enforcement agency be grounds for
40 dismissal.

(k) (1) A person contesting a charge by claiming under penalty of perjury not to be the person issued the notice to appear may choose to submit a right thumbprint, or a left thumbprint if the person has a missing or disfigured right thumb, to the issuing court through his or her local law enforcement agency for comparison with the one placed on the notice to appear. A local law enforcement agency providing this service may charge the requester no more than the actual costs. The issuing court may refer the thumbprint submitted and the notice to appear to the prosecuting attorney for comparison of the thumbprints. When there is no thumbprint or fingerprint on the notice to appear, or when the comparison of thumbprints is inconclusive, the court shall refer the notice to appear or copy thereof back to the issuing agency for further investigation, unless the court finds that referral is not in the interest of justice.

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

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

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

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

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

SEC. 1.5. Section 853.6 of the Penal Code is amended to read:

853.6. (a) (1) In any case in which a person is arrested for an offense declared to be a misdemeanor, including a violation of any city or county ordinance, and does not demand to be taken before a magistrate, that person shall, instead of being taken before a magistrate, be released according to the procedures set forth by this ~~chapter~~ *chapter, although nothing prevents an officer from first booking an arrestee pursuant to subdivision (g).* If the person is released, the officer or his or her superior shall prepare in duplicate a written notice to appear in court, containing the name and address of the person, the offense charged, and the time when, and place where, the person shall appear in court. If, pursuant to subdivision (i), the person is not released prior to being booked and the officer in charge of the booking or his or her superior determines that the person should be released, the officer or his or her superior shall prepare a written notice to appear in a court.

~~In~~

(2) In any case in which a person is arrested for a misdemeanor violation of a protective court order involving domestic violence, as defined in subdivision (b) of Section 13700, or arrested pursuant to a policy, as described in Section 13701, the person shall be taken before a magistrate instead of being released according to the procedures set forth in this chapter, 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. Prior to adopting these provisions, each city, county, or city and county shall develop a protocol to assist officers to determine when arrest and release is appropriate, rather than taking the arrested person before a magistrate. The county shall establish a committee to develop the protocol, consisting of, at a minimum, the police chief or county sheriff within the jurisdiction, the district attorney, county counsel, city attorney, representatives from domestic violence shelters, domestic violence councils, and other relevant community agencies.

(3) *This subdivision shall not apply to the crimes specified in Section 1270.1, including crimes defined in each of the following:*

(A) *Paragraph (1) of subdivision (e) of Section 243.*

(B) *Section 273.5.*

1 (C) Section 273.6, if the detained person made threats to kill or
2 harm, has engaged in violence against, or has gone to the residence
3 or workplace of, the protected party.

4 (D) Section 646.9.

5 ~~Nothing~~

6 (4) ~~Nothing~~ in this subdivision shall be construed to affect a
7 defendant's ability to be released on bail or on his or her own
8 ~~recognizance~~; *recognizance, except as specified in Section 1270.1.*

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

12 (c) The place specified in the notice shall be the court of the
13 magistrate before whom the person would be taken if the
14 requirement of taking an arrested person before a magistrate were
15 complied with, or shall be an officer authorized by that court to
16 receive a deposit of bail.

17 (d) The officer shall deliver one copy of the notice to appear to
18 the arrested person, and the arrested person, in order to secure
19 release, shall give his or her written promise to appear in court as
20 specified in the notice by signing the duplicate notice which shall
21 be retained by the officer, and the officer may require the arrested
22 person, if he or she has no satisfactory identification, to place a
23 right thumbprint, or a left thumbprint or fingerprint if the person
24 has a missing or disfigured right thumb, on the notice to appear.
25 Except for law enforcement purposes relating to the identity of the
26 arrestee, no person or entity may sell, give away, allow the
27 distribution of, include in a database, or create a database with,
28 this print. Upon the signing of the duplicate notice, the arresting
29 officer shall immediately release the person arrested from custody.

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

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

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

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

39 If the duplicate notice is filed with the prosecuting attorney, he
40 or she, within his or her discretion, may initiate prosecution by

1 filing the notice or a formal complaint with the magistrate specified
2 in the duplicate notice within 25 days from the time of arrest. If
3 the prosecution is not to be initiated, the prosecutor shall send
4 notice to the person arrested at the address on the notice to appear.
5 The failure by the prosecutor to file the notice or formal complaint
6 within 25 days of the time of the arrest shall not bar further
7 prosecution of the misdemeanor charged in the notice to appear.
8 However, any further prosecution shall be preceded by a new and
9 separate citation or an arrest warrant.

10 Upon the filing of the notice with the magistrate by the officer,
11 or the filing of the notice or formal complaint by the prosecutor,
12 the magistrate may fix the amount of bail that in his or her
13 judgment, in accordance with Section 1275, is reasonable and
14 sufficient for the appearance of the defendant and shall endorse
15 upon the notice a statement signed by him or her in the form set
16 forth in Section 815a. The defendant may, prior to the date upon
17 which he or she promised to appear in court, deposit with the
18 magistrate the amount of bail set by the magistrate. At the time
19 the case is called for arraignment before the magistrate, if the
20 defendant does not appear, either in person or by counsel, the
21 magistrate may declare the bail forfeited, and may, in his or her
22 discretion, order that no further proceedings shall be had in the
23 case, unless the defendant has been charged with a violation of
24 Section 374.3 or 374.7 of this code or of Section 11357, 11360,
25 or 13002 of the Health and Safety Code, or a violation punishable
26 under Section 5008.7 of the Public Resources Code, and he or she
27 has previously been convicted of a violation of that section or a
28 violation that is punishable under that section, except in cases
29 where the magistrate finds that undue hardship will be imposed
30 upon the defendant by requiring him or her to appear, the
31 magistrate may declare the bail forfeited and order that no further
32 proceedings be had in the case.

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

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

(g) The officer may book the arrested person *at the scene or at the arresting agency* prior to release or indicate on the citation that the arrested person shall appear at the arresting agency to be booked or indicate on the citation that the arrested person shall appear at the arresting agency to be fingerprinted prior to the date the arrested person appears in court. If it is indicated on the citation that the arrested person shall be booked or fingerprinted prior to the date of the person's court appearance, the arresting agency at the time of booking or fingerprinting shall provide the arrested person with verification of the booking or fingerprinting by making an entry on the citation. If it is indicated on the citation that the arrested person is to be booked or fingerprinted, the magistrate, judge, or court shall, before the proceedings begin, order the defendant to provide verification that he or she was booked or fingerprinted by the arresting agency. If the defendant cannot produce the verification, the magistrate, judge, or court shall require that the defendant be booked or fingerprinted by the arresting agency before the next court appearance, and that the defendant provide the verification at the next court appearance unless both parties stipulate that booking or fingerprinting is not necessary.

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

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

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

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

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

1 (4) There were one or more outstanding arrest warrants for the
2 person.

3 (5) The person could not provide satisfactory evidence of
4 personal identification.

5 (6) The prosecution of the offense or offenses for which the
6 person was arrested, or the prosecution of any other offense or
7 offenses, would be jeopardized by immediate release of the person
8 arrested.

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

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

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

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

18 The form shall be filed with the arresting agency as soon as
19 practicable and shall be made available to any party having custody
20 of the arrested person, subsequent to the arresting officer, and to
21 any person authorized by law to release him or her from custody
22 before trial.

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

27 Any person, including the arresting officer and any member of
28 the officer's department or agency, or any peace officer, who alters,
29 conceals, modifies, nullifies, or destroys, or causes to be altered,
30 concealed, modified, nullified, or destroyed, the face side of the
31 remaining original or any copy of a citation that was retained by
32 the officer, for any reason, before it is filed with the magistrate or
33 with a person authorized by the magistrate to receive deposit of
34 bail, is guilty of a misdemeanor.

35 If, after an arrested person has signed and received a copy of a
36 notice to appear, the arresting officer determines that, in the interest
37 of justice, the citation or notice should be dismissed, the arresting
38 agency may recommend, in writing, to the magistrate that the
39 charges be dismissed. The recommendation shall cite the reasons
40 for the recommendation and shall be filed with the court.

1 If the magistrate makes a finding that there are grounds for
2 dismissal, the finding shall be entered in the record and the charges
3 dismissed.

4 Under no circumstances shall a personal relationship with any
5 officer, public official, or law enforcement agency be grounds for
6 dismissal.

7 (k) (1) A person contesting a charge by claiming under penalty
8 of perjury not to be the person issued the notice to appear may
9 choose to submit a right thumbprint, or a left thumbprint if the
10 person has a missing or disfigured right thumb, to the issuing court
11 through his or her local law enforcement agency for comparison
12 with the one placed on the notice to appear. A local law
13 enforcement agency providing this service may charge the requester
14 no more than the actual costs. The issuing court may refer the
15 thumbprint submitted and the notice to appear to the prosecuting
16 attorney for comparison of the thumbprints. When there is no
17 thumbprint or fingerprint on the notice to appear, or when the
18 comparison of thumbprints is inconclusive, the court shall refer
19 the notice to appear or copy thereof back to the issuing agency for
20 further investigation, unless the court finds that referral is not in
21 the interest of justice.

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

25 (3) Upon receipt of the issuing agency's or prosecuting
26 attorney's response, the court may make a finding of factual
27 innocence pursuant to Section 530.6 if the court determines that
28 there is insufficient evidence that the person cited is the person
29 charged and shall immediately notify the Department of Motor
30 Vehicles of its determination. If the Department of Motor Vehicles
31 determines the citation or citations in question formed the basis
32 of a suspension or revocation of the person's driving privilege, the
33 department shall immediately set aside the action.

34 (4) If the prosecuting attorney or issuing agency fails to respond
35 to a court referral within 45 days, the court shall make a finding
36 of factual innocence pursuant to Section 530.6, unless the court
37 finds that a finding of factual innocence is not in the interest of
38 justice.

39 (5) The citation or notice to appear may be held by the
40 prosecuting attorney or issuing agency for future adjudication

1 should the arrestee who received the citation or notice to appear
2 be found.

3 (l) For purposes of this section, the term “arresting agency”
4 includes any other agency designated by the arresting agency to
5 provide booking or fingerprinting services.

6 *SEC. 2. Section 1.5 of this bill incorporates amendments to*
7 *Section 853.6 of the Penal Code proposed by both this bill and AB*
8 *1209. It shall only become operative if (1) both bills are enacted*
9 *and become effective on or before January 1, 2010, (2) each bill*
10 *amends Section 853.6 of the Penal Code, and (3) this bill is enacted*
11 *after AB 1209, in which case Section 1 of this bill shall not become*
12 *operative.*