

AMENDED IN ASSEMBLY MAY 8, 1995
AMENDED IN ASSEMBLY MARCH 30, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 219

Introduced by Assembly Member Baca

January 31, 1995

An act to amend Sections 853.5 and 853.6 of the Penal Code, and to amend Sections 40500 and 40504 of the Vehicle Code, relating to arrests.

LEGISLATIVE COUNSEL'S DIGEST

AB 219, as amended, Baca. Arrests: identification: thumbprints.

Under existing law, in any case in which a person is arrested for an offense declared to be an infraction or a misdemeanor, including a violation of any city or county ordinance or a violation of the state Vehicle Code, the person may be released pursuant to specified procedures that include presenting to a peace officer satisfactory identification or signing either a promise or notice to appear.

This bill would authorize the peace officer to obtain a right thumbprint, or a left thumbprint or fingerprint if the person has a missing or disfigured right thumb, on a promise to appear from the person arrested for an infraction if that person does not provide satisfactory evidence of identity, or when the person is arrested for a misdemeanor and ~~the officer determines that a thumbprint on a promise or notice to~~

~~appear is necessary~~ *he or she has no satisfactory identification. The bill would prohibit the thumbprint provided by the person arrested from being used to create a data base.*

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 853.5 of the Penal Code is
2 amended to read:

3 853.5. Except as otherwise provided by law, in any
4 case in which a person is arrested for an offense declared
5 to be an infraction, the person may be released according
6 to the procedures set forth by this chapter for the release
7 of persons arrested for an offense declared to be a
8 misdemeanor. In all cases, except as specified in Sections
9 40302, 40303, 40305, and 40305.5 of the Vehicle Code, in
10 which a person is arrested for an infraction, a peace
11 officer shall only require the arrestee to present his
12 driver's license or other satisfactory evidence of his
13 identity for examination and to sign a written promise to
14 appear. If the arrestee does not have a driver's license or
15 other satisfactory evidence of identity in his or her
16 possession, the officer may require the arrestee to place
17 a right thumbprint, or a left thumbprint or fingerprint if
18 the person has a missing or disfigured right thumb, on the
19 ~~promise to appear. Only if the arrestee refuses to present~~
20 ~~the identification, refuses to sign a written promise, or~~
21 ~~promise to appear. This thumbprint shall not be used to~~
22 ~~create a data base. Only if the arrestee refuses to sign a~~
23 ~~written promise, has no satisfactory identification, or~~
24 refuses to provide a thumbprint may the arrestee be
25 taken into custody.

26 SEC. 2. Section 853.6 of the Penal Code is amended to
27 read:

28 853.6. (a) In any case in which a person is arrested for
29 an offense declared to be a misdemeanor, including a
30 violation of any city or county ordinance, and does not
31 demand to be taken before a magistrate, that person shall,
32 instead of being taken before a magistrate, be released



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

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

32 Nothing in this subdivision shall be construed to affect
33 a defendant's ability to be released on bail or on his or her
34 own recognizance.

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

39 (c) The place specified in the notice shall be the court
40 of the magistrate before whom the person would be taken



1 if the requirement of taking an arrested person before a
2 magistrate were complied with, or shall be an officer
3 authorized by that court to receive a deposit of bail.

4 (d) The officer shall deliver one copy of the notice to
5 appear to the arrested person, and the arrested person, in
6 order to secure release, shall give his or her written
7 promise to appear in court as specified in the notice by
8 signing the duplicate notice which shall be retained by
9 the officer, and the officer may require the arrested
10 person, *if he or she has no satisfactory identification*, to
11 place a right thumbprint, or a left thumbprint or
12 fingerprint if the person has a missing or disfigured right
13 thumb, on the promise to appear. *This thumbprint shall*
14 *not be used to create a data base*. Upon the signing of the
15 duplicate notice, the arresting officer shall immediately
16 release the person arrested from custody.

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

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

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

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

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



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

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

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

37 (g) The officer may book the arrested person prior to
38 release or indicate on the citation that the arrested person
39 shall appear at the arresting agency to be booked or
40 indicate on the citation that the arrested person shall



1 appear at the arresting agency to be fingerprinted prior
2 to the date the arrested person appears in court. If it is
3 indicated on the citation that the arrested person shall be
4 booked or fingerprinted prior to the date of the person's
5 court appearance, the arresting agency at the time of
6 booking or fingerprinting shall provide the arrested
7 person with verification of the booking or fingerprinting
8 by either making an entry on the citation or providing the
9 arrested person a verification form established by the
10 arresting agency. If it is indicated on the citation that the
11 arrested person is to be booked or fingerprinted, the
12 magistrate, judge, or court shall, before the proceedings
13 begin, order the defendant to provide verification that he
14 or she was booked or fingerprinted by the arresting
15 agency. If the defendant cannot produce the verification,
16 the magistrate, judge, or court shall require that the
17 defendant be booked or fingerprinted by the arresting
18 agency before the next court appearance, and that the
19 defendant provide the verification at the next court
20 appearance unless both parties stipulate that booking or
21 fingerprinting is not necessary.

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

28 (i) Whenever any person is arrested by a peace officer
29 for a misdemeanor, that person shall be released
30 according to the procedures set forth by this chapter
31 unless one of the following is a reason for nonrelease, in
32 which case the arresting officer may release the person,
33 or the arresting officer shall indicate, on a form to be
34 established by his or her employing law enforcement
35 agency, which of the following was a reason for the
36 nonrelease:

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



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

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

7 (4) There were one or more outstanding arrest
8 warrants for the person.

9 (5) The person could not provide satisfactory
10 evidence of personal identification.

11 (6) The prosecution of the offense or offenses for
12 which the person was arrested, or the prosecution of any
13 other offense or offenses, would be jeopardized by
14 immediate release of the person arrested.

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

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

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

25 The form shall be filed with the arresting agency as
26 soon as practicable and shall be made available to any
27 party having custody of the arrested person, subsequent
28 to the arresting officer, and to any person authorized by
29 law to release him or her from custody before trial.

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

34 Any person, including the arresting officer and any
35 member of the officer's department or agency, or any
36 peace officer, who alters, conceals, modifies, nullifies, or
37 destroys, or causes to be altered, concealed, modified,
38 nullified, or destroyed, the face side of the remaining
39 original or any copy of a citation that was retained by the
40 officer, for any reason, before it is filed with the



1 magistrate or with a person authorized by the magistrate
2 to receive deposit of bail, is guilty of a misdemeanor.

3 If, after an arrested person has signed and received a
4 copy of a notice to appear, the arresting officer
5 determines that, in the interest of justice, the citation or
6 notice should be dismissed, the arresting agency may
7 recommend, in writing, to the magistrate that the
8 charges be dismissed. The recommendation shall cite the
9 reasons for the recommendation and shall be filed with
10 the court.

11 If the magistrate makes a finding that there are grounds
12 for dismissal, the finding shall be entered in the record
13 and the charges dismissed.

14 Under no circumstances shall a personal relationship
15 with any officer, public official, or law enforcement
16 agency be grounds for dismissal.

17 (k) For purposes of this section, the term “arresting
18 agency” includes any other agency designated by the
19 arresting agency to provide booking or fingerprinting
20 services.

21 SEC. 3. Section 40500 of the Vehicle Code is amended
22 to read:

23 40500. (a) Whenever a person is arrested for any
24 violation of this code not declared to be a felony, or for a
25 violation of an ordinance of a city or county relating to
26 traffic offenses and he is not immediately taken before a
27 magistrate, as provided in this chapter, the arresting
28 officer shall prepare in triplicate a written notice to
29 appear in court or before a person authorized to receive
30 a deposit of bail, containing the name and address of the
31 person, the right thumbprint of the person, or a left
32 thumbprint or fingerprint if the person has a missing or
33 ~~disfigured right thumb, if the officer determines that a~~
34 ~~thumbprint is necessary, the license number of his~~
35 *disfigured right thumb, or if the arrestee has no*
36 *satisfactory identification, the license number of his or*
37 *her* vehicle, if any, the name and address, when available,
38 of the registered owner or lessee of the vehicle, the
39 offense charged and the time and place when and where
40 he shall appear.



1 (b) The Judicial Council shall prescribe the form of the
2 notice to appear. *The thumbprint provided by the*
3 *arrestee shall not be used to create a data base.*

4 (c) Nothing in this section requires the law
5 enforcement agency or the arresting officer issuing the
6 notice to appear to inform any person arrested pursuant
7 to this section of the amount of bail required to be
8 deposited for the offense charged.

9 (d) Once the arresting officer has prepared the
10 written notice to appear, and has delivered a copy to the
11 arrested person, the officer shall deliver the remaining
12 original and all copies of the notice to appear as provided
13 by Section 40506.

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

24 If, after an arrested person has signed and received a
25 copy of a notice to appear, the arresting officer or other
26 officer of the issuing agency, determines that, in the
27 interest of justice, the citation or notice should be
28 dismissed, the arresting agency may recommend, in
29 writing, to the magistrate or judge that the case be
30 dismissed. The recommendation shall cite the reasons for
31 the recommendation and be filed with the court.

32 If the magistrate or judge makes a finding that there are
33 grounds for dismissal, the finding shall be entered on the
34 record and the infraction or misdemeanor dismissed.

35 Under no circumstances shall a personal relationship
36 with any officer, public official, or law enforcement
37 agency be grounds for dismissal.

38 SEC. 4. Section 40504 of the Vehicle Code is amended
39 to read:



1 40504. (a) The officer shall deliver one copy of the
2 notice to appear to the arrested person and the arrested
3 person in order to secure release must give his or her
4 written promise to appear in court or before a person
5 authorized to receive a deposit of bail by signing two
6 copies of the notice which shall be retained by the officer,
7 and the officer may require the arrested person, *if this*
8 *person has no satisfactory identification*, to place a right
9 thumbprint, or a left thumbprint or fingerprint if the
10 person has a missing or disfigured right thumb, on the
11 promise to appear. Thereupon the arresting officer shall
12 forthwith release the person arrested from custody. *The*
13 *thumbprint provided by the arrested person shall not be*
14 *used to create a data base.*

15 (b) Any person who signs a written promise to appear
16 with a false or fictitious name is guilty of a misdemeanor
17 regardless of the disposition of the charge upon which he
18 was originally arrested.

