

AMENDED IN ASSEMBLY JUNE 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1209

Introduced by Assembly Members ~~Hagman and Ma~~ *Ma and Hagman*

February 27, 2009

An act to amend ~~Sections 853.5 and~~ *Section* 853.6 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 1209, as amended, ~~Hagman~~ *Ma*. Identification.

~~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 a city or county ordinance or a violation of the Vehicle Code, the person may be released pursuant to specified procedures that include presenting to a peace officer satisfactory identification or signing a promise or notice to appear. Existing law also authorizes a 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 he or she has no satisfactory identification.~~

~~This bill would also authorize a peace officer to alternatively require the arrestee to provide use of his or her thumbs or fingers or both in order to capture these images with a mobile fingerprint device.~~

~~Existing law provides that a person contesting a charge by claiming under penalty of perjury not to be the person issued a notice to appear under the circumstances described above may choose to submit a print to the issuing court through his or her local law enforcement agency~~

~~for comparison with the one placed on the notice to appear. Existing law also authorizes a local law enforcement agency providing this service to charge the requester no more than the actual costs.~~

~~This bill would provide that a person contesting a charge pursuant to those provisions may choose to allow an officer to capture images of his or her thumbprints or fingerprints or both for comparison with the images of the fingerprints or thumbprints or both of the arrestee.~~

Existing law regarding misdemeanor release procedures provides that an officer may book an arrested person 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 arrested person's court date.

~~This bill would authorize an officer, as an alternative to those procedures, to require the arrestee to provide use of his or her thumbs or fingers or both in order to capture images of the arrestee's thumbprints or fingerprints or both with a mobile fingerprint device. The bill would require the officer to provide the arrestee with verification by making an entry on the citation that images of the arrestee's thumbprints or fingerprints or both were captured with a mobile fingerprint device. The bill would also require the magistrate, judge, or court, upon the arrestee's appearance in court and before the proceeding begins, to order the defendant to provide verification that images of his or her thumbprints or fingerprints were captured and to take other actions regarding verification.~~

This bill would specify that an officer may book the arrested person at the scene or at the arresting agency prior to release.

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) 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, *although nothing prevents an officer from first booking*

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

10 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 Nothing in this subdivision shall be construed to affect a
29 defendant's ability to be released on bail or on his or her own
30 recognizance.

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

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

39 (d) The officer shall deliver one copy of the notice to appear to
40 the arrested person, and the arrested person, in order to secure

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

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

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

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

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

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

32 Upon the filing of the notice with the magistrate by the officer,
33 or the filing of the notice or formal complaint by the prosecutor,
34 the magistrate may fix the amount of bail that in his or her
35 judgment, in accordance with Section 1275, is reasonable and
36 sufficient for the appearance of the defendant and shall endorse
37 upon the notice a statement signed by him or her in the form set
38 forth in Section 815a. The defendant may, prior to the date upon
39 which he or she promised to appear in court, deposit with the
40 magistrate the amount of bail set by the magistrate. At the time

1 the case is called for arraignment before the magistrate, if the
2 defendant does not appear, either in person or by counsel, the
3 magistrate may declare the bail forfeited, and may, in his or her
4 discretion, order that no further proceedings shall be had in the
5 case, unless the defendant has been charged with a violation of
6 Section 374.3 or 374.7 of this code or of Section 11357, 11360,
7 or 13002 of the Health and Safety Code, or a violation punishable
8 under Section 5008.7 of the Public Resources Code, and he or she
9 has previously been convicted of a violation of that section or a
10 violation that is punishable under that section, except in cases
11 where the magistrate finds that undue hardship will be imposed
12 upon the defendant by requiring him or her to appear, the
13 magistrate may declare the bail forfeited and order that no further
14 proceedings be had in the case.

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

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

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

1 verification at the next court appearance unless both parties
2 stipulate that booking or fingerprinting is not necessary.

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

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

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

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

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

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

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

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

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

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

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

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 ~~SECTION 1. Section 853.5 of the Penal Code is amended to~~
28 ~~read:~~

29 ~~853.5. (a) Except as otherwise provided by law, in any case~~
30 ~~in which a person is arrested for an offense declared to be an~~
31 ~~infraction, the person may be released according to the procedures~~
32 ~~set forth by this chapter for the release of persons arrested for an~~
33 ~~offense declared to be a misdemeanor. In all cases, except as~~
34 ~~specified in Sections 40302, 40303, 40305, and 40305.5 of the~~
35 ~~Vehicle Code, in which a person is arrested for an infraction, a~~
36 ~~peace officer shall only require the arrestee to present his or her~~
37 ~~driver's license or other satisfactory evidence of his or her identity~~
38 ~~for examination and to sign a written promise to appear contained~~
39 ~~in a notice to appear. If the arrestee does not have a driver's license~~
40 ~~or other satisfactory evidence of identity in his or her possession,~~

1 the officer may either: (1) require the arrestee to place a right
2 thumbprint, or a left thumbprint or fingerprint if the person has a
3 missing or disfigured right thumb, on the notice to appear or (2)
4 require the arrestee to provide use of his or her thumbs or fingers
5 or both in order to capture images of his or her thumbprints or
6 fingerprints or both with a mobile fingerprint device. Except for
7 law enforcement purposes relating to the identity of the arrestee,
8 no person or entity may sell, give away, allow the distribution of,
9 include in a database, or create a database with, these prints. Only
10 if the arrestee refuses to sign a written promise, has no satisfactory
11 identification, refuses to provide a thumbprint or fingerprint, or
12 refuses to allow the officer to capture images of his or her
13 thumbprints or fingerprints or both when a mobile fingerprint
14 device is available, may the arrestee be taken into custody.

15 (b) A person contesting a charge by claiming under penalty of
16 perjury not to be the person issued the notice to appear may choose
17 to submit a right thumbprint, or a left thumbprint if the person has
18 a missing or disfigured right thumb, to the issuing court through
19 his or her local law enforcement agency for comparison with the
20 one placed on the notice to appear. When a mobile fingerprint
21 device was used to capture images of the arrestee's thumbprints
22 or fingerprints or both, a person contesting a charge pursuant to
23 this subdivision may choose to allow an officer to capture images
24 of his or her thumbprints or fingerprints or both for comparison
25 with the images of the fingerprints or thumbprints or both of the
26 arrestee. A local law enforcement agency providing this service
27 may charge the requester no more than the actual costs. The issuing
28 court may refer the thumbprint submitted and the notice to appear,
29 or images captured by the mobile fingerprint device, to the
30 prosecuting attorney for comparison of the thumbprints or
31 fingerprints or both. When there is no thumbprint or fingerprint
32 on the notice to appear, or when the comparison of thumbprints
33 or fingerprints or both is inconclusive, the court shall refer the
34 notice to appear or copy thereof back to the issuing agency for
35 further investigation, unless the court finds that referral is not in
36 the interest of justice.

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

~~(d) 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.~~

~~(e) 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.~~

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

~~853.6. (a) 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. 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 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~~

1 ~~arrest and release is appropriate, rather than taking the arrested~~
2 ~~person before a magistrate. The county shall establish a committee~~
3 ~~to develop the protocol, consisting of, at a minimum, the police~~
4 ~~chief or county sheriff within the jurisdiction, the district attorney,~~
5 ~~county counsel, city attorney, representatives from domestic~~
6 ~~violence shelters, domestic violence councils, and other relevant~~
7 ~~community agencies.~~

8 ~~Nothing in this subdivision shall be construed to affect a~~
9 ~~defendant's ability to be released on bail or on his or her own~~
10 ~~recognizance.~~

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

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

19 ~~(d) The officer shall deliver one copy of the notice to appear to~~
20 ~~the arrested person, and the arrested person, in order to secure~~
21 ~~release, shall give his or her written promise to appear in court as~~
22 ~~specified in the notice by signing the duplicate notice which shall~~
23 ~~be retained by the officer, and the officer may either (1) require~~
24 ~~the arrested person, if he or she has no satisfactory identification,~~
25 ~~to place a right thumbprint, or a left thumbprint or fingerprint if~~
26 ~~the person has a missing or disfigured right thumb, on the notice~~
27 ~~to appear or (2) require the arrestee to provide use of his or her~~
28 ~~thumbs or fingers or both in order to capture images of his or her~~
29 ~~thumbprints or fingerprints or both with a mobile fingerprint~~
30 ~~device. Except for law enforcement purposes relating to the identity~~
31 ~~of the arrestee, no person or entity may sell, give away, allow the~~
32 ~~distribution of, include in a database, or create a database with,~~
33 ~~these prints. Upon the signing of the duplicate notice, the arresting~~
34 ~~officer shall immediately release the person arrested from custody.~~

35 ~~(e) The officer shall, as soon as practicable, file the duplicate~~
36 ~~notice, as follows:~~

37 ~~(1) It shall be filed with the magistrate if the offense charged is~~
38 ~~an infraction.~~

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

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

4 ~~If the duplicate notice is filed with the prosecuting attorney, he~~
5 ~~or she, within his or her discretion, may initiate prosecution by~~
6 ~~filing the notice or a formal complaint with the magistrate specified~~
7 ~~in the duplicate notice within 25 days from the time of arrest. If~~
8 ~~the prosecution is not to be initiated, the prosecutor shall send~~
9 ~~notice to the person arrested at the address on the notice to appear.~~
10 ~~The failure by the prosecutor to file the notice or formal complaint~~
11 ~~within 25 days of the time of the arrest shall not bar further~~
12 ~~prosecution of the misdemeanor charged in the notice to appear.~~
13 ~~However, any further prosecution shall be preceded by a new and~~
14 ~~separate citation or an arrest warrant.~~

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

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

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

6 (g) ~~The officer may book the arrested person prior to release or~~
7 ~~indicate on the citation that the arrested person shall appear at the~~
8 ~~arresting agency to be booked or indicate on the citation that the~~
9 ~~arrested person shall appear at the arresting agency to be~~
10 ~~fingerprinted prior to the date the arrested person appears in court.~~
11 ~~If it is indicated on the citation that the arrested person shall be~~
12 ~~booked or fingerprinted prior to the date of the person's court~~
13 ~~appearance, the arresting agency at the time of booking or~~
14 ~~fingerprinting shall provide the arrested person with verification~~
15 ~~of the booking or fingerprinting by making an entry on the citation.~~
16 ~~If it is indicated on the citation that the arrested person is to be~~
17 ~~booked or fingerprinted, the magistrate, judge, or court shall, before~~
18 ~~the proceedings begin, order the defendant to provide verification~~
19 ~~that he or she was booked or fingerprinted by the arresting agency.~~
20 ~~If the defendant cannot produce the verification, the magistrate,~~
21 ~~judge, or court shall require that the defendant be booked or~~
22 ~~fingerprinted by the arresting agency before the next court~~
23 ~~appearance, and that the defendant provide the verification at the~~
24 ~~next court appearance unless both parties stipulate that booking~~
25 ~~or fingerprinting is not necessary.~~

26 (h) ~~As an alternative to the procedures set forth in subdivision~~
27 ~~(g), prior to release, the officer may instead require the arrestee to~~
28 ~~provide use of his or her thumbs or fingers or both in order to~~
29 ~~capture images of the arrestee's thumbprints or fingerprints or both~~
30 ~~with a mobile fingerprint device. The officer shall provide the~~
31 ~~arrestee with verification by making an entry on the citation that~~
32 ~~images of the arrestee's thumbprints or fingerprints or both were~~
33 ~~captured with a mobile fingerprint device. Upon the arrestee's~~
34 ~~appearance in court, the magistrate, judge, or court shall, before~~
35 ~~the proceeding begins, order the defendant to provide verification~~
36 ~~that images of his or her thumbprints or fingerprints were captured~~
37 ~~by the arresting officer with a mobile fingerprinting device. If the~~
38 ~~defendant provides the verification, the magistrate, judge, or court~~
39 ~~shall order the defendant to be fingerprinted immediately by the~~
40 ~~court. If the defendant cannot produce the verification, the~~

1 magistrate, judge, or court shall require that the defendant be
2 booked or fingerprinted by the arresting agency before the next
3 court appearance, and that the defendant provide the verification
4 at the next court appearance unless both parties stipulate that
5 booking or fingerprinting is not necessary.

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

11 (j) Whenever any person is arrested by a peace officer for a
12 misdemeanor, that person shall be released according to the
13 procedures set forth by this chapter unless one of the following is
14 a reason for nonrelease, in which case the arresting officer may
15 release the person, or the arresting officer shall indicate, on a form
16 to be established by his or her employing law enforcement agency,
17 which of the following was a reason for the nonrelease:

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

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

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

25 (4) There were one or more outstanding arrest warrants for the
26 person.

27 (5) The person could not provide satisfactory evidence of
28 personal identification.

29 (6) The prosecution of the offense or offenses for which the
30 person was arrested, or the prosecution of any other offense or
31 offenses, would be jeopardized by immediate release of the person
32 arrested.

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

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

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

1 ~~The form shall be filed with the arresting agency as soon as~~
2 ~~practicable and shall be made available to any party having custody~~
3 ~~of the arrested person, subsequent to the arresting officer, and to~~
4 ~~any person authorized by law to release him or her from custody~~
5 ~~before trial.~~

6 ~~(k) Once the arresting officer has prepared the written notice to~~
7 ~~appear and has delivered a copy to the person arrested, the officer~~
8 ~~shall deliver the remaining original and all copies as provided by~~
9 ~~subdivision (e).~~

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

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

24 ~~If the magistrate makes a finding that there are grounds for~~
25 ~~dismissal, the finding shall be entered in the record and the charges~~
26 ~~dismissed.~~

27 ~~Under no circumstances shall a personal relationship with any~~
28 ~~officer, public official, or law enforcement agency be grounds for~~
29 ~~dismissal.~~

30 ~~(l) (1) A person contesting a charge by claiming under penalty~~
31 ~~of perjury not to be the person issued the notice to appear may~~
32 ~~choose to submit a right thumbprint, or a left thumbprint if the~~
33 ~~person has a missing or disfigured right thumb, to the issuing court~~
34 ~~through his or her local law enforcement agency for comparison~~
35 ~~with the one placed on the notice to appear. When a mobile~~
36 ~~fingerprint device was used to capture images of the arrested~~
37 ~~person's thumbprints or fingerprints or both, a person contesting~~
38 ~~a charge pursuant to this subdivision may choose to allow an officer~~
39 ~~to capture images of his or her thumbprints or fingerprints or both~~
40 ~~for comparison with the images of the fingerprints or thumbprints~~

1 or both of the arrested person. A local law enforcement agency
2 providing this service may charge the requester no more than the
3 actual costs. The issuing court may refer the thumbprint submitted
4 and the notice to appear, or images captured by the mobile
5 fingerprint device, to the prosecuting attorney for comparison of
6 the thumbprints or fingerprints or both. When there is no
7 thumbprint or fingerprint on the notice to appear, or when the
8 comparison of thumbprints or fingerprints is inconclusive, the
9 court shall refer the notice to appear or copy thereof back to the
10 issuing agency for further investigation, unless the court finds that
11 referral is not in the interest of justice.

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

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

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

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

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