

CHAPTER 1
ARREST POLICIES
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CHAPTER 1
ARREST POLICIES

1. PURPOSE. This chapter provides direction to officers when considering a physical arrest as an enforcement action.

2. PHYSICAL ARRESTS.

a. Policy.

(1) Officers shall physically arrest all felony violators as prescribed by law.

(a) Section 851.5 of the California Penal Code (PC) requires that an arrested person has the right to make at least three completed telephone calls, as described, immediately upon being booked or detained, and except where physically impossible, no later than three hours after arrest. These telephone calls and other forms of communication should not normally be allowed during transport.

(b) Pursuant to Section 851.5(c) PC, as soon as practicable upon being arrested but, except where physically impossible, no later than three hours after arrest, the arresting or booking officer shall inquire as to whether the arrestee is a custodial parent with responsibility for a minor child. If the arrestee is a custodial parent for a minor child, the arrestee shall be entitled to make two additional calls for the purpose of arranging for the care of the minor child or children in the parent's absence. These telephone calls shall be given immediately upon request, or as soon as practicable.

(c) Section 851.5 PC also requires a sign stating the arrestee's right to free telephone calls, as well as the right to two additional calls if they are a custodial parent with responsibility for a minor child, be posted at any police facility or place where an arrestee may be detained. A CHP 975, Penal Code Section 851.5, Arrested Person May Make Telephone Call, available on the California CHP Intranet site under Forms, shall be posted in CHP Area offices that allow arrestees to be temporarily detained (e.g., during a drug recognition evaluation or stolen vehicle investigation).

(2) Officers should physically arrest all violators meeting the conditions described in Section 40302 of the California Vehicle Code (CVC). A complaint may be filed in those instances where no useful purpose would be served through the violator's incarceration. In applying this exception,

officers shall coordinate the violator's release with a supervisor whenever one is available. Examples where the exception may apply are:

- (a) Persons with small children present.
- (b) Elderly persons who are confused.
- (c) Sick persons.
- (d) Pregnant women.
- (e) Juveniles.
- (f) Mentally ill persons.

(3) Refusals to Sign the CHP 215, Notice to Appear. Persons taken into custody pursuant to Section 853.6(i)(8) PC or Section 40302(b) CVC and not otherwise released shall be afforded every opportunity permitted by law to sign the CHP 215 and thereby secure release from custody. When a violator refuses to sign the CHP 215, the following should occur:

- (a) The arresting officer shall direct the violator's attention to the introductory statement above the violator signature line on the CHP 215 which reads: "Without admitting guilt, I promise to appear at the time and place designated below."
- (b) The officer should carefully explain signing the citation has the same effect as cash bail, which is required for release if taken before a magistrate or to jail.
- (c) If the violator still refuses to sign the citation and it appears a physical arrest is necessary, the officer shall notify an on-duty supervisor. The supervisor shall determine the appropriate course of action and respond to the scene, as necessary (refer to Section 853.6 PC).
- (d) As a final measure, the violator shall be taken without unnecessary delay before a magistrate, or if after court hours, to jail. If at any time during the course of transportation to the court or jail, the violator reconsiders and requests to sign the citation, the violator shall be permitted to do so.

NOTE: Once the booking process has begun, the violator is in the jailer's custody and cannot be released by the arresting officer.

(e) In the interest of providing for the violator's safety and limiting the Department's liability, the following transportation services should be afforded to anyone who reconsiders and signs the CHP 215:

- 1 The violator should be transported to their vehicle or the original place of arrest, when practical.
- 2 When transportation is unavailable, the violator should be left at a safe location, convenient to communication and transportation facilities.
- 3 Violators shall not be left at any location which would either cause them a reasonably avoidable hardship in resuming normal activities or place them in foreseeable peril.

(4) Officers should cite and release violators of misdemeanor offenses unless one of the following is a reason for nonrelease:

- (a) The person is so intoxicated that they could be a danger to themselves or to others.
- (b) The person requires medical examination or medical care or is otherwise unable to care for their own safety.
- (c) There is one or more outstanding arrest warrants for the person.
- (d) The person cannot provide satisfactory evidence of personal identification.
- (e) The prosecution of the offense would be jeopardized by immediate release of the person arrested.
- (f) There is a reasonable likelihood that the offense or offenses would continue or resume. (Refer to Chapter 3, Response to Domestic Violence, of this manual for procedures regarding domestic violence.)
- (g) The safety of persons or property would be imminently endangered by release of the person.
- (h) The person demands to be taken before a magistrate or refuses to sign the notice to appear.
- (i) There is reason to believe that the person would not appear at the time and place specified in the notice.

(5) Officers should also cite and release violators of specific misdemeanor offenses listed in Sections 40303 and 40304 CVC. Physical arrest for these offenses should only be made when the officer has reasonable cause to believe that one of the following conditions exists:

(a) The violator will not be available for due process of law.

(b) The continued liberty of the violator presents a danger to themselves or others.

(c) The violator is suspected of violating Section 2813 CVC, relating to the refusal to submit to an inspection of size, weight, and/or equipment.

(d) The violator is suspected of violating Section 21200.5 CVC, riding a bicycle while under the influence of alcohol or drugs, Section 21221.5 CVC, operation of motorized scooter while under the influence, or Section 21050 CVC, riding or driving an animal upon a highway while under the influence. Areas participating in the driving under the influence (DUI) cite and release program shall follow departmental and Area policies when arresting DUI bicyclists or motorized scooter operators. Refer to Highway Patrol Manual (HPM) 70.4, Driving Under the Influence Enforcement Manual.

b. Procedures. Complete the appropriate CHP 202, Driving Under the Influence Arrest – Investigation Report, or CHP 216, Arrest – Investigation Report. The Misdemeanor Incarceration Section of the arrest-investigation report shall be completed by the arresting officer whenever a physical arrest is made for a misdemeanor.

3. ARRESTS AND CUSTODY OF MINORS.

a. Authority.

(1) Sections 40502(d) CVC and 853.6a PC provide that the place of appearance specified on the CHP 215 shall be “before the juvenile court, a juvenile court referee, or a juvenile hearing officer within the county in which the offense charged is alleged to have been committed...”

(2) Sections 601 and 602 of the Welfare and Institutions Code (WIC) provide that any person who is under the age of 18 years when they violate any law of this state or of the United States, or any ordinance of any city or county of this state, is within the jurisdiction of the juvenile court.

b. Policy.

(1) Arrests of minors who are 14 years of age or older under the provisions of Section 625.3 WIC shall be handled in accordance with Section 626.6 WIC.

(2) Arrests are to be handled in accordance with Section 626 WIC. This section directs the arresting officer to handle the minor in a way which least restricts the minor's freedom and is in the best interest of the minor and the community.

(3) Enforcement actions for misdemeanor violations not committed in the officer's presence are to be initiated by filing an affidavit with a county probation officer.

(4) Arrests for traffic infractions are to be handled in accordance with established local court procedures.

c. Procedures.

(1) Citation Arrests.

(a) Normally, a CHP 215 should be issued or a complaint filed unless the mandatory or discretionary provisions of Sections 40302 through 40305 CVC or 853.6 PC apply.

(b) A minor's refusal to sign a citation would bring them within the mandatory incarceration provisions of the CVC and PC.

(2) In-Custody Arrests/Detentions. The following guidelines and safeguards shall be followed in situations where departmental personnel have temporary custody of a minor for a criminal law violation which necessitates the administration of a chemical test or an investigative procedure within a jail or other law enforcement facility:

(a) When possible, buildings without a jail facility which provide chemical testing or investigative facilities should be used. A minor falling within the scope of Section 23612 CVC, Implied Consent, must be given the choice of chemical tests unless a medical condition or treatment limits test choices. (Refer to HPM 70.4, Chapter 5, Chemical Tests–Implied Consent Law.)

(b) Departmental personnel shall ensure the following procedures are followed, regardless of whether a jail facility or other law enforcement facility is used:

1 Arrested minors shall remain under the continuous supervision of a departmental or law enforcement facility employee.

2 Minors shall not be locked in a cell or room within an adult detention facility or jail.

3 Minors shall not be permitted to come into contact with an in-custody adult. If contact occurs, the contact shall not be permitted to continue.

4 A minor's presence in a law enforcement facility or jail shall not be unnecessarily extended. The minor shall be removed as soon as reasonably possible. In no event shall a minor be present in an adult detention facility or jail for a continuous period in excess of two hours.

(c) As with any arrest, the Miranda Rights warning must be provided after a custodial arrest and prior to an interrogation. If a minor is subject to interrogation, the duration of the interrogation and number of interrogators used shall be limited to that which is reasonably necessary for the purposes of the investigation.

(d) When an interrogation will not be conducted, the constitutional advisement described in paragraph 3.c.(4) of this chapter should be given just prior to the release of the juvenile to a jail facility or a parent to comply with Section 625 WIC.

(3) Disposition.

(a) The disposition of in-custody minors shall be in accordance with the local procedures established by courts, district attorneys, and juvenile authorities.

(b) To comply with the provision of Section 627 WIC, a reasonable effort to notify a parent or guardian shall be made regarding the minor's arrest. This may be accomplished through routine personal or telephone contact or through a probation office if they agree to accept this responsibility. When notifying a parent or relative, officers should attempt to explain the procedures relating to the applicable minor detention or custody.

(c) The filing of a petition to initiate further proceedings is the exclusive responsibility of a county probation officer. Once the minor is lodged with a county probation officer and the necessary reports are filed, the arresting officer has no further responsibility in connection with the minor's arrest.

(4) Section 625 WIC states that a peace officer may, without a warrant, take into temporary custody a minor when such minor is a person described in Section 602 WIC. Section 625 WIC also states that when a minor has been

taken into custody, the officer shall advise the minor of their constitutional rights. These rights include:

- (a) Anything they say can be used against them;
- (b) Their right to remain silent; and
- (c) Their right to have counsel present during any interrogation and to have counsel appointed, if they are unable to afford counsel.

(5) Questioning Minors.

(a) Custodial Interviews. Section 625.6 WIC states prior to custodial interrogation, and before the waiver of any Miranda Rights, a youth 17 years of age or younger shall consult with legal counsel in person, by telephone, or by video conference. The consultation may not be waived.

1 Section 625.6 WIC does not apply to the admissibility of statements of a youth 17 years of age or younger if the officer who questioned the youth reasonably believed the information they sought was necessary to protect life or property from an imminent threat, and the officer's questions are limited to those that are reasonably necessary to obtain the information.

2 Section 625.7 WIC states that, during a custodial interrogation, an officer may not use threats, physical harm, deception, or psychologically manipulative interrogation tactics when questioning a person 17 years of age or younger about the commission of a felony or misdemeanor.

(b) Noncustodial Interviews. Noncustodial interviews of juveniles shall be done with consideration of age, mental state, or other factors or influences experienced by the juvenile. Departmental personnel shall be professional, respectful, compassionate, caring, and empathetic when speaking to juvenile victims of, or witnesses to, criminal acts.

1 When conducting a noncustodial interview with a juvenile suspect, the issue of custody from the perspective of the child shall also be considered prior to initiating questions.

(6) Except as provided in paragraphs 3.c.(7) and 3.c.(8), custody of minors shall be handled in the manner which least restricts the minor's freedom of movement, provided such disposition is compatible with the best interests of the minor and the community. Sections 626 and 626.5 WIC provide that an officer may:

- (a) Release the minor.

(b) Deliver or refer the minor to a public or private agency in which the city or county has an agreement to provide shelter, care, counseling, or diversion services.

(c) Prepare a CHP 215 for appearance before a county probation officer of the county in which the minor was taken into custody.

(d) Take the minor without unnecessary delay (24 hours or less) before a county probation officer of the county in which they were taken into custody.

(7) Section 625.3 WIC requires that a minor who is 14 years of age or older and who is taken into custody by a peace officer for the personal use of a firearm in the commission or attempted commission of a felony shall not be released until that minor is brought before a judicial officer.

(8) Section 626.6 WIC requires a peace officer who takes a minor into temporary custody under Section 625.3 WIC to take the minor without unnecessary delay before, and deliver into the custody of, a county probation officer of the county in which the minor was taken into custody, or in which the minor resides, or in which the acts took place or the circumstances exist which are alleged to bring the minor within the provisions of Section 602 WIC.

(9) The peace officer shall prepare a concise written statement of the probable cause and reasons for taking the minor into temporary custody. The officer shall provide the statement to a county probation officer at the time the minor is delivered.

(10) Section 627 WIC provides that when an officer takes a minor before a county probation officer at juvenile hall or to any other place of confinement, the officer shall take immediate steps to notify the minor's parents, guardian, or a responsible relative that such minor is in custody and the place where they are being held. Immediately after being taken to a place of confinement, and except where physically impossible, no later than one hour after the minor has been taken into custody, the minor shall be advised they have the right to make at least two telephone calls from the place that they are being held. One call may be to their parent or guardian, a responsible relative, or their employer; and the second may be to an attorney. Such calls are to be made at public expense, if within the local calling area. Calls must be made in the presence of a public officer or employee.

(11) Section 207.1 WIC provides that no peace officer shall knowingly detain a minor in a jail or lockup. This section defines a jail or lockup as follows:

(a) Jail is defined as a locked facility administered by a law enforcement or governmental agency, the purpose of which is to detain adults charged

with violations of criminal law pending trial or to hold convicted criminal offenders sentenced for less than one year.

(b) Lockup is defined as any locked room or secure enclosure under the control of a sheriff or other peace officer which is primarily for the temporary confinement of adults upon arrest.

(12) Although Section 207.1 WIC generally provides that a minor may not be detained in a jail or lockup for adults, an exception permits the temporary, secure detention of a minor in a police or sheriff's lockup, not a jail, if the minor meets all the following criteria:

(a) The minor is 14 years of age or older.

(b) The minor is taken into temporary custody on the basis of having violated a criminal law (Section 602 WIC).

(c) The peace officer apprehending the minor has a reasonable belief that the minor presents a "serious security risk of harm to self or others."

(13) A minor meeting the above criteria may be locked in a room or cell in the station, subject to the following conditions:

(a) The minor may not be detained longer than six hours. In order to be securely detained longer than six hours, the minor must be transferred to a juvenile facility (e.g., juvenile hall).

(b) The temporary detention must be for the purpose of giving the officer time to investigate the case, facilitate release of the minor to parents, or arrange transfer to juvenile hall.

(c) The minor must be separated from adults as stated in Section 208 WIC.

(d) The minor must be told how long the incarceration can last.

(e) The minor must be adequately supervised.

(f) The law enforcement agency must keep a written record explaining the need and length of the secure detention.

(14) A minor taken into custody for a violation of criminal law, who is under 14 years of age or who is not believed to be a security risk, may be kept in temporary custody at a law enforcement facility. This includes a police station or sheriff's station but does not include a jail as defined by Section 207.1

WIC. The custody must be nonsecure (the minor is not locked in a cell or room), and the minor must be adequately supervised to ensure there is no contact with in-custody adults. Final disposition (as described in Sections 626 and 626.5 WIC) must take place within six hours.

(15) The total secure and nonsecure detention time in a law enforcement facility, excluding a jail as defined in Section 207.1 WIC, may not exceed six hours. However, the minor may remain on the premises voluntarily.

(16) Section 207.1 WIC permits a peace officer to escort a minor arrested for DUI into an adult detention facility or jail for the purpose of administering an evaluation, test, or chemical test for alcohol or drugs, if specified conditions are met. Such conditions include that the minor is not locked in a cell or room within an adult detention facility or jail, is under continuous personal supervision, is not permitted to come into contact with in-custody adults, shall not exceed two hours in custody, and if there is no equipment for the administration of the evaluation, test, or chemical test located at a juvenile facility within a reasonable distance of where the minor was taken into custody.

(17) Section 206 WIC states that abused and neglected children may not be detained in adult jails or police lockups. These minors may not be detained in a building which contains a jail or lockup for the confinement of adults unless the minor is under continuous supervision and is not permitted to come into or remain in contact with in-custody adults as stated in Section 206 WIC.

(18) Soliciting a Minor for Prostitution. Per Section 647(b)(3) PC, an individual who solicits or who agrees to engage in, or who engages in, any act of prostitution with a minor in exchange for compensation, money, or anything of value to the minor is guilty of disorderly conduct and will be charged with a misdemeanor.

(a) This does not apply to a child under 18 years of age who is alleged to have engaged in conduct to receive money or other consideration that would, if committed by an adult, violate Section 647(b)(3) PC.

4. SERVICE OF WARRANTS.

a. Authority. Officers shall be governed by the provisions of Sections 2411, 40304.5, and 40516 CVC and Sections 813 through 851 PC when making arrests for warrants.

b. Policy.

(1) Officers shall physically arrest violators, as required by law, in response to a warrant. The warrant may be either an original or an abstract relayed by the issuing agency.

(2) Officers shall not arrest any person for outstanding warrants when that person can produce evidence in the form of a receipt showing that the fine for the violation on which the warrant is based has been paid. The receipt must have been issued by a proper official of the court and contain the following information:

(a) Name and phone number of the court issuing the receipt.

(b) Date the case was adjudicated or the fine paid.

(c) Case or docket info.

(d) Violations(s) adjudicated.

(3) Any person who falsely represents themselves as another person (or a fictitious person) for the purpose of evading either the process of the court or proper identification by the investigating officer should be charged with a violation of Section 148.9 PC.

(4) The amount of the bail shall not be a criterion for deciding to physically arrest a person for a warrant.

(5) Warrants shall be requested by officers of this Department only when they can be served more expeditiously by the Department than by the local agency in possession of the warrant.

(6) Officers shall not conduct a field check for outstanding warrants unless there is reasonable suspicion that a warrant may exist and/or the check can be accomplished without resulting in an unreasonable delay.

c. Procedures.

(1) When making a warrant arrest, the officer shall proceed with the arrestee as commanded by the warrant and as provided by law.

(2) When the warrant has bail set by the issuing magistrate, the officer shall take the arrestee before the issuing magistrate or another magistrate within the county. In the event that a magistrate is unavailable, the arrestee shall be taken before a person who can accept the bail. When bail has not been set or when the arrestee does not post bail, the officer shall take them to a facility where they may be booked. Officers shall not accept bail from any person.

(3) Normally, all persons arrested by virtue of a warrant should be taken forthwith, unless the booking agency requests the Department release the arrestee as stated in Section 827.1 PC.

(a) Section 827.1 PC permits the officer to release the arrestee on their written promise to appear according to Sections 853.6 PC through 853.8 PC when the warrant is for a misdemeanor offense unless:

1 The misdemeanor cited in the warrant involves violence, a firearm, resisting arrest, or giving false information to a peace officer.

2 The arrestee is a danger to themselves or others due to intoxication or being under the influence of drugs or narcotics.

3 The arrestee requires medical examination/care or is otherwise unable to care for their own safety.

4 The arrestee has other ineligible charges pending against them.

5 There is reasonable likelihood the offense or offenses would continue or resume, or that the safety of a person(s) or property would be immediately endangered by the release of the person. (Refer to Chapter 3 of this manual for procedures regarding domestic violence.)

6 The arrestee refuses to sign the CHP 215.

7 The arrestee cannot provide satisfactory evidence of personal identification. (Officers shall not arrest a person pursuant to a warrant unless they are reasonably certain they have satisfactorily made a correct identification of the subject described in the warrant.)

8 The warrant of the arrestee indicates the arrestee is not eligible to be released on a written promise to appear.

(4) When warrants are served in counties other than where they were issued, officers shall comply with the provisions as stated in Sections 821 and 822 PC. In addition to these requirements, the following procedures will be followed:

(a) An original and one copy of a CHP 412, Warrant Service Notice, will be completed at the time the arrest is made. The original will be given to the arrestee at the time of service. The copy will be attached to the office copy of the CHP 215 and retained in Area files. It is desirable, but not mandatory, that the arrestee sign this copy.

(b) The serving officer shall enter the following information on the warrant:

- 1 Their name and badge number.
- 2 Date and time of service.
- 3 An advisement to the arrestee of their right to be taken before a magistrate in the county of arrest at the time of service.

(c) When the arrestee requests to be taken before a magistrate in the county of arrest, the serving officer shall comply with the request.

(5) The California Victim Compensation Board does not provide for overnight lodging or meals for arrestees. Therefore, when it is necessary to provide overnight lodging for arrestees, they should be housed in a city or county jail.

(6) When a warrant is not served in a reasonable time, it shall, whenever possible, be returned to the agency from which it was requested. If the agency refuses the warrant, it shall be retained by the command making the request and periodic attempts at service shall be made.

NOTE: Rost vs. Municipal Court of the Southern Judicial District, 7 Cal. Reporter 869, concluded that the constitutional requirement of a speedy trial necessitates that a defendant be arrested within a reasonable time after the filing of a complaint. The court indicated that a 60-day delay in the execution of a warrant would not be unreasonable, but for any time beyond that period an explanation should be made.

(7) Transmitting Abstract (Telegraphic) Warrants. The use of telegraphic copies of warrants is covered by Sections 850 and 851 PC.

(a) CHP personnel transmitting telegraphic warrants via Communications Network (Comm-Net) message, teletypewriter exchange service communication, or any other electronic device at the request of an employee of either this Department or other agencies shall retain a copy of any warrant so transmitted. The copy shall be certified by the officer requesting such transmission. The transmitted copy shall be an exact restatement of the basic document.

(b) Personnel of this Department who are transmitting telegraphic warrants shall return the original warrant to the issuing magistrate with a statement indicating that the warrant has been transmitted by a Comm-Net message or other electronic means.

(8) "For Bail Purposes Only."

- (a) Abstracts of warrants containing the phrase “for bail purposes only” shall be handled in the same manner as abstracts without this phrase.
- (b) The phrase “for bail purposes only” or other similar additional phrases shall be included on any copy of a warrant transmitted by personnel of this Department.
- (c) Attorney General Opinion No. CR 78-47 dated February 16, 1979, completed an analysis of Sections 821 and 822 PC with the following conclusions:

1 Sections 821 and 822 PC require the law enforcement agency in the county which issues an arrest warrant to take custody of the suspect within five days of notification and bring them before a magistrate within the issuing county.

2 The phrase “for bail purposes only” is inoperative in an arrest warrant abstract since it circumvents the above-mentioned duty imposed by Sections 821 and 822 PC to take an arrested person before the magistrate in the issuing county.

5. ARRESTS BY PRIVATE PERSONS.

- a. Policy. Uniformed employees of this Department shall, subject to the discretionary power vested in them by law, accept custody of persons arrested by private persons.
- b. Acceptance of Custody. When a uniformed employee is requested to accept custody of a person arrested by a person without peace officer authority, they shall ensure the arresting party has made the arrest in accordance with the procedures provided by law as stated in Sections 837 and 847 PC.
- c. Disposition Procedure.
 - (1) No Mandatory Appearance. When the arrest is for a public offense not requiring a mandatory appearance, the arrested party should be satisfactorily identified. The arrestee should then be cited and released after having signed the CHP 215.
 - (a) Prior to issuing a CHP 215, legal custody of the person arrested must have been accepted.
 - (b) Enter “private person’s arrest” in the *Special* box of the CHP 215.

(c) Complete a CHP 202 or CHP 216, and forward a copy to the court when the CHP 215 is processed. Record the name and address of the arresting person in the *Witness* section. This will enable the court to subpoena the arresting party should the case go to trial or additional investigation be necessary.

(2) Mandatory Appearance. When the arrest is for a felony or a misdemeanor requiring a mandatory appearance, take the arrested person without unnecessary delay before a magistrate.

(a) If the violation is the responsibility of another law enforcement agency, that agency should be requested to handle the arrest to conclusion.

(b) Complete the appropriate Arrest-Investigation Report as provided in General Order (GO) 100.39, CHP 202, Driving Under the Influence Arrest – Investigation Report, and CHP 216, Arrest – Investigation Report.

(3) There is no requirement for the officer accepting custody of a person arrested by a private person to determine probable cause for the arrest (Kinney vs. County of Contra Costa, 8 Cal. App. 3d 761). However, if the facts of the arrest become known to the officer and they are satisfied that there are insufficient grounds for making a criminal complaint against the person arrested, the arrested party should be released from custody pursuant to Section 849(b)(1) PC.

(a) Upon release, issue a CHP 103, Certificate of Release From Custody, as provided in paragraph 8. of this chapter.

(b) Document the circumstances surrounding the incident and the reason for the release on a memorandum to the Area.

6. CONTROLLED SUBSTANCES ARRESTS.

a. Policy.

(1) Arrests for offenses involving possession of controlled substances as defined in the California Uniform Controlled Substances Act (Division 10 of the Health and Safety Code [H&S]) should be handled to conclusion provided supplemental investigation is not required. Notwithstanding this policy, Division Chiefs may require individual Areas to refer controlled substances arrests to local authorities in the event coordination problems are encountered.

(2) Arrests requiring supplemental investigation or resulting in the confiscation of large quantities of controlled substances are to be referred to the

appropriate narcotics task force or allied agency. These cases may qualify for seizure and asset forfeiture. They should be handled in accordance with the policies and procedures contained in HPM 81.5, Drug Programs Manual, Chapter 2, Asset Forfeiture Program.

b. Procedures.

(1) Commanders are to establish procedures to ensure coordination of controlled substances arrests with allied agencies in cases where a desire to become involved is expressed or where good judgement indicates a need for such involvement, such as with large quantities of drugs, evidence of drug manufacturing operations, or large sums of money linked to drug transactions.

(2) Commanders unable to develop satisfactory referral arrangements with allied agencies shall notify their Division.

(3) If satisfactory arrangements cannot be made at the Division level, Assistant Commissioner, Field, shall be informed by memorandum.

(4) Notification Requirements. Upon the arrest of any school employee for any controlled substance offense, as specified in Section 11591 H&S, provided that the officer knows that the arrestee is a school employee, the officer shall do one of the following:

(a) If the school employee is a public school teacher, the officer shall immediately notify, by telephone, the superintendent of schools of the school district employing the teacher and shall immediately give written notice of the arrest to the Commission on Teacher Credentialing and to the superintendent of schools in the county where the person is employed.

(b) If the school employee is a nonteacher in any of the public schools of this state, the officer shall immediately notify, by telephone, the superintendent of schools of the school district employing the nonteacher and shall immediately give written notice of the arrest to the governing board of the school district employing the person.

(c) If the school employee is a teacher in any private school of this state, the officer shall immediately notify, by telephone, the private school authority employing the teacher and shall immediately give written notice of the arrest to the private school authority employing the teacher.

(d) Commands shall ensure standard operating procedures (SOP) are established for the above types of arrests. Notifications made pursuant to these requirements shall be documented in the arrest report.

7. HATE CRIME ARRESTS.

a. Definition. A “hate crime” is defined in Section 422.55 PC as a criminal act committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim: disability, gender, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group with one or more of these actual or perceived characteristics. It is also against the law in California for any person to willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to them by the Constitution or laws of this state in whole or in part because of one or more of the actual or perceived characteristics of the victim listed above.

b. Policy.

(1) When a member of this Department encounters a criminal act that could be classified as a hate crime (not on state property within a designated service area), the appropriate local law enforcement agency should be notified to handle the incident to conclusion.

(2) When the local law enforcement agency cannot or does not respond, this Department will handle the investigation to conclusion.

(3) When a member of this Department handles a hate crime investigation to conclusion, the victim shall be provided with a CHP 876, Rights of Hate Crime Victims, brochure. The CHP 876 shall also be made available, upon request, to members of the public. Additionally, as specified in Section 7923.615(b) of the Government Code (GC), the victim may request that their name be withheld.

c. Procedures.

(1) The preliminary investigation of hate or bias crimes shall be conducted in a manner that is consistent with the original offense.

(2) If an officer has reasonable cause to believe that an offense was bias-motivated and not on state property within a designated service area, they should notify the appropriate local law enforcement agency. When making notification to the local law enforcement agency, the officer shall ensure the agency is made aware that the crime was bias-motivated (a hate crime).

(3) When the local law enforcement agency cannot or does not respond, the investigating officer will handle the investigation to conclusion. The investigating officer shall complete the appropriate investigation report, CHP 202 or CHP 216.

(a) Since the use of derogatory language helps to categorize the crime as a hate crime, officers shall:

1 Record verbatim such language used either before or during the incident, and

2 Record the victim's feelings about why the crime occurred.

(b) Title the report of all known or suspected hate crimes with the primary crime, followed by "Possible Hate Crime" (e.g., Assault/Possible Hate Crime).

(c) Each report should be reviewed by the on-duty supervisor to confirm that the incident was, in fact, a hate crime.

(4) The investigating officer shall provide the victim with a CHP 174, Right to Privacy Acknowledgement. Section 7923.615(b) GC states that the victim may request that their name be withheld in the CHP 202 or CHP 216 (see paragraph 7.c.[9]).

(5) The investigating officer shall provide the victim with a CHP 876.

(a) The CHP 876 may be sent to the victim through the mail if the investigating officer does not have one in their possession at the time the report is taken.

(6) A CHP 729, Uniform Crime Report, shall be completed.

(7) The following PC sections deal with hate crimes:

(a) Section 422.6 PC, interference with exercise of civil rights; damaging property; punishment; speech.

(b) Section 422.7 PC, aggravating factors for punishment.

(c) Section 422.85 PC, protected classes; enhanced penalty for felonies against person or property of public agency or private institution because of class membership.

(d) Section 422.77 PC, violations of orders.

(e) Section 422.8 PC, prosecutions not limited. (This section enables prosecuting authorities to charge a defendant with both the crime [e.g., Section 594 PC, vandalism] and the violation of Section 422.6 or 422.7 PC.)

(f) Section 11411 PC, terrorizing the owner or occupant of real property; placement or display of a sign, symbol, or other physical impression

without authorization; engagement in pattern of conduct; or burning or desecration of religious symbols.

(g) Section 11412 PC, threat; obstructing exercise of religion.

(h) Section 11413 PC, terrorizing; use of destructive device or explosion or commission of arson in specified places listed in this section (e.g., licensed health facility, church, temple, synagogue, other place of worship, courthouse, probation office).

(8) In addition to the above sections, crimes indicating the presence of any of the following elements are considered hate crimes:

(a) The presence of visible symbols of hate (e.g., written racial slurs and graffiti, a burning cross, Nazi Party insignia [swastikas, SS skull and crossbones, SS lightning bolts]).

(b) Desecration of venerated objects in a place of worship.

1 Damage or defacement of tombstones with words or symbols of hate.

2 Arson used to destroy religious objects or property.

(c) Expressions of hatred by the perpetrator.

1 Words alone, when they fall within the specifications of the law and constitute a threat that causes the victim to reasonably fear for their own safety, are a crime.

2 The perpetrator's violent speech can be a preliminary step toward acting out expressed hatred by committing:

a Physical assault.

b Property damage to the victim's business, house, or vehicle.

(d) Bias, or a victim's perception of bias, as demonstrated by the perpetrator's actions.

(e) The date and/or time of the occurrence as it corresponds to a holiday or event of religious, racial, or ethnic significance (e.g., Martin Luther King Jr. Day, Chinese New Year, Cinco de Mayo).

(f) The totality of the circumstances surrounding the crime.

(g) The absence of any other apparent motive.

1 In hate crimes, the person is often victimized simply because they are available, not because of any ongoing relationship.

2 The probability that an individual has been attacked solely on the basis of race, sex, or sexual preference can be established by showing:

a A lack of previous contact between the victim and the offender.

b Lack of arguments or confrontations between the victim and their neighbors.

c Random selection of victims by perpetrators cruising in an automobile.

(9) Right to Confidentiality. Section 7923.615(b) GC states that victims of hate crimes have the right to have their name and address withheld from the CHP 202 or CHP 216, if requested. The officer shall notify the victim of the right to request confidentiality and explain that the victim's name and address will become public record if confidentiality is not requested. The officer will then document in the narrative of the CHP 202 or CHP 216 whether or not the victim chose to exercise that right.

(10) The offer of confidentiality shall be made prior to the initiation of a report, and a CHP 174 shall be completed with the victim's name and address. If confidentiality is not invoked, the CHP 174 shall become an attachment to the CHP 202 or CHP 216. If confidentiality is invoked, the CHP 174 shall become the face page of the report, "John/Jane Doe" shall be inserted in the place of the victim's name on the CHP 202 or CHP 216, and the address shall be excluded. The CHP 174 shall remain confidential and only be released with the report when it is provided to the district attorney's office for purposes of prosecution or to an allied law enforcement agency for follow-up investigation.

8. RELEASE FROM PHYSICAL ARREST.

a. Authority. Section 851.6 PC provides that when a person is arrested and released pursuant to Section 849(b)(1), (3), or (5) PC, or when a person is arrested and released and no accusatory pleading is filed charging an offense, the person shall be issued a certificate describing the action as a detention. The certificate shall be signed by the releasing officer or their supervisor.

b. Policy.

(1) When a person arrested (arrest includes issuance of a CHP 215) by this Department is released from custody without being formally charged with an offense, that person shall be issued a CHP 103.

(2) Section 849.5 PC states that when a person is arrested and released and there is no accusatory pleading filed charging them with an offense, any record of arrest of the person shall include a record of release. The arrest shall not be deemed an arrest, but a detention only.

(3) Section 851.6(d) PC states that when a person is arrested and released pursuant to Section 849(b)(1), (3), or (5) PC, any reference to the action as an arrest shall be deleted from the arrest records of the arresting agency and of the Department of Justice (DOJ).

c. Procedures.

(1) A CHP 103 should normally be issued by a supervisor. If a supervisor is not available, the arresting officer may issue the certificate. Officers should coordinate the release with a supervisor whenever one is available.

(2) While on-duty, supervisors shall be responsible for having copies of the CHP 103 in their possession.

(3) In instances where this Department no longer has physical control of an arrested person to be released from custody without being charged with an offense, a CHP 103 shall be issued.

(4) When circumstances require issuance of a CHP 103, it shall be completed in duplicate. The original shall be filed in the Area office, and the copy shall be delivered to the person being released. If not hand-delivered, the CHP 103 will be mailed to the person released from custody. The mailing date shall be noted on the Area office copy.

(5) Any reference to the action as an arrest of a person released pursuant to Section 849(b)(1), (3), or (5) PC shall be deleted from the arrest records and thereafter be referred to as a detention.

(6) Written notice of the arrestee's case disposition shall be forwarded to the DOJ as outlined in GO 100.28, Criminal Fingerprinting; JUS 8715, Adult Disposition of Arrest and Court Action; and JUS 8716, Juvenile Detention Disposition Report.

(7) Section 851.91 PC requires a facility at which an arrestee is detained to post a sign informing arrestees of their right to petition the court to have their arrest and related records sealed if they were not convicted. A CR-409, Petition to Seal Arrest and Related Records (Penal Code Section 851.91), available on the CHP Intranet site under Forms, shall be posted in CHP Area offices that allow arrestees to be temporarily detained (e.g., during a drug recognition evaluation, stolen vehicle investigation).

(8) Section 851.91 PC also requires a facility at which an arrestee is detained to provide the arrestee with a CR-409, Petition to Seal Arrest and Related Records (Pen. Code, § 851.91), and a CR-409-INFO, Information on How to File a Petition to Seal Arrest and Related Records Under Penal Code Section 851.91, upon request. The CR-409 and CR-409-INFO forms are available in the Forms directory of the CHP Intranet site.

(9) Divisions and Areas shall develop SOP to ensure compliance with Sections 849.5, 851.6(b), and 851.6(d) PC.

9. OFF-DUTY ARRESTS.

a. General. The purpose of these paragraphs is to increase an officer's awareness of the potential exposure to safety and liability risks when involved in off-duty incidents. Nothing in this policy should be interpreted to limit an officer's authority to make an arrest in circumstances that present a clear and immediate threat to public safety.

b. Policy.

(1) Off-duty enforcement actions are discouraged and should not be conducted unless the violation is serious in nature or poses a danger to the public.

(2) Officers should be aware that attempts to initiate an off-duty enforcement action may create an extraordinary safety risk. Officers should use sound professional judgement when involved in these situations.

(3) Any enforcement actions undertaken by officers of this Department shall be in compliance with existing law and departmental policies.

(4) Officers involved in off-duty enforcement actions shall, as soon as practical, notify their command of their involvement.

c. Procedures.

- (1) Normally, identification of the violator(s) should be accomplished by obtaining a description of the violator(s) and of the involved vehicle(s).
- (2) A one-on-one confrontation between an off-duty officer and the violator(s) should be avoided.
- (3) The law enforcement agency with proper jurisdiction should be called to investigate the incident and should initiate the enforcement contact with the violator(s).
- (4) Officers contemplating an off-duty enforcement action should consider several factors prior to initiating the contact including, but not limited to:
 - (a) A lack of radio communications.
 - (b) Lack of vehicle equipped with a red light or siren.
 - (c) Lack of protective equipment such as a firearm, impact weapon, oleoresin capsicum, soft body armor, handcuffs, or flashlight.
 - (d) Unavailability of back-up officers.
 - (e) Potential identification problems such as the violator not readily recognizing an off-duty officer as a peace officer.
 - (f) Responding officers failing to recognize an off-duty officer as a peace officer.
- (5) Officers shall document all off-duty incidents as required by law and departmental policy. Due to the potential for civil liability, commanders should ensure proper documentation is retained at the Area level.
 - (a) Depending on the nature of the incident, documentation may range from a memorandum to an arrest-investigation report.
 - (b) The retention of documentation will conform to the guidelines outlined in the Records Retention Schedule found on the CHP Intranet site.

10. MEDICAL TREATMENT OF INJURED OR ILL ARRESTEES.

- a. Officers shall arrange for a medical examination whenever an arrestee appears to be in need of or requests medical attention, regardless of outward symptoms of illness or injury.
- b. When an arrestee requests or is provided medical attention, arrest reports should include, at minimum, the following additional information:

- (1) Nature of illness or injury.
- (2) Name of attending doctor and their recommendations.
- (3) Whether jail personnel were requested to arrange for the medical care.
- (4) When pertinent, include time elements, symptoms, requests for aid by the arrestee(s), and details of the transportation and treatment.

11. SEXUAL ASSAULT CRIMES.

a. Policy.

(1) When a member of this Department encounters a sexual assault crime, the appropriate local law enforcement agency should be notified to handle the incident.

(2) When the local law enforcement agency cannot or does not respond, this Department will handle the investigation to conclusion. Officers should refer to local jurisdiction protocol for handling sexual offenses.

Section 680 PC established the "Sexual Assault Victims' DNA Bill of Rights." When investigating a felony sex offense violation as referenced in Sections 261, 261.5, 286, 287, or 289 PC, the law enforcement agency investigating the violation shall, at the victim's request, inform the victim of the status of the DNA testing of the rape kit evidence or other crime scene evidence from the victim's case; it is at the agency's discretion to require that the victim's request be in writing. The law enforcement agency shall respond to the victim's request with either an oral or written communication, or via e-mail. The victim has the right to be informed whether or not a DNA profile of the assailant was obtained from the testing of the rape kit evidence or other crime scene evidence from the victim's case.

(3) Section 680 PC states that law enforcement agencies must notify victims of information which is in the law enforcement agency's possession. This is not meant to affect the manner of or frequency with which DOJ provides information to law enforcement agencies.

(a) If the law enforcement agency does not analyze DNA evidence within six months prior to the time limits set forth in Section 803 PC, a victim of a sexual assault offense shall be informed either orally, in writing, or via e-mail of that fact by the law enforcement agency.

(b) A law enforcement agency shall not destroy or dispose of rape kit evidence or other crime scene evidence from an unsolved sexual assault

case before at least 20 years, or if the victim was under 18 years of age at the time of the alleged offense, before the victim's 40th birthday.

1 If the law enforcement agency intends to destroy or dispose of rape kit evidence or other crime scene evidence from an unsolved sexual assault case, a victim of a violation of Section 261, 261.5, 286, 287, or 289 PC shall be given written notification of that intent.

2 Written notification shall be made at least 60 days prior to the destruction or disposal of the rape kit evidence or other crime scene evidence from an unsolved sexual assault case.

(4) Subject to the commitment of sufficient resources to respond to requests for information, sexual assault victims have the following rights:

(a) To be informed whether or not a DNA profile of the assailant was obtained from the testing of the rape kit evidence or other crime scene evidence from the victim's case.

(b) To be informed whether or not a DNA profile of the assailant developed from the rape kit evidence or other crime scene evidence has been entered into the DOJ Data Bank of case evidence.

(c) To be informed of whether or not there is a match between the DNA profile of the assailant developed from the rape kit evidence or other crime scene evidence and a DNA profile contained in the DOJ Convicted Offender DNA Database, provided that disclosure would not impede or compromise an ongoing investigation.

(5) Commands shall ensure Area SOP are established for above types of crimes. Notifications made pursuant to these requirements shall be documented in the arrest report.

b. Procedures.

(1) The investigating officer shall complete the appropriate investigation report, CHP 202 or CHP 216.

(2) Right to Confidentiality. Pursuant to Section 293(a) PC and Section 7923.615(b) GC, victims of sexual crimes have the right to have their name and address withheld from the CHP 202 or CHP 216, if requested. The officer must notify the victim of the right to request confidentiality and explain that the victim's name and address will become public record if confidentiality is not requested. The officer shall then document in the narrative of the CHP 202 or CHP 216 whether or not the victim chose to exercise that right.

(3) The offer of confidentiality shall be made prior to the initiation of a report, and a CHP 174 completed with the victim's name and address. If confidentiality is not invoked, the CHP 174 shall become an attachment to the CHP 202 or CHP 216. If confidentiality is is invoked, the CHP 174 shall become the face page to the report; "John/Jane Doe" shall be inserted in the place of the victim's name on the CHP 202 or CHP 216, and the address shall be excluded. The CHP 174 shall remain confidential and only be released with the report when it was provided to the district attorney's office for purposes of prosecution or to an allied law enforcement agency for follow-up investigation.

(4) Prior to the commencement of the initial interview by law enforcement authorities pertaining to any criminal action arising out of a sexual assault, a victim of sexual assault, as the result of any offense stated in Section 264.2 PC, shall be notified in writing by the attending law enforcement authority of the following:

(a) As stated in Section 679.04 PC, a victim of a sexual assault, as the result of any offense stated in Section 264.2 PC, has the right to have victim advocates and a support person of the victim's choosing present at any interview by law enforcement authorities.

(b) All other rights of the victim pursuant to law in the card described in subdivision (a) of Section 680.2 PC. This card can be obtained by contacting the local law enforcement agency.

(c) They have the right to request to have a person of the same gender or opposite gender as the victim present in the room during any interview with a law enforcement official, unless no such person is readily available. This subdivision applies to investigators and agents employed or retained by law enforcement.

(5) Any victim of a sexual assault who seeks a medical evidentiary examination, as stated in Section 13823.95 PC, shall be provided with a medical evidentiary examination.

(a) A victim of a sexual assault shall not be required to participate or agree to participate in the criminal justice system, either prior to the examination or at any other time.

(b) A law enforcement official shall not, for any reason, discourage a victim of an alleged sexual assault from receiving a medical evidentiary or physical examination.

(c) Section 264.2(b)(1) PC states that victims have the right to have a sexual assault counselor (as defined in Section 1035.2 of the Evidence

Code) and a support person of the victim's choosing present at any medical evidentiary or physical examination.

1 The support person may be excluded from a medical evidentiary or physical examination if the law enforcement authority or medical provider determines that the presence of that individual would be detrimental to the purpose of the examination.

(d) The officer shall immediately notify the local rape victim counseling center pursuant to Section 264.2(b)(1) PC if the victim is transported to a hospital for any medical evidentiary or physical examination and the sexual assault involves an alleged violation of one of the following sections:

1 Section 261 PC, rape.

2 Section 261.5 PC, unlawful sexual intercourse with a person under the age of 18.

3 Section 286 PC, sodomy.

4 Section 287 PC, oral copulation.

5 Section 289 PC, penetration of genital or anal openings by foreign or unknown objects.

(e) The cost of a medical evidentiary examination performed by a qualified healthcare professional, hospital, or other emergency medical facility for a victim of a sexual assault shall be treated as a local cost. The medical examination should be charged to the local law enforcement agency in whose jurisdiction the alleged offense was committed.

1 The local law enforcement agency may seek reimbursement from the Office of Emergency Services for the cost of conducting the medical evidentiary examination portion of a medical examination of a sexual assault victim who does not participate in the criminal justice system per Section 13823.95 PC.

(6) A law enforcement official shall, upon written request by a sexual assault victim, furnish a free copy of the initial crime report to the victim related to the sexual assault, regardless of whether the report has been closed by the law enforcement agency. A law enforcement agency may redact personal, identifying information in the copy furnished to the victim.

(7) The "Victims of Domestic Violence" card (**to be obtained from allied law enforcement agencies in the Area's jurisdiction**) containing local

information shall be provided, including the names and locations of rape victim counseling centers within the county, a statement on the proper procedures for a victim to follow after a sexual assault, and a statement that sexual assault by a person who is the spouse of the victim is a crime.

(8) The CHP 182, Domestic Violence Resource Information, and additional information shall be available in the field and distributed when appropriate along with the CHP 173, Domestic Violence Referral.

(9) Notification Requirements for Arrested School Employees.

(a) Section 291(a) PC states that, upon the arrest of a teacher in any of the public schools of this state for a sexual assault crime enumerated in Section 290 PC or Section 44010 of the Education Code (EC), commands shall immediately notify, by telephone, the superintendent of schools of the school district employing the arrestee. Commands shall also immediately give written notice of the arrest to the Commission on Teacher Credentialing and to the superintendent of schools in the county where the person is employed.

(b) Section 291(b) PC states that, upon the arrest of a nonteacher in any of the public schools of this state for a sexual assault crime enumerated in Section 290 PC or Section 44010 EC, commands shall immediately notify, by telephone, the superintendent of schools of the school district employing the arrestee. Commands shall also immediately give written notice of the arrest to the governing board of the school district employing the nonteacher.

(c) Section 291.1 PC states that, upon the arrest of a private school employee for a sexual assault crime enumerated in Section 290 PC or Section 44010 EC, commands shall, provided it is known that the arrestee is a school employee, immediately notify, by telephone, the private school authority employing the arrestee. Commands shall also immediately give written notice of the arrest to the private school authority employing the arrestee if it is known that the arrestee is a school employee.

12. WARRANTLESS ARRESTS.

a. Policy. Section 836 PC authorizes a peace officer to make an arrest without a warrant under any of the following circumstances:

(1) If the officer has probable cause to believe the person has committed a public offense in their presence.

- (a) To book a suspect for a misdemeanor violation, they shall meet at least one of the qualifications listed in the *Misdemeanor Incarceration* box on the CHP 202 or CHP 216 (described in Section 853.6 PC).
 - (b) Absent any other law or policy requiring booking, suspects who do not meet one of the qualifications listed in the *Misdemeanor Incarceration* box shall be issued a misdemeanor citation.
- (2) If the officer has probable cause to believe the person has committed a felony, even if the felony did not occur in the officer's presence.
- (3) Domestic battery (Section 243[e][1] PC) or neglect/abandonment of a child (Section 270 PC).
- (a) Any time a law enforcement officer is called to a domestic violence situation, the officer shall make a good faith effort to inform the victim of their right to make a citizen's arrest, unless the officer makes an arrest for relational battery (Section 243[e][1] PC) or corporal injury (Section 273.5 PC).
 - (b) Refer to Chapter 3 and Chapter 5, Response to Child Abuse or Neglect, of this manual for additional information.
- (4) Violation of a domestic violence protective or restraining order.
- (a) Refer to Chapter 4, Issuance, Service, and Enforcement of Court Protective Orders, of this manual for additional information.
- (5) If an officer has probable cause to believe the person has committed assault and battery on a family member, current or former partner, or any person 65 years of age or older.
- (a) Refer to Chapter 3 of this manual for additional information.
- (6) Carrying a concealed firearm in an airport.
- (7) Shoplifting, where the value of the property taken does not exceed \$950 (Section 459.5 PC), when all of the following conditions are met:
- (a) The officer has probable cause to believe the person committed the violation.
 - (b) The arrest is made without delay after the violation.
 - (c) Any of the following occurs:

- 1 The officer takes a sworn statement from a person who witnessed the person committing the violation.
- 2 The officer observes video of the person to be arrested committing the alleged violation.
- 3 The person to be arrested possesses a quantity of retail items inconsistent with personal use, and the items bear security devices that would normally be removed upon purchase.
- 4 The person to be arrested confesses to the alleged crime to the officer.