

AMENDED IN ASSEMBLY APRIL 16, 2024

AMENDED IN ASSEMBLY MARCH 18, 2024

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 1990

Introduced by Assembly Member Wendy Carrillo
(Principal coauthors: Assembly Members Gipson and Villapudua)
(~~Coauthor: Assembly Member Alanis~~)
(Coauthors: Assembly Members Alanis, Lackey, Stephanie Nguyen,
***Petrie-Norris, and Rodriguez*)**

January 30, 2024

An act to amend Sections 836 and 853.6 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 1990, as amended, Wendy Carrillo. Criminal procedure: arrests: shoplifting.

(1) Existing law prohibits shoplifting, defined as entering a commercial establishment with intent to commit theft while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed \$950. Existing law requires an act that falls within this definition to be charged as shoplifting and not as burglary or theft. Under existing law, shoplifting is punishable as a misdemeanor, except when the defendant has prior convictions, as specified.

Existing law authorizes a peace officer to make a warrantless arrest for a misdemeanor when the officer has probable cause to believe the person to be arrested has committed the misdemeanor in the officer's presence. Existing law also authorizes a private person to make an arrest

for a misdemeanor committed in their presence, and requires the person to deliver the arrested person to a peace officer or magistrate. Existing law additionally authorizes a merchant to detain a person for a reasonable time and in a reasonable manner to determine if a person has unlawfully taken merchandise.

Existing law authorizes a peace officer to make a warrantless arrest for specified misdemeanors relating to domestic violence, violation of a restraining order, and carrying a concealed firearm at an airport that did not occur in the officer’s presence.

This bill would authorize a peace officer to make a warrantless arrest for a misdemeanor shoplifting offense not committed in the officer’s presence if the officer has probable cause to believe that person has committed ~~shoplifting~~ *shoplifting, as specified*.

(2) Existing law requires a peace officer to release upon a signed promise to appear any person arrested for a misdemeanor, unless the person demands to be taken before a magistrate. Existing law provides certain reasons a person arrested for a misdemeanor shall not be released including that the person is intoxicated or in need of medical attention, the person is unable to provide satisfactory proof of identification, or there are outstanding arrest warrants for the person. Additionally, existing law exempts from this provision persons arrest for specified crimes including domestic violence, stalking, threatening a witness, and, until January 1, 2026, organized retail theft.

This bill would additionally exempt a person arrested for shoplifting from the requirement that they be released on citation.

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 836 of the Penal Code is amended to
- 2 read:
- 3 836. (a) A peace officer may arrest a person in obedience to
- 4 a warrant, or, pursuant to the authority granted by Chapter 4.5
- 5 (commencing with Section 830), without a warrant, may arrest a
- 6 person whenever any of the following circumstances occur:
- 7 (1) The officer has probable cause to believe that the person to
- 8 be arrested has committed a public offense in the officer’s presence.
- 9 (2) The person arrested has committed a felony, although not
- 10 in the officer’s presence.

1 (3) The officer has probable cause to believe that the person to
2 be arrested has committed a felony, whether or not a felony, in
3 fact, has been committed.

4 (b) Any time a peace officer is called out on a domestic violence
5 call, it shall be mandatory that the officer make a good faith effort
6 to inform the victim of their right to make a citizen's arrest, unless
7 the peace officer makes an arrest for a violation of paragraph (1)
8 of subdivision (e) of Section 243 or 273.5. This information shall
9 include advising the victim how to safely execute the arrest.

10 (c) (1) When a peace officer is responding to a call alleging a
11 violation of a domestic violence protective or restraining order
12 issued under Section 527.6 of the Code of Civil Procedure, the
13 Family Code, Section 136.2, 646.91, or paragraph (2) of
14 subdivision (a) of Section 1203.097 of this code, Section 213.5 or
15 15657.03 of the Welfare and Institutions Code, or of a domestic
16 violence protective or restraining order issued by the court of
17 another state, tribe, or territory and the peace officer has probable
18 cause to believe that the person against whom the order is issued
19 has notice of the order and has committed an act in violation of
20 the order, the officer shall, consistent with subdivision (b) of
21 Section 13701, make a lawful arrest of the person without a warrant
22 and take that person into custody whether or not the violation
23 occurred in the presence of the arresting officer. The officer shall,
24 as soon as possible after the arrest, confirm with the appropriate
25 authorities or the Domestic Violence Protection Order Registry
26 maintained pursuant to Section 6380 of the Family Code that a
27 true copy of the protective order has been registered, unless the
28 victim provides the officer with a copy of the protective order.

29 (2) The person against whom a protective order has been issued
30 shall be deemed to have notice of the order if the victim presents
31 to the officer proof of service of the order, the officer confirms
32 with the appropriate authorities that a true copy of the proof of
33 service is on file, or the person against whom the protective order
34 was issued was present at the protective order hearing or was
35 informed by a peace officer of the contents of the protective order.

36 (3) In situations where mutual protective orders have been issued
37 under Division 10 (commencing with Section 6200) of the Family
38 Code, liability for arrest under this subdivision applies only to
39 those persons who are reasonably believed to have been the
40 dominant aggressor. In those situations, prior to making an arrest

1 under this subdivision, the peace officer shall make reasonable
2 efforts to identify, and may arrest, the dominant aggressor involved
3 in the incident. The dominant aggressor is the person determined
4 to be the most significant, rather than the first, aggressor. In
5 identifying the dominant aggressor, an officer shall consider (A)
6 the intent of the law to protect victims of domestic violence from
7 continuing abuse, (B) the threats creating fear of physical injury,
8 (C) the history of domestic violence between the persons involved,
9 and (D) whether either person involved acted in self-defense.

10 (d) Notwithstanding paragraph (1) of subdivision (a), if a suspect
11 commits an assault or battery upon a current or former spouse,
12 fiancé, fiancée, a current or former cohabitant as defined in Section
13 6209 of the Family Code, a person with whom the suspect currently
14 is having or has previously had an engagement or dating
15 relationship, as defined in paragraph (10) of subdivision (f) of
16 Section 243, a person with whom the suspect has parented a child,
17 or is presumed to have parented a child pursuant to the Uniform
18 Parentage Act (Part 3 (commencing with Section 7600) of Division
19 12 of the Family Code), a child of the suspect, a child whose
20 parentage by the suspect is the subject of an action under the
21 Uniform Parentage Act, a child of a person in one of the above
22 categories, any other person related to the suspect by consanguinity
23 or affinity within the second degree, or any person who is 65 years
24 of age or older and who is related to the suspect by blood or legal
25 guardianship, a peace officer may arrest the suspect without a
26 warrant where both of the following circumstances apply:

27 (1) The peace officer has probable cause to believe that the
28 person to be arrested has committed the assault or battery, whether
29 or not it has in fact been committed.

30 (2) The peace officer makes the arrest as soon as probable cause
31 arises to believe that the person to be arrested has committed the
32 assault or battery, whether or not it has in fact been committed.

33 (e) In addition to the authority to make an arrest without a
34 warrant pursuant to paragraphs (1) and (3) of subdivision (a), a
35 peace officer may, without a warrant, arrest a person for a violation
36 of Section 25400 when all of the following apply:

37 (1) The officer has reasonable cause to believe that the person
38 to be arrested has committed the violation of Section 25400.

39 (2) The violation of Section 25400 occurred within an airport,
40 as defined in Section 21013 of the Public Utilities Code, in an area

1 to which access is controlled by the inspection of persons and
2 property.

3 (3) The peace officer makes the arrest as soon as reasonable
4 cause arises to believe that the person to be arrested has committed
5 the violation of Section 25400.

6 (f) (1) In addition to the authority to make an arrest without a
7 warrant pursuant to subdivision (a), a peace officer may, without
8 a warrant, arrest a person for a violation of Section 459.5 not
9 committed in the officer's presence if the officer has ~~reasonable~~
10 *probable* cause to believe that the person to be arrested has
11 committed a violation of Section 459.5.

12 (2) *The probable cause to make an arrest shall be based on a*
13 *sworn statement obtained by the officer from a person who*
14 *witnessed the person to be arrested committing the alleged*
15 *violation.*

16 SEC. 2. Section 853.6 of the Penal Code, as amended by
17 Section 1 of Chapter 856 of the Statutes of 2022, is amended to
18 read:

19 853.6. (a) (1) When a person is arrested for an offense declared
20 to be a misdemeanor, including a violation of a city or county
21 ordinance, and does not demand to be taken before a magistrate,
22 that person shall, instead of being taken before a magistrate, be
23 released according to the procedures set forth by this chapter,
24 although nothing prevents an officer from first booking an arrestee
25 pursuant to subdivision (g). If the person is released, the officer
26 or the officer's superior shall prepare in duplicate a written notice
27 to appear in court, containing the name and address of the person,
28 the offense charged, and the time when, and place where, the
29 person shall appear in court. If, pursuant to subdivision (i), the
30 person is not released prior to being booked and the officer in
31 charge of the booking or the officer's superior determines that the
32 person should be released, the officer or the officer's superior shall
33 prepare a written notice to appear in a court.

34 (2) When a person is arrested for a misdemeanor violation of a
35 protective court order involving domestic violence, as defined in
36 Section 13700, or arrested pursuant to a policy, as described in
37 Section 13701, the person shall be taken before a magistrate instead
38 of being released according to the procedures set forth in this
39 chapter, unless the arresting officer determines that there is not a
40 reasonable likelihood that the offense will continue or resume or

1 that the safety of persons or property would be imminently
2 endangered by release of the person arrested. Prior to adopting
3 these provisions, each city, county, or city and county shall develop
4 a protocol to assist officers to determine when arrest and release
5 is appropriate, rather than taking the arrested person before a
6 magistrate. The county shall establish a committee to develop the
7 protocol, consisting of, at a minimum, the police chief or county
8 sheriff within the jurisdiction, the district attorney, county counsel,
9 city attorney, representatives from domestic violence shelters,
10 domestic violence councils, and other relevant community
11 agencies.

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

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

15 (B) Section 273.5.

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

19 (D) Section 646.9.

20 (4) This subdivision shall not affect a defendant's ability to be
21 released on bail or on their own recognizance, except as specified
22 in Section 1270.1.

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

26 (c) The place specified in the notice shall be the court of the
27 magistrate before whom the person would be taken if the
28 requirement of taking an arrested person before a magistrate were
29 complied with, or shall be an officer authorized by that court to
30 receive a deposit of bail.

31 (d) The officer shall deliver one copy of the notice to appear to
32 the arrested person, and the arrested person, in order to secure
33 release, shall give their written promise to appear in court as
34 specified in the notice by signing the duplicate notice, which shall
35 be retained by the officer, and the officer may require the arrested
36 person, if the arrested person has no satisfactory identification, to
37 place a right thumbprint, or a left thumbprint or fingerprint if the
38 person has a missing or disfigured right thumb, on the notice to
39 appear. Except for law enforcement purposes relating to the identity
40 of the arrestee, a person or entity shall not sell, give away, allow

1 the distribution of, include in a database, or create a database with,
2 this print. Upon the signing of the duplicate notice, the arresting
3 officer shall immediately release the person arrested from custody.

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

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

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

10 (3) (A) The duplicate notice and underlying police reports in
11 support of the charge or charges shall be filed with the prosecuting
12 attorney in cases other than those specified in paragraphs (1) and
13 (2).

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

25 (C) Upon the filing of the notice with the magistrate by the
26 officer, or the filing of the notice or formal complaint by the
27 prosecutor, the magistrate may fix the amount of bail that in the
28 magistrate's judgment, in accordance with Section 1275, is
29 reasonable and sufficient for the appearance of the defendant and
30 shall endorse upon the notice a statement signed by the magistrate
31 in the form set forth in Section 815a. The defendant may, prior to
32 the date upon which the defendant promised to appear in court,
33 deposit with the magistrate the amount of bail set by the magistrate.
34 At the time the case is called for arraignment before the magistrate,
35 if the defendant does not appear, either in person or by counsel,
36 the magistrate may declare the bail forfeited, and may, in the
37 magistrate's discretion, order that further proceedings shall not be
38 had in the case, unless the defendant has been charged with a
39 violation of Section 374.3 or 374.7 of this code or of Section
40 11357, 11360, or 13002 of the Health and Safety Code, or a

1 violation punishable under Section 5008.7 of the Public Resources
2 Code, and the defendant has previously been convicted of a
3 violation of that section or a violation that is punishable under that
4 section, except when the magistrate finds that undue hardship will
5 be imposed upon the defendant by requiring the defendant to
6 appear, the magistrate may declare the bail forfeited and order that
7 further proceedings not be had in the case.

8 (D) Upon the making of the order that further proceedings not
9 be had, all sums deposited as bail shall immediately be paid into
10 the county treasury for distribution pursuant to Section 1463.

11 (f) A warrant shall not be issued for the arrest of a person who
12 has given a written promise to appear in court, unless and until the
13 person has violated that promise or has failed to deposit bail, to
14 appear for arraignment, trial, or judgment, or to comply with the
15 terms and provisions of the judgment, as required by law.

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

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

1 (i) When a person is arrested by a peace officer for a
2 misdemeanor, that person shall be released according to the
3 procedures set forth in this chapter unless one of the following is
4 a reason for nonrelease, in which case the arresting officer may
5 release the person, except as provided in subdivision (a), or the
6 arresting officer shall indicate, on a form to be established by the
7 officer's employing law enforcement agency, which of the
8 following was a reason for the nonrelease:

9 (1) The person arrested was so intoxicated that they could have
10 been a danger to themselves or to others.

11 (2) The person arrested required medical examination or medical
12 care or was otherwise unable to care for their own safety.

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

16 (4) There were one or more outstanding arrest warrants for the
17 person.

18 (5) The person could not provide satisfactory evidence of
19 personal identification.

20 (6) The prosecution of the offense or offenses for which the
21 person was arrested, or the prosecution of any other offense or
22 offenses, would be jeopardized by immediate release of the person
23 arrested.

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

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

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

32 (10) (A) The person was subject to Section 1270.1.

33 (B) The form shall be filed with the arresting agency as soon
34 as practicable and shall be made available to any party having
35 custody of the arrested person, subsequent to the arresting officer,
36 and to any person authorized by law to release the arrested person
37 from custody before trial.

38 (11) The person has been cited, arrested, or convicted for
39 misdemeanor or felony theft from a store in the previous six
40 months.

1 (12) There is probable cause to believe that the person arrested
2 is guilty of committing a violation of Section 490.4 or 459.5.

3 (j) (1) Once the arresting officer has prepared the written notice
4 to 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 (2) Any person, including the arresting officer and any member
8 of the officer’s department or agency, or any peace officer, who
9 alters, conceals, modifies, nullifies, or destroys, or causes to be
10 altered, concealed, modified, nullified, or destroyed, the face side
11 of the remaining original or a copy of a citation that was retained
12 by the officer, for any reason, before it is filed with the magistrate
13 or with a person authorized by the magistrate to receive deposit
14 of bail, is guilty of a misdemeanor.

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

21 (4) 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 (5) A personal relationship with any officer, public official, or
25 law enforcement agency shall not be grounds for dismissal.

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

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

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

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

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

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

25 (m) This section shall remain in effect only until January 1,
26 2026, and as of that date is repealed.

27 SEC. 3. Section 853.6 of the Penal Code, as added by Section
28 2 of Chapter 856 of the Statutes of 2022, is amended to read:

29 853.6. (a) (1) When a person is arrested for an offense declared
30 to be a misdemeanor, including a violation of a city or county
31 ordinance, and does not demand to be taken before a magistrate,
32 that person shall, instead of being taken before a magistrate, be
33 released according to the procedures set forth by this chapter,
34 however an officer may first book an arrestee pursuant to
35 subdivision (g). If the person is released, the officer or the officer’s
36 superior shall prepare, in duplicate, a written notice to appear in
37 court, containing the name and address of the person, the offense
38 charged, and the time when, and place where, the person shall
39 appear in court. If, pursuant to subdivision (i), the person is not
40 released prior to being booked and the officer in charge of the

1 booking or the officer's superior determines that the person should
2 be released, the officer or the officer's superior shall prepare a
3 written notice to appear in a court.

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

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

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

25 (B) Section 273.5.

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

29 (D) Section 646.9.

30 (4) This subdivision does not affect a defendant's ability to be
31 released on bail or on their own recognizance, except as specified
32 in Section 1270.1.

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

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

1 (d) The officer shall deliver one copy of the notice to appear to
2 the arrested person, and the arrested person, in order to secure
3 release, shall give their written promise to appear in court as
4 specified in the notice by signing the duplicate notice, which shall
5 be retained by the officer. The officer may require the arrested
6 person, if the arrested person has no satisfactory identification, to
7 place a right thumbprint, or a left thumbprint or fingerprint if the
8 person has a missing or disfigured right thumb, on the notice to
9 appear. Except for law enforcement purposes relating to the identity
10 of the arrestee, a person or entity may not sell, give away, allow
11 the distribution of, include in a database, or create a database with,
12 this print. Upon the person signing the duplicate notice, the
13 arresting officer shall immediately release the person arrested from
14 custody.

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

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

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

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

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

36 (C) Upon the filing of the notice with the magistrate by the
37 officer, or the filing of the notice or formal complaint by the
38 prosecutor, the magistrate may fix the amount of bail that in the
39 magistrate's judgment, in accordance with Section 1275, is
40 reasonable and sufficient for the appearance of the defendant and

1 shall endorse upon the notice a statement signed by the magistrate
2 in the form set forth in Section 815a. The defendant may, prior to
3 the date upon which the defendant promised to appear in court,
4 deposit with the magistrate the amount of bail set by the magistrate.
5 When the case is called for arraignment before the magistrate, if
6 the defendant does not appear, either in person or by counsel, the
7 magistrate may declare the bail forfeited, and may, in the
8 magistrate's discretion, order that no further proceedings shall be
9 had in the case, unless the defendant has been charged with a
10 violation of Section 374.3 or 374.7 of this code or of Section
11 11357, 11360, or 13002 of the Health and Safety Code, or a
12 violation punishable under Section 5008.7 of the Public Resources
13 Code, and the defendant has previously been convicted of a
14 violation of that section or a violation that is punishable under that
15 section, except in cases where the magistrate finds that undue
16 hardship will be imposed upon the defendant by requiring the
17 defendant to appear, the magistrate may declare the bail forfeited
18 and order that no further proceedings be had in the case.

19 (D) Upon the making of the order that no further proceedings
20 be had, all sums deposited as bail shall immediately be paid into
21 the county treasury for distribution pursuant to Section 1463.

22 (f) A warrant shall not be issued for the arrest of a person who
23 has given a written promise to appear in court, unless and until the
24 person has violated that promise or has failed to deposit bail, to
25 appear for arraignment, trial, or judgment or to comply with the
26 terms and provisions of the judgment, as required by law.

27 (g) The officer may book the arrested person at the scene or at
28 the arresting agency prior to release or indicate on the citation that
29 the arrested person shall appear at the arresting agency to be booked
30 or indicate on the citation that the arrested person shall appear at
31 the arresting agency to be fingerprinted prior to the date the arrested
32 person appears in court. If it is indicated on the citation that the
33 arrested person shall be booked or fingerprinted prior to the date
34 of the person's court appearance, the arresting agency, at the time
35 of booking or fingerprinting, shall provide the arrested person with
36 verification of the booking or fingerprinting by making an entry
37 on the citation. If it is indicated on the citation that the arrested
38 person is to be booked or fingerprinted, the magistrate, judge, or
39 court shall, before the proceedings begin, order the defendant to
40 provide verification that the defendant was booked or fingerprinted

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

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

12 (i) When a person is arrested by a peace officer for a
13 misdemeanor, that person shall be released according to the
14 procedures set forth by this chapter unless one of the following is
15 a reason for nonrelease, in which case the arresting officer may
16 release the person, except as provided in subdivision (a), or the
17 arresting officer shall indicate, on a form to be established by the
18 officer's employing law enforcement agency, which of the
19 following was a reason for the nonrelease:

20 (1) The person arrested was so intoxicated that they could have
21 been a danger to themselves or to others.

22 (2) The person arrested required medical examination or medical
23 care or was otherwise unable to care for their own safety.

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

27 (4) There were one or more outstanding arrest warrants for the
28 person.

29 (5) The person could not provide satisfactory evidence of
30 personal identification.

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

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

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

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

4 (10) (A) The person was subject to Section 1270.1.

5 (11) There is probable cause to believe that the person arrested
6 is guilty of committing a violation of Section 459.5.

7 (B) The form shall be filed with the arresting agency as soon
8 as practicable and shall be made available to any party having
9 custody of the arrested person, subsequent to the arresting officer,
10 and to any person authorized by law to release the arrested person
11 from custody before trial.

12 (j) (1) Once the arresting officer has prepared the written notice
13 to appear and has delivered a copy to the person arrested, the officer
14 shall deliver the remaining original and all copies as provided by
15 subdivision (e).

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

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

30 (4) If the magistrate makes a finding that there are grounds for
31 dismissal, the finding shall be entered in the record and the charges
32 dismissed.

33 (5) A personal relationship with any officer, public official, or
34 law enforcement agency shall not be grounds for dismissal.

35 (k) (1) A person contesting a charge by claiming under penalty
36 of perjury not to be the person issued the notice to appear may
37 choose to submit a right thumbprint, or a left thumbprint if the
38 person has a missing or disfigured right thumb, to the issuing court
39 through the person's local law enforcement agency for comparison
40 with the one placed on the notice to appear. A local law

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

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

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

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

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

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

34 (m) This section shall become operative January 1, 2026.

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