



KERN COUNTY PROBATION DEPARTMENT

Policies And Procedures

TITLE: Notice To Appear- Citation Books			Article: 1717
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POLICY

During the course of duty, Deputy Probation Officers will encounter offenders who have active misdemeanor warrants or commit open misdemeanor offenses. Booking the offender in jail is not always appropriate and may take significant time away from an officer's primary duties. Therefore, the Kern County Probation Department has adopted an official citation (TR 120) for use by authorized Probation personnel. The citation fulfills all necessary legal requirements for Notices to Appear and is approved by the California Judicial Council. The purpose of this policy is to provide guidelines for the use of citations.

The Kern County Probation Department citation may be issued, when appropriate, for criminal violations or for release of suspected adult offenders in lieu of bail. Citations will be issued to offenders by the Chief Probation Officer, the Deputy Probation Officers, or any such persons specifically authorized. The citation is the property of the Kern County Probation Department and subject to the rules of inspection. No other use is authorized. Violation of this policy will result in disciplinary action and may result in criminal prosecution.

Citation books will be ordered, issued and tracked through the Special Services Team. Officers who are issued citation books will be responsible for the proper usage of the citations and maintaining the security of the book itself.

GUIDELINES

A. Procuring/Receiving/Storing/Issuing Citation Books

The Special Services Team Supervisor or his/her designee is authorized to issue new citation books to individual Kern County Probation Department employees. Division Directors may authorize additional Kern County Probation Department employees to access the citation database, order citation books, receive citation books for storage and issue citation books.

Actions to be taken by the Special Services Team Supervisor or his/her designee:

1. Maintain the citation book database on the Z:drive.
 - a. All citation books will be tracked via the citation database on the Z:drive. The Special Services Team will maintain a stock of new

citation books for distribution. The database will track all citation books from their initial issuance from the Special Services Team to their storage at the warehouse once depleted. This system will ensure accountability for periodic supervisory review and audit purposes.

2. Inventory all citation books and order more when necessary.
 - a. Order replacement citation books in lots of 20.
 - b. Update the citation database within 72 hours of receipt of the order.
3. Distribute citation books to individual field units as requested.
 - a. Update the citation database to reflect the citation book issuance.
 - b. Authorized personnel may possess up to two citation books at any time.
4. Ensure the department's unused supply of citation books remains in a secure location.
5. Receive completed and no longer needed citation books from unit supervisors.
 - a. Update the citation database to reflect the receipt of the used citation book.
 - b. Ensure the used citation books are maintained in a secure location and not reissued.
6. Receive goldenrod copies of issued citations and Notice of Correction and Proof of Service / Notice of Amended Citation from designated clerical.
 - a. Maintain the goldenrod copies and Notice of Correction and Proof of Service / Notice of Amended Citation in a secure location as records.
7. Store the used citation books and goldenrod records until receipt of a valid destruction order.
 - a. Destroy books pursuant to a valid destruction order.

B. Using/Maintaining/Returning Citation books

Official Kern County Probation Department citation books will be issued to authorized employees as required by individual duty assignments.

Actions to be taken by officers who are assigned citation books:

1. Exercise care, custody, and control of the assigned citation book.
 - a. Account for all citations in the book.
 - i. Missing citations require a memo from the officer who is assigned the book.
 - a) The memo will identify what is missing and what subsequent investigation was conducted to determine how or why the citations are missing. The memo shall be approved by the officer's supervisor and stapled or otherwise permanently attached to the citation book.
 - b. Citation books are subject to inspection upon reasonable request.
 - i. Maintain the citation book in a locked vehicle or storage when not being used.
 - ii. Issued citation books will be kept in a department issued protective casing.
2. Issue citations as necessary pursuant to state and federal law and this policy.
 - a. Prior to initiating a citation, complete your investigation to ensure a citation is appropriate.
 - i. Determine all code sections that were violated.
 - ii. Conduct a records check of the offender.
 - b. Citations will not be issued to:
 - i. Juveniles.
 - a) Misdemeanor offenses committed by juveniles can be addressed through submitting a PR to the petition desk. A juvenile citation does not specify a court date and is, therefore, not necessary.
 - ii. Adults who have committed any of the offenses specified in PC 853.6.

- a) PC 243(e), Battery against spouse.
 - b) PC 273.5, Willful infliction of corporal injury.
 - c) PC 273.6, if the detained person made threats to kill or harm, has engaged in violence against, or has gone to the residence or workplace of, the protected party.
 - d) PC 646.9, Stalking.
- iii. Adults who cannot produce an operator's license or satisfactory proof of identification.
 - iv. Adults who have committed a felony offense.
 - v. Adults who have an active felony warrant.
 - vi. Adults who have an active child support warrants (#PT-*****)
 - vii. Adults who have active misdemeanor warrant with no bail amount.
 - viii. Adults who have an active misdemeanor warrant for charges involving violence, firearm, resisting arrest or giving false information to a peace officer.
 - ix. Adults so intoxicated they may be a danger to themselves or others.
 - x. Adults who require medical care or are otherwise unable to care for their own safety.
 - xi. Adults whose release would jeopardize the prosecution of the offense(s) committed or any other offense(s)
 - xii. Adults whose release would likely cause the offense(s) to continue or resume or jeopardize the safety of persons or property.
 - xiii. Adults on active Formal Probation, Mandatory Supervision or Post Release Community Supervision who commit open misdemeanors (misdemeanor warrants can be cited for offenders on status).
 - xiv. Adults who refuse to sign the citation and/or demand to be taken before a judge.

3. Complete the citation with as much information as available including physical description, detail of charges, and appropriate court appearance information.
 - a. Write legibly and with enough force to penetrate all carbon copies.
 - b. Citation books will be kept in a department issued protective casing which will be used to write on.
 - c. Pens must be black ink and not have a soft tip.
4. Include all appropriate open charges on the citation using the exact specific code sections.
 - a. If there are more requested charges than available lines (12) on the citation, the offender must be arrested and booked in the jail.
 - i. Do not use a second citation to continue listing charges.
 - b. The code sections must be listed in the same manner as they would on a Field Arrest Data (FAD).
 - c. If issuing a citation for a misdemeanor warrant, write only the case number on the "Codes" line(s).
 - d. "M" (misd) or "I" (infraction) must be circled for every charge/warrant listed.
5. If the offender has multiple active misdemeanor warrants out of different Courts, there must be a separate citation issued for each Court. i.e.
 - a. Do not cite a BM*****A warrant and an SM*****A warrant on the same citation.
6. If you are citing an offender for open misdemeanor charges and they have an active misdemeanor warrant, there must be a separate citation issued for each.
7. All citations will be set in the Court of jurisdiction for the location in which the crime was committed for open charges or the Court of issuance for warrants.
 - a. If there is a question regarding the Court of jurisdiction for the location of the crime, contact dispatch to determine agency of jurisdiction and issue the citation to the corresponding Court.

- i.e. If the crime was committed in the Lamont Substation's jurisdiction, the offender will be cited into the Lamont Court (Tehachapi PD goes to the Mojave Court, etc.).
 - b. For Court addresses, phone numbers and hearing times, refer to the Court Appearance Information document.
- 8. Request a PR# and get the appropriate court date from Custody Intake at the time of issuing the citation. The issuing officer will provide Custody Intake with the citation number, the Court of jurisdiction and the charges. when requesting the PR#.
 - a. When requesting a PR# for an infraction, advise Custody Intake of the charge and that it is an infraction.
 - i. A PR report will not be generated.
 - b. When requesting a PR# for a misdemeanor warrant, advise the citation number and "Misd warrant #BM*****A" as the charge.
 - i. A PR report will not be generated.
 - ii. Custody Intake will clear the warrant from the system.
- 9. The issuing officer's badge number will be used in the serial number. space at the bottom of the citation.
 - a. CAD ID# or any other number will NOT be accepted in place of the officer's badge number
- 10. Any officer notes will be made on the back of the goldenrod (records). copy.
 - a. If the citation is being issued for an infraction only, a narrative is required on the back of the goldenrod(records) copy.
 - i. A PR report will not be generated, and this will be all an officer has to reference if called to Court on the matter.
- 11. When circumstances are such that it is necessary to VOID a citation before it is signed by the offender.
 - a. Write VOID across the face of the white copy and leave all copies in the citation book.
 - i. Do not have the offender sign a voided citation.

- b. Voided citations will require a written explanation on the back of the green copy or a memo attached to the green copy, if additional space is needed.
 - i. Date and sign the green copy and/or memo.
 - ii. Advise your unit supervisor of the voided citation.
 - a) Supervisor will review, sign and date the green copy and/or memo.
 - c. Citations cannot be voided for use as a written warning.
 - i. Verbal warnings will be given in place of written warnings.
12. Ensure the offender signs the citation.
- a. If the offender refuses to sign, he must be booked into the Kern County Jail.
 - b. Do not have the offender sign a voided citation.
13. Issuing officer must sign the citation and write badge number in "Serial No." box.
- a. Signature **MUST** be legible, printing your name is acceptable.
14. Provide the offender with the canary copy.
15. Do not alter the citation in any way after it has been signed.
- a. An arresting officer cannot legally change or void a citation after it is signed by the offender (PC 853.6).
16. Prior to leaving at the end of the shift, verify any misdemeanor warrants cited during the shift have been cleared from CJIS.
- a. If CJIS still shows the warrant as active, contact Custody Intake and remind them to maintain the warrant.
17. Follow up on all issued citations the next business day.
- a. Separate the carbon copies of the citation and distribute.
 - i. The white and pink copies will be attached to the PR report as discovery and forwarded to the Court.
 - ii. The goldenrod copy will be given to the unit's clerical staff.

Clerical will scan the citation, front and back, into the Laserfiche Citation folder and route it to the Special Services Team Supervisor for storage.

- iii. The green copy will remain in the citation book.

The green copy is not perforated and is designed to remain in the book.

- b. If a citation is issued for infractions only:

- i. Photo copy the front of the white copy and the back of the goldenrod copy (narrative) side by side on a single sheet of paper.
- ii. Staple the white and pink copies to the photocopy and route to Traffic Court.
- iii. Do not generate a PR report.

- 18. If a citation is issued for open misdemeanor charges on the Direct File List:

The Direct File List is a list of charges that can be filed directly with the Court without having to be reviewed by the District Attorney's Office

- a. Direct File Charges:

- i. BP - 25662, 25665, 4149(a), 25658(a)
- ii. PC - 597.7(a), 488, 647(b), 602, 647(f)
- iii. HS - 12671, 11364, 11364.1
- iv. VC2800.1, 12500(a), 12500(b), 14601(a), 14601.1(a)*, 14601.2(a), 4462.5, 23224, 23109(c), 20002(a), 23109(d), 23152(a)*, 23152(b)*, 23222(b), 23223, 23225, 23103

*Not accepted as a Direct File if any priors in last 10 years.

- v. All Municipal Code Violations, County Ordinances, Uniform Fire Code Citations, Fish and Game Citations, Parks and Recreation Citations.
- b. If any of the requested charges are NOT on the Direct File list, then a complaint request packet must be submitted to the DA's office.

- i. Submit a complaint packet directly to the Criminal Counter office at 1215 Truxtun Avenue, 1st Floor, ten Court days prior to the scheduled Court date. The complaint packet must be two holes punched or it will be rejected.
 - a) Submit the original PR report and two copies.
 - b) Staple the white and pink copies of the citation to the original PR report – Do not hole punch the actual citation.
 - c) Three photocopies of the citation at 115%, this will serve as the Probable Cause Declaration/Field Arrest Data.
 - d) Three copies of the RAP/DL sheet
 - c. If the offense occurred in the jurisdiction of an outlying Court, the complaint request packet must be delivered to the corresponding Court clerk or the Regional Supervision Unit Supervisor (Juvenile) who will ensure it is delivered to the clerk.
19. If a citation is issued for open misdemeanor charges not on the Direct File List:
- a. Submit a complaint request packet to the District Attorney's office at 1215 Truxtun Ave., 4th floor, ten Court days prior to the scheduled Court date.
 - i. Formal Complaint Request.
 - ii. Original PR report and two copies.
 - iii. Staple the white and pink copies of the citation to the original PR report.
 - iv. Three photocopies of the citation at 115%, this will serve as the Probable Cause Declaration/Field Arrest Data.
 - v. Three copies of the RAP/DL sheet
 - b. If filed by the District Attorney's Office, pick up, sign and deliver the complaint packet to the Criminal Counter on the first floor.
 - c. If the offense occurred in the jurisdiction of an outlying Court, the complaint request packet must be delivered to the corresponding DA.

- i. Must be delivered by the citing officer. The Regional Supervision Supervisor will not deliver packets to the DA for review.
- 20. If a citation is issued for an open misdemeanor charge and the issuing officer determines that it should be dismissed, a letter citing the reasons shall be submitted through the chain of command.
 - a. Upon approval, the letter must be filed with the Court, prior to the scheduled Court date, recommending the charges be dismissed.
- 21. If a citation is issued for a misdemeanor warrant only:
 - a. Do not to complete a PR report.
 - b. Verify the warrant has been maintained in CJIS (W ADSPACT)
 - i. If the warrant is still active, contact Custody Intake and direct them to clear the warrant.
 - c. Tape the white copy of the citation to the center of a piece of white paper and deliver it the Criminal Counter at 1215 Truxtun Ave. the next business day.
 - i. The citations must be taped to the middle of the paper and two hole punched. Do not hole punch the actual citation.
 - ii. If the issuing Court is outlying, it must be delivered to the corresponding Court clerk or the Regional Supervision Unit Supervisor (Juvenile) who will ensure it is delivered to the clerk.
- 22. Penal Code Section 853.6 makes it a misdemeanor to alter, conceal, modify, nullify, or destroy the face side of any original or copy of a citation. Once a citation is prepared, signed by the violator, and/or any copy is removed from the citation book, no changes will be made except as provided by P.C. 853.6.
- 23. If an infraction only citation is to be amended by adding or modifying any of the information on the citation including the charges, the issuing officer will:
 - a. Complete or cause to be completed a Notice of Correction and Proof of Service (TR 100) identifying what information is to be amended.
 - i. Provide one copy of the Notice of Correction and Proof of Service to the person named in the citation by mail.

- ii. Provide the original Notice of Correction and Proof of Service to the Court along with the original citation.
 - a) Attach it to the packet being routed to Traffic Court
- iii. Provide a copy of Notice of Correction and Proof of Service to clerical who will scan it into the Laserfiche Citation folder and route it to the SST Supervisor for storage.
- iv. Each Division will have a gross of Notice of Correction and Proof of Service forms for use in these instances.

24. If a misdemeanor citation is to be amended by adding or modifying any of the information on the citation including the charges, the issuing officer will:

- a. Complete or cause to be completed a Notice of Amended Citation form identifying what information is to be amended.
 - i. Provide one copy of the Notice of Correction and Proof of Service and Notice of Amended Citation to the person named in the citation by mail.
 - ii. Provide the original Notice of Correction and Proof of Service and Notice of Amended Citation to the Court along with the original citation.
 - a) Attach both to the top of the packet being delivered to the DA's Office or Criminal Counter (Direct File) for filing.
 - iii. Provide a copy of Notice of Correction and Proof of Service and Notice of Amended Citation to clerical who will scan them into the Laserfiche Citation folder and route them to the SST Supervisor for storage.
 - iv. The Notice of Amended Citation is located on the Z:drive.
 - v. Each Division will have a gross of Notice of Correction and Proof of Service forms for use in these instances.

25. Return depleted or no longer needed citation books to your unit Supervisor.

- a. Ensure any voided or missing citations are accompanied by the appropriate documentation outlined in this policy.

26. All misdemeanor warrants that are cited into Court will be cleared by Custody Intake.

Actions to be taken by Custody Intake when an officer requests a PR# for a citation.

1. Provide the citing officer of the appropriate Court date.
 - a. An annual schedule of Court dates will be provided by the Court and maintained by Custody Intake.
 - i. Delano – Wednesday are in Division B
 - ii. Mojave – No Fridays
 - iii. Ridgecrest – No Wednesdays or Fridays
 - b. If the corresponding Court dates on the schedule conflict with specific Court restrictions or the offender is being issued multiple citations to different Courts, defer to the next appropriate date.
2. If the citation is for open charges:
 - a. Ask the requesting officer for the citation number (PA*****) and all charges being requested on the citation.
 - b. Add the citation number and charges to the PR Log under incident brief.
3. If the citation is for a misdemeanor warrant:
 - a. Ask the requesting officer for their badge number, the citation number (PA*****) and the warrant number (BM*****A).
 - b. Add the citation number and case number to the PR Log under Incident Brief.
 - c. Maintain the warrant(s) in CJIS to remove it (them) from the system
 - i. Request Abstract of each warrant cited under WAGENABS
 - a) Enter warrant # then press Enter
 - b) Enter "KCPD" under AGENCY NAME, "(Name, Badge #)" under ATTENTION and select DEFAULT PRINTER. Press Enter

- c) Print Abstract
- d. Serve the abstract in WAMNTRV
 - i. Enter warrant # then press Enter
 - ii. Enter CITATION ISSUE DATE, TIME, CITATION NUMBER and press Enter
 - iii. Enter HEARING DATE and TIME(of Court) and press Enter
 - iv. CJIS will not accept 0730, use 0830 for Metro Division
 - v. Print Service
- e. Verify the warrant was removed W ADSPACT.
 - i. Enter warrant # then press Enter
- f. Route the CJIS printouts to the citing officer.
 - a. The citing officer is responsible for verifying the warrant was maintained at the end of the shift and will contact Custody Intake if it was not done properly.
 - g. Custody Intake is the only unit with the ability to clear the warrant and must ensure it is done properly
- 4. Citation books being returned to the Special Services Team will be done so through the officer's unit supervisors.

Actions to be taken by the Unit Supervisor:

- 1. Review the citation book and ensure all citations are accounted for.
 - a. Voided citations must have an approved explanation/memo attached to the green copy of the citation.
 - b. Missing citations must have memo detailing the circumstances and investigation as to why it is missing attached to the citation book.
 - c. Verify all issued citation for open charges were followed with the filing of a complaint packet or a letter to the Court requesting the charges be dismissed.

- d. Unused citations will be voided by punching a hole in them, so they can't be issued.
 - i. If no citations in the book have been issued/voided/missing, do not punch holes in the unused citations. (SST Supervisor will reissue the book upon receipt).
- e. Within 30 days, deliver the book and any attachments to the Special Services Team Supervisor for storage.
- f. Update the citation database showing the citation book has been received from the officer and delivered to the Special Services Team for storage.

PC 853.6 Arrest and Release for Misdemeanor

- (a)(1) In any case in which a person is arrested for an offense declared to be a misdemeanor, including a violation of any city or county ordinance, and does not demand to be taken before a magistrate, that person shall, instead of being taken before a magistrate, be released according to the procedures set forth by this chapter, although nothing prevents an officer from first booking an arrestee pursuant to subdivision (g). If the person is released, the officer or his or her superior shall prepare in duplicate a written notice to appear in court, containing the name and address of the person, the offense charged, and the time when, and place where, the person shall appear in court. If, pursuant to subdivision (i), the person is not released prior to being booked and the officer in charge of the booking or his or her superior determines that the person should be released, the officer or his or her superior shall prepare a written notice to appear in a court.
- (2) In any case in which a person is arrested for a misdemeanor violation of a protective court order involving domestic violence, as defined in subdivision (b) of Section 13700, or arrested pursuant to a policy, as described in Section 13701, the person shall be taken before a magistrate instead of being released according to the procedures set forth in this chapter, unless the arresting officer determines that there is not a reasonable likelihood that the offense will continue or resume or that the safety of persons or property would be imminently endangered by release of the person arrested. Prior to adopting these provisions, each city, county, or city and county shall develop a protocol to assist officers to determine when arrest and release is appropriate, rather than taking the arrested person before a magistrate. The county shall establish a committee to develop the protocol, consisting of, at a minimum, the police chief or county sheriff within the jurisdiction, the district attorney, county counsel, city attorney, representatives from domestic violence shelters, domestic violence councils, and other relevant community agencies.
- (3) This subdivision shall not apply to the crimes specified in Section 1270.1, including crimes defined in each of the following:

- (A) Paragraph (1) of subdivision (e) of Section 243.
- (B) Section 273.5.
- (C) Section 273.6, if the detained person made threats to kill or harm, has engaged in violence against, or has gone to the residence or workplace of, the protected party.
- (D) Section 646.9
- (4) Nothing in this subdivision shall be construed to affect a defendant's ability to be released on bail or on his or her own recognizance, except as specified in Section 1270.1.
- (b) Unless waived by the person, the time specified in the notice to appear shall be at least 10 days after arrest if the duplicate notice is to be filed by the officer with the magistrate.
- (c) The place specified in the notice shall be the court of the magistrate before whom the person would be taken if the requirement of taking an arrested person before a magistrate were complied with, or shall be an officer authorized by that court to receive a deposit of bail.
- (d) The officer shall deliver one copy of the notice to appear to the arrested person, and the arrested person, in order to secure release, shall give his or her written promise to appear in court as specified in the notice by signing the duplicate notice which shall be retained by the officer, and the officer may require the arrested person, if he or she has no satisfactory identification, to place a right thumbprint, or a left thumbprint or fingerprint if the person has a missing or disfigured right thumb, on the notice to appear. Except for law enforcement purposes relating to the identity of the arrestee, no person or entity may sell, give away, allow the distribution of, include in a database, or create a database with, this print. Upon the signing of the duplicate notice, the arresting officer shall immediately release the person arrested from custody.
- (e) The officer shall, as soon as practicable, file the duplicate notice, as follows:
 - (1) It shall be filed with the magistrate if the offense charged is an infraction.
 - (2) It shall be filed with the magistrate if the prosecuting attorney has previously directed the officer to do so.
 - (3) The duplicate notice and underlying police reports in support of the charge or charges shall be filed with the prosecuting attorney in cases other than those specified in paragraphs (1) and (2).

If the duplicate notice is filed with the prosecuting attorney, he or she, within his or her discretion, may initiate prosecution by filing the notice or a formal complaint with the magistrate specified in the duplicate notice within 25 days from the time

of arrest. If the prosecution is not to be initiated, the prosecutor shall send notice to the person arrested at the address on the notice to appear. The failure by the prosecutor to file the notice or formal complaint within 25 days of the time of the arrest shall not bar further prosecution of the misdemeanor charged in the notice to appear. However, any further prosecution shall be preceded by a new and separate citation or an arrest warrant.

Upon the filing of the notice with the magistrate by the officer, or the filing of the notice or formal complaint by the prosecutor, the magistrate may fix the amount of bail that in his or her judgment, in accordance with Section 1275, is reasonable and sufficient for the appearance of the defendant and shall endorse upon the notice a statement signed by him or her in the form set forth in Section 815a. The defendant may, prior to the date upon which he or she promised to appear in court, deposit with the magistrate the amount of bail set by the magistrate. At the time the case is called for arraignment before the magistrate, if the defendant does not appear, either in person or by counsel, the magistrate may declare the bail forfeited, and may, in his or her discretion, order that no further proceedings shall be had in the case, unless the defendant has been charged with a violation of Section 374.3 or 374.7 of this code or of Section 11357, 11360, or 13002 of the Health and Safety Code, or a violation punishable under Section 5008.7 of the Public Resources Code, and he or she has previously been convicted of a violation of that section or a violation that is punishable under that section, except in cases where the magistrate finds that undue hardship will be imposed upon the defendant by requiring him or her to appear, the magistrate may declare the bail forfeited and order that no further proceedings be had in the case. Upon the making of the order that no further proceedings be had, all sums deposited as bail shall immediately be paid into the county treasury for distribution pursuant to Section 1463.

- (f) No warrant shall be issued for the arrest of a person who has given a written promise to appear in court, unless and until he or she has violated that promise or has failed to deposit bail, to appear for arraignment, trial, or judgment or to comply with the terms and provisions of the judgment, as required by law.
- (g) The officer may book the arrested person at the scene or at the arresting agency prior to release or indicate on the citation that the arrested person shall appear at the arresting agency to be booked or indicate on the citation that the arrested person shall appear at the arresting agency to be fingerprinted prior to the date the arrested person appears in court. If it is indicated on the citation that the arrested person shall be booked or fingerprinted prior to the date of the person's court appearance, the arresting agency at the time of booking or fingerprinting shall provide the arrested person with verification of the booking or fingerprinting by making an entry on the citation. If it is indicated on the citation that the arrested person is to be booked or fingerprinted, the magistrate, judge, or court shall, before the proceedings begin, order the defendant to provide verification that he or she was booked or fingerprinted by the arresting agency. If the defendant cannot

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

- (h) A peace officer shall use the written notice to appear procedure set forth in this section for any misdemeanor offense in which the officer has arrested a person without a warrant pursuant to Section 836 or in which he or she has taken custody of a person pursuant to Section 847.
- (i) Whenever any person is arrested by a peace officer for a misdemeanor, that person shall be released according to the procedures set forth by this chapter unless one of the following is a reason for nonrelease, in which case the arresting officer may release the person, except as provided in subdivision (a), or the arresting officer shall indicate, on a form to be established by his or her employing law enforcement agency, which of the following was a reason for the nonrelease:
 - (1) The person arrested was so intoxicated that he or she could have been a danger to himself or herself or to others.
 - (2) The person arrested required medical examination or medical care or was otherwise unable to care for his or her own safety.
 - (3) The person was arrested under one or more of the circumstances listed in Sections 40302 and 40303 of the Vehicle Code.
 - (4) There were one or more outstanding arrest warrants for the person.
 - (5) The person could not provide satisfactory evidence of personal identification.
 - (6) The prosecution of the offense or offenses for which the person was arrested, or the prosecution of any other offense or offenses, would be jeopardized by immediate release of the person arrested.
 - (7) There was a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by release of the person arrested.
 - (8) The person arrested demanded to be taken before a magistrate or refused to sign the notice to appear.
 - (9) There is reason to believe that the person would not appear at the time and place specified in the notice. The basis for this determination shall be specifically stated.
 - (10) The person was subject to Section 1270.1.

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

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

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

If, after an arrested person has signed and received a copy of a notice to appear, the arresting officer determines that, in the interest of justice, the citation or notice should be dismissed, the arresting agency may recommend, in writing, to the magistrate that the charges be dismissed. The recommendation shall cite the reasons for the recommendation and shall be filed with the court. If the magistrate makes a finding that there are grounds for dismissal, the finding shall be entered in the record and the charges dismissed. Under no circumstances shall a personal relationship with any officer, public official, or law enforcement agency be grounds for dismissal.

- (k) (1) A person contesting a charge by claiming under penalty of perjury not to be the person issued the notice to appear may choose to submit a right thumbprint, or a left thumbprint if the person has a missing or disfigured right thumb, to the issuing court through his or her local law enforcement agency for comparison with the one placed on the notice to appear. A local law enforcement agency providing this service may charge the requester no more than the actual costs. The issuing court may refer the thumbprint submitted and the notice to appear to the prosecuting attorney for comparison of the thumbprints. When there is no thumbprint or fingerprint on the notice to appear, or when the comparison of thumbprints is inconclusive, the court shall refer the notice to appear or copy thereof back to the issuing agency for further investigation, unless the court finds that referral is not in the interest of justice.
- (2) Upon initiation of the investigation or comparison process by referral of the court, the court shall continue the case and the speedy trial period shall be tolled for 45 days.
- (3) Upon receipt of the issuing agency's or prosecuting attorney's response, the court may make a finding of factual innocence pursuant to Section 530.6 if the court determines that there is insufficient evidence that the person cited is the person

charged and shall immediately notify the Department of Motor Vehicles of its determination. If the Department of Motor Vehicles determines the citation or citations in question formed the basis of a suspension or revocation of the person's driving privilege, the department shall immediately set aside the action.

- (4) If the prosecuting attorney or issuing agency fails to respond to a court referral within 45 days, the court shall make a finding of factual innocence pursuant to Section 530.6, unless the court finds that a finding of factual innocence is not in the interest of justice.
- (5) The citation or notice to appear may be held by the prosecuting attorney or issuing agency for future adjudication should the arrestee who received the citation or notice to appear be found.
- (l) For purposes of this section, the term "arresting agency" includes any other agency designated by the arresting agency to provide booking or fingerprinting services.

(Amended by Stats. 2009, AB 688, Ch. 465, Sec. 1.5. Effective January 1, 2010.)

(Amended by Stats. 2004, Ch. 889, Sec. 4. Effective September 29, 2004.)

(Amended by Stats. 2003, Ch. 467, Sec. 3. Effective January 1, 2004.)

(Amended by Stats. 1996, Ch. 851, Sec. 1. Effective January 1, 1997.)