

Memorandum

TO: ALL DEPARTMENT PERSONNEL

FROM: Anthony Mata
Chief of Police

**SUBJECT: DUTY MANUAL REVISIONS:
CRIMINAL AND WARRANT
CITATIONS**

DATE: February 3, 2023

APPROVED

Memo #2023-003

BACKGROUND

On June 2, 2017, the Santa Clara County Sheriff's Office amended their procedures regarding bookings for on-view arrests and warrant citation release. As a result, the Department issued Memorandum #2017-039 regarding Enforcement of Firearm Related Offenses – Mandatory Booking. This memorandum revised several Duty Manual sections regarding the enforcement of firearm related offenses and guidelines for the issuance of citations for misdemeanor on-view arrests and warrant citation release.

From June 2017 to present, the Santa Clara County Superior Court issued several orders regarding the Emergency Bail Schedule and authorization for citation and release. Effective August 1, 2022, the orders were allowed to expire, resulting in adoption of the [2022 Criminal Bail Schedule \(link\)](#).

[Penal Code section 853.6 \(link\)](#) lists the reasons a person arrested for a misdemeanor shall be issued a citation and released instead of being taken before a magistrate. However, nothing prevents an officer from first booking an arrestee prior to release.

A review of the Duty Manual revealed changes were necessary to bring booking and cite and release procedures into alignment with best practices.

ANALYSIS

The Duty Manual has been revised to reflect changes described below. Additions are shown in *italics and underlined*. Deletions are shown in ~~strike-through~~ form.

L 3101 CRIMINAL CITATIONS:
Revised 02-03-23

Penal Code ~~s~~Section 853.6 of the ~~Penal Code~~ authorizes the use of criminal citations whenever the following elements are present:-

- *Probable* Reasonable cause for an arrest exists

- All The offenses involves are an infractions and/or misdemeanors
- The subject individual responsible for the violation does not demand to be taken before a magistrate
- No domestic violence or violation of a court order offenses

Refer to Duty Manual section L 3113 ELIGIBILITY FOR THE ISSUANCE OF CRIMINAL CITATIONS, OR MISDEMEANOR OR INFRACTION WARRANT CITATIONS for further information.

In any event, officers will adhere to the following procedures when using the criminal citation in lieu of booking.

L 3102 PROCEDURE PRIOR TO ISSUING A CITATION:

Revised 02-03-23

When the circumstances surrounding an arrest allow for the issuance of a citation, the arresting officer will conduct a brief background investigation to determine if the arrested individual should be issued a citation and released. This investigation will include the following items, if applicable, to ensure the subject can be located at a later date if they fail to appear as promised:

- Adequate proof of identity
- Adequate proof of residence
- Length of time at the present residence
- Work status and history Occupation and employer and length of time employed
- Previous Criminal record
- Marital and family status
- Any other facts or information which would assist the arresting officer in determining if a citation and release is appropriate

A citation is not issued if there is a reasonable likelihood that the offense would continue or resume or that the safety of persons or property would be imminently endangered by release of the person arrested.

The decision to use a the criminal citation is made by the arresting officer or as directed by a supervisor superior. When a decision is made to issue a citation, officers will obtain adequate information to ensure that the individual receiving the citation can be located at a later date if such individual fails to appear as promised.

L 3113 ELIGIBILITY GUIDELINES FOR THE ISSUANCE OF CRIMINAL CITATIONS FOR MISDEMEANOR ON-VIEW ARRESTS, OR AND MISDEMEANOR OR INFRACTION WARRANT CITATIONS RELEASE:

Revised 02-03-23

All persons arrested for "on-view" misdemeanor violations, or misdemeanor or infraction warrants, arrests are eligible for citation release unless any one of the following circumstances below exist; is present: however, nothing prevents an officer from first booking an arrestee before release:

- The subject is arrested for a felony
- The subject arrestee cannot provide satisfactory evidence of personal identification

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- The subject arrestee demands to be taken before a magistrate or refuses to sign the notice to appear
- The subject refuses to sign the citation
- The subject was arrested and released for a similar charge (other than PC 647(f) or H&S 11550) in the previous twenty-four (24) hours, or there is a reasonable likelihood that the safety of persons or property is imminently endangered by the release of the subject arrestee
- The arresting officer or a supervisor determines there is likelihood of reoccurrence or a risk to persons or property if the subject is cited and released
- The offense involves violence, ~~unless the arresting officer determines that there is no likelihood of recurrence~~ (including but not limited to PC 136.1, 236/237, 368(f), 422, and 452(d), and brandishing a weapon (including an imitation firearm))
- The offense involves domestic violence, ~~specifically~~ (including but not limited to PC 273.5; PC 242-243(e); PC 242-243(e)(1); PC 646.9 (Stalking); PC 273.5(e) (Domestic Violence with a prior conviction within 7 years); PC 422 (Felony), or PC 273.6
- The offense arrestee is charged with involves a probation violation, (including but not limited to PC 1203.2(a) or PC 1203.2(b))
- The offense involves sexual assault (including but not limited to PC 314, 290, 243.4, and 647.6(a)(1))
- The offense involves a firearms or resisting arrest (including but not limited to PC 30305(a)(1))
- The offense involves delaying, resisting, or obstruction, including but not limited to PC 135, 148, 148.5, 148.9 and VC 2800
- The offense involves being an accessory after the fact, harboring, concealing, or aiding a fugitive, or escape to avoid any punishment pursuant to crimes including but not limited to PC 32
- The subject person is arrested for any on-view impaired driving. Absent other eligibility guidelines, warrants for impaired driving or CVC 23247(e) are eligible for cite and release. VC 23152 or
- The subject is arrested for any on-view or warrant for PC 192 or of the circumstances listed in CVC Sections 23247(e), 40302, or 40303
- The subject arrestee is arrested charged for with a violation of any protective court order PC 166.4 or PC 273.6 (involving domestic violence)
- The subject arrestee is a danger to themselves or to others due to intoxication, or being under the influence of narcotics, and/or requires immediate medical care
- The prosecution of the offense or offenses for which the person is arrested, or the prosecution of any other offense or offenses, would be jeopardized by immediate release of the arrestee
- There is reason to believe the subject arrestee would not appear at the time and place specified in the notice to appear (e.g., three or more failures to appear in the previous three years)
- The subject has a warrant for Failure to Appear
- ~~The subject arrestee requires medical examination or medical care or is otherwise unable to care for their own safety~~
- Warrant is listed as "No Bail", "No SCIT", "No Cite Release" and/or any other terminology indicating cite and release is inappropriate felony warrants

MISDEMEANOR CITATION RELEASE PROCEDURE

A person taken into custody in the field, either for an on-view misdemeanor charge, or for a misdemeanor or infraction warrant, who is eligible for citation release under this policy, should be cited and released in the field or transported to the Main Jail for Identification Pre-processing Center and then cited and released.

For ease of reference, the procedure for release of arrestees has been separated into the two categories discussed below:

- ~~In-field on-view arrest/cite and release~~
- ~~In-field warrant arrest/cite and release~~

In-Field On-View Misdemeanor Arrest/ Cite and Release

Officers will continue to issue citations using the Notice to Appear (Form 200-15) and Continuation of Notice to Appear (Form 200-15A) for on-view misdemeanor arrests per established policy and consistent with Duty Manual Chapter Sections L 3100 – CRIMINAL CITATIONS L 3112.

In-Field Misdemeanor or Infraction Warrant Arrest/ Cite and Release

Officers will adhere to the above guidelines when determining whether to determine the subject's eligibility for cite and release on a warrant. Officers will then complete the following steps:

1. Have the warrant confirmed through Communications and determine the following:
 - Court date
 - Court address
 - Court telephone number
 - Whether booking is required
2. Advise Communications that the subject is being cited for the warrant. Communications members will notify the Warrants Unit that the subject is being cited and also request the warrant be removed from the Wanted Person System. If the officer is unable to complete the citation due to an unforeseen circumstance (e.g., i.e., Code 3 Fill or priority call), the officer will notify Communications the subject was not cited then and Communications will ~~then~~ advise the Warrants Unit to reinstate the warrant.
3. Complete the Warrant Citation / Notice to Appear (Form 491). This form is used only for eligible subjects who are cited persons who match the above criteria and are being cited for outstanding warrants.

Note: Officers will complete a separate Warrant Citation / Notice to Appear (Form 491) for each warrant involving a separate court. If there is insufficient space to list all of the warrant charges on the warrant(s), continue listing the charges on an additional second Warrant Citation / Notice to Appear (Form 491), completing all of the information on the form. Above the CEN number, hand-write how many pages exist in the complete document (e.g., i.e. Page 1 of 2, Page 2 of 2, etc.).

4. Affix the subject's arrestee's right thumbprint to the face sheet and the pink copy of the Warrant Citation / Notice to Appear (Form 491).
5. Have the subject arrestee read and sign the Warrant Citation / Notice to Appear (Form 491), explain the pre-booking requirement, which is described on the back of the form, then give them the yellow copy.
6. By the end of shift, the Warrant Citation / Notice to Appear (Form 491) must be placed in the a "Warrants Only" drop box in the BFO Rreport Writing Room or taken directly to the Warrants Unit. The Warrants Unit will ~~then~~ attach the Warrant Citation / Notice to Appear (Form 491) to the warrant or warrant abstract and forward it to the appropriate cCourt(s).

Persons arrested pursuant to out-of-county warrants shall also be cited, when eligible. In addition to the above process, a General Offense Report (Form 200-2-AFR) is ~~will~~ also ~~be~~ required to document the occurrence.

R 1516 NOTICE TO APPEAR (FORM 200-15):

Revised 02-03-23

This form is used in lieu of booking physical incarceration of an eligible subject, pursuant to Duty Manual Chapter L 3100 – CRIMINAL CITATIONS. ~~violator whenever all of the following elements are present:~~

- ~~• IDENTITY: When an officer is satisfied that a violator has provided adequate evidence of identity.~~
- ~~• DEGREE OF VIOLATION: When the offense is a misdemeanor or infraction and is in a mandated booking section.~~
- ~~• TYPE OF VIOLATION: When the offense is criminal in nature, this form may be used to cite adults only (juveniles are cited on a JCR Form).~~

When the offense is a traffic violation, this form may be used to cite both juveniles and adults.

- ~~• NATURE OF VIOLATION: When release of the violator would not endanger the violator or any other person.~~

~~When issuing a citation for a criminal offense, officers will adhere to the DM Section 3100, (Criminal Citations).~~

R 1516.5 WARRANT CITATION / NOTICE TO APPEAR (FORM 491):

Added 02-03-23

This form is used in lieu of booking an eligible subject, pursuant to Duty Manual Chapter L 3100 – CRIMINAL CITATIONS.

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ORDER

Effective immediately, all Department personnel shall adhere to the above Duty Manual sections.

A handwritten signature in black ink, appearing to read 'A. Mata', is positioned above the printed name and title.

Anthony Mata
Chief of Police

AM:SD:DK