



SAN JOSE POLICE DEPARTMENT

TRAINING BULLETIN

TO: ALL DEPARTMENT PERSONNEL

FROM: Anthony Mata
Chief of Police

SUBJECT: PRIVATE PERSON ARRESTS

DATE: July 15, 2021

Bulletin# 2021-016

If a private person makes an arrest or *places* a subject under arrest, officers must determine whether or not to “receive” that arrest, meaning they take custody of the subject. Per subdivision (c) of California Penal Code section 142, there is no criminal liability for refusing to “receive” a subject arrested by a private person pursuant to Penal Code section 837 (Private Person Arrest) when the investigating officer determines probable cause for the arrest does not exist. However, if probable cause for the arrest exists based on the officer’s investigation, the officer will “receive” that arrest.

There are no magic words for a private person arrest. However, the private person should notify the subject of the following:

- That they are under arrest.
- The crime for which they are under arrest.
- The facts justifying the arrest.

This notification may be made by an officer if the private person is unable or unwilling to confront the subject. In this case, the private person must know that under the law, they are the ones making the arrest, not the officer. In any case, officers will interview the private person, the alleged perpetrator, any independent witnesses, and examine available evidence about the facts upon which probable cause is based to ensure that there is a sufficient factual basis for the arrest. Officers will complete a General Offense Report (Form 200-2-AFR) detailing the allegations and factual circumstances bearing on an officer's determination to refuse to accept custody.

Additional Considerations:

For felonies, probable cause is the only requirement. For infractions and misdemeanors, there are two elements: probable cause and “in the presence.” “In the presence” means there is probable cause to believe the crime was committed in the private person’s presence. For stale misdemeanors, the officer should consider not making the arrest and seek a warrant if there was a substantial delay between the commission of the crime and the arrest. For example, if one neighbor wants to place another neighbor under private person arrest for a minor battery that occurred a week ago, the officer should consider documenting the event and obtaining a warrant rather than arresting the offending neighbor.

Officers should not “receive” a private person arrest of a subject engaged in the exercise of Constitutionally or statutorily protected rights unless the officer has probable cause to believe the

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person is also engaged in conduct of a separate criminal violation, such as violent acts against persons or property, or willfully and maliciously obstructing entrances to places of public assembly or pedestrians on public ways. As an example, officers should not “receive” a private person arrest of a subject lawfully exercising their First Amendment rights by protesting. However, if that subject is arrested by a private person for vandalizing a business, and the officer is able to establish probable cause, the officer should “receive” that arrest.

Options After Taking Custody:

1. Book into jail.
2. Cite and release. If the crime was an infraction or misdemeanor, the subject may be cited with a promise to appear.
3. Release. If there are insufficient grounds for making a criminal complaint, the subject shall be released without a promise to appear.

In all cases, officers will thoroughly document the event, including the actions of the private person, the facts of the case, the probable cause (or lack thereof), and the actions of the officer.

Department members are also reminded of the following Duty Manual sections applicable to private person arrests:

L 3502 RECEIVING A PRIVATE PERSON / CITIZEN ARREST

L 3503 REFUSING A PRIVATE PERSON / CITIZEN ARREST

L 3504 PRIVATE PROPERTY TRESPASS ENFORCEMENT: UNION LABOR ACTIVITY
AND EXPRESSIVE CONDUCT AT SHOPPING CENTERS AND MALLS

L 4200 INVESTIGATIONS



Anthony Mata
Chief of Police

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