

DATE:	MAY 23, 2022
NUMBER:	Q.77
SUBJECT:	PERMISSIVE RELEASE OF PRE-ARRAIGNMENT MISDEMEANOR INCARCERATED PERSONS
RELATED SECTIONS:	I.47

PURPOSE

To provide for the release of “pre-arraignment” misdemeanor incarcerated persons per Penal Code Sections 849(b)(2) and 853.6 (O.R.).

POLICY

To expedite the release of “pre-arraignment” misdemeanor incarcerated persons, Penal Code Sections 849(b)(2), and 853.6 shall be liberally construed.

PROCEDURE

In order to provide standards for releases of designated incarcerated persons, the following procedure will be instituted.

- I. Bookings for Penal Code 647 (f) disorderly conduct drunk in public, Health and Safety Code 11550(A) - Under the influence, California Vehicle Code 21200.5 - Riding a bicycle under the influence, 665(B) HN – DUI Boat/Vessel.

When the arresting agency does not desire prosecution of an incarcerated person arrested for Penal Code 647(f) (Drunk in Public), the incarcerated person may be released pursuant to Penal Code 849(b)(2). An 849b(2) PC Release Order (J-68) form will be used with no further proceedings. The incarcerated person charged only with Penal Code 647(f) may be released at the discretion of the watch commander. However, incarcerated persons charged with Health and Safety Code 11550(A) - Under the influence, California Vehicle Code 21200.5 - Riding a bicycle under the influence, 665(B) HN – DUI Boat/Vessel will be processed as book and release and will be given a Pre-Arraignment Notice To Appear (J-14) form pursuant to Penal Code 853.6.

- II. Other Misdemeanor Booking

An incarcerated person charged with a misdemeanor shall not be released from custody on their promise to appear pursuant to Penal Code 853.6 when:

- A. The safety of the incarcerated person, or the safety of others, may be jeopardized by the release.
- B. The incarcerated person was arrested for a warrant or there are holds or warrants against the incarcerated person with total bail in excess of \$500.00.
- C. The incarcerated person refuses to sign the J-14 form.

- D. The arrested person refuses or is unable to provide booking/O.R. information due to mental or emotional problems or intoxication.

III. General Provision

All incarcerated persons who are booked into a Sheriff's detention facility and subject to release per Penal Code Section 853.6 will be handled as a detention facility release.

- A. All releases shall be approved by the watch commander.
- B. The authority to exercise the release may be executed at any time prior to the incarcerated person's appearance before a magistrate.
- C. Any military person released pursuant to these sections may be released to the custody of the military police.
- D. Distribution of the J-14 form is as follows:
 - 1. Original and one copy to Court Clerk.
 - 2. Incarcerated person being released.
 - 3. Incarcerated person's custody record.
 - 4. Military Police or personnel if applicable.
- E. Any incarcerated person booked under authority of 40302(a) CVC (lack of satisfactory evidence of identification) may be released by the detention facility. The detention facility may detain the arrested person for a reasonable period of time (not to exceed two hours) in order to verify the person's identification per Section 40307 CVC.

IV. California Vehicle Code (CVC) Misdemeanor/Infraction Arrests

- A. Any individual charged with 23152(a)–(g) CVC may be considered for release through the Conditional Custody Program (CCP). Individuals charged with 12500 CVC or any vehicle code INFRACTION in addition to 23152(a-g) CVC will be considered for the program. Additional FELONY or MISDEMEANOR charges meeting the booking acceptance criteria, such as 14601 CVC, would disqualify them for CCP.
 - 1. The CCP program satisfies the 40302(d) CVC requirement for immediate appearance before a magistrate or booking into a jail.
 - 2. Residents of San Diego County, or of counties contiguous or in close proximity to San Diego County, are eligible for the program (San Diego, Orange, Riverside, Los Angeles, San Bernardino, Imperial). Military personnel stationed within San Diego County are also eligible for the program. Residents of Mexico are not eligible.
 - 3. Prior DUI arrests WITHIN THE PAST TWO YEARS will disqualify an individual for CCP.

4. Active warrants that meet the current booking acceptance criteria will disqualify an individual for CCP.
 - B. Incarcerated persons qualified for the CCP will remain in custody until they are capable of assuming responsibility for themselves, and then released on their own recognizance per the signed promise to appear using the J-14 form.
 - C. Detentions Processing Division staff will notify sworn staff of incarcerated persons who have been disqualified from the CCP process. Once notified, sworn staff will change the incarcerated person's wristband in compliance with Detention Services Bureau Policies and Procedures section I.47. The incarcerated person will remain in custody with bail and will be returned to the standard booking process.
- V. The detentions processing technician (DPT) assigned to the final release position will be responsible for verifying the identity of the subject being released.
- A. Check the wristband for proper name, date of birth (D.O.B.) and booking number.
 - B. Check the photo in JIMS with the incarcerated person to be released to verify proper name, booking number, and D.O.B.
 - C. The DPT should make sure, through observation and instruction, that the subject does not take jail property and/or clothes from the premises.
 - D. The subject must sign the property receipt section for returned funds and property.