



**San Diego County Sheriff**

**Training Bulletin**

**William D. Gore, Sheriff**

**July 2017**



## **Certificates of Release**

On August 1, 2016 the California Court of Appeal held in *Schmidt v. California Highway Patrol*, that if a person is arrested, but no accusatory pleading is filed with the court, the arrest shall be deemed a detention only.

Further, the arresting agency must issue the arrested person a certificate stating it was a mere detention, and the Department of Justice must delete any referenced to an arrest from its records.

### **Facts**

On May 1, 2011, John J. Schmidt was arrested by the CHP for driving under the influence. He was booked into the Santa Barbara County jail and released later that day on his own recognizance. Schmidt signed a notice to appear in court. The CHP sent Schmidt's arrest report to the Santa Barbara County District Attorney's Office. The district attorney reviewed the referral and decided not to file charges "at this time." The CHP did not provide Schmidt with a certificate describing his arrest as a detention. Nor did the CHP report the arrest as a detention to the Department of Justice.

Schmidt brought a class action against the CHP for a writ of mandate to compel the CHP to provide him with the certificate. The trial court certified the class and granted Schmidt's writ petition.

The court also awarded Schmidt attorney fees pursuant to Code of Civil Procedure section 1021.5, the private attorney general statute, in the amount of \$296,100. The Court of Appeal affirmed the lower court's decision.

The information in this Training Bulletin was provided by Lieutenant Greg Rylaarsdam and edited for distribution by the In-Service Training Unit. If you have expertise in a particular subject and would like to write a training bulletin, please contact Corporal Daniel Gutierrez at In-Service Training, [REDACTED]

## **Court Discussion**

Penal Code Section 849.5 provides: "In any case in which a person is arrested and released and no accusatory pleading is filed charging him with an offense, any record of arrest of the person shall include a record of the release. Thereafter, the arrest shall not be deemed an arrest, but a detention only."

Section 851.6, subdivision (b) provides: "In any case in which a person is arrested and released and no accusatory pleading is filed charging him with an offense, the person shall be issued a certificate by the law enforcement agency which arrested him describing the action as a detention."

Finally, section 851.6, subdivision (d) provides: "Any reference to the action as an arrest shall be deleted from the arrest records of the arresting agency and of the Bureau of Criminal Identification and Investigation of the Department of Justice. Thereafter, any such record of the action shall refer to it as a detention."

The Court of Appeal stated that "(t)he language of the statutes is clear and unambiguous. Applying the plain, commonsense meaning, a person is 'released' when free to leave police custody, whether the person is released on a notice to appear, own recognizance or bail."

"A notice to appear may be an 'accusatory pleading' when it is filed with the court." According to the Court of Appeal, "The ordinary meaning of a pleading is that it is a document filed with the court."

## **HOW THIS AFFECTS US**

It is important for all law enforcement agencies to comply with the law by (1) issuing such a certificate; (2) changing the official records to reflect the arrest as a detention; and (3) notifying DOJ's Bureau of Criminal Identification and Investigation of the Department of Justice to correct their records, as well.

Currently, the Sheriff's Inmate Processing Division provides a Certificate of Release (SO-23) per Penal Code Section 849.5 to those inmates who have been arrested, booked into custody and later released when no complaint was filed. A copy is forwarded to Sheriff's Records and I.D Division for proper notification to the Department of Justice.

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There have been instances where requests for Certificates of Release have come in at the station level. Requests should be processed without delay, checking the case status in both JIMS and the DA systems. If a requestor was released and no charges were filed, provide them with a copy of the Certificates of Release (form SO-23) and forward a copy to Sheriff's Records as you would any other 849(b) form.

## **QUESTIONS**

***If I file a case/citation with the District Attorney's Office do I have to issue a Certificate of Release?***

Yes, if the person is released from police custody and an accusatory pleading or citation/notice to appear is not filed with the court within 25 days.

***Doesn't the District Attorney have a year or longer in some cases to file the criminal case? Should we be issuing certificates when the case could still be filed at a later point in time?***

Although a case could be filed at a later date, the law does NOT provide an exception under 849.5PC. Issuing a Certificate of Release now will not affect a later case filing.

***I ran a records check and charges were filed on a booking, but they were not the charges the arrestee was initially booked on. Should I process the request for the Certificate of Release?***

No, if a case was filed with the court by a prosecuting agency (District Attorney, City Attorney) a Certificate of Release will not be issued.

***If a Certificate of Release is issued, do I need to go back into NetRMS and change my case clearance to something other than arrest?***

No, there will be no changes to case clearances in NetRMS when a Certificate of Release is issued.

***If I arrest a suspect and later release them with a citation, do I need to provide them with a Certificate of Release?***

In each case where a suspect is arrested and booked (Fingerprinted/LiveScanned) and no accusatory pleading is later filed (CRE or No Complaint at the Court date), a Certificate of release shall be prepared by the assigned investigator and provided to the individual or sent to their last known mailing address. In these cases, the investigator should note the Certificate of Release in the case notes via NetRMS.

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