

CHAPTER 17 - ARREST POLICIES

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GARDEN GROVE POLICE DEPARTMENT

GENERAL ORDER 17.1

Effective Date: January 1, 1988
Last Amended: September 1, 2000

Index as: Citation Release for Misdemeanor Arrests
Infractions
Juvenile Arrests
Public Intoxication Arrests
Use of Discretion
Verbal Warnings

ALTERNATIVES TO ARREST AND INCARCERATION

PURPOSE

The purpose of this General Order is to establish guidelines for the use of alternatives to arrest (physical incarceration).

POLICY

It is the policy of the Garden Grove Police Department to adhere to the requirements of CPC Sections 827.1, 849, 853.5, and 853.6 in utilizing alternatives to the physical incarceration of persons arrested by the department. Officers should review and be familiar with the provisions of General Order 2.5 - Use of Discretion. Generally, officers should attempt to release on citation, all misdemeanor arrestees that do not meet the criteria listed in the above sections. Arrestees that fall into the categories listed in 827.1 and 853.6(i) may be released on citation with supervisory approval. This approval will be documented in the narrative of the arrest report.

CITATION RELEASE FOR MISDEMEANOR ARRESTS

Adults arrested for a misdemeanor offense must be given the opportunity to be released from custody in return for their written promise to appear. In accordance with California Penal Code Section 853.6(i), the following arrestees **MUST NOT BE RELEASED** on their written promise to appear.

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."

CITATION RELEASE FOR MISDEMEANOR WARRANT ARRESTS

A person arrested for a misdemeanor warrant may be released upon the issuance of a citation. When electing to use this option the officer must weigh the totality of the circumstances. Bench warrant arrests will not be released on citation. In accordance with California Penal Code Section 827.1, the following arrestees MUST NOT BE RELEASED on their written promise to appear.

1. "The misdemeanor cited in the warrant involves violence.
2. The misdemeanor cited in the warrant involves a firearm.
3. The misdemeanor cited in the warrant involves resisting arrest.
4. The misdemeanor cited in the warrant involves giving false information to a peace officer.
5. The person arrested is a danger to himself or herself or others due to intoxication or being under the influence of drugs or narcotics.
6. The person requires medical examination or medical care or was otherwise unable to care for his or her own safety.
7. The person has other ineligible charges pending against him or her.
8. There is reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be immediately endangered by the release of the person.
9. The person refuses to sign the notice to appear.
10. The person cannot provide satisfactory evidence of personal identification.
11. The warrant of arrest indicates that the person is not eligible to be released on a citation."

CITATION RELEASES FOR MISDEMEANOR 23152(a) C.V.C ARRESTS

Adult arrested for a misdemeanor charge of driving under the influence may be released on citation if the following criteria has been satisfied:

1. A chemical test has been satisfactorily completed at the Garden Grove Police Department.
2. The arrestee's vehicle has been stored.
3. Admin Per Se has been completed.
4. The arrestee has been fingerprinted and photographed.
5. The arrestee has spent sufficient time at GGPD and is no longer under the influence **or** a responsible adult will accept the arrestee after they have been processed.
6. When completing the citation you must check the "Booking Required" box.

PROCEDURES FOR RELEASE

When a person is arrested and released on a written promise to appear, the following procedures are to be followed.

1. An arrest report and citation forms are completed.
2. The violator's copy of the citation is given to the arrestee.
3. All remaining copies of the citation must be attached to the arrest report and turned in to the Records Section. Officers must ensure that the "released" box is checked and the citation number is filled in on the Report of Arrest form.
4. The arrestee is cited to appear in court not less than ten days from the date the citation is issued.
5. Prior to releasing an arrestee, the issuing officer is to roll the right thumbprint onto the reverse side of the citation file copy, preferably in the diagram section. If the right thumbprint is not possible, then roll the left thumbprint and so note it on the citation. The arrest narrative shall state that the thumbprint was taken and indicate right or left.

INFRACTIONS

In accordance with California Penal Code Section 853.5, all persons arrested for an offense that is declared to be an infraction will be released on a written promise to appear as described in the previous section. Exceptions to this procedure are offenses and conditions established in California Vehicle Code Sections 40302, 40303, 40305, and 40305.5.

If an arrestee refuses to present valid identification or refuses to sign the written promise to appear, he may be taken into custody and booked at the Orange County Jail or appropriate detention facility.

VERBAL WARNINGS

Officers may utilize the concept of a "verbal warning" for infraction (traffic) and misdemeanor offenses where the facts indicate that proper resolution of the incident may be achieved without formal court action. This discretionary action may be restricted by a supervisor or Team Commander in those areas of directed patrol or selective enforcement requiring stricter attention to the "letter of the law."

PUBLIC INTOXICATION ARRESTS

Officers are encouraged to use alternatives to arrest for those persons who are in violation of California Penal Code Section 647(f) - Public Intoxication. Those persons that are brought to the Garden Grove Police Department holding facility will be released on a written promise to appear or released under the condition of Penal Code Section 849(b)(2).

JUVENILE ARRESTS

All persons under the age of 18 years of age who are arrested by this department will be handled in accordance with the procedures established in General Order 8.1 - Juvenile Arrests and Applications for Petition.

¹Standard 1.2.3, 5.1.4, 62.1.1, 74.3.1

GARDEN GROVE POLICE DEPARTMENT

GENERAL ORDER 17.2

Effective Date: July 16, 1969
Last Amended: January 4, 2007

Index as: Arrest by Private Person
Miranda Advisement
Off-Duty Arrests
Out of City Arrests
Search Warrants
Warrant Arrests
Warrantless Arrests
Warrantless Searches

CRIMINAL PROCESS

PURPOSE

The purpose of this General Order is to establish procedures governing the execution of the criminal process.

POLICY

Garden Grove police officers will follow all statutory and case guidelines when executing criminal processes.

SEARCH WARRANTS

Search warrants issued by a judge are valid for execution in the county specified on the warrant. As per Penal Code Section 1534, the search warrant shall be executed and returned to the court within ten days from issuance, unless specified otherwise by the issuing judge.

Telephone search warrants may be obtained by following the current practices dictated by West Orange County Judicial Center and under the guidelines of Penal Code Section 1528b.

WARRANTLESS SEARCHES

Officers will conduct warrantless searches and seizures in accordance with current case law. Warrantless searches include, but are not limited to: consent searches; "stop and frisk" searches; vehicle searches; crime scene searches; emergency (exigent circumstance) searches; prisoner and vehicle inventory searches; and any other search authorized by current state and federal law.

The Department subscribes to and provides all officers access to the California Peace Officers Legal Sourcebook, a publication of the California Department of Justice. The Legal Sourcebook provides the latest federal and California Supreme Court decisions and offers commentary to assist officers in complying with the most recent case law. The Sourcebook is updated quarterly. Field Supervisors are provided with a "Field Guide" version of the Sourcebook. The "Field Guide" is published annually.

The Orange County District Attorneys Office provides a monthly "Legal Update" on videotape. The tape covers many legal issues that relate to law enforcement, including conducting warrantless searches and seizures.

ARREST PROCEDURES

Assistance/Force to Effect Arrest

Any person making an arrest may orally summon as many persons as he deems necessary to aid him therein as per Penal Code Section 839.

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape, or to overcome resistance, as per Penal Code Section 835a. Refer to General Order 2.6 - Use of Physical Force.

Warrant Arrests

Arrest warrants are to be executed only by sworn peace officers.

When a misdemeanor arrest is made pursuant to a warrant, the original daily report (DR) file number is used on the report of arrest, GGPd Form 303.

Arrests made on outside agency warrants require that a Garden Grove daily report file number, arrest face page, and M.O. data sheet be completed. Refer to General Order 12.1 - Legal Process.

Warrantless Arrests

California Penal Code Section 836 authorizes Garden Grove police officers to make warrantless arrests under the following situations:

1. The crime was committed in their presence;
2. The person arrested has committed a felony, although not in their presence;
3. Whenever they have reasonable cause to believe that the person to be arrested has committed a felony, whether or not a felony has in fact been committed.

Adults arrested for a misdemeanor offense must be given the opportunity to be released from custody in return for their written promise to appear. Refer to General Order 17.1 - Alternatives to Arrest and Incarceration.

Municipal Code Arrest

Anytime an arrest is made where the charge may be either a municipal or state law violation, and a booking is deemed necessary, every effort to charge under California Penal Code will be made. This procedure ensures that the state pays for confinement rather than the city.

Off-Duty Arrests

When no other alternative is available, the situation requires immediate action, and the officer makes an arrest, the officer is on duty. On-duty time starts with the officer's initial action, and lasts until the officer is dismissed from duty by the on-duty Watch Commander or Community Policing Bureau sergeant.

Out of City Arrests

An officer who makes an arrest while off duty in another jurisdiction must contact the agency having jurisdiction. This arrest is considered a private person arrest for court.

The officer must advise the on-duty Watch Commander or Community Policing Bureau sergeant of the incident as soon as possible. The officer will direct a memorandum detailing the incident to the Chief of Police as soon as practical.

MIRANDA ADVISEMENT PROCEDURES

Adult Suspects

Miranda advisements are required before an adult is interviewed under the following circumstances:

1. The adult is in custody; and
2. The adult is being interrogated (interviewed).

Juvenile Suspects

Section 625 of the California Welfare and Institutions Code REQUIRES that a juvenile be advised of his constitutional rights when the juvenile is taken into custody for a violation of Section 601 or 602 of the Welfare and Institutions Code. The advisement must be given REGARDLESS of whether or not the juvenile is interviewed. Refer to General Order 8.1 - Juvenile Arrests and Applications for Petition.

ARREST BY A PRIVATE PERSON

Penal Code Section 837 provides that a private person may arrest another:

- a) For a public offense
- b) When the person arrested has committed a felony, although not in his or her presence, or
- c) When a felony has been in fact committed, and he or she has reasonable cause for believing the person arrested has committed it.

Note: Unlike peace officers, private persons may not make an arrest on suspicion that a felony has been committed – the felony must in fact have been committed.

Officer Responsibilities:

Any officer presented with a private person wishing to make an arrest must determine whether or not there is reasonable cause to believe that such an arrest would be lawful. Penal Code 847.

- a) Should any officer determine that there is no reasonable cause to believe that a private person's arrest is lawful, the officer should take no action to further detain or restrain the individual beyond that which reasonably appears necessary to investigate the matter, determine the lawfulness of the arrest and protect public safety. If a private person demands an arrest, and the officer determines there is no reasonable cause to support the arrest or other lawful grounds to support an independent arrest by the officer, the officer should advise the parties that no arrest will be made and that the circumstances will be documented in a related report.
 - 1) Any private person's arrest where a suspect is in physical custody, and the officer has determined that the arrest is unlawful, should be received by the officer and promptly released pursuant to Penal Code 849(b)(1). This officer must include the facts and reasons for the arrest and release in a related report.
- b) Whenever an officer determines that there is reasonable cause to believe that a private person's arrest is lawful, the officer may exercise any of the following options:
 - 1) Take the individual into physical custody for booking;
 - 2) Release the individual pursuant to a Notice to Appear
 - 3) Release the individual pursuant to Penal Code 849.

Reporting Requirements:

In all circumstances in which a private person is claiming to have made an arrest, the individual must complete and sign a department Private Person's Arrest Form (GGPD Form 322) under penalty of perjury.

In addition to the Private Person's Arrest Form (and any other related documents such as citations, booking forms, etc.), officers shall complete an arrest face page and narrative report regarding the circumstances and disposition of the incident. If the arrestee will be released in the field pursuant to Penal Code 849(b)(1), a supervisor must sign the form as per Department policy.

In the case of a private person arrest for shoplifting, the officer will obtain a copy of the store employee's report of the incident. This report will accompany the arrest report.

GARDEN GROVE POLICE DEPARTMENT

GENERAL ORDER 17.3

Effective Date: June 15, 2005
Last Amended: January 4, 2007

Index as: Immigration violations

IMMIGRATION VIOLATIONS

PURPOSE

The purpose of this policy is to establish guidelines when dealing with individuals who have violated the immigration laws of the United States

The trust that members of the community enjoy with the City and the Police Department is of paramount importance. It is incumbent upon all members of this Department to make a personal commitment to equal enforcement of the law and equal service to the public regardless of alien status.

POLICY

The United States Immigration and Customs Enforcement (ICE) has primary jurisdiction for enforcement of the provisions of Title 8, U.S. Code dealing with illegal entry, etc. When members of the Garden Grove Police Department are requested by the ICE to provide immediate assistance, or when suspected criminal violations are discovered as a result of any investigation, based upon probable cause, not originating from violations of Title 8, U.S. Code, §~ 1304, 1324, 1325, and 1326, members of the Garden Grove Police Department may assist in the enforcement of federal immigration laws.

IMMIGRATION COMPLAINT PROCEDURES

Persons wishing to report immigration violations should be referred to the United States Immigration and Customs Enforcement (ICE), 34 Civic Center Plaza, 9th floor, Santa Ana, CA (714) 972-4100. The Employer Sanction Unit of the ICE has primary jurisdiction for enforcement of Title 8, U.S. Code.

The fact that an individual is suspected of being an undocumented alien alone shall not be the basis for contact, detention, or arrest.

Members of the Garden Grove Police Department shall not independently conduct sweeps or other concentrated efforts to detain suspected undocumented aliens.

When enforcement efforts are increased in a particular area, equal consideration should be given to all suspected violations and not just those affecting a particular race, ethnicity, age, gender, socioeconomic status, or other group. While discretionary, the disposition of each contact should not be affected by such factors as race, ethnicity, sexual orientation, etc.

If the ICE or any other federal agency makes a specific request for assistance, members of the Garden Grove Police Department will provide available support during the federal operation. Members of the Department should not participate in such federal operations as part of any detention team unless it is in response to an immediate, yet temporary request for assistance or for officer safety. Any detention by a member of this Department should be based upon the reasonable belief that an individual is involved in criminal activity, other than those related to citizenship status.

ARREST AND IDENTIFICATION

Whenever any individual is reasonably suspected of a criminal violation (infraction, misdemeanor, or felony), the investigating officer should take the necessary steps to identify the person. This may include valid government issued identification or other reliable sources.

If an officer believes that an individual taken into custody for a felony is an undocumented alien, the arrestee should be booked into Orange County Jail without consideration for immigration status.

If an officer believes that an individual taken into custody for a misdemeanor is an undocumented alien, and that person would have otherwise been released on a written promise to appear, the person should be given a reasonable opportunity to verify their true identity (e.g., telephone calls, etc.). If the person's identity is thereafter reasonably established, the original citation release should be completed without consideration of immigration status.

If members of the Department arrest an individual who is unable to reasonably establish his or her true identity, the individual may be booked at the appropriate jail (refer to Vehicle Code § 40302a, and Penal Code § 853.6, if applicable).

If a person is detained pursuant to the authority of Vehicle Code § 40302a, for an infraction, that person may be detained for a reasonable period not to exceed two hours, for the purpose of establishing his or her true identity. Regardless of the status of that person's identity at the expiration of two hours, he or she shall be released on his/her signature with a written promise to appear in court for the Vehicle Code infraction involved.

NOTIFICATION OF IMMIGRATION AND NATURALIZATION SERVICE

If an officer detains an individual who meets the criteria, as defined in Section 1227, Title 8 U.S.C., Deportable Aliens, which includes prior convictions for crimes of moral turpitude, controlled substances, domestic violence, and violation of courts protection orders, the individual can be taken into custody for violation of this Federal statute if:

- a. The officer has obtained a copy of the individuals Criminal History Index indicating one of the listed offenses,
- b. The officer has obtained approval from the Watch Commander prior to the arrest,
- c. Written notification to the Chief of Police, via the chain of command, must be provided prior to the conclusion of the officer's duty shift.

The United States Customs and Border Protection (CBP) should be notified of the arrest by calling (619) 662-7321. The arrestee should be transported to the San Onofre Border Checkpoint and released to the custody of the United States Customs and Border Protection (CBP). The arresting officer shall indicate the disposition of the arrestee on the Arrest Face Page and in the arrest narrative.

This Department will not book undocumented aliens based solely on immigration status unless a warrant is confirmed through the ICE and they are willing to pick up the individual.

DETERMINATION OF IMMIGRANT STATUS

Determination of immigration status is primarily the jurisdiction of the United States Immigration and Customs Enforcement (ICE). Title 8, U.S. Code § 1304 (e), provides: "Every alien, eighteen years of age and over, shall at all times carry with him and have in his/her personal possession any certificate of alien registration or alien registration receipt card issued to him pursuant to subsection (d) of this section. Any alien who fails to comply with the provisions of this subsection shall be guilty of a misdemeanor and shall upon conviction for each offense be fined not to exceed \$100.00 or be imprisoned not more than thirty days, or both."