

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: July 20, 2016

NUMBER: 3.21 – INVESTIGATIONS

SUBJECT: FIELD RELEASE AND/OR DROP/CHANGE OF CHARGE FORM PD-1136-LA [849(b)(1) PC]

RELATED POLICY: [3.21](#)

ORIGINATING DIVISION: INVESTIGATIONS I

NEW PROCEDURE:

PROCEDURAL CHANGE:

SUPERSEDES: DP 3.21 –12/22/2011

I. PURPOSE

This Department procedure establishes guidelines for the release and change of charges of persons arrested without a warrant.

II. SCOPE

This Department procedure applies to all sworn members of the Department.

III. BACKGROUND

NEW A. Penal Code Section 849(b) provides that any peace officer may release from custody, instead of taking such person before a magistrate, any person arrested without a warrant, including a person arrested by a citizen pursuant to Penal Code section 837, whenever:

NEW 1. The officer is satisfied that there are insufficient grounds for making a criminal complaint against the person arrested.

NEW 2. The person arrested was arrested for intoxication only, and no further proceedings are desirable.

NEW 3. The person was arrested only for being under the influence of a controlled substance or drug and such person is delivered to a facility or hospital for treatment and no further proceedings are desirable.

NEW

4. The person was arrested for driving under the influence of alcohol or drugs and the person is delivered to a hospital for medical treatment that prohibits immediate delivery before a magistrate.

NEW

B. When a person is released pursuant to Penal Code section 849(b)(1) or (b)(3), the record of arrest must include a Certificate of Release; thereafter, such arrest shall not be deemed an arrest, but a detention only.

NEW

C. Nothing in this procedure requires an officer to take custody of a person arrested by a citizen pursuant to Penal Code section 837 when the officer has determined there is no probable cause for arrest.

1. All such incidents should be documented appropriately.

IV. PROCEDURE FOR FIELD DETENTION RELEASES

A. When officers determine that arrested subjects should be released because of insufficient grounds to seek a criminal complaint, they shall release the subjects in one of the following ways:

1. At the scene of the arrest prior to any transportation or removal;
2. At a police facility (e.g. Headquarters or area station); or,
3. At a medical facility where he/she has been taken for treatment of injuries or illness.

B. Any deviation from the above procedure(s) must have the prior approval of a supervisor.

C. When an arrested subject is transported away from the scene of an arrest to either a police or medical facility and is subsequently released from custody, an Arrest Report form (ARJIS-8) must be submitted. The report must outline the circumstances of the arrest, the reason for release, and the release location.

D. This procedure does not apply to the detention and arrest of juvenile offenders. Those procedures are outlined in Department Procedure 3.08, Juvenile Procedures.

V. PROCEDURE FOR DROP/CHANGE OF CHARGE FORM (PD-1136-LA)

A. A Drop/Change of Charge form is used when a felony charge under Penal Code Section 17(b)(4) is dropped to a misdemeanor, or when facts arise to charge another crime. When preparing the Drop/Change of Charge form (PD-1136-LA) in CRMS, or manually, the assigned investigator will completely fill in the

appropriate blanks and clearly indicate the reason for dropping any charges in the "Explanation" section.

1. Under no circumstances is "insufficient evidence" alone an acceptable reason.
 2. The investigator's immediate supervisor must approve the Drop/Change of Charge form electronically in CRMS or by signing the paper form if completed manually. Authorization for the form will be made by the appropriate commanding officer (area captain or specialized unit captain).
 3. The electronic change of charge form is located in CRMS Web. The paper form (Form PD-1136-LA) can be located at area command investigative units or on the LAN at F:\Templates\Investigative Reports\Prisoner Charge Changes.dot.
- B. If processing by paper form, the original must be sent to Records Division for processing and retention. The electronic form is automatically stored in CRMS after supervisor approval.
- C. Copies of the manual form or a printed copy of the electronic form will be routed by the investigator as follows:
1. Jail – one copy shall be faxed to the Jail or Las Colinas. The charges on either the paper form or the electronic form must match **exactly** with the charges the Jail or Las Colinas has on the suspect. If the charges do not match, the form will not be accepted by the booking personnel.
 2. City Attorney – the City Attorney's copy will be attached to the arrest package that is submitted through Department mail. This copy must be prepared when:
 - a. Dropping a felony charge with a misdemeanor charge remaining;
 - b. Reducing a felony charge to a misdemeanor; or,
 - c. Referring a felony charge to the City Attorney for 17(b)(4) prosecution.
 3. It will be the individual investigator's responsibility to transport Drop/Change of Charge forms to all appropriate divisions/persons in the event of a fax machine malfunction.
- D. The Watch Commander shall be the only person, other than investigative personnel, authorized to prepare an 849(b)(1) release or Drop/Change of Charge form, reducing original booking charges.

1. Preparing such releases or change of charge forms should be considered only when exigent circumstances exist.
 2. Errors or omissions relative to original booking charges should be conveyed to investigative units by the arresting officer.
 3. Investigative personnel will then be responsible for correcting the original booking charges.
- E. When the District Attorney rejects the issuance of a complaint, an SDPD Drop/Change of Charge form (PD-1136-LA) is not needed. The District Attorney is responsible for the jail release, per 849.5 PC.
- F. When all charges on an arrest have been released, Records Division personnel will prepare a Certificate of Release form (PD-470) in CRMS. It will then be routed as follows:
1. A copy is retained in CRMS.
 2. A copy is forwarded to Sheriff's Records Division.
 3. The original is mailed to the subject.