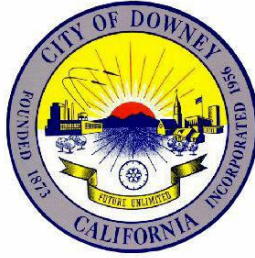


# **DOWNEY POLICE DEPARTMENT**

**TRAINING**



**BULLETIN**

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No. 18-02

## **Arrest Without Filing of Accusatory Pleading**

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A recent class action case, *Schmidt v. CHP*, brought about a reaffirmation of the express requirements of Penal Code sections 849, 849.5 and 851.6. The California Court of Appeal, 2<sup>nd</sup> District, held, in *Schmidt v. CHP*, that if a person is arrested, but no accusatory pleading is filed with a court, the arrest shall be deemed a detention only. The Court Discussion is as follows:

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.”

Penal Code 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/her describing the action as a detention.”

Penal Code 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.”

Effective immediately, the following process will be in place for when an individual is arrested and ultimately released, with no accusatory pleading filed:

- a) The individual shall be issued a certificate describing the action as a detention. This certificate will also be used in situations where individuals are released pursuant to 849PC.
- b) The Bureau of Criminal Identification and Investigation of the DOJ shall be notified that the arrest should be classified as a detention only.

### **Field Operations:**

The attached Detention Certificate shall be immediately issued upon release of any subject who is formally arrested and released (whether or not they were actually “booked”). A copy of the certificate shall be kept with the arrest package and it shall be the responsibility of the Records

personnel to notify The Bureau of Criminal Identification and Investigation of the DOJ that the arrest is to be classified as a detention only.

**Detective Bureau:**

When a case is submitted to the District Attorney's Office and the District Attorney declines filing, the attached Detention Certificate shall be immediately issued (U.S. mail) to the arrestee. A copy of the certificate shall be kept with the case file and it shall be the responsibility of the Detective Bureau Secretary to notify The Bureau of Criminal Identification and Investigation of the DOJ that the arrest is to be classified as a detention only.