

DOWNEY POLICE DEPARTMENT

TRAINING



BULLETIN

Dean Milligan
Chief of Police

No. 20-03

Carotid Restraint

Effective as of Sunday, June 7, 2020 at 1200 hours, California POST will no longer send a force expert to testify in the use of the carotid restraint on behalf of law enforcement agencies. Additionally, POST will no longer train or certify the use of the carotid restraint.

Therefore, we shall discontinue the use of the carotid restraint effective immediately and continue to do so until further clarification is provided by our attorneys on its further use.

This bulletin will address the recent court decision in the Schmidt v. CHP case which stated if a person is arrested, but no accusatory pleading is filed with a court, the arrest shall be deemed a detention only.

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.

Effective immediately, all members of this department shall continue to utilize Downey Police form DPP 224 "Certificate of Release"¹ when a subject is taken into custody but is to be classified as a Detention Only, not an Arrest. Furthermore, 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."

¹ This form is commonly referred to as the 849(b) form

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"A notice to appear may be an 'accusatory pleading' when it is filed with the court. But the CHP cites no authority holding that a notice to appear may constitute an accusatory pleading without being filed with the court. The ordinary meaning of a pleading is that it is a document filed with the court."

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