

ALAMEDA COUNTY SHERIFF'S OFFICE DETENTION AND CORRECTIONS POLICY AND PROCEDURE	NUMBER: 11.12	PAGES: 1 of 3
	RELATED ORDERS: ACA 4-ALDF-5B-18, 4C-34 P.C. 849, 849.5, 851.6	
	ISSUED DATE: July 1, 1989	
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CHAPTER: Intake, Transfer, Release and Records	SUBJECT: P.C. 849(b) Release Procedure	

- I. **PURPOSE:** To describe the process for releasing inmates pursuant to 849(b) PC.
- II. **POLICY:** Staff from the Glenn E. Dyer Detention Facility (GEDDF) and the Santa Rita Jail (SRJ) will release prisoners at the request of the arresting officer or another member of the arresting officer's agency, when appropriate, and in compliance with Sections 849 and 851.6 of the Penal Code. No inmate will be released from physical custody, without sworn ACSO supervisor approval.
- III. **DEFINITIONS:**
- A. PENAL CODE SECTION 849 reads in part:
1. 849(a): When an arrest is made without a warrant by a peace officer or private person, the person arrested, if not otherwise released, shall without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the offense is triable, and a complaint stating the charge against the arrested person shall be laid before such magistrate.
 2. 849(b): Any peace officer may release from custody, instead of taking such person before a magistrate, any person arrested without a warrant whenever: (1) He/she is satisfied there are insufficient grounds for making a criminal complaint against the person arrested. (2) The person arrested was arrested for intoxication only, and no further proceedings are desirable. (3) The person was arrested only for being under the influence of a narcotic, drug, or restricted dangerous drug, and such person is delivered to a facility or hospital for treatment, and no further proceedings are desirable.
 3. 849(c): Any record of arrest of a person released pursuant to paragraphs (1) and (3) of subdivision (b) shall include a record of release. Thereafter, such arrest shall not be deemed an arrest, but a detention only.

- B. PENAL CODE SECTION 849.5 reads in part, 849.5(a): In any case in which a person is arrested and released and no accusatory pleading is filed charging him/her with an offense, any record of arrest of the person shall include a record of release. Thereafter, the arrest shall not be deemed an arrest, but a detention only.
- C. PENAL CODE SECTION 851.6 reads in part:
1. 851.6(a): In any case in which a person is arrested and released pursuant to Paragraphs (1) or (3) of subdivision (b) of Section 849, the person shall be issued a certificate, signed by the releasing officer or his/her superior officer, describing the action as a detention.
 2. 851.6(b): In any case in which a person is arrested and released and no accusatory pleading is filed charging him/her 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.

IV. PROCEDURE:

- A. Only the arresting officer, or another member of the arresting agency, will be allowed to authorize a release under Penal Code Section 849(b).
1. The officer or other member of the arresting agency requesting the release will provide the completed PC 849(b) form approved by their agency.
 2. The completed form will be submitted by the arresting agency in person. Faxed forms and verbal requests to release are not accepted.
 3. At no time will an arrested individual be accepted into the custody of the Alameda County Sheriff's Office with a signed PC 849(b) form issued. The PC 849(b) release prohibits further incarceration and the Alameda County Sheriff's Office has no legal authority to hold the offender.
 4. If an arresting agency brings in an arrested individual for under the influence of drugs or alcohol and no criminal prosecution is sought, the arresting agency shall be referred to the Cherry Hill Sobering Center. If the arresting agency submits the prisoner to the custody of the Alameda County Sheriff's Office they have the option to return and submit a PC 849(b) form. If no authorization to release has been obtained staff will process the prisoner per existing policies.

- B. The staff member that receives notification of a release pursuant to PC 849(b) will:
1. Ensure the PC 849(b) form is complete with all proper information.
 2. Process the inmate for release.
 3. At time of release, the arrestee will be given the original completed PD-300 form.
 4. A duplicate copy of the form will be placed in the custodial file
 5. *The release reason is listed in ATIMS as 849(b).*