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# ONE MINUTE BRIEF

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**NUMBER:** 2020-08    **DATE:** 03-18-20    **BY:** Devallis Rutledge    **TOPIC:** Distancing Options

**ISSUE:** What are some legal options for limiting jailhouse and courthouse occupant density?

Calamities such as the current viral epidemic may require that law enforcement officials and court officers consider making the greatest-possible use of statutory procedures for **limiting** the number of arrestees who are booked into jail or summoned into court for trial, consistent with overall public safety. About 28% of arrests in California are for felony offenses. <https://openjustice.doj.ca.gov/exploration/crime-statistics/arrests>. This means the remaining 72% of arrests are for misdemeanors or infractions—offenses for which officials have greater flexibility with respect to incarceration and court appearance. Here are some provisions of law to be considered.

- **Release from Arrest.** In those 5 situations listed in PC § 849(b), officers may release from warrantless arrest certain arrestees, with no further proceedings. (This section may sometimes apply to either misdemeanor or felony offenses. PC § 849(b)(1).)

- **Cite and Release.** PC §§ 853.5 (infractions) and 853.6 (misdemeanors) mandate that most non-felony arrestees be released on written promise to appear (except in domestic violence cases where there is a reasonable likelihood of further risk, per PC § 853.6(a)(2), or those cases listed in PC § 853.6(a)(3), or as specified in VC §§ 40302-40305.5).

- Although PC § 853.6(i) lists 12 grounds for retaining the person in custody instead of citing and releasing (and these misdemeanor provisions also apply to infractions, per PC § 19.7), keeping the person in custody even in these 12 situations is **discretionary** (“...the arresting officer **may release the person...**”).

- A person who is to be cited and released may nevertheless be **booked** (mugged and printed) at the scene or at the station, before release on citation. PC §§ 853.6(g), 1320.8.

- Cite-and-release is not authorized in cases of **felony** arrests, PC § 853.85, including “wobbler” arrests. PC § 17(b). *“These provisions for release upon the giving of a written promise to appear do not apply in any case where a person is arrested for an offense declared to be a felony.” In re Rottanak K. (1995) 37 Cal.App.4<sup>th</sup> 260, 276.*

- Arresting officers may generally exercise their statutory discretion to release on written citation, or as provided in PC § 849(b), without fear that doing so may subject them to civil liability. Govt. Code §§ 812.2, 820.2, 821 and 846; *Harris v. Smith* (1984) 157 Cal.App.3d 100 (no liability for exercise of official discretion). (City attorneys, county counsel or the Attorney General, as appropriate, should be consulted on all civil liability issues.)

- **Trial by Written Declaration.** In most **infraction** cases, a defendant may elect to have a trial by written declaration on violations of the Vehicle Code or local ordinances, as provided in VC § 40902.

- **Online Trials.** In courts designated as “pilot courts” by the Judicial Council, a defendant may elect to have the trial of Vehicle Code **infractions** conducted online, as detailed in VC § 40287.

- With the guidance of supervisory personnel and civil legal counsel, law enforcement and court officers may follow protocols for utilizing these and other procedures to **minimize**, to the extent compatible with the demands of public safety, the **pretrial incarceration** and **courtroom appearance** of certain suspects. Reducing the numbers of suspects commingling in the jails and courtrooms may help mitigate the risks of transmission of pathogens.

**BOTTOM LINE:** As determined to be appropriate, some arrested persons may be processed without the need for pretrial incarceration or courtroom appearance.

This information was current as of publication date. It is not intended as legal advice. It is recommended that readers check for subsequent developments, and consult legal advisors to ensure currency after publication. Local policies and procedures regarding application should be observed.