

# Private Persons Arrests

## 363.1 PURPOSE AND SCOPE

Best Practice **MODIFIED**

The purpose of this policy is to provide guidance for the handling of private person's arrests made pursuant to Penal Code § 837.

### 363.1(a) RELATED LAWS

Officers shall become familiar with the following Penal Code Sections:

1. Penal Code 142 Refusing to receive or arrest person charged with a crime
2. Penal Code 837 Arrests by private persons
3. Penal Code 839 Summoning assistance to make arrest
4. Penal Code 847 Deliver arrested person to Peace Officer/liability of Peace Officer
5. Penal Code 849(b)(1) Release from custody

## 363.2 ADVISING PRIVATE PERSONS OF THE ARREST PROCESS

State

Penal Code § 836(b) expressly mandates that all officers shall advise victims of domestic violence of the right to make a private person's arrest, including advice on how to safely execute such an arrest. In all other situations, officers should use sound discretion in determining whether or not to advise an individual of the arrest process.

- (a) When advising any individual regarding the right to make a private person's arrest, officers should refrain from encouraging or dissuading any individual from making such an arrest and should instead limit advice to the legal requirements for such an arrest as listed below.
- (b) Private individuals should be discouraged from using force to effect a private person's arrest, and absent immediate threat to their own safety or the safety of others, private individuals should be encouraged to refer matters to law enforcement officials for further investigation or arrest.

## 363.3 ARRESTS BY PRIVATE PERSONS

State

Penal Code § 837 provides that a private person may arrest another:

- (a) For a public offense committed or attempted in his or her presence;
- (b) When the person arrested has committed a felony, although not in his or her presence;
- (c) When a felony has been in fact committed, and he or she has reasonable cause for believing the person arrested has committed it.

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Unlike peace officers, private persons may not make an arrest on suspicion that a felony has been committed - the felony must in fact have taken place.

#### **363.4 OFFICER RESPONSIBILITIES**

State **MODIFIED**

Any officer presented with a private person wishing to make an arrest must determine whether or not there is reasonable cause to believe that such an arrest would be lawful (Penal Code § 847).

- (a) Should any officer determine that there is no reasonable cause to believe that a private person's arrest is lawful, the officer should take no action to further detain or restrain the individual beyond that which reasonably appears necessary to investigate the matter, determine the lawfulness of the arrest and protect the public safety.
  1. Any officer who determines that a private person's arrest appears to be unlawful should promptly release the arrested individual pursuant to Penal Code § 849(b) (1), fill out a detention certificate and give a copy to the detainee. The officer must include the basis of such a determination in a related report and attach the detention certificate to it.
  2. Absent reasonable cause to support a private person's arrest or other lawful grounds to support an independent arrest by the officer, the officer should advise the parties that no arrest will be made and that the circumstances will be documented in a related report.
- (b) Whenever an officer determines that there is reasonable cause to believe that a private person's arrest is lawful, the officer may exercise any of the following options:
  1. Take the individual into physical custody for booking
  2. Release the individual pursuant to a Notice to Appear
  3. Release the individual pursuant to Penal Code § 849
  4. In a private person arrest involving an adult violator, officers will advise the private person making the arrest that the District Attorney's Office will notify them if they are needed.
  5. In a private person arrest involving adult violators on city code violations, officers will advise the private person making the arrest that the City Attorney's Office will notify them if they are needed.
  6. In a private person arrest involving a juvenile violator, officers will advise the private person making the arrest that they will be notified when they are needed for court purposes.

#### **363.5 REPORTING REQUIREMENTS**

Best Practice

In all circumstances in which a private person is claiming to have made an arrest, the individual must complete and sign a department Private Person's Arrest form under penalty of perjury.

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In addition to the Private Person's Arrest Form (and any other related documents such as citations, booking forms, etc.), officers shall complete a narrative report regarding the circumstances and disposition of the incident.