

AMENDED IN SENATE MARCH 21, 2002

SENATE BILL

No. 1541

Introduced by Senator Ackerman

February 20, 2002

An act to amend Section 853.5 of the Penal Code, *and to amend Sections 40303, 40305, 40305.5, and 40500 of the Vehicle Code*, relating to arrests.

LEGISLATIVE COUNSEL'S DIGEST

SB 1541, as amended, Ackerman. Arrest: infractions: release.

Existing law generally provides that in any case in which a person is arrested for an offense declared to be an infraction, the person may be released, as specified, provided the arrestee presents his or her driver's license or other satisfactory evidence of identity for examination and signs a written promise to appear. Existing law further provides that if the arrestee does not have a driver's license or other satisfactory evidence of identity in his or her possession, the officer may require the arrestee to provide thumbprints or fingerprints, as specified, and that only if the arrestee refuses to sign a written promise, has ~~not~~ *no* satisfactory identification, or refuses to provide a thumbprint or fingerprint may the arrestee be taken into custody.

This bill would instead provide that if the arrestee does not have a driver's license or other satisfactory evidence of identity in his or her possession, the officer shall require the arrestee to provide thumbprints or fingerprints, as specified, unless the officer is called away for an emergency or otherwise cannot perform the task. The bill would specify that only if the arrestee refuses to sign a written promise to appear, has ~~not~~ *no* satisfactory identification, or refuses to provide a thumbprint or fingerprint may the arrestee be taken into custody.

Under existing law, in most cases in which a person is arrested for a Vehicle Code violation declared to be an infraction or a misdemeanor, including a violation of any city or county traffic ordinance, the person may be released pursuant to specified procedures, in addition to those described above, without the involvement of a magistrate. These procedures generally require, among other things, presenting to a peace officer satisfactory identification or signing a promise or notice to appear. Existing law authorizes a peace officer to obtain a thumbprint or fingerprint on a promise to appear from the person arrested for a traffic infraction or misdemeanor if that person does not provide satisfactory evidence of identity. Under certain of these provisions, when a traffic arrestee does not have sufficient evidence of identity, an officer may require the arrestee to provide a thumbprint or fingerprint prior to a release authorized without a magistrate.

This bill would require rather than permit an arresting officer availing of certain specified release procedures that do not involve a magistrate to take a thumbprint or fingerprint from the arrestee who does not have sufficient identification, as specified. It would also require an officer to take a thumbprint or fingerprint from any arrestee with or without sufficient identification who is released on specified Vehicle Code changes without the involvement of a magistrate.

By requiring peace officers to take fingerprints in certain circumstances, this bill would impose a state-mandated local program.

This bill also would provide that when a person contests a charge by claiming not to be the person issued the written promise to appear *on an infraction* and there is no thumbprint or fingerprint as provided above, the court, if it believes that sufficient identification is not apparent from the face of the promise to appear, may refer the promise to appear back to the issuing agency for further investigation. In this event, the court would be required to continue the case and the speedy trial period shall be tolled for 45 days. Upon receipt of the issuing agency's response, if the court determines there is insufficient evidence that the person cited is the person charged, the court would have the authority to dismiss the matter, and if the issuing agency fails to respond within 45 days, the court would be required to dismiss the charges.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide



and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 853.5 of the Penal Code is amended to
2 read:

3 853.5. (a) Except as otherwise provided by law, in any case
4 in which a person is arrested for an offense declared to be an
5 infraction, the person may be released according to the procedures
6 set forth by this chapter for the release of persons arrested for an
7 offense declared to be a misdemeanor. In all cases, except as
8 specified in Sections 40302, 40303, 40305, and 40305.5 of the
9 Vehicle Code, in which a person is arrested for an infraction, a
10 peace officer shall only require the arrestee to present his *or her*
11 driver's license or other satisfactory evidence of his *or her* identity
12 for examination and to sign a written promise to appear. If the
13 arrestee does not have a driver's license or other satisfactory
14 evidence of identity in his or her possession, the officer shall
15 require the arrestee to place a right thumbprint, or a left thumbprint
16 or fingerprint if the person has a missing or disfigured right thumb,
17 on the promise to appear, unless the officer is called away on what
18 the officer deems is an emergency or the officer is otherwise
19 unable to perform this task. This thumbprint or fingerprint shall
20 not be used to create a data base. Only if the arrestee refuses to sign
21 a written promise to appear, has no satisfactory identification, or
22 refuses to provide a thumbprint or fingerprint may the arrestee be
23 taken into custody.

24 (b) When a person contests a charge by claiming not to be the
25 person issued the written promise to appear and there is no
26 thumbprint or fingerprint as provided above, the court may on its
27 own authority refer the promise to appear back to the issuing
28 agency for further investigation if in its discretion the court



1 believes that sufficient identification is not apparent from the face
2 of the promise to appear.

3 (c) Upon initiation of the investigation process, the court shall
4 continue the case and the speedy trial period shall be tolled for 45
5 days.

6 (d) (1) Upon receipt of the issuing agency's response, the court
7 may dismiss the matter pursuant to Section 1385 if the court
8 determines there is insufficient evidence that the person cited is the
9 person charged.

10 (2) If the issuing agency fails to respond within 45 days, the
11 court shall dismiss the charges pursuant to Section 1385.

12 SEC. 2. *Section 40303 of the Vehicle Code is amended to read:*

13 40303. Whenever any person is arrested for any of the
14 following offenses and the arresting officer is not required to take
15 the person without unnecessary delay before a magistrate, ~~the~~
16 ~~arrested person shall, in the judgment of the arresting officer,~~
17 ~~either be given a~~ *the officer shall require the arrestee to place a*
18 *right thumbprint, or a left thumbprint or fingerprint if the person*
19 *has a missing or disfigured right thumb, on the 10 days' notice to*
20 *appear as provided in this section or be taken without unnecessary*
21 *delay before a magistrate within the county in which the offense*
22 *charged is alleged to have been committed and who has*
23 *jurisdiction of the offense and is nearest or most accessible with*
24 *reference to the place where the arrest is made:*

25 (a) Section 10852 or 10853, relating to injuring or tampering
26 with a vehicle.

27 (b) Section 23103 or 23104, relating to reckless driving.

28 (c) Subdivision (a) of Section 2800, insofar as it relates to a
29 failure or refusal of the driver of a vehicle to stop and submit to an
30 inspection or test of the lights upon the vehicle under Section 2804
31 hereof, which is punishable as a misdemeanor.

32 (d) Subdivision (a) of Section 2800, insofar as it relates to a
33 failure or refusal of the driver of a vehicle to stop and submit to a
34 brake test which is punishable as a misdemeanor.

35 (e) Subdivision (a) of Section 2800, relating to the refusal to
36 submit vehicle and load to an inspection, measurement, or
37 weighing as prescribed in Section 2802 or a refusal to adjust the
38 load or obtain a permit as prescribed in Section 2803.

39 (f) Subdivision (a) of Section 2800, insofar as it relates to any
40 driver who continues to drive after being lawfully ordered not to



1 drive by a member of the California Highway Patrol for violating
2 the driver's hours of service or driver's log regulations adopted
3 pursuant to subdivision (a) of Section 34501.

4 (g) Subdivision (b) of Section 2800, relating to a failure or
5 refusal to comply with any lawful out-of-service order.

6 (h) Section 20002 or 20003, relating to duties in the event of an
7 accident.

8 (i) Section 23109, relating to participating in speed contests or
9 exhibition of speed.

10 (j) Section 14601, 14601.1, 14601.2, or 14601.5, relating to
11 driving while license is suspended or revoked.

12 (k) When the person arrested has attempted to evade arrest.

13 (l) Section 23332, relating to persons upon vehicular crossings.

14 (m) Section 2813, relating to the refusal to stop and submit a
15 vehicle to an inspection of its size, weight, and equipment.

16 (n) Section 21461.5, insofar as it relates to a pedestrian who,
17 after being cited for a violation of Section 21461.5, is, within 24
18 hours, again found upon the freeway in violation of Section
19 21461.5 and thereafter refuses to leave the freeway after being
20 lawfully ordered to do so by a peace officer and after having been
21 informed that his or her failure to leave could result in his or her
22 arrest.

23 (o) Subdivision (a) of Section 2800, insofar as it relates to a
24 pedestrian who, after having been cited for a violation of
25 subdivision (a) of Section 2800 for failure to obey a lawful order
26 of a peace officer issued pursuant to Section 21962, is within 24
27 hours again found upon the bridge or overpass and thereafter
28 refuses to leave after being lawfully ordered to do so by a peace
29 officer and after having been informed that his or her failure to
30 leave could result in his or her arrest.

31 (p) Section 21200.5, relating to riding a bicycle while under the
32 influence of an alcoholic beverage or any drug.

33 (q) Section 21221.5, relating to operating a motorized scooter
34 while under the influence of an alcoholic beverage or any drug.

35 *SEC. 3. Section 40305 of the Vehicle Code is amended to read:*

36 40305. Whenever a nonresident is arrested for violating any
37 section of this code while driving a motor vehicle and does not
38 furnish satisfactory evidence of identity and an address within this
39 State at which he can be located, he may, in the discretion of the
40 arresting officer, be taken immediately before a magistrate within



1 the county where the offense charged is alleged to have been
2 committed, and who has jurisdiction over the offense and is nearest
3 or most accessible with reference to the place where the arrest is
4 made. If the magistrate is not available at the time of the arrest and
5 the arrested person is not taken before any other person authorized
6 to receive a deposit of bail, and if the arresting officer does not have
7 the authority or is not required to take the arrested person before
8 a magistrate or other person authorized to receive a deposit of bail
9 by some other provision of law, *the officer shall require the*
10 ~~nonresident shall be released from custody upon giving~~ *to place a*
11 *right thumbprint, or a left thumbprint or fingerprint if the person*
12 *has a missing or disfigured right thumb, on a written promise to*
13 *appear as provided in Article 2 (commencing with Section 40500).*

14 *SEC. 4. Section 40305.5 of the Vehicle Code is amended to*
15 *read:*

16 40305.5. (a) Whenever a nonresident is arrested for violating
17 any section of this code while driving a commercially registered
18 motor vehicle, excluding house cars, with an unladen weight of
19 7,000 pounds or more, and does not furnish satisfactory evidence
20 of identity and an address within this state at which he or she can
21 be located, the arresting officer may, in lieu of the procedures set
22 forth in Section 40305, accept a guaranteed traffic arrest bail bond
23 certificate, ~~and shall be released from custody upon giving.~~ *In that*
24 *event, the arresting officer shall require the nonresident to place*
25 *a right thumbprint, or a left thumbprint or fingerprint if the person*
26 *has a missing or disfigured right thumb, on a written promise to*
27 *appear as provided in Article 2 (commencing with Section*
28 *40500), and the nonresident shall be released from custody.*

29 (b) Every guaranteed traffic arrest bail bond certificate shall
30 contain all of the following information:

31 (1) The name and address of the surety and of the issuer, if other
32 than the surety.

33 (2) The name, address, driver's license number and signature
34 of the individual covered by the certificate.

35 (3) The maximum amount guaranteed.

36 (4) Exclusions from coverage.

37 (5) A statement that the issuing company guarantees the
38 appearance of a person to whom a guaranteed traffic arrest bail
39 bond certificate is issued and, in the event of failure of the person
40 to appear in court at the time of trial, the issuing company shall pay



1 any fine or forfeiture imposed on the person, not to exceed the
2 amount stated on the certificate.

3 (6) The expiration date of the certificate.

4 (c) A guaranteed traffic arrest bail bond certificate may be
5 issued by a surety admitted in this state. The certificate may also
6 be issued by an association of motor carriers if all of the following
7 conditions are met:

8 (1) The association is incorporated, or authorized to do
9 business, in this state.

10 (2) The association is covered by a guaranteed traffic arrest bail
11 bond issued by a surety admitted in this state.

12 (3) The association agrees to pay fines or bail assessed against
13 the guaranteed traffic arrest bail bond certificate.

14 (4) The surety guarantees payment of fines or bail assessed
15 against the guaranteed traffic arrest bail bond certificates issued by
16 the association.

17 (d) The arresting officer shall file the guaranteed traffic arrest
18 bail bond certificate with the notice to appear required to be filed
19 by Section 40506.

20 (e) A “guaranteed traffic arrest bail bond certificate” is a
21 document which guarantees the payment of fines or bail assessed
22 against an individual for violation of this code, except driving
23 while under the influence of alcohol or drugs, driving without a
24 license or driving with a suspended or revoked license, operating
25 a motor vehicle without the permission of the owner, or any
26 violation punishable as a felony.

27 (f) A “guaranteed traffic arrest bail bond” is a bond issued by
28 a surety guaranteeing the obligations of the issuer of guaranteed
29 traffic arrest bail bond certificates. The bond shall be in the amount
30 of fifty thousand dollars (\$50,000) and shall be filed with the
31 Secretary of State. Any court in this state may assess against the
32 surety the amount of covered fines or bail which the issuer of a
33 guaranteed traffic arrest bail bond certificate fails to pay.

34 *SEC. 5. Section 40500 of the Vehicle Code is amended to read:*

35 40500. (a) Whenever a person is arrested for any violation of
36 this code not declared to be a felony, or for a violation of an
37 ordinance of a city or county relating to traffic offenses and he is
38 not immediately taken before a magistrate, as provided in this
39 chapter, the arresting officer shall prepare in triplicate a written
40 notice to appear in court or before a person authorized to receive



1 a deposit of bail, containing the name and address of the person,
2 the license number of his or her vehicle, if any, the name and
3 address, when available, of the registered owner or lessee of the
4 vehicle, the offense charged and the time and place when and
5 where he shall appear. If the arrestee does not have a driver's
6 license or other satisfactory evidence of identity in his or her
7 possession, the officer ~~may~~ *shall* require the arrestee to place a
8 right thumbprint, or a left thumbprint or fingerprint if the person
9 has a missing or disfigured right thumb, on the notice to appear.
10 This thumbprint or fingerprint shall not be used to create a data
11 base.

12 (b) The Judicial Council shall prescribe the form of the notice
13 to appear.

14 (c) Nothing in this section requires the law enforcement agency
15 or the arresting officer issuing the notice to appear to inform any
16 person arrested pursuant to this section of the amount of bail
17 required to be deposited for the offense charged.

18 (d) Once the arresting officer has prepared the written notice to
19 appear, and has delivered a copy to the arrested person, the officer
20 shall deliver the remaining original and all copies of the notice to
21 appear as provided by Section 40506.

22 Any person, including the arresting officer and any member of
23 the officer's department or agency, or any peace officer, who
24 alters, conceals, modifies, nullifies, or destroys, or causes to be
25 altered, concealed, modified, nullified, or destroyed, the face side
26 of the remaining original or any copy of a citation that was retained
27 by the officer, for any reason, before it is filed with the magistrate
28 or with a person authorized by the magistrate or judge to receive
29 a deposit of bail, is guilty of a misdemeanor.

30 If, after an arrested person has signed and received a copy of a
31 notice to appear, the arresting officer or other officer of the issuing
32 agency, determines that, in the interest of justice, the citation or
33 notice should be dismissed, the arresting agency may recommend,
34 in writing, to the magistrate or judge that the case be dismissed.
35 The recommendation shall cite the reasons for the
36 recommendation and be filed with the court.

37 If the magistrate or judge makes a finding that there are grounds
38 for dismissal, the finding shall be entered on the record and the
39 infraction or misdemeanor dismissed.



1 Under no circumstances shall a personal relationship with any
2 officer, public official, or law enforcement agency be grounds for
3 dismissal.

4 *SEC. 6.* Notwithstanding Section 17610 of the Government
5 Code, if the Commission on State Mandates determines that this
6 act contains costs mandated by the state, reimbursement to local
7 agencies and school districts for those costs shall be made pursuant
8 to Part 7 (commencing with Section 17500) of Division 4 of Title
9 2 of the Government Code. If the statewide cost of the claim for
10 reimbursement does not exceed one million dollars (\$1,000,000),
11 reimbursement shall be made from the State Mandates Claims
12 Fund.

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