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**NEVADA COUNTY  
SHERIFF'S OFFICE**



**GENERAL ORDER**

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Effective Date

June 8, 2018

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**SUBJECT**                                    **DETENTION CERTIFICATES ISSUED WHEN ARRESTEE  
RELEASED WITH NO ACCUSATORY PLEADING FILED**

**POLICY**                                    Established pursuant to Penal Code Sections 849.5 and  
851.6(d) as applied in the 2016 California Court of Appeal,  
2<sup>nd</sup> District case of Schmidt v. California Highway Patrol.

**PURPOSE**                                This policy provides guidelines for the correction of arrest  
records where a person is arrested and released with no  
accusatory pleading being filed charging him/her with an  
offense.

**CODE REFERENCE**                    Penal Code 849.5 provides: "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 the release. Thereafter, the  
arrest *shall not be deemed an arrest*, but a detention only".

Penal Code 851.6, subdivision (b) provides: In any case in  
which a person is arrested and released an 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 or her describing the action as a  
detention".

Penal Code 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  
(DOJ). Thereafter, any such record of the action shall refer  
to it as a detention".

**CASE LAW**                                Schmidt v. *California Highway Patrol*

## DEFINITIONS

**Arrest** – As used in this Policy, means an arrest made by a Nevada County Sheriff's deputy for which a fingerprint-based arrest report has been submitted to the California Department of Justice (DOJ), electronically or otherwise.

**DOJ** – Means the California Department of Justice.

**Records Supervisor** – Means the designated Criminal Record Security Officer for the Nevada County Sheriff's Office.

**Released** – Means free to leave Sheriff's Office custody, whether the person is released on a notice to appear, own recognizance or bail.

## PROCEDURE

Whenever a person is arrested and released and no accusatory pleading is filed charging that person with an offense, the action of a sheriff's deputy in taking that person into custody shall be referred to as a "detention" and the Records Supervisor shall issue a certificate of detention to that person and update any local criminal history records to record the action as a detention rather than an arrest.

In addition to correcting references in the arrest records for any person entitled to a certificate of detention, the Records Supervisor shall give notice to DOJ in the case disposition for that person changing the arrest to a detention, but only for cases that were not referred to the District Attorney's Office. When cases are forwarded to the District Attorney's Office, and they decline to file charges, it is their responsibility to notify DOJ. This notice shall either be electronically routed as instructed by the DOJ or in writing on forms provided by the DOJ. Forms provided by DOJ are known as the Adult Disposition of Arrest and Court Action (JUS 8715/8715A) and the Juvenile Detention Disposition Report (JUS 8716/8717).

Any correspondence sent to either the arrested party or DOJ must be preserved in the Records Management System.