

**GENERAL ORDER**

**ARRESTS BY PRIVATE PERSONS**

This order establishes policies regarding an officer's obligation to receive a subject arrested by a private person and to determine whether to arrest or release the subject.

**I. POLICY**

A. REQUIREMENT TO RECEIVE AN ARREST. Penal Code Section 142 states:

*(a) "Any peace officer who has the authority to receive or arrest a person charged with a criminal offense and willfully refuses to receive or arrest that person shall be punished by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in the state prison, or in a county jail not exceeding one year, or by both that fine and imprisonment."*

Effective January 1, 2002, Penal Code Section 142 was amended by the addition of subsection (c) which states: *"This section shall not apply to arrests made pursuant to Section 837."*

Section 837 is the authority for private persons to make arrests. Therefore, officers are no longer subject to felony arrest for failing to accept a private person's arrest.

B. LIABILITY OF PEACE OFFICER. Penal Code Section 847 states: *(a) A private person who has arrested another for the commission of a public offense must, without unnecessary delay, take the person arrested before a magistrate, or deliver him or her to a peace officer. (b) There shall be no civil liability on the part of, and no cause of action shall arise against, any peace officer. . . acting within the scope of his or her authority, for false arrest or false imprisonment arising out of any arrest under any of the following circumstances:*

- 1. The arrest was lawful or when the peace officer, at the time of the arrest, had reasonable cause to believe the arrest was lawful.*
- 2. The arrest was made pursuant to a charge made, upon reasonable cause, of the commission of a felony by the person to be arrested.*
- 3. When the arrest was made pursuant to the requirements of Section 142, 837, 838 or 839.*

Therefore, when an officer accepts a private person's arrest because there is reasonable cause to believe that the arrest was proper pursuant to Penal Code Section 837, the officer is not subject to liability for false arrest.

- C. **REQUESTING AN ARREST/INTENT.** Occasionally, the Department receives complaints from citizens who state that an officer failed to place a person under private person arrest. In these cases, the citizen thought that he or she had made it verbally clear that the person was to be placed under such an arrest. Officers should be aware that a citizen may say that he or she wishes to arrest an individual without using a formally worded demand such as: "I wish to place this person under citizen's arrest." Officers must always evaluate the intent of the person making the arrest and, if necessary, ask questions in order to determine if the person is actually requesting a private person arrest.

## **II. PROCEDURES**

Whenever a private person summons an officer to take custody of an individual that the private person has arrested or wants to arrest, officers shall:

1. Respond to the location of the "private person arrest."
2. Determine if a crime has, in fact, been committed.
3. Determine if reasonable suspicion exists to justify detaining the individual pending further investigation. If reasonable suspicion does not exist, the individual is free to leave.
4. Determine if probable cause exists to believe the individual committed the crime in question. If probable cause exists such that an arrest should be made, accept the private person's arrest and book or cite the individual as appropriate (see DGO 5.06, "Citation Release"). If probable cause does not exist, the individual is free to leave.
5. If an individual is briefly detained or moved a short distance for safety, convenience, or privacy, you need not issue a Certificate of Release. If you release the individual, after having moved the individual a substantial distance, detained the individual for a significant length of time, physically restrained the individual, or brought the individual to a police facility, issue a Certificate of Release (See DGO 5.03 "Investigative Detentions").
6. If a custodial arrest is made, obtain the signature of the arresting private person on the "Private Person Arrest" section of the incident report form or complete the separate private person arrest form (SFPD 80).

7. If a citation is issued, the arresting person should complete and sign the back of the citation form. The arresting person should be given a copy of the citation.
8. In all instances involving requests for a private person's arrest, an incident report shall be prepared.

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**References:**

Penal Code Section 142  
Penal Code Section 837  
Penal Code Section 838  
Penal Code Section 839  
Penal Code Section 847  
DGO 5.03, Investigative Detention  
DGO 5.06, Citation Release