

Removal of Guard Procedure

421.1 PURPOSE AND SCOPE

The purpose of this procedure is to establish the process for removing the police officer or Prisoner Transport Officer (PTO) guard from hospitalized prisoners. Penal Code § 4011.7 and Penal Code § 4011.9 grant the authority to remove the guard from hospitalized prisoners under certain circumstances. Those sections also establish that when the guard is removed, it is the legal responsibility of the prisoner to remain at the hospital until treatment is provided. After treatment has been provided the prisoner must remain at the hospital until taken back into custody by the guard. Failure to remain at the hospital can result in criminal prosecution for escape (Penal Code § 4532(a); Penal Code § 4532(b)).

421.1.1 DEFINITIONS

Guard - A police officer or Prisoner Transport Officer (PTO) who is charged with maintaining the custody of an arrested person.

Misdemeanor prisoner - A prisoner arrested for, charged with, or convicted of an offense constituting a misdemeanor.

Felony prisoner - A prisoner arrested for, charged with, or convicted of an offense constituting a felony.

421.1.2 BACKGROUND

Injured and sick prisoners are required to be medically cleared before being booked into city or county jails. This requires that the prisoner be taken to a hospital to be examined by medical personnel. Normally, the medical clearance occurs fairly rapidly. On other, more infrequent occasions, clearance may be delayed, or the prisoner may be admitted to the hospital.

The Penal Code allows for withdrawal of a guard for hospitalized prisoners. If a prisoner is going to be hospitalized for a prolonged period, as defined by the watch commander, the watch commander may choose to remove the guard.

- (a) Penal Code § 4011.7 allows for the removal of guards from all hospitalized misdemeanor prisoners; however, the watch commander shall ensure that the removal of the guard does not imperil public safety.
- (b) Penal Code § 4011.9 specifies that the guard can only be removed from felony prisoners when the prisoner is "physically unable to effectuate an escape or the prisoner does not constitute a danger to life or property."

When the Watch Commander contemplates removing the guard from a felony prisoner, he should consider: the nature of the crime; the likelihood that an escape would endanger the public; the criminal history of the prisoner; the medical condition of the prisoner; the ambulatory ability of the prisoner.

421.1.3 PROCEDURE

If the Watch Commander chooses to remove the guard, the following procedures shall be followed:

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- (a) The guard shall complete the 4011 PC Removal of Guard from Hospitalized Prisoner form, with the exception of the "prisoner signature" and "prisoner thumbprint" portion.
- (b) The guard shall direct the prisoner to read and sign the "4011 PC - Removal of Guard from Hospitalized Prisoner" form. If the prisoner is unable read the form, the form shall be read to the prisoner. The prisoner must orally indicate that he understands he will be prosecuted for escape if he fails to remain at the hospital until taken into custody by a Union City Police Department guard. The reading of the form, and the acknowledgment by the prisoner, shall be tape recorded, and the tape shall be booked into evidence.
- (c) If the prisoner is unwilling to sign the form, or unwilling to acknowledge the content of the form orally, the prisoner shall not be released.
- (d) If the prisoner is unconscious, the guard shall request that the nurse-in-charge call the Union City Police Department and report to the on-duty Watch Commander when the prisoner has regained consciousness. At that time the Watch Commander shall dispatch a guard to the hospital to complete the process.

The guard shall take the right thumb print of the prisoner, and apply it to the prisoner thumbprint of the first page of the 4011 PC Removal of Guard from Hospitalized Prisoner form. If the right thumbprint is unavailable, the left thumb print shall be taken and that shall be noted in the "notes" section of the 4011 PC - Removal of Guard from Hospitalized Prisoner form. If neither digit is available, any other digit can be used, and the digit used shall be noted in the "notes" section. The guard shall provide the prisoner with the third copy of the 4011 PC - Removal of Guard from Hospitalized Prisoner form, advise the prisoner to remain at the hospital after release, and to immediately contact the Union City Police Watch Commander to advise that the prisoner has been released from the hospital. The prisoner shall be orally advised that failure to await Union City police officers, upon the release from the hospital, will result in criminal charges for escape being filed against the prisoner.

The guard shall request that the hospital notify the Union City Police Department at the time of the prisoner's release.

The guard shall attach the first page of the 4011 PC Removal of Guard from Hospitalized Prisoner to the original report documenting the arrest of the prisoner.

The guard shall place the second page of the 4011 PC Removal of Guard from Hospitalized Prisoner form in the Patrol Bulletin book.

Nothing in this section is intended to discourage the release of misdemeanor prisoners via citation, if that is appropriate and possible.

421.1.4 FOLLOW UP PROCEDURES

It shall be the responsibility of the Watch Commander to remain aware of hospitalized prisoners.

It shall be the responsibility of the Watch Commander to arrange for prisoner pick up at any hospital, once the Union City Police Department is contacted by the prisoner or the hospital. This should be done as expeditiously as possible.

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It shall be the responsibility of each Watch Commander to contact any hospital which is providing treatment to prisoners, on each shift. This process will be used to ensure that the prisoner has not left the facility in violation of the agreement to remain until taken into custody by the Police Department.

421.2 REVISIONS

Adopted: June 18, 2018