



# CITATION IN LIEU OF ARREST

## Model Policy

July 2020

### I. PURPOSE

This policy is designed to promote public safety and efficient use of taxpayer funds, reduce unnecessary pretrial detentions, and promote least harm resolutions. The Presidential Task Force on 21st Century Policing recommended that law enforcement agencies adopt preferences for “least harm” resolutions, such as the use of citation in lieu of arrest for low-level offenses. Increased use of citations also promotes efficiency. An International Association of Chiefs of Police report found that citations offer a time savings of just over an hour per incident. Increased use of citations can help reduce unnecessary pretrial detentions of low-risk defendants and associated taxpayer costs, unfairness, and negative public safety outcomes. An arrest triggers an initial appearance and imposition of conditions of pretrial release. Because secured bonds are the most common condition imposed in North Carolina, the decision to make an arrest often results in imposition of a secured bond. Imposition of a bond in turn can cause unnecessary wealth-based detentions of low-level defendants, driving up jail costs. Additionally, such detentions have been shown to negatively impact public safety; research shows that misdemeanor defendants detained pretrial are more likely to be charged with new crimes after release than similar defendants who were not detained pretrial. This policy achieves its purposes by aligning citation practices with state law regarding arrest and bail while preserving officer discretion.

### II. POLICY

Whether to cite, arrest, or decline to charge is always in the officer’s discretion. However, when an officer decides to charge a person with a criminal offense, a citation is recommended in misdemeanor incidents except when, based on information available at the time:

- (1) the law requires an arrest;
- (2) release on a citation
  - (a) will not reasonably assure the defendant’s appearance in court;
  - (b) will pose a danger of injury to any person; or
  - (c) is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses; or
- (3) exigent circumstances require an arrest.

Officers who make an arrest in misdemeanor cases shall document their reasons for doing so.

### III. EXPLANATORY NOTES

*Officer Discretion.* The policy preserves officer discretion. Specifically, it states that “[w]hether to cite or arrest is always in the officer’s discretion” and recommends (but does not mandate) use of citations unless an exception applies.

*Exceptions.* The policy recommends use of a citation in misdemeanor cases, subject to three exceptions.

One exception applies when the law requires an arrest. For example, N.C.G.S. 50B-4.1(b) provides that “[a] law enforcement officer shall arrest and take a person into custody, with or without a warrant or other process, if the officer has probable cause to believe that the person knowingly has violated [certain domestic violence protective orders].” In such a scenario, arrest is required by law and a citation may not be issued.

The second exception aligns citation practice with state bail law. Specifically, exception (2) reflects the requirements of N.C.G.S. 15A-534. That provision states that when setting conditions of pretrial release (“bail”) the judicial official (magistrate, clerk or judge) must impose a written promise, custody release, or unsecured bond “unless he determines that such release will not reasonably assure the appearance of the defendant as required; will pose a danger of injury to any person; or is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses.” The law *prohibits* imposition of a secured bond unless one or more of the circumstances noted in (2)(a)-(c) above are present. The policy thus provides that a citation is recommended for defendants charged with misdemeanors who cannot receive a secured bond. This will promote officer efficiency as it will avoid scenarios where a defendant is arrested but then immediately released by the magistrate without a secured bond on grounds that no statutory reason supporting imposition of such a bond is present.

Circumstance (2)(a) applies when release on a citation will not reasonably assure the defendant’s appearance in court. Examples:

- The officer cannot establish the defendant’s identity
- The officer will not be able to later locate the defendant for court purposes, such as serving an order for arrest after a failure to appear
- The defendant has a record of prior failures to appear

As used here, “a record of prior failures to appear” means two or more failures to appear within the last two years.

The mere fact that the defendant is homeless does not satisfy this circumstance, if the officer can establish the defendant’s identity and knows where the defendant later can be found. Likewise, the mere fact that a defendant resides outside of the county does not satisfy this circumstance.

Circumstance (2)(b) applies when release on a citation will pose a danger of injury to any person. Examples:

- There is an immediate danger that the defendant will harm themselves or others
- The alleged offense involves physical injury to a person, a deadly weapon, or a domestic dispute

- The defendant's criminal record includes a conviction for a violent felony
- The defendant is currently on parole, probation, pretrial release, or post-release supervision for a conviction or charge involving injury to any person

A risk of injury to property does not satisfy the bail statute or this circumstance.

Circumstance (2)(c) applies when release on a citation is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses. Subornation of perjury means procuring or inducing another person to commit perjury. Examples:

- The defendant has threatened a witness
- The defendant has a record of witness intimidation
- The defendant previously has destroyed evidence to avoid prosecution

The final exception applies when exigent circumstances require arrest. An example of when this exception might apply is when release on a citation will not reasonably result in the immediate cessation of the criminal conduct. Examples:

- The defendant is engaged in aggressive panhandling and refuses to cease activity
- The defendant is engaged in drunk and disorderly activity that will continue absent removal from the scene

In applying this exception, officers should be aware of their authority under G.S. 122C-301 through -303 to provide assistance to a person who is intoxicated in public without making an arrest, including: transporting the person to their home, another residence, a shelter, or a medical facility; and transporting the person to jail for detention without arrest until the person becomes sober or up to 24 hours.

Note that this exception applies in situations involving exigency. Thus, it does not apply when the officer believes that the criminal activity may resume at some later, non-immediate future time. However, depending on the nature of the activity in question, a belief that it may eventually resume may satisfy one of the other exceptions discussed above.

*Documentation Required.* The policy provides that when an officer makes an arrest in a misdemeanor case, reasons for doing so must be documented.