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SHOULD GEORGIA CHANGE ITS MISDEMEANOR ARREST LAWS TO AUTHORIZE ISSUING MORE FIELD CITATIONS?

CAN AN ALTERNATIVE ARREST PROCESS HELP ALLEVIATE GEORGIA'S JAIL OVERCROWDING AND REDUCE THE TIME ARRESTING OFFICERS EXPEND PROCESSING NONTRAFFIC MISDEMEANOR OFFENSES?

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ABSTRACT

This Article analyzes whether the legislature should change Georgia's arrest laws to authorize the discretionary issuance of field citations to more nontraffic misdemeanor offenders as a means to help alleviate jail overcrowding and reduce the amount of time required by patrol officers to process misdemeanor arrests. This Article includes a review of current Georgia law concerning citation arrests for nontraffic misdemeanor offenses; published literature; a quantitative analysis of the effects of using the field citation process upon officer processing times and the failure to appear rate within the Gwinnett Judicial Circuit; surveys of Georgia law enforcement executives; and interviews with court administrators, a jail commander, and numerous arresting officers.

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INTRODUCTION

A sampling of headlines of Georgia newspapers regularly cites two recurring criminal justice problems: (1) overcrowded jails and (2) a shortage of law enforcement officers.¹ This Article explores whether implementing a discretionary arrest process for nontraffic misdemeanor offenders could help alleviate both of these problems. In appropriate cases, the proposed alternative lessens the number of misdemeanor offenders held in pretrial detention facilities by eliminating custodial arrests and subsequent bonding procedures. With fewer misdemeanor offenders initially incarcerated, jail overcrowding lessens. The alternative process can also decrease the time arresting officers spend to arrest, process, “book,” and seek arrest warrants for these nontraffic misdemeanor offenders, freeing these officers to perform other patrol duties.

This discretionary, alternative arrest process is not new. It already exists as the criminal procedure alternative to custodial arrests for nontraffic offenses in 46 states.² A number of national police organizations as well as organizations responsible for setting criminal justice standards throughout the United States have endorsed the discretionary procedure:

1. Jay Bookman, *Fulton Needs to Arrest Its Jail and More*, ATLANTA J. CONST., July 19, 2004, at A11; Tasgola Bruner, *4-day Workweeks Designed for Better Police Coverage*, ATLANTA J. CONST., July 31, 2003, at B3; *Filling in the Blue Line*, SAVANNAH MORNING NEWS, July 16, 2000, at A12; Sheri Kasprzak, *Barrow Targets Jail Overcrowding*, GWINNETT DAILY POST, Dec. 12, 2003; Lyda Longa, *Police Blues; Crisis Team Is Proposed*, ATLANTA J. CONST., Mar. 21, 1999, at D1; Doug Nurse, *County's Latino Payroll Lags; Officials Struggle with Recruitment*, ATLANTA J. CONST., Dec. 29, 2003, at JJ1; Editorial, *Our Opinions: Most Wanted: Jail Relief; Fulton Commissioners Must Free Up Enough Money, People to Make Changes That Will Last*, ATLANTA J. CONST., July 19, 2004, at A10; *Richmond Grand Jury Presentments*, AUGUSTA CHRON. (Ga.), Oct. 7, 2004, at O14; Karen Sloan, *County Adjusts to Overcrowding*, BRUNSWICK NEWS (Ga.), June 23, 2003, at 1; *State's Inmates Fill Cells*, AUGUSTA CHRON. (Ga.), Aug. 2, 2004, at B207; Carmela Thomas, *Gunfire Common in High Crime Complex*, AUGUSTA CHRON. (Ga.), Jan. 24, 1997, at B1; Paula Reed Ward, *Beyond Capacity*, SAVANNAH MORNING NEWS, July 26, 2003, at A1; Paula Reed Ward, *Police Battle Shortage Again*, SAVANNAH MORNING NEWS, Apr. 16, 2001 at C1; Beth Warren, *Public Safety Pay Catches Attention of Neaton-Griggs*, ATLANTA J. CONST., May 14, 2001, at JJ1.

2. See, e.g., Ala. R. Crim. P. 4.3; Idaho Misdemeanor Crim. R. 5; MD. CODE ANN., CRIM. PROC. § 4-101 (West 2005); Mass. R. Crim. P. 6; MISS. CODE ANN. § 99-3-18 (West 2005); S.D. CODIFIED LAWS § 23-1a-7 (2005); TEX. CODE CRIM. PROC. ANN. art. 14.06(b) (Vernon 2005); UTAH CODE ANN. § 77-7-18 (West 2005); W. VA. CODE ANN. § 62-1-5a (West 2005); WYO. STAT. ANN. § 7-2-103 (2004); FLOYD F. FEENEY, *THE POLICE AND PRETRIAL RELEASE* 197 (1982); see App. A.

- The President's Commission on Law Enforcement and Administration of Justice, 1967;
- The American Bar Association, Minimum Standards for Criminal Justice, 1968;
- The American Law Institute, Model Code for Prearrest Procedures, 1972;
- National Advisory Commission on Criminal Justice Standards and Goals, 1973;
- International Chiefs of Police Model Rules for Law Enforcement Officers, 1974;
- National Conference for Commission on Uniform Laws, Uniform Rules of Criminal Procedures, 1974;
- National District Attorneys Association, National Prosecution Standards, 1977;
- National Association of Pretrial Services Agencies, Performance Standards and Goals for Pretrial Release, 1978; and
- American Bar Association, Revised Standards for Pretrial Release, 1979³

What do 46 other states do differently than Georgia? These states have arrest laws that vest their law enforcement officers with the discretion to issue field citations to a majority of nontraffic misdemeanor offenders.⁴ Unlike officers in other states, the legislature has not authorized Georgia officers to issue field citations to most nontraffic misdemeanor offenders. Georgia's arrest process for most nontraffic misdemeanor offenders is more complicated and time consuming than other states. Typically, where probable cause exists, the common arrest process in Georgia for most nontraffic misdemeanor offenders involves physical arrest, transportation to a jail, incarceration, procurement of an arrest warrant, service of the

3. DEBRA WHITCOMB, BONNIE LEWIN, & MARGARET J. LEVINE, CITATION RELEASE 2 (Nat'l Inst. Just. 1984).

4. See *e.g.*, sources cited *supra* note 2.

warrant, processing by jail personnel, then continued incarceration until the offender posts bond or is otherwise brought before a court. This nondiscretionary arrest process contributes to overcrowded jails and requires more officer time. Should the legislature change Georgia's arrest process for nontraffic misdemeanor offenses? Is there support for change?

Currently, Georgia law grants limited statutory authority to arresting officers to use field citations as the charging procedure in municipal and magistrate courts for four nontraffic misdemeanor offenses: possession of alcohol by a minor, possession of less than an ounce of marijuana, criminal trespass, and theft by shoplifting.⁵ But the laws governing Georgia's state and superior courts do not authorize the use of field citations as the charging document for nontraffic misdemeanor offenses in those courts.

This Article assesses whether the legislature should change Georgia's arrest laws to authorize the discretionary use of field citations for more nontraffic misdemeanor offenses. Part I of this Article reviews the published literature on the use of field citations as an alternative arrest process. Parts II and III examine a quantitative study of the use of field citations in the Gwinnett County Magistrate Court for the misdemeanor offense of theft by shoplifting. They seek to determine whether the use of field citations answers the following: is it more efficient for arresting officers than custodial arrests and the current misdemeanor arrest warrant process, and how does the failure to appear rate for persons released on citations compare with the failure to appear rate of physically arrested offenders who the court releases on bond. Part IV analyzes a survey to determine if there is sufficient experience and support among Georgia's executive law enforcement officials to change Georgia law to authorize the use of field citations for more types of misdemeanor offenders. Finally, Parts V, VI, and VII evaluate the perspectives of court administrators,

5. O.C.G.A. § 15-10-260 (2005); O.C.G.A. § 36-32-10.2 (2005); O.C.G.A. § 15-10-262 (2005); O.C.G.A. § 15-10-202 (2005). Georgia can process the misdemeanor offense of deposit account fraud, commonly called "bad checks," by the citation mechanism, however this is a judicial function exercised by magistrates rather than a field citation issued by an investigating law enforcement officer. O.C.G.A. § 15-10-202 (2005).

jail commanders, and law enforcement officers regarding the advantages and disadvantages of citation arrests for nontraffic misdemeanor offenders.

I. REVIEW OF PUBLISHED LITERATURE

Floyd Feeney's 1972 article, *Citation in Lieu of Arrest*, provides a general overview of how the field citation arrest process evolved:

Sixty years ago, before the traffic infraction became a common occurrence, police departments found it necessary to make physical arrests in the case of each traffic violation. As the number of violations mounted, however, the arrest procedure proved to be too cumbersome and demanding. This led to the invention of [a] new procedure, the citation or promise to appear. The new system proved to be both convenient and practical and in short order it virtually replaced the old arrest procedure. Surprisingly, however, the invention of the new procedure did not lead to a rethinking of the need to arrest and detain persons accused of other kinds of misconduct . . . [M]ore recently, the idea did develop that the citation procedure might be used in other situations.⁶

Feeney found the following reasons for implementing a field citation arrest program:

- (1) Benefits of cost and timesaving for police departments;
- (2) Defendants benefited by prompt pretrial release; and
- (3) Conclusion that certain persons can be released safely.⁷

Initial objective standards evolved to guide arresting officers in assessing appropriate candidates for field citation release:

6. Floyd F. Feeney, *Citation in Lieu of Arrest: The New California Law*, 25 VAND. L. REV. 367, 367-68 (1972).

7. *Id.* at 371.

- (1) Address verification within the jurisdiction;
- (2) Analysis of prior failure to appear events;
- (3) Whether further investigation was needed at the station house;
- (4) Type of misdemeanor offense;
- (5) Sobriety of the accused; and
- (6) Whether there were outstanding warrants for the accused.⁸

Other states added various factors to Feeney's list to address circumstances when an officer should not issue a field citation:

- (1) Failure to give proper identification;
- (2) Arrest appears necessary to prevent imminent bodily harm to accused or to another person; and
- (3) Refusal to sign the citation.⁹

A Wisconsin study concluded that a field citation issued by law enforcement officers to misdemeanor arrestees constituted the quickest and least restrictive form of release. This type of release reduces costs to the jurisdiction by negating the need to transport the arrestee to the central booking facility, minimizing the police officer's time out of service.¹⁰

In the District of Columbia, a Law Enforcement Administration Association study determined four ways a citation arrest program would benefit officers:

[R]educe[] the amount of time required to make and process arrests.

[R]educe[] the demand for prisoner conveyance to the detention facility.

8. *Id.* at 381.

9. Wisconsin Legislative Council Staff, *Issues Relating to Pretrial Release Pursuant to the Issuance of a Citation or Summons, Discussion Paper 80-15*, 1980 NAT'L INST. JUST. 3 (Sept.).

10. *See id.* at 13.

[R]educe[] the time and costs of processing and detaining prisoners at the detention facility.

[A]llow[] the arresting officer to remain in the district, available to respond to emergency situations and routine citizen requests for service.¹¹

Dr. Malcolm F. Feeley conducted an early quantitative study of the citation arrest release program in New Haven, Connecticut.¹² The study included a quantitative analysis finding a direct relationship between the number of defendants arrested on citations and the increased “failure to appear” rate of defendants who voluntarily fail to appear for court.¹³ Feeley’s study includes an analysis of defendants released on citation—a promise to appear (released on own recognizance after being physically arrested)—or released after posting bond.¹⁴ He determined the following:

- (1) Slightly over one-third of all defendants released on citation or promise to appear (PTA) thereafter fail to appear at least once;¹⁵
- (2) 20% of those released on PTA fail to appear, 15% of those released on citation fail to appear, and only 7% of those released on bond do so;¹⁶
- (3) A more liberal pretrial release policy tends to be at the expense of an increase in failure to appear;¹⁷ and
- (4) The increase in the use of citation releases has been coupled with an increase in the FTA rate for those released on citation.¹⁸

11. ELEANOR CHELIMSKY, ET AL., LAW ENFORCEMENT ASSISTANCE ADMIN., IMPROVING THE CRIMINAL PROCESSING OF MISDEMEANANTS, THE IMPROVED LOWER COURT CASE HANDLING PROGRAM: WILMINGTON (NEW CASTLE COUNTY), 1-2 (1978).

12. Malcolm M. Feeley & John McNaughton, *The Pretrial Process in the Sixth Circuit: A Quantitative and Legal Analysis*, 1974 NAT’L INST. JUST. 1 (Mar.).

13. *Id.* at 33.

14. *Id.*

15. *Id.* at 30-31.

16. *Id.* at 33.

17. *See* Feeley & McNaughton, *supra* note 12, at 33.

Eleanor Chelimsky studied the use of police citations for misdemeanor offenders in Cincinnati.¹⁹ She selected police citations because their use was consistent with overall program goals of improving criminal justice processing.²⁰ The issuance of a citation ticket, in lieu of formal arrest or as a post-arrest procedure, obviated transporting arrestees to the station for booking and detention procedures.²¹ This would save police time and decrease the time and resources required for temporary detention.²²

The field citation arrest brought a new alternative to processing misdemeanor arrests.²³ Previously there were only two legal alternatives available to an officer in a potential criminal arrest situation.²⁴ “The officer could either make a full custody arrest or could take no action at all. A third alternative—issuing a citation instructing the accused person to appear in court on a certain date—had long existed for traffic offenses.”²⁵ Thus, a number of police departments began using citations for nontraffic misdemeanor criminal offenses.

Researchers included various locales across the nation in studies testing the theory of issuing citations to misdemeanor offenders as a means to facilitate pretrial release programs.²⁶ These locales included California, Delaware, District of Columbia, Florida, Illinois,

18. *Id.* at 53 (“In 1970-71 the FTA rate was 5.3% of all those released on citations, while in 1973 the percentage jumped to 15%.”).

19. *See* CHELIMSKY, *supra* note 11, at 1.

20. *See id.*

21. *Id.* at 4.

22. *Id.*

23. Julie Horney, *Citation Arrest: Extending the Reach of the Criminal Justice System?*, 17 *CRIMINOLOGY: AN INTERDISC. J.* 419, 419-20 (1980).

24. *Id.*

25. *Id.*

26. *An Analysis of the Citation System in Evanston, Illinois: Its Value, Constitutionality and Viability*, 65 *J. CRIM. L. & CRIMINOLOGY* 75 (1974); Bruce Beaudin, et al., *A Review of Pretrial Release Procedures in the City of St. Louis*, U.S. DEP’T OF JUST. CRIMINAL COURTS TECHNICAL ASSISTANCE PROJECT 13-15 (Aug. 1974); CHELIMSKY, *supra* note 11, at 1; NAT’L INST. OF LAW AND POL’Y PLAN., LEON COUNTY PHASE ONE REPORT: THE CAUSES OF JAIL OVERCROWDING IN LEON COUNTY 1 (Nov. 1987); Giannina Rikoski & Debra Whitcomb, *An Exemplary Project: The D.C. Pretrial Services Agency Washington D.C.*, 1982 NAT’L INST. JUST. 1 (May); STATE OF CALIFORNIA BOARD OF CORRECTIONS, THE STATE OF THE JAILS IN CALIFORNIA, REPORT #2: PRISONER FLOW AND RELEASE i (Nat’l Inst. Just. Dec. 1985); *see* Wisconsin Legislative Council Staff, *supra* note 9, at 2.

Missouri, and Wisconsin. Researcher John Galvin referenced a comprehensive study of citation release as a pretrial alternative for 103 cities in 29 states in 1977 and found that it presented a viable alternative to pretrial detention.²⁷

By 1981, 38 states had a statute or a court rule authorizing the use of citations for at least some nontraffic misdemeanor offenses.²⁸ The oldest statutes were the New Hampshire and Rhode Island statutes, each adopted in 1941.²⁹ Delaware adopted its citation statute in 1951, and California followed with statutes adopted in 1959 and 1969.³⁰

A 1985 study by the California Department of Corrections found field citations to be the least costly pretrial alternative to incarceration.³¹

A Florida study of Leon County stressed the importance of assessing whether misdemeanants posed a threat to the community or a risk of nonappearance at trial before officers used a field citation.³² Furthermore, this study recommended that locales using pretrial release programs with citation arrest continue to monitor, review, and modify procedures as needed.³³

The primary rationale behind establishing misdemeanor citation programs is that many people accused of these crimes simply do not need to be taken into physical custody because various pretrial release studies indicate that many misdemeanor offenders are not dangerous to society and will appear for court even if not required to post bond.³⁴

During this time period, the American Bar Association (ABA) presented suggested standards involving the pretrial use of the citation arrest procedures:

27. JOHN J. GALVIN, WALTER H. BUSER, & WILLIAM GREENE-QUIJANO, *INSTEAD OF JAIL: PRE AND POST TRIAL ALTERNATIVES TO JAIL INCARCERATION* 20-21 (1977).

28. *Id.*; see App. A.

29. App. A.

30. *Id.*

31. See STATE OF CALIFORNIA BOARD OF CORRECTIONS, *supra* note 26, at vi.

32. See NAT'L INST. OF LAW AND POL'Y PLAN., *supra* note 26, at 51.

33. See *id.* at 51, 56-57.

34. See Horney, *supra* note 23, at 420.

Standard 2.1 Policy favoring issuance of citations.

It should be the policy of every law enforcement agency to issue citations in lieu of arrest or continued custody to the maximum extent consistent with the effective enforcement of the law. [Statutes of statewide applicability should implement the policy.]

....

Standard 2.3 Permissive authority to issue citations in all cases.

(b) Implementation. Each law enforcement agency should promulgate regulations designed to increase the use of citations to the greatest degree consistent with public safety.³⁵

The ABA, in furtherance of this policy position, created recommendations for successfully implementing citation arrest programs.³⁶

In 1975, a Law Enforcement Assistance Administration cost analysis study of correctional facilities also advocated using citations as an alternative to custodial arrests and made the following recommendations:

Each criminal justice jurisdiction, state or local, as appropriate, should immediately develop a policy, and seek enabling legislation where necessary, to encourage the use of citations in lieu of arrest and detention. This policy should provide:

....

(4) Criminal penalties for willful failure to respond to a citation.

35. ABA Project on Standards for Criminal Justice, *Pretrial Release*, 1974 STANDARDS RELATING TO THE ADMINISTRATION OF JUSTICE §§ 2.1, 2.3.

36. ABA Project on Standards for Criminal Justice, 1968 STANDARDS RELATING TO PRETRIAL RELEASE 31-38 (Sept.).

- (5) [Statutory] [a]uthority to make lawful search incident to an arrest where a citation is issued in lieu of [custodial] arrest.³⁷

The implementation of citation arrest policies for misdemeanor offenders have played an integral role in complying with court-imposed reductions in jail populations.³⁸

While citation policies evolved initially as part of the bail reform movement, they also clearly benefited law enforcement. For example, researcher Mark Berger noted that a trip to the police station and the booking that follows could often be a lengthy process, keeping a patrol officer off the beat for a considerable period of time.³⁹ In some instances, a police officer can issue a citation in a matter of minutes without substantially interrupting the officer's patrol activities, saving time and money.⁴⁰

Later studies echoed these findings of officer timesaving. Debra Whitcomb's study for the National Institute of Justice, *Citation Release*, found that the field citation is the speediest arrest alternative for street police officers.⁴¹ In his study, Floyd Feeney found that police departments issued field citations in 30 minutes or less.⁴² Nearly half (48%) of the agencies responding to Feeney's survey reported that each field citation saved 30-60 minutes over a traditional custodial arrest; an additional 21% claimed to save from one to two hours per field citation.⁴³ A more recent study of four jurisdictions by Jerome Needle and Walter Busher found that field release saved from 4 to 46 minutes over traditional arrests.⁴⁴ Whitcomb's study further revealed that the "street-time" saved in field release is even more marked in jurisdictions which use two-man

37. Susan Weisberg, *Cost Analysis of Correctional Standards: Alternatives to Arrest Volume I*, 1975 LAW ENFORCEMENT ASSISTANCE ADMIN. 3-4 (Oct.).

38. W. N. Welsh, *Changes in Arrest Policies as a Result of Court Orders Against County Jails*, 10 JUST. Q. 89 (1993).

39. See Mark Berger, *Police Field Citations in New Haven*, 2 WIS. L. REV. 382, 387-88 (1972).

40. *Id.* at 409.

41. See WHITCOMB, ET AL., *supra* note 3, at 17.

42. See FEENEY, *supra* note 2, at 52.

43. *Id.*

44. JEROME A. NEEDLE & WALTER H. BUSER, COUNTYWIDE CITATION RELEASE PROGRAMMING 26-27 (Nat'l Inst. Corrections 1982).

cars; there, the man-hours incurred in transporting arrestees to the stationhouse or jail are doubled.”⁴⁵

The most often cited studies of various citation arrest programs were the seminal findings published by Floyd F. Feeney, in his book, *The Police and Pretrial Release*.⁴⁶ “Each community should establish procedures to enable and encourage police departments to release in appropriate classes of cases, as many arrested persons as possible promptly after an arrest upon issuance of a citation or summons requiring subsequent appearance.”⁴⁷ Feeney compared the citation arrest program to the traffic arrest program:

What is happening today . . . is similar to what happened seventy years ago when the automobile and the traffic infraction were first becoming common. Police departments at that time found it necessary to make physical arrest in the case of each traffic violation. . . . Somewhat surprisingly, the invention of the traffic citation a generation ago did not lead to a rethinking of the need to arrest and detain in the case of minor crimes. Physical arrest continued to be the almost exclusive method of beginning cases, and virtually no thought was given to whether detention was necessary to ensure appearance before the court.⁴⁸

Feeney found that an era of tight budgets made citation arrest programs attractive to many government administrators because the programs tend to cut costs, save manpower, and keep more officers on the street.⁴⁹

Feeney’s analysis of the statutory requirements of a citation arrest program was an extremely helpful aspect of his study.

45. See WHITCOMB, ET AL., *supra* note 3, at 17.

46. See FEENEY, *supra* note 2.

47. *Id.* at 3 (quoting *The Challenge of Crime in a Free Society*, PRESIDENT’S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE 133 (1967)).

48. See *id.* at 4-5.

49. *Id.* at 50.

In the United States the law of arrest is a combination of constitutional and state law. The Constitution requires that there be probable cause to believe that the suspect has committed a crime. Many states have additional requirements for misdemeanors. Generally, these are that arrests without a warrant may be made only for misdemeanors committed in the presence of the officer. A few of these states are even more restrictive, continuing remnants of the common-law rule that limited warrantless misdemeanor arrests to breaches of the peace committed in the presence of the officer.⁵⁰

The importance of Feeney's suggested statutory analysis of both state law and constitutional law regains vigor with the recent U.S. Supreme Court case, *Atwater v. City of Lago Vista*.⁵¹ The Court analyzed whether the accused, Ms. Gail Atwater, had a vested federal constitutional right to be issued a field citation, in lieu of a custodial arrest for a misdemeanor offense.⁵² The opinion begins by noting state law for vesting an officer with the discretion to issue a field citation:

In Texas, if a car is equipped with safety belts, a front-seat passenger must wear one, Tex. Transp. Code Ann. § 545.413(a) (1999), and the driver must secure any small child riding in front, § 545.413(b). Violation of either provision is "a misdemeanor punishable by a fine not less than \$25 or more than \$50." § 545.413(d). Texas law expressly authorizes "any peace officer to arrest without warrant a person found committing a violation" of these seatbelt laws, § 545.001, although it permits police to issue citations in lieu of arrest, §§ 543.003-543.005.⁵³

The Court, in a five to four decision, upheld the arresting officer's discretion to either make a custodial arrest or issue a field citation

50. See FEENEY, *supra* note 2, at 63.

51. 532 U.S. 318 (2001).

52. *Id.* at 326.

53. *Id.* at 323.

provided that the officer had valid probable cause to believe that Ms. Atwater had committed a misdemeanor offense in violation of state law.⁵⁴ This split decision held that the accused did not have a vested constitutional right under the Fourth Amendment to receive a citation in lieu of a custodial arrest for a misdemeanor offense.⁵⁵ Different states vest their officers with varying degrees of discretion to effectuate misdemeanor arrests. While most states parallel Texas law by remaining silent as to which misdemeanor arrest procedure an officer should use, either custodial arrest or field citation, *Atwater* references the state misdemeanor arrest laws of Kentucky and Tennessee as having statutory policy positions favoring the issuance of citations in lieu of custodial arrests for certain misdemeanor or certain minor violations.⁵⁶

Feeney also examined the various departmental approaches to citation arrests.⁵⁷ There are typically three recognized approaches for an officer to use when determining whether to issue a field citation or make a custodial arrest: the point system approach, the departmental guidelines approach, and the discretion of the individual officer approach.⁵⁸ Feeney found that each approach had its own unique advantages and disadvantages:

The point system is a useful way of standardizing decision-making and reducing discretion. If the point scale is well chosen, it can help maintain a low failure-to-appear rate. [The point system] is somewhat cumbersome . . . and is probably more time-consuming than the other approaches.

The departmental-guidelines approach generally provides useful guidance as to when citations may be issued without

54. *Id.* at 354.

55. *Id.*; see also Richard S. Frase, *What Were They Thinking? Fourth Amendment Unreasonableness in Atwater v. City of Lago Vista*, 71 *FORDHAM L. REV.* 329, 331 (2002) (doubting the persuasiveness of the Court's reasons for upholding Ms. Atwater's arrest).

56. *Atwater*, 532 U.S. at 352; KY. REV. STAT. ANN. §§ 431.005, 431.015(2) (Michie 1999); TENN. CODE ANN. § 40-7-103(a)(1) (2000); see also OHIO REV. CODE ANN §§ 2935.03, 2935.26 (2000); Vt. Rule Crim. Proc. 3(a) (2000).

57. See FEENEY, *supra* note 2, at 116-18.

58. *Id.*

adding a lot of complexity. It is almost always simpler than the point system, although probably somewhat less accurate in its ability to pinpoint individuals who are likely to fail to appear.

The individual discretion approach, in which the officer is essentially on his own, is useful primarily in smaller communities where officers have a great deal of personal knowledge of the local citizenry. Most larger departments find that it provides too little uniformity and too little help to the officer.⁵⁹

Feeney's book contains six final recommendations concerning citation arrests:

1. Each police agency, large or small, which does not now use citations should immediately begin to do so. The practice has proved effective under almost every conceivable circumstance, and there is no reason to believe that it will not work in the agencies not now using it.
2. Each police agency now using the procedures should review its policies to determine whether it is making maximum effective use of citations. In particular, agencies should review the list of excluded offenses to determine if the exclusions in force are necessary. As a general rule, if an agency is releasing less than 50 percent of its misdemeanor arrestees under some form of police citation its use is low.
3. Police agencies should begin to experiment with use of the citation for minor felonies. . . .
4. [R]elease-on-own recognizance programs for misdemeanor defendants should encourage the use of police citations as the primary method of pretrial release, leaving the OR program free to concentrate on felony cases and other cases in which more extensive pretrial-release services are necessary.

59. *Id.* at 118.

5. Each state that does not now have a statute or court rule mandating use of the procedures should promptly adopt such a statute or court rule.
6. States that do not have statute or court rules authorizing use of the procedures should assess the desirability of more mandatory legislation or rules.⁶⁰

In conclusion, Feeney wrote:

The citation proved its usefulness for traffic offenses years ago. Today it has also clearly proved its usefulness for criminal offenses - both from the point of view of defendants charged with crimes and from that of the agencies entrusted with administering the criminal justice system. Used properly it adds a considerable measure of the efficiency and fairness to a criminal justice system that has all too often lacked both these highly necessary qualities.⁶¹

J. David Hirschel and Charles W. Dean published a comprehensive study on the cost effectiveness of citation arrests.⁶² Hirschel and Dean explored a two-fold problem. First, are citation arrests more cost effective than in-custody arrests?⁶³ Second, if so, is there still a cost savings when one considers the costs of additional processing for failure to appear cases?⁶⁴ Hirschel and Dean also addressed the problems of prior studies that used differing operational methods to define when the study deemed that an offender failed to appear and differing units of analysis, such as tracking court appearances versus tracking defendants.⁶⁵ Their study included an experimental design to

60. *See id.*

61. *Id.* at 195.

62. J. David Hirschel & Charles W. Dean, *The Relative Cost Effectiveness of Citation and Arrest*, 23 J. CRIM. JUST. 1 (1995).

63. *See id.*

64. *See id.* at 8, 10.

65. *Id.* at 3-4.

control "differences in the characteristics of the defendant population."⁶⁶

Hirschel and Dean used a straightforward cost effectiveness formula for estimating the relative cost savings of a citation arrest as opposed to a custodial arrest.⁶⁷ First, they listed and described the required procedures for each arrest, estimated the costs for each procedure, and totaled the costs.⁶⁸ Second, they multiplied this cost times the number of cases, or case flow, for a given period.⁶⁹ Finally, they subtracted the cost of processing the failure to appear cases for the same period.⁷⁰ The results would determine the final cost savings of using a citation, if any.⁷¹ The study's initial cost assessment between in-custody arrests and citation arrests is duplicated in the Table below.⁷²

Cost for arrest	\$120.96
Cost for citation	\$20.00
Initial cost difference between arrest and citation	\$100.96

Hirschel and Dean calculated a substantial potential financial savings of using citations.⁷³ The conservative estimate in their study is that each field citation initially produces a savings of \$100.96 over each custodial arrest.⁷⁴

Their next assessment analyzed whether increased FTA rates diminished the financial savings so much as to become negligible.⁷⁵

66. *Id.* at 4.

67. *Id.* at 8.

68. *See* Hirschel & Dean, *supra* note 62, at 8.

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.* at 10.

73. *See id.*

74. *See* Hirschel & Dean, *supra* note 62, at 10.

75. *Id.*

From the data of their study, the answer to that question would appear to be “no.”⁷⁶ After subtracting time costs and costs of processing the failure to appear cases, the study still showed a net overall savings of \$71.93 when using the citation process in lieu of a custodial arrest.⁷⁷

Debra Whitcomb’s 1984 study is a comprehensive analysis of the use of citation arrests and release, written to help criminal justice planners assess the value of a citation release program.⁷⁸ Whitcomb analyzed three main variations of citation arrests and release alternatives.⁷⁹ Each variation offers its own advantages and disadvantages:

Field citation offers the greatest potential for benefits both to the defendant and to the criminal justice system: patrol officers are removed from service for only a brief period of time, typically 30 minutes or less; no transportation costs are incurred; defendants are subject to the least amount of disruption. At the same time, however, field release offers the arresting officer little assurance that the defendant (a) has given true identification; (b) is not a serious offender with an extensive criminal record; or (c) will appear in court as directed. For these reasons, many patrol officers doubt the value of field citations in achieving the ultimate goal of ensuring that criminal offenders are brought to justice.

. . . [S]tationhouse release[] offers law enforcement agencies greater confidence in the authority of their arrests: information provided by the defendant can be verified and criminal histories checked before release is granted. This higher level of confidence is achieved at some cost, however, particularly in the time involved in transporting defendants to the stationhouse and the inconvenience suffered by the defendants.

76. *Id.*

77. *See id.*

78. *See* WHITCOMB, ET AL., *supra* note 3, at vii.

79. *Id.*

. . . [J]ail [release] . . . offers the greatest degree of assurance to the arresting officer: defendants generally undergo the entire identification and booking process before they can be released. However, this option is the most costly: jail release incurs the time not only of arresting or transporting officers, but of detention facility staff as well. Finally, jail release most closely resembles a traditional, custodial arrest and, as such, is most disruptive to the defendant.⁸⁰

Whitcomb's writing included a table (reproduced below) to help planners quickly visualize the advantages and disadvantages of different citation release programs.⁸¹

Table 3.1. (Whitcomb) Summary of Advantages & Disadvantages of Citation Release			
	Release Location		
Potential Advantages	Field	Stationhouse	Jail
Cost Savings			
Patrol Officer Time	High	Low	Low
Transportation Costs	High	Low	Low
Booking Fees	High	Medium	Low
Detention Costs	High	High	Medium
Reduced Jail Population	High	High	Medium
Reduced Police Jail Complaints	High	Medium	Medium
Increased Failure to Appear	High	High	High

80. *Id.*

81. *Id.* at 17.

Potential Disadvantages			
Loss of Sanctioning Power	High	Medium	Medium
Widening Net	High	Medium	Low
Misuse of Officer Discretion	High	Medium	Medium

Whitcomb also noted the increased failure to appear rate for citation release cases.⁸²

Whitcomb discussed whether the use of citations results in a loss of sanctioning power.⁸³ Proponents of this theory contend an expected increase in the failure to appear rate will “diminish[] the clout of law enforcement agencies to see that justice is served.”⁸⁴ Many victims do not want to see the accused released on a citation. They want the accused arrested and taken away.⁸⁵ Also officers may be more prone to issue citations to persons who they previously would have released with a warning or reprimand, “thereby bringing more people into the criminal justice system and ‘widening the net’ of social control.”⁸⁶

Walter Busher summarized the most common objectives for implementing a citation release program:

- To reduce the amount of time that police and equipment are removed from service in the course of making a physical arrest.
- To reduce arrestee and community ill-will generated by physical arrests for minor offenses.
- To reduce the amount of time spent on booking and releasing persons ultimately approved for pretrial release.
- To reduce the daily jail populations and associated costs.
- To reduce the size of the pretrial population.

82. *See id.* at 20.

83. *Id.*

84. WHITCOMB, ET AL., *supra* note 3, at 20.

85. *Id.*

86. *Id.*

- To reduce the number of low-risk people interviewed by a pretrial release agency.
- To reduce uneven distribution of arraignment workload.
- To reduce judge's involvement in bail and release on recognizance.
- To reduce the time required to screen and prosecute misdemeanor arrestees.
- To reduce the volume of police overcharging cases.⁸⁷

Busher analyzed the impact of the length of time between the date of arrest and date of arraignment upon the failure to appear rate.⁸⁸ Busher found that the longer the time period between the two dates, the higher the failure to appear rate.⁸⁹ He also found the failure to appear rate reduced substantially when the court issued a written reminder to defendants.⁹⁰

Whitcomb condensed the common goals of citation release, data needed and expected sources of data into Table 7.2 wherein she credits Busher's prior research.⁹¹

87. WALTER H. BUSER, CITATION RELEASE: AN ALTERNATIVE TO PRETRIAL DETENTION 86-87 (1978).

88. *Id.* at 102.

89. *Id.*

90. *Id.* at 45-48.

91. See WHITCOMB, ET AL., *supra* note 3, at 54-55; see BUSER, *supra* 87, at 86-87.

Table 7.2 Common Impact Goals of Citation Release, Data Needed and Sources of Data (selected portions)		
Objectives	Data Needed	Sources of Data
To reduce the amount of time that police and equipment are removed from service in the course of making an arrest	Time out of service per officer when effectuating a full arrest, (may include transportation to jail and booking time) time out of service per officer. Time involved per officer in effecting field release.	Dispatch logs Officers Daily Activity Sheets
To reduce amount of time spent on booking and releasing persons ultimately approved for pretrial release	Time incurred by jail officers in booking. Time incurred by prosecutors and judges in reviewing release recommendations	Jail officer time logs Prosecutor and judge time logs.
To reduce average daily population of the jail and associated costs	Average daily populations of jail. Daily cost of housing a prisoner	Daily jail intake and release records. Operating costs of jail per number of inmates housed, as expressed in budget or annual report
To reduce the size of the pretrial population in jail	Proportion of inmates on pretrial status	Inmate records by criminal justice status, pretrial vs. sentenced

<p>To implement the citation release program without exceeding a predetermined acceptable rate of failure to appear</p>	<p>Failure to appear rates, before and after the onset of a citation program, for the following groups: Arrestees released on (citation) Arrestees released on bond. Failure to appear rate for cited arrestees Of all persons who fail to appear from each release category, the percentage which did so deliberately Of all persons who fail to appear from each release category, the percentage subsequently prosecuted for this offense</p>	<p>Court records. Prosecutor records Pretrial Service agency records</p>
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Whitcomb recommended the following steps to implement a citation release program:

- (1) Needs assessment, will a citation arrest program actually address the problem to be solved,
- (2) Statutory review,
- (3) Prioritization of objectives,
- (4) Formulation of policy,
- (5) Design of the citation form,
- (6) Refinement of procedures.⁹²

92. See WHITCOMB, ET AL., *supra* note 3, at 59-61.

Whitcomb summed up citation arrest programs in other states as a means to conserve scarce patrol resources and contain burgeoning jail populations.⁹³

From this review of the published literature, Gwinnett County incorporated a framework of previously tested methods, ideas, and procedures to “field test” the use of field citations within the Gwinnett Judicial Circuit.

II. THE GWINNETT PROJECT TESTING MISDEMEANOR SHOPLIFTING CITATIONS

In September 2003, the Gwinnett County Magistrate Court, Solicitor’s Office, and Police Department initiated a pilot project to test the use of field citations for the nontraffic misdemeanor offense of theft by shoplifting. Gwinnett County chose this particular misdemeanor offense because it is one of the four misdemeanor offenses approved for citation arrest and adjudication within Georgia’s magistrate courts.⁹⁴ Furthermore, Gwinnett County has three large regional malls of retail stores within its jurisdiction, making this particular misdemeanor offense relatively common within this jurisdiction.

The Gwinnett project proposed to conduct quantitative studies of three primary issues. The author undertook the responsibility to collect and analyze the data. The following sets forth the author’s findings surrounding these three issues:

- (1) Whether the use of field citations for this particular nontraffic misdemeanor offense was more time efficient for investigating officers. If so, how much time did officers save?
- (2) Whether the failure to appear rate for defendants issued citations to voluntarily appear in court would increase in

93. *Id.* at 61.

94. *See* O.C.G.A. § 15-10-262 (2000).

comparison to those defendants who police arrested and released on bond.

- (3) Whether the failure to appear rate for defendants released on nontraffic misdemeanor citations would be similar to the failure to appear rate for defendants released on traffic citations.

Discretionary standards authorizing the officer to use a field citation for the nontraffic offense of theft by shoplifting followed those Feeney previously recommended and the study conducted on behalf of the Wisconsin legislature.⁹⁵ The Gwinnett project required officers to consider seven factors before issuing a nontraffic misdemeanor citation in lieu of a custodial arrest:

- (1) Confirm that the accused is a resident of the state of Georgia;
- (2) Whether the officer can reasonably verify the accused's identity. Suggested verification included driver's license, state identification card, school identification or vehicle registration;
- (3) Check records to determine if there are any outstanding failure to appear holds on the defendant;
- (4) Check records to determine if there are any outstanding warrants for the arrest of the defendant;
- (5) Confirm that the offense alleged is a misdemeanor offense;
- (6) Whether the accused is sober; and
- (7) Whether the accused will sign the citation.

The project anticipated an increased failure to appear (FTA) rate on citation release offenders as predicted by Feeley, Feeney, Whitcomb, Hirschel, and Busher.⁹⁶ Feeley's early study of the FTA rate suggested a four-pronged examination to help assess this expected increase: "Examining how well defendants understand court

95. See Feeney, *supra* note 6, at 379; Wisconsin Legislative Council Staff, *supra* note 9, at 3.

96. See Feeley & McNaughton, *supra* note 12, at 33; FEENEY, *supra* note 2, at 43; Hirschel & Dean, *supra* note 62, at 3; NEEDLE & BUSER, *supra* note 44, at 32-34; WHITCOMB, ET AL., *supra* note 3, at 20.

procedure, how much respect they have for the court and the police, how well aware they are of scheduled court appearances and what penalties they believe they will face if they fail to appear may give a much clearer picture of FTA behavior.”⁹⁷ Following those suggestions, the Gwinnett project created a citation that explained court procedures. It included arraignment information, a description of diversion programs, the shoplifting statute, and a legal rights notice to the accused. The design included the assigned court appearance date and a description of the penalty for failure to appear—custodial arrest and the posting of a cash bond.⁹⁸ Additionally, the clerk’s office followed Busher’s procedural recommendation and mailed the accused a reminder notice prior to the court date scheduled on the citation.⁹⁹

After incorporating these recommendations for establishing discretionary guidelines and methods to reduce the failure to appear rate, Gwinnett police officers began their discretionary use of issuing field citations to nontraffic misdemeanor offenders charged with the offense of misdemeanor theft by shoplifting.

A. Is the Use of Field Citations More Time Efficient for Investigating Officers?

To make this determination, the Gwinnett project considered the suggestions of Debra Whitcomb on how to conduct a time analysis of citation arrests.¹⁰⁰ Whitcomb recommended studying police dispatch logs for the sources of data needed to determine time out of service when effectuating a full arrest, including transportation and booking time compared to time out of service when effectuating a field (citation) release.¹⁰¹ The author obtained dispatch logs for the Gwinnett County Police Department for retrieval and analysis from a web-based databank. These detailed logs contain precise entries of various events Whitcomb suggested, including: date, times,

97. See Feeley & McNaughton, *supra* note 12, at 37.

98. See App. 9, 1-2.

99. See BUSER, *supra* note 87.

100. See WHITCOMB, ET AL., *supra* note 3, at 59-61.

101. *Id.* at 54.

geographical locations of officers, and offense codes for arrests made during an officer's shift.¹⁰² To facilitate the analysis component of this project, the Gwinnett County Police Department assigned field citation shoplifting arrests a specific offense code, #2407, and custodial arrests for shoplifting the specific offense code of #2406.

1. Analyzing Custodial Arrests

According to the log sheet, an officer's time out of service for a custodial arrest by warrant began when the officer arrived at the call. The time out of service continued to be tracked through (1) the time to arrest and transport the accused to the Gwinnett County Detention Center, (2) the time to obtain an arrest warrant, and (3) the time for an officer to return to the outermost area of the officer's general patrol zone. The author broke down this analysis for time out of service into these three component parts to help reviewers gain a clearer understanding that completing various arrest processes would likely vary between, or even within, given jurisdictions. For instance, the Gwinnett Judicial Circuit has two separate court locations where an officer can submit an arrest warrant application to a judicial officer. An equal number of time samples were taken within this study from each respective court location to test whether different court locations, even within a single county, would affect an officer's time out of service.

a. Time Required to Arrest and Transport Offender

The methodology to determine a patrol officer's time to make a custodial misdemeanor arrest and transport the offender involved analyzing 150 sequentially occurring misdemeanor arrests within the one-year period of the project study. The author analyzed the police dispatch logs to determine when the time out of service began and when the officer arrived at the holding facility, the Gwinnett County Detention Center. The author calculated time in minutes and entered the time results of the analysis of this component of the arrest process

102. *Id.*

into Microsoft Excel to determine the mean time and the variance to a 95% confidence level.¹⁰³

b. Time to Obtain an Arrest Warrant

Similarly, the methodology to measure an officer's time to obtain a misdemeanor arrest warrant also involved analyzing 150 sequentially occurring misdemeanor warrants issued within the project time period. Since Gwinnett County has two court facilities for the issuance of arrest warrants, the author broke down this sample size into two subgroups of 75 misdemeanor warrants issued from each respective location. A review of police dispatch logs containing unique police case number identifiers were cross-referenced with court records to insure accuracy in issuing misdemeanor warrants. The author again analyzed the data to determine the mean time and the variance to a 95% confidence level.¹⁰⁴ From that data, the author made a single factor analysis of variance, ANOVA, to determine if the difference between the mean times between the two samples of procuring arrest warrants from a different court location was actually statistically significant.¹⁰⁵

c. Time to Return to Outermost Area of Officer's Patrol Zone

The methodology for the third factor assigned 12 minutes as the expected average time when most patrol officers within Gwinnett County would reach the outermost part of their patrol precinct after leaving the jail or court facility. No precise time data is assessed upon the police dispatch logs to track this function.

The time requirements for an officer making a custodial arrest for a misdemeanor case and procuring an arrest warrant within the sampled cases, from either of two separate court locations, is set forth in Table 1.

103. See App. 1.

104. See App. 2.

105. See App. 3.

Table 1: Custodial Arrests Pursuant to Warrant—Analyzing the three arrest components			
(Mean time in minutes, 95% confidence level, n = 150)			
(1) Custodial arrest & transportation to jail	49.83, +/- 3.18	Min. 50	Min. 50
(2)(a) Obtaining a misdemeanor arrest warrant (Jail Location)	44.72, +/- 3.16	45	-
(2)(b) Obtaining a misdemeanor arrest warrant (Courthouse location)	65.67, +/- 5.48	-	66
(3) Time to return to outermost area of patrol zone	12	12	12
Total time out of service to effectuate a physical misdemeanor arrest/case	Jail Court Location	107	-
	Courthouse Location	-	128

Within the sample cases, the second arrest function, the mean time to obtain an arrest warrant, varied between whether the officer procured the arrest warrant at the jail location or the courthouse location, 44.72 minutes +/- 3.18 minutes and 65.67 minutes +/- 5.48 minutes, respectively. A statistical analysis using an ANOVA, single factor analysis resulted in a p-value of 6.65, confirming that the difference between the two mean samples was statistically significant.¹⁰⁶ Because officers must submit an arrest warrant application to a judicial officer in order to complete the custodial arrest process, these results indicate the importance of analyzing judicial officer availability when assessing the time required to obtain an arrest warrant within a particular jurisdiction.

106. See App. 3.

2. Analyzing Citation Arrests

An officer's time out of service to make a citation arrest began when the officer went out of service and continued through the officer's investigation of the offense, issuing a citation, and announcing a return to service.

The methodology to measure the patrol officer's time to use a field citation included analyzing a sample of 150 sequentially occurring field citations issued within the one-year period of the project study. The author analyzed the police dispatch logs to determine when the time out of service began, if the officer issued a citation, and when the officer returned to service. The author cross-referenced court dockets to insure the officer issued a citation. The author calculated time in minutes and entered the time results of this component into Microsoft Excel to determine the mean time and the variance to a 95% confidence level.

The average time required for an officer to make a citation arrest for a misdemeanor shoplifting case was 35 minutes. The data is presented in Table 2.

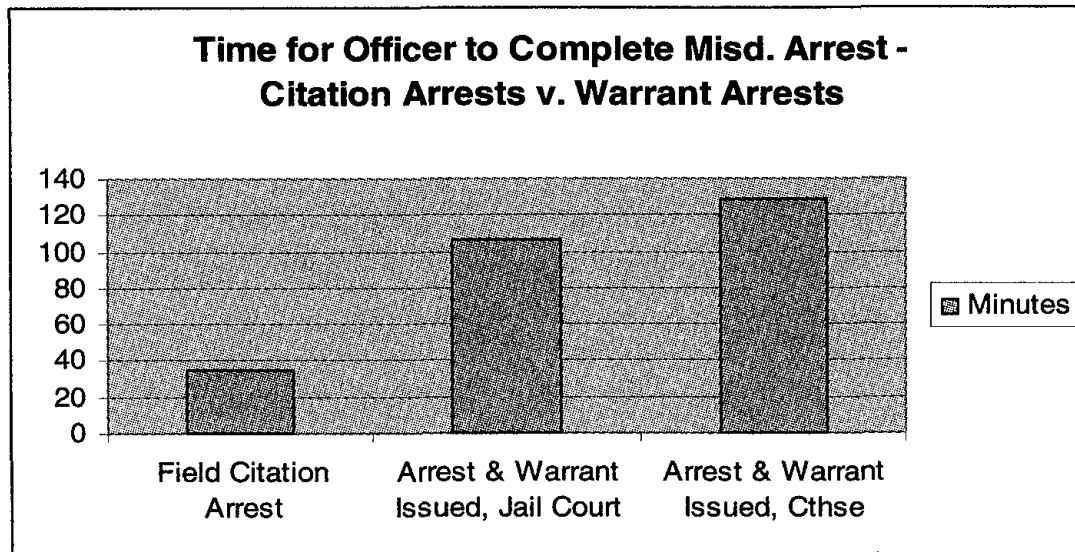
Table 2 Field Citations (Mean time in minutes, 95% confidence level, n = 150)		
Time to investigate offense, issue citation, and return to service in lieu of arrest warrant.	Min. 35.32 +/- 2.40	Min. 35

3. Conclusion of Time Study

As predicted by Feeney, Chelimsky, Berger, and Whitcomb, this sample revealed that field citations are more time efficient for investigating patrol officers than making a custodial misdemeanor arrest.¹⁰⁷ In this study, a patrol officer could issue a field citation and return to service within an average of 35 minutes. By contrast, an officer making a custodial misdemeanor arrest and obtaining an arrest

107. See Feeney, *supra* note 6, at 371-72; CHELIMSKY, *supra* note 11; Berger, *supra* note 39, at 390; WHITCOMB, ET AL., *supra* note 3, at vii; Tbl. 1; Tbl. 2.

warrant from the jail court facility spent an average of 107 minutes per case, and a patrol officer obtaining an arrest warrant from the courthouse facility spent an average of 128 minutes per case.



Comparing the field citation process to the arrest warrant process identified three potential time saving opportunities from the three tasks required by an officer to make a misdemeanor arrest pursuant to a warrant:

- (1) The citation arrest process negates the need for the arresting officer to transport the offender to the detention location;
- (2) The officer does not need to obtain an arrest warrant from a judicial officer; and
- (3) The officer does not need to travel back to a patrol zone.

Overall, the Gwinnett project found that using field citations was 70% more time efficient for arresting officers than making a custodial misdemeanor arrest, equating to more officer time for other patrol duties without increased patrol officer staffing.

III. COMPARISONS OF FAILURE TO APPEAR RATES

The Gwinnett project compared the failure to appear rate (FTA) of defendants released on citations for the offense of misdemeanor shoplifting with the FTA rate of defendants physically arrested, incarcerated, and then released on bond for misdemeanor shoplifting. The methodology to compare the FTA rates was to randomly select 300 sequentially occurring citation cases and 300 sequentially occurring custodial arrest cases where an officer made a custodial arrest and the defendant posted bond. The author analyzed court records to determine the FTA rates for each of these respective groups.

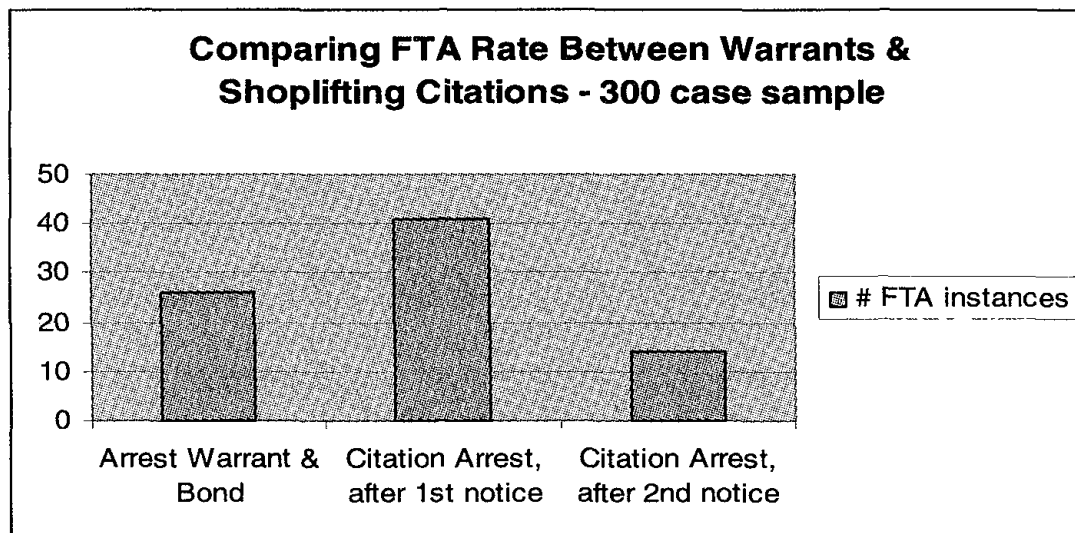
The FTA rate analysis requires an understanding of local court procedures to assess when the court deems that an offender has “failed to appear.” As cautioned by Hirschel and Dean, the author expected variations in the operational definitions for the term “failed to appear.”¹⁰⁸ As cautioned, in the Gwinnett Judicial Circuit there was an operational difference between the court declaring an FTA after a citation arrest and declaring an FTA after posting bond. The operational difference was the following:

- FTA citation: The court gives a defendant who fails to appear on the date set forth on the citation notice a second written notice to appear at a second court date before being declared an FTA and having a bench warrant issued for the defendant’s arrest. This second written notice is unique to citation arrests and does not apply to defendants released on bond.
- FTA custodial arrest: Defendants released on bond are given a court notice after posting bond, and if the defendant fails to appear at the first hearing, the court declares the defendant an FTA, and issues a bench warrant.

108. See Hirschel & Dean, *supra* note 62, at 4.

To compensate for this operational difference, the FTA instances tabulated within this analysis includes those occurring at both the first and second court appearances.

Fortuitously, this local court procedure of giving a second written notice to citation offenders tracked one of Busher's recommendations as a means to reduce the increase in the FTA rate expected with the implementation of citation arrest programs.¹⁰⁹ Furthermore, giving a first notice and a second notice permitted the Gwinnett project to gain another important FTA measurement: to assess the effect of giving one court notice to citation release offenders and the effect of giving a second notice to those who failed to appear. Then the author could compare the FTA rate of both of those groups to the FTA rate of defendants released on bond. The results are set forth in Table 3.1 and in the chart entitled "Comparing FTA Rate Between Warrants & Shoplifting Citations."



109. See BUSER, *supra* note 87, at 45-58

Table 3.1 Arrest Mechanism	Sample size	1st notice, # FTA	% FTA	2nd notice, # FTA	Final % FTA
Arrest Warrant & Bond	300	26	8.6%	----	----
Shoplifting Citation	300	41	13.6%	14	4.6%

The FTA rate for persons issued citations (13.6%) is initially 5% higher than the rate of persons who have posted bond (8.6%). However, when the court utilizes the simple mechanism of giving the accused a second notice to appear instead of issuing a bench warrant, a reduction in the final FTA rate of citation arrest offenders (4.6%) dropped below that of the FTA rate of offenders who posted bond (8.6%). But statistical analysis using an ANOVA, single factor analysis determined that this small difference was not necessarily statistically significant.¹¹⁰ The FTA rate is simply the converse of the “appearance rate.” The statistical analysis of this sample indicates “appearance rates” in Table 4.

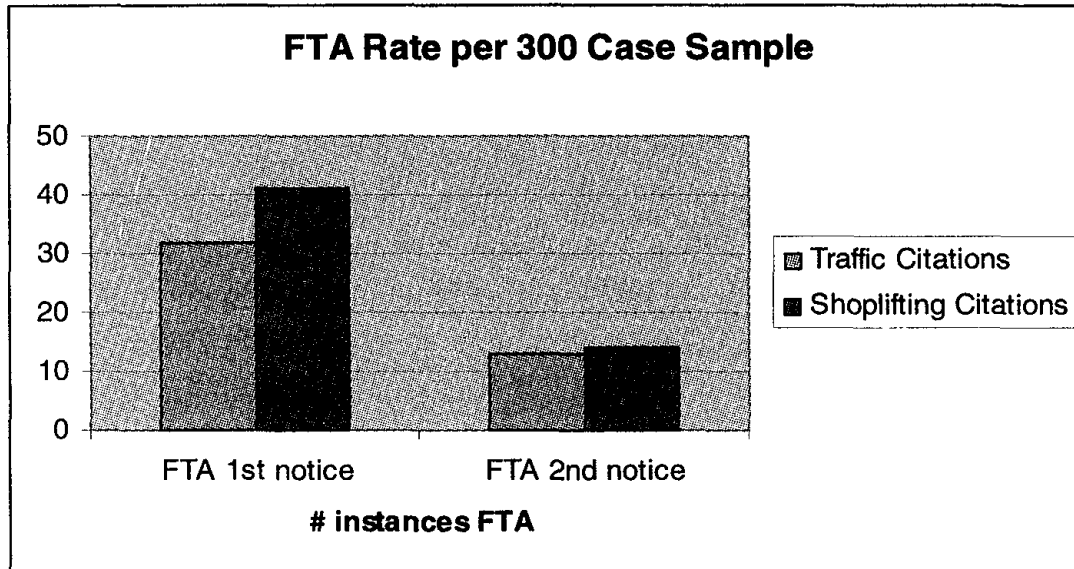
Table 4 Groups	Count	Sum	Average “show up rate”	Variance
Citation 1 notice	300	259	0.86333	0.118383
Citation 2 notice	300	286	0.95333	0.044637
Bail Bond	300	274	0.91333	0.079420

The next quantitative analysis conducted with respect to the Gwinnett project compared the FTA rate for defendants charged and released on field citations with the misdemeanor offense of theft by shoplifting and the FTA rate of those defendants charged and released on general misdemeanor traffic citations. The methodology made a random selection of 300 sequential citations for each respective category. Again, since the local court process incorporates

110. See App. 5 (determining p-value of 5.61×10^{-4}).

a second notice to citation arrest offenders, the author incorporated this data into the analysis.

Table 5 Arrest Mechanism	Sample size	# Failing to Appear, FTA	% FTA	Second notice, # FTA	Final % FTA
Traffic Citations	300	32	10.7%	13	4.3%
Shoplifting Citations	300	41	13.6%	14	4.6%



For this second analysis, it once again appears that when only one notice is given to a defendant to appear in court, such as only giving an appearance court date on the citation, the initial FTA rate for defendants receiving a citation (10.7% traffic, 13.6% shoplifting) is higher than the FTA rate (8.6%) for defendants released on bond. However, when the court sends a second notice to the accused, the citation arrest FTA rate (4.3% traffic, 4.6% shoplifting) reduces to less than the FTA rate (8.6%) of defendants released on bond.

Interestingly, the statistics show that the final FTA rate (4.6%) for defendants released on citation for a nontraffic misdemeanor offense was nearly identical to the FTA rate (4.3%) of defendants released on

a citation for a traffic misdemeanor offense within the Gwinnett Judicial Circuit. This relationship could assist criminal justice planners in assessing the viability of a nontraffic misdemeanor citation program, as this analysis indicates that the FTA rate for their current citation misdemeanor traffic offenders could be similar to a projected FTA rate for a nontraffic citation misdemeanor offender.¹¹¹

In summary, the FTA rate for the Gwinnett project was similar to, or less than, the FTA rate of offenders who post bond for misdemeanor offenses if the court mails the accused a reminder notice prior to the assigned court appearance date.¹¹² If the court does not mail the accused a reminder notice, the FTA rate for citation offenders is higher.¹¹³ Also, the FTA rate for the Gwinnett project closely paralleled the final FTA rate for traffic offenders receiving citations.¹¹⁴

IV. IS THERE SUPPORT AMONG LAW ENFORCEMENT EXECUTIVES TO CHANGE GEORGIA LAW?

The next prong of the author's analysis was to conduct a survey to determine if there is initial support among Georgia's law enforcement executives to consider changing Georgia law to authorize using field citations in lieu of custodial arrests for more types of misdemeanor offenders. Generally, the law enforcement executive levels for sheriff departments are the sheriffs and their chief deputy, whereas for police departments those executive levels are police chiefs and their assistant police chiefs.

The methodology was to conduct a sample survey of one member of the executive level of leadership for a single sheriff's department and a single police department. The goals for the survey were results within a confidence level of 95%, with a margin of error of +/-10%. A web-based computer generated analysis used the following formulas:

111. Tbl. 5.

112. See Tbl. 3; Tbl. 5.

113. See FTA Rate per 300 Case Sample Chart.

114. See Tbl. 5.

$$n = N_x / ((N-1)E^2 + x)$$

$$E = \text{Sqrt} [(N - n)x / n(N-1)]$$

$$x = Z^{(c/100)^2} r(100-r)$$

Where:

n = sample size

E = margin of error

N = population size

r = fraction of responses

$Z^{(c/100)}$ = critical value for the confidence level “c” to insure that the respective surveys were within these measurement parameters.¹¹⁵

Accordingly, the author set a goal to seek a singular response from at least 61 different sheriff's departments, which represents 38 of the 159 sheriff's departments within the State of Georgia. The author received 61 responses. The author obtained the list of sheriff's departments from the Georgia Sheriff's Association, which maintains a directory of all Georgia sheriffs.¹¹⁶ The methodology for police department executives was to similarly seek a singular response from a minimum of 80 police departments, and in this case, 107 responded to this survey. This sample represented 24% of the 451 police departments listed within the State of Georgia. The author obtained the list of police departments from the Georgia Police Chiefs Association, which maintains a directory of all Georgia police departments.¹¹⁷

The author submitted the survey questions via email and fax to each respective department with responses tabulated as the first round of the survey.¹¹⁸ In the event of an inadequate sample size, random telephone calls in descending alphabetical order were made to

115. Raosoft Sample Size Calculator, <http://www.raosoft.com/samplesize.html> (last visited Mar. 3, 2006).

116. Georgia Sheriffs' Association, <http://www.georgiasheriffs.org> (last visited Mar. 21, 2006).

117. Georgia Association of Chiefs of Police, <http://www.gachiefs.com> (last visited Mar. 21, 2006).

118. *See App. 6.*

nonresponding departments until the author reached the predetermined sample size.

The author subcategorized responding law enforcement executives into the following three main geographic locales: urban, suburban, or rural. First, the survey asked if they were in favor of supporting a change in Georgia's arrest laws to permit more field citations for more misdemeanor offenses.¹¹⁹ Second, the survey asked whether their department already had experience with using field citations for nontraffic misdemeanor offenses. The author added this second criteria to test the experience level of responding agencies. The results of the survey are displayed in Tables 6 and 7.

Table 6				
Sheriffs 159 GA Sheriff				
Departments - Polled 61;				
37.7%; Confidence level 95%				
			% in favor +/- 10%	% opposed +/- 10%
Urban	Yes	No		
Allowing more field citations for misdemeanor offenses	3	1	75%	25%
Currently use some field citations	2	2	50%	50%
Suburban	Yes	No		
Allowing more field citations for misdemeanor offenses	18	3	86%	14%
Currently use some field citations	13	8	62%	38%
Rural	Yes	No		
Allowing more field citations for misdemeanor offenses	29	7	80%	20%
Currently use some field citations	23	13	63%	37%

119. *Id.*

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	Yes	No	% in favor +/- 10%	% opposed +/- 10%
Totals – Sheriff Departments				
Allowing more field citations for misdemeanor offenses	50	11	82%	18%
Currently use some field citations	38	23	62%	38%

Table 7				
Police Departments; 451 listed; Polled 107 23% polled; Confidence level 95%				
	Yes	No	% in favor +/- 10%	% opposed +/- 10%
Urban				
Allowing more field citations for misdemeanor offenses	23	2	92%	8%
Currently use some field citations	21	4	84%	16%
Suburban				
Allowing more field citations for misdemeanor offenses	33	3	92%	8%
Currently use some field citations	29	4	85%	15%
Rural				
Allowing more field citations for misdemeanor offenses	44	2	96%	4%
Currently use some field citations	29	17	63%	37%
			% in favor +/- 10%	% opposed +/- 10%
Totals – Police Departments				
Allowing more field citations for misdemeanor offenses	100	7	93%	7%
Currently use some field citations	79	25	74%	26%

The survey data indicates significant support among Georgia's law enforcement executives to increase the legal authority to use field citations for more nontraffic misdemeanor offenders with 82% of surveyed sheriff's departments in favor and 93% of surveyed police departments in favor of this proposed criminal procedure change.¹²⁰ The survey also indicates that 63% of sheriff's departments and 74% of police departments used field citations for nontraffic offenses, thus indicating experience with the field citation process.¹²¹

V. LOCAL COURT ADMINISTRATORS—IMPLEMENTATION ISSUES

The author sought opinions of local court administrators to help identify any unique implementation issues connected with using citations for more nontraffic misdemeanor offenses. The author randomly selected and interviewed seven court administrators from the Georgia Courts Directory, together with two municipal court judges who also serve as municipal court administrators.¹²² The author selected three from urban courts, three from suburban courts, and three from rural courts.

Two of the three court administrators in the urban courts and one suburban court administrator opposed utilizing citations for more types of misdemeanor offenders. In their opinion, the current systems worked well and needed no change. The other six court administrators were in favor of increasing the discretionary use of field citations with more types of misdemeanor offenses.

Court administrators cited various policy concerns: (1) care must be taken in selecting which additional misdemeanor offenses to add to the alternative citation process;¹²³ (2) the criminal justice system should seek to simplify its processes whenever reasonably possible;¹²⁴ (3) locales should not unnecessarily incarcerate local

120. See Tbl. 6; Tbl. 7.

121. Tbl. 6; Tbl. 7.

122. JUDICIAL COUNCIL OF GEORGIA, GEORGIA COURTS DIRECTORY 54 (Aug. 2002-2003).

123. Telephone Interview with Hon. Herbert Benson, Judge, Municipal Court of Tifton (Summer 2004).

124. Interview with Phil Boudewyns, Court Administrator, Gwinnett Judicial Circuit, in Lawrenceville, Ga. (Aug. 2, 2004).

misdemeanor offenders pretrial if it appears reasonably likely that these offenders will voluntarily appear at their court date;¹²⁵ (4) locales would need to change mandatory booking and fingerprinting procedures from “time of arrest” processing to “time of court appearance” processing for those misdemeanor offenses that have mandatory fingerprinting requirements;¹²⁶ (5) require comprehensive law enforcement officer training to properly utilize discretionary guidelines;¹²⁷ and (6) a circuit using a limited number of offenses to permit officers and court officials to familiarize themselves with this procedural change should first employ a test period.¹²⁸

VI. PERSPECTIVE OF JAIL COMMANDER

Colonel Gary Lancaster, a 30-year law enforcement veteran and Gwinnett’s Jail Commander, provided a jailer’s perspective of using field citations for more nontraffic misdemeanor offenses. From his vantage point, a greater use of the citation arrest process for nontraffic misdemeanor offenses would free up critical jail space and personnel currently used to house and supervise low-level misdemeanor offenders.¹²⁹ While most of these misdemeanor offenders post bond and the jail eventually releases them, some within hours of their arrests, the custodial arrest process still requires staffing and the physical cell space to hold these offenders while they await the bail bonding process or their first court appearance. In his opinion, most Georgia jails have too little space, too many serious offender inmates, and not enough staff. Any reduction within the pretrial custodial jail population would help alleviate overcrowding. As of the month of this interview, October 2004, the Gwinnett project

125. Telephone Interview with Hon. Ralph Luker, Judge, Clayton County Court Administrator (July 15, 2004).

126. O.C.G.A. § 35-3-33 (incorporating by reference therein, 2003 Op. Att’y Gen. 03-03); *see supra* note 124.

127. Telephone Interview with Robert Cochran, Court Administrator, Roswell Municipal Court (Aug. 2, 2004).

128. Telephone Interview with Patti Sutton, Court Administrator, Lowndes County (July 23, 2004).

129. Interview with Gary Lancaster, Gwinnett County Jail Commander, Gwinnett County Sheriff’s Department, in Lawrenceville, Ga. (Oct. 2004) (on file with author) (hereinafter Lancaster Interview).

resulted in the release of over 500 misdemeanor offenders. That equates to 500 offenders who were not held within Gwinnett's jail awaiting the posting of bond or their first court date, and "[e]very little bit helps."¹³⁰

The jail staff also has the responsibility of "booking and processing" certain misdemeanor offenses, including the misdemeanor offense of theft by shoplifting.¹³¹ To comply with this statutory obligation, jail staff fingerprinted and photographed offenders issued field citations when they appeared for arraignment.¹³² According to Colonel Lancaster, this has not presented a problem for jail staff as they historically book in fewer inmates during normal business hours than they do during night time hours when officers arrest more frequently, so "[o]verall, the process helps."¹³³

VII. PATROL OFFICERS—VISITING ROLL CALLS

The author appeared at police "roll calls" in order to conduct interviews with officers about the citation process randomly during the course of the project. The author asked officers to describe or write about the advantages and disadvantages of the citation arrest method. Generally, the officers and their supervisors supported this alternative arrest method. Most officers appreciated the decision-making discretion the process vested in them. The reason primarily espoused involved the time savings offered to the investigating officer. For instance, Senior Police Officer, Jill Merchant, Gwinnett County Police Department, wrote the following:

It was very helpful to all of us The most obvious reason was that it allowed the uniform officers to cut a citation and release the subject on scene verses transporting-placing the officer out-of-service for over an hour. I believe if we were able to write

130. *Id.*

131. O.C.G.A. § 35-3-33 (2005).

132. *Id.* (incorporating by reference therein, 2003 Op. Att'y Gen. 03-03).

133. Lancaster Interview, *supra* note 129.

more misdemeanor offenses verses T95 (transporting in custody) them to jail it would allow us to answer more calls, provide more officers to be available to back each other up on priority calls-officer safety, and allow officers to be more productive and keep up with paperwork more efficiently. Having the option to take the perp to jail or cut them a citation is an excellent resource out on the road! The biggest advantage is it allows the officer to be more productive with his time.¹³⁴

Corporal Ike Isenhour, also with Gwinnett County Police Department, echoed these sentiments: “The shoplifting citation program is an excellent idea. It has saved countless hours on officers answering and providing transports on misdemeanor shoplifting cases.”¹³⁵

A minority of officers cited several disadvantages:

- (1) Anxiety in that an officer might unknowingly issue a citation to an inappropriate defendant, such as a “professional shoplifter;”
- (2) Some victims would prefer that the officer make a custodial arrest;
- (3) A belief that initial custodial arrests have a deterrent value;
- (4) A personal preference to make a custodial arrest;
- (5) A personal reluctance to shoulder the chief investigating officer role as some misdemeanor offenses can be delegated to citizens or shopkeepers to initiate their own prosecutions via the arrest warrant process without law enforcement prosecution.¹³⁶

134. Interview with Jill Merchant, Senior Police Officer, Gwinnett County Police Department (2004) (on file with author).

135. Interview with Corporal Ike Isenhour, Gwinnett County Police Department (2004) (on file with author).

136. O.C.G.A. § 17-4-40(b) (2005) (stating that a person other than a peace officer or law enforcement officer may apply for a warrant).

CONCLUSION

The increased discretionary use of field citations for nontraffic misdemeanor offenders offers a viable arrest alternative to help Georgia relieve overcrowded jails and understaffed law enforcement agencies. Every major commission that has studied the criminal justice system has endorsed the process.¹³⁷ The survey of literature consistently supports the use of citations for appropriate nontraffic misdemeanor cases.

Gwinnett's pilot project of using citations for misdemeanor shoplifting citations resulted in quantitative findings that the citation arrest mechanism is 70% more time efficient for investigating officers.¹³⁸ This equates to more officer time for other patrol duties, with no increase in officer staffing.¹³⁹

Embracing proven guidelines for the issuance of field citations can reduce the failure to appear rate.¹⁴⁰ Incorporating methods to insure that those methods explain court procedures, clearly stating the court appearance date, and describing penalties for the failure to appear provide a means to reduce the FTA rate.¹⁴¹ Mailing an additional court reminder notice, as suggested by Busher, reduced the failure to appear rate of offenders issued citations to less than the initial failure to appear rate for persons who were custodially arrested and released on bond.¹⁴² In conclusion, the rate of "failure to appear" instances appears more related to establishing discretionary guidelines for the issuance of citations, explaining court procedures, and sending reminder notices than whether the officer issued the accused a citation or whether the officer arrested the accused.¹⁴³

Law enforcement executives who responded to a survey supported a change in Georgia's criminal procedure laws to authorize the use of field citations for more nontraffic misdemeanor offenses with 82% of

137. See FEENEY, *supra* note 2, at 195.

138. See Tbl. 1; Tbl. 2.

139. Tbl. 1; Tbl. 2.

140. See *supra* Part II.B.

141. *Id.*

142. See BUSER, *supra* note 87; *supra* Part II.B.

143. *Id.*

responding sheriff's departments and 93% of responding police department executives supporting the change.¹⁴⁴ Currently, 62% of sheriff's departments and 74% of police departments already use field citations for permitted nontraffic offenses.¹⁴⁵ This indicates an experience level that finds the citation arrest process is satisfactory.¹⁴⁶

Urban court administrators were less supportive of a legislative change to support increased use of field citations than their peers in suburban and rural Georgia.¹⁴⁷ But that is not entirely surprising because field citation release is premised upon a belief that the accused will voluntarily appear for court and the arresting officer reasonably can verify the accused's identity.¹⁴⁸ It appears reasonable that court administrators from less dense population areas would tend to believe that their officers would have more personal knowledge of offenders and are therefore more able to verify offender identity and more accurately assess whether a particular accused would voluntarily appear for court.

The experience of the Gwinnett Jail Commander, Colonel Gary Lancaster, was that "every little bit helps" when it comes to reducing the inmate populations of a Georgia jail.¹⁴⁹ Field citations, by their very nature, eliminate the initial need to jail a misdemeanor offender while awaiting the posting of bond or the next available court appearance date.

Investigating officers using the field citation mechanism generally supported this alternative arrest process for nontraffic offenders.¹⁵⁰ Officers most appreciated the timesaving the process offered them.¹⁵¹ A minority of officers expressed apprehensions about the field citation process, citing issues relating to their increased discretion and

144. See Tbl. 6 and Tbl. 7.

145. *Id.*

146. See *supra* Part III.

147. See *supra* Part IV.

148. *Id.*

149. See *supra* Part V.

150. *Id.*

151. *Id.*

their own personal beliefs that custodial arrests have a deterrent effect.¹⁵²

RECOMMENDATIONS

The legislature should modify Georgia law to authorize the discretionary use of field citations for more types of misdemeanor offenders. Debra Whitcomb offered suggestions to jurisdictions seeking to expand their use of field citations.¹⁵³ Citing the works of Needle and Busher, she recommended a seven-point strategy:

- (1) Establish objectives;
- (2) Broaden the list of citable offenses;
- (3) Reduce the number of eligibility criteria;
- (4) Treat conditions that cause exclusion, (e.g., uncleared warrants, restrictive booking requirements);
- (5) Strengthen supervisory controls;
- (6) Reaffirm commitment to the procedure; and
- (7) Declare prosecution and charging policies.¹⁵⁴

To broaden the scope of citation arrests for more nontraffic misdemeanor offenses, the legislature should modify Georgia criminal procedure similarly to the Code section concerning traffic citations arrests to clarify the factual circumstances when officers could use a field citation to effectuate a misdemeanor citation arrest. Preferably, officers would use a standardized charging document, similar to the Uniform Traffic Citation. The legislature should also follow the lead of other states by setting forth the objective criterion to determine the eligibility of an accused to be issued a field citation by a law enforcement officer, such as reasonable address verification, a check for outstanding warrants or previous failures to appear, sobriety, and signing the citation in lieu of a custodial arrest.¹⁵⁵

152. *Id.*

153. *See* WHITCOMB, ET AL., *supra* note 3, at ix.

154. *See id.* at 61.

155. *See* Feeney, *supra* note 6, at 381.

Furthermore, the legislature should insure that the citation explains court procedures, clearly states the court appearance date, and proscribes the potential penalties for failing to appear. Lastly, requiring the mailing of additional court notices to offenders appears to help mitigate the failure to appear rate.¹⁵⁶

Expanding the discretionary use of field citations for more misdemeanor offenses is a proven and tested arrest alternative that could help reduce Georgia's pretrial jail populations and reduce the time required by arresting officers to process the arrest of nontraffic misdemeanor offenders.

156. See BUSHER, *supra* note 87.

APPENDIX A

Statutes and Court Rules Regulating to Nontraffic Citations¹

- Alaska Rules of Criminal Procedure Rule 4 (a)(2) (1975)
Arizona Revised Statutes, §13-3903 (1978)
Arkansas Rules of Criminal Procedure Rule 5.2 (1977)
California Penal Code §853.6 (West Cum. Supp. 1980)
Colorado Revised Statutes §16-3-105(b)&(c) (1978)
Connecticut General Statutes Annotated §54-63c (West Cum. Supp. 1981)
Delaware Code tit.11, §§1907-1908 (1979)
District of Columbia Code §23-1110 (1973)
Florida Rules of Criminal Procedure Rule 3.125 (West Cum. Supp. 1981)
(See also Florida Statutes Annotated §§901.28-901.30.)
Hawaii Revised Statutes §803-6 (1976 and Supp. 1980)
Illinois Annotated Statutes ch. 38, §107-12 (Smith-Hurd 1980)
Indiana Code §35-1-17-7 (Burns Cum. Supp. 1980) (infractions only)
Iowa Code Annotated §§804.1, 805.1-805.5 (West 1979)
Kansas Statutes §22-2408 (Cum. Supp. 1980)
Kentucky Revised Statutes §431.015 (Cum. Supp. 1980)
Louisiana Code of Criminal Procedure art. 208 (West 1967)
Maine Revised Statutes tit. 14, §5544 (West Cum. Supp. 1980)
Michigan Statutes Annotated §§28.868 (1)-(7) (1978)
Minnesota Rules of Criminal Procedure Rule 6.01 (1981)
Montana Revised Codes Annotated §95-614 (1969)
Nebraska Revised Statutes §§29-422 through 29-435 (1979)
Nevada Revised Statutes §§171.177 through 171.1779 (1975)
New Hampshire Revised Statutes Annotated §594:14 (1975)
New Jersey Rules Governing Criminal Practice Rules 3.3-1 and 3.4-1 (1981)
New Mexico Criminal Procedure Law §31-1-6 (1978)
New York Criminal Procedure Law §§140.20, 140.27, 150.10-15.75 160.10-160.40

1. FEENEY, *supra* note 2, at 197.

(McKinney 1961 and Cum. Supp. 1980)
 North Carolina General Statutes §15A-302 (1978)
 Ohio Revised Code Annotated §2935.10 (Page 1975) and Rules of
 Criminal Procedure Rules 4(F) and 4.1 (1980)
 Oklahoma Statutes Annotated tit. 22, §209 (West 1969)
 Oregon Revised Statutes §§133.045-133.100 (1979)
 Pennsylvania Rules of Criminal Procedures Rules 51 through 56
 (1980) (summary offenses only)
 Rhode Island General Laws §§12-7-11 through 12-7-12 (1970 and
 Cum. Supp. 1980)
 Tennessee Rules of Criminal Procedure Rule 3.5 (Supp. 1980)
 Utah Code Annotated, Code of Criminal Procedure §§77-7-18
 through 77-7-22
 (Special Supp. 1980)
 Vermont Rules of Criminal Procedure Rule 3 (1974)
 Virginia Code §§19.2-74 and 19.2-74.1 (Cum. Supp. 1980)
 Washington Justice Court Criminal Rules Rule 2.01 (1980)
 Wisconsin Statutes Annotated §766.119 (West Cum. Supp. 1981)
 (ordinance violations only)

Appendix 1

Microsoft Excel spreadsheet analysis of the average time required to make a misdemeanor arrest and transport accused to the jail. (Minutes)

Mean	49.83444
Standard Error	1.613066
Median	45
Mode	32
Standard	
Deviation	19.82168
Sample Variance	392.8991
Kurtosis	-0.33922
Skewness	0.642245
Range	91
Minimum	14
Maximum	105
Sum	7525
Count	151
Confidence	
Level(95.0%)	3.187265

Appendix 2

Microsoft Excel spreadsheet analysis of the average time required to make a misdemeanor arrest and transport accused to the jail.

<i>Warrants issued at jail (minutes)</i>	
Mean	44.72368421
Standard Error	1.58464105
Median	45
Mode	40
Standard Deviation	13.8145804
Sample Variance	190.8426316
Kurtosis	-0.74318498
Skewness	0.016400217
Range	60
Minimum	15
Maximum	75
Sum	3399
Count	76
Confidence Level(95.0%)	3.156766801

<i>Warrants issued at Courthouse (minutes)</i>	
Mean	65.67105263
Standard Error	2.749825395
Median	64.5
Mode	81
Standard Deviation	23.97242202
Sample Variance	574.6770175
Kurtosis	0.469644797
Skewness	0.217489785
Range	120
Minimum	14
Maximum	134
Sum	4991
Count	76
Confidence Level(95.0%)	5.47793301

Appendix 3

Microsoft Excel, ANOVA Single Factor analysis to determine if there is a statistically significant difference between the amounts of time required for an officer to procure a misdemeanor arrest warrant from the warrants issued at the jail versus warrants issued at the courthouse.

ANOVA: Single Factor						
SUMMARY						
<i>Groups</i>	<i>Count</i>	<i>Sum</i>	<i>Average</i>	<i>Variance</i>		
Warrants issued at jail	76	3399	44.72368	190.8426		
Warrants issued at Courthouse	76	4991	65.67105	574.677		
ANOVA						
<i>Source of Variation</i>	<i>SS</i>	<i>df</i>	<i>MS</i>	<i>F</i>	<i>P-value</i>	<i>F crit</i>
Between Groups	16674.11	1	16674.11	43.56284	6.65E-10	3.904202
Within Groups	57413.97	150	382.7598			
Total	74088.08	151				

Appendix 4

<i>2407 - Citations</i>	
Time to issue shoplifting citation	
Mean	35.3245
Standard Error	1.216572
Median	34
Mode	34
Standard Deviation	14.94949
Sample Variance	223.4873
Kurtosis	2.452297
Skewness	1.275626
Range	86
Minimum	11
Maximum	97
Sum	5334
Count	151
Confidence Level(95.0%)	2.403832

Appendix 5

ANOVA: Single Factor						
SUMMARY						
<i>Groups</i>	<i>Count</i>	<i>Sum</i>	<i>Average</i>	<i>Variance</i>		
Citation 1 notice	300	259	0.863333333	0.118383501		
Citation 2 notice	300	286	0.953333333	0.044637681		
Bail Bond	300	274	0.913333333	0.07942029		
ANOVA						
<i>Source of Variation</i>	<i>SS</i>	<i>df</i>	<i>MS</i>	<i>F</i>	<i>P-value</i>	<i>F crit</i>
Between Groups	1.22	2	0.61	7.548213547	0.000561	3.00576
Within Groups	72.49	897	0.080813824			
Total	73.71	899				

Appendix 6

Text of survey of questions propounded to Georgia law enforcement executives.

The below survey description and questions were emailed and sent via FAX to all sheriff's departments and all police departments listed. In the event an adequate sample size was not received by email and FAX responses, telephone calls were made to departments appearing in alphabetical order until the required sample size was reached.

Responses were tabulated on a summary log sheet for each department type.

TO: (Sheriff or Chief Deputy) or (Chief of Police or Asst. Chief of Police)

Short overview: 46 of 50 states grant law enforcement officers with broad discretion to issue field citations to non-traffic misdemeanor offenders, excluding family violence. In Georgia, the field citation is much more limited. Instead, Georgia uses the criminal warrant process for many non-traffic misdemeanor offenses. In your opinion, should this be changed?

This poll seeks your recommendation. We seek your responses by either of two methods, whichever is more convenient to you. #1 Circle your answers and FAX to 770382238075; OR, respond to a telephone survey which will be made in the very near future. We value your opinions.

1. Would you support or oppose vesting Georgia law enforcement officers with more discretion to use field citations for the arrest of offenders accused of committing more types of non-traffic misdemeanor offenses?
 - A. Support.
 - B. Oppose.

2. Does your department currently issue field citations to misdemeanor offenders for any non-traffic misdemeanor offenses?
 - A. Yes
 - B. No

3. Would you classify your department as being primarily serving an urban, suburban or rural area?

Appendix 7

Analysis of Time for Arrests

Original Data

Random calls beginning page 8, 1-5-04 for 2406 & Page 3
for 2407

2406 Warrant	2407 - Citations
68	34
55	34
36	34
36	49
54	24
54	24
65	24
98	24
60	24
65	36
62	20
37	40
82	62
35	37
35	42
59	42
30	25
91	25
69	25
65	62
26	51
26	86
46	25
46	26
38	34
68	49
35	39

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CHANGING GEORGIA'S MISDEMEANOR ARREST LAWS

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35	28
27	42
27	29
43	29
105	23
49	31
49	26
59	38
45	42
45	29
82	29
54	44
58	44
57	32
32	38
32	38
44	43
79	65
84	57
47	36
30	48
30	35
22	38
22	44
34	44
31	36
61	14
47	68
52	26
55	17
96	30
44	17
41	63
98	33
41	52
34	29

53	28
79	49
64	29
67	37
43	30
72	30
64	46
23	63
38	34
77	26
56	26
78	26
93	11
54	34
84	20
73	36
49	21
49	48
24	14
24	14
40	46
40	24
40	34
36	37
36	22
32	26
32	31
35	20
35	37
77	31
24	33
38	31
26	20
41	46
69	40
56	41

76	38
84	21
34	28
23	34
23	14
46	25
38	24
79	43
53	63
70	34
77	47
41	41
68	72
77	14
43	45
29	40
46	82
45	28
33	37
33	31
76	31
39	40
39	14
39	14
87	52
68	34
60	17
60	17
59	97
41	38
41	77
14	19
19	19
19	57
32	26
31	37

	31	29
	50	28
	44	28
	28	45
	48	27
	48	19
	38	19
	38	19
	73	19
	32	31
	32	29
	54	45
	51	46
	42	43
	37	53
	84	29
	7525	5334
Average	76	35.3245
	45 Median	34

Add 12 minutes to get back to zone.

Appendix 8

Time Comparison Between Warrants Issued at GJAC Versus Jail Original Data

Jail Issued Warrants		GJAC – Courthouse Issued Warrants
28		83
29		50
40		75
51		72
51		90
36		58
23		58
40		96
48		127
48		51
61		65
53		81
43		71
43		80
43		32
50		69
38		65
30		80
60		65
40		39
65		49
39		61
52		117
39		84
64		48
21		48
21		85
64		45
21		15
21		134

75	89
69	15
45	51
38	41
31	55
24	51
61	53
45	63
56	80
65	64
56	44
50	19
36	81
52	53
50	82
63	57
51	57
15	56
33	59
33	62
34	81
34	73
32	90
56	87
45	92
53	51
40	42
46	80
45	81
48	85
46	48
67	14
34	97
54	57
68	76
59	36

2005]	CHANGING GEORGIA'S MISDEMEANOR ARREST LAWS	375	
	58	36	
	66	32	
	57	79	
	53	100	
	33	49	
	34	75	
	28	69	
	35	53	
	32	102	
	32	81	
	44.72368421	65.67105	
	Average	Average	
	45	65	
	Median	Median	
	Combined total =	8390	
	Average =	55.93	56 minutes

Appendix 9

**CITATION, SUMMONS & ACCUSATION -- THEFT BY SHOPLIFTING - MISDEMEANOR
(reformatted - not to scale)**

STATE OF GEORGIA

MAGISTRATE COURT, GWINNETT COUNTY, GA

vs.

CLERK CASE NO _____

POLICE CASE NO _____

CITATION NO: _____

Defendant

Telephone	Race	Sex	Ht	Wt
SSN	DOB		Age	Hair
<input type="checkbox"/> I verified Def's identity by: <input type="checkbox"/> driver's license <input type="checkbox"/> state i.d. card <input type="checkbox"/> school i.d. card <input type="checkbox"/> tag receipt <input type="checkbox"/> other:			<input type="checkbox"/> I confirmed there are no outstanding warrants/holds.	

I, the undersigned officer, have just and reasonable grounds to believe, and does believe, that to the best of my knowledge and belief, the Defendant, on _____, between the hours of _____ .m. and _____ .m. did commit the **misdemeanor** offense of **THEFT BY SHOPLIFTING, violating O.C.G.A. §16-08-14** at the below-listed address of owner, within Gwinnett County, Georgia, and against the owner, a retail establishment, and the laws of the State of Georgia. The facts for this citation is based are as follows: Said Defendant did (*check applicable*) did take possession of merchandise conceal merchandise alter the price tag transfer the merchandise from one container to another; interchange the price marking on merchandise; wrongfully cause the amount paid to be less than the owner's stated price for merchandise. Said merchandise was: _____

with a value lesser than three hundred dollars (\$300.00), to-wit the sum of \$_____, the property of owner, with the intent to deprive owner of the full value of merchandise and was taken from the possession of owner.

Retail Establishment/Owner:		
Address:	GA	Zip:
Telephone:	Contact Person:	

Witnesses:		
Witness(es) Address & Tel#, if NOT a store employee:		
Defendant <input type="checkbox"/> admitted <input type="checkbox"/> denied; the offense; and/or made the following statements to these persons:		
Officer's Name:		Signature
Dept:	Badge#	Work Tel:

Notice to Defendant: You are hereby ordered to appear and answer this charge before the Magistrate Court of Gwinnett, (770.822.8100, Criminal Div.), located on the second floor of the Gwinnett County Detention Center, 2900 University Parkway, Lawrenceville, GA. Your arraignment is (check applicable date [Wednesday [Friday at 8:30 AM;] or [Tuesday [Thursday at 1:30 P.M.];] the _____ day of _____, 20____, Courtroom B at the Detention Center. The prosecutor is assigned by the Solicitor's Office of Gwinnett County, 770.822.8300. **In the event that you fail to timely appear**, at the date and time set forth above, a criminal arrest warrant shall be issued for your arrest, you will be incarcerated and held in jail until a CASH BOND of no less than \$2000.00 has been posted. You will avoid being incarcerated on an arrest warrant for this offense **if you timely appear** at ALL court proceedings.

YOUR SIGNATURE ACKNOWLEDGES SERVICE OF THIS CITATION, RECEIPT & NOTICE OF YOUR COURT DATE

Signature of Defendant:	Date
-------------------------	------

IMPORTANT INSTRUCTIONS ON REVERSE SIDE MAG 21-01 Citation - Shoplifting
White - Court; Yellow - Defendant; Pink - Arresting Agency; Goldenrod - Victim

Appendix 9, page 2. ARRAIGNMENT & OPTIONAL DIVERSION PROGRAMS

You have been charged with the offense of theft by shoplifting. The assigned court date is your arraignment. It is not your trial date, but it is a critical stage of the criminal justice process. You should hire an attorney. If you are indigent and cannot hire an attorney you will be given the opportunity to apply for a court-appointed attorney at your arraignment. The arraignment procedure requires you to enter your plea. Typically you would enter one of these pleas, "not guilty, guilty or nolo contendere." The term nolo contendere means "no contest." If you plead "guilty" or "nolo contendere", you will be sentenced immediately. If you plead "not guilty", your case will be set for trial at a later date.

If you are eligible, you will have the opportunity at arraignment to apply for enrollment in the Shoplifting Diversion program operated by the Solicitor's office, rather than entering a plea to the charge. This program permits the accused to complete certain conditions in exchange for having the shoplifting charge dismissed. The diversion program

costs \$300.00 + probation supervision fees. The applicant will be expected to complete course work and complete community service.

The fines assessed in shoplifting cases range from \$100.00 to \$1,000.00. A common fine is the sum of \$300.00 + 10% OCGA 15-21-73 + 10% Jail Construction Fund + 5% Victim's Assistance Program for a total of \$375.00. All fines must be paid in cash or by money order. Persons not able to pay the fine in full will be placed on probation to permit additional time to complete full payment. If you are placed on probation, you must pay a monthly supervision fee.

MISDEMEANOR SHOPLIFTING

Shoplifting is a serious offense. Subsequent convictions for misdemeanor shoplifting can increase your penalties to a serious felony offense. O.C.G.A. 16-8-14 provides:

(b) (1) A person convicted of the offense of theft by shoplifting, as provided in subsection (a) of this Code section, when the property which was the subject of the theft is \$300.00 or less in value shall be punished as for a misdemeanor; provided, however, that:

(A) Upon conviction of a second offense for shoplifting, where the first offense is either a felony or a misdemeanor, as defined by this Code section, in addition to or in lieu of any imprisonment which might be imposed, the defendant shall be fined not less than \$250.00 and the fine shall not be suspended or probated;

(B) Upon conviction of a third offense for shoplifting, where the first two offenses are either felonies or misdemeanors, or a combination of a felony and a misdemeanor, as defined by this Code section, in addition to or in lieu of any fine which might be imposed, the defendant shall be punished by imprisonment for not less than 30 days or confinement in a "special alternative incarceration-probation boot camp," probation detention center, diversion center, or other community correctional facility of the Department of Corrections for a period of 120 days or shall be sentenced to monitored house arrest for a period of 120 days and, in addition to either such types of confinement, may be required to undergo psychological evaluation and treatment to be paid for by the defendant; and such sentence of imprisonment or confinement shall not be suspended, probated, deferred, or withheld; and

(C) Upon conviction of a fourth or subsequent offense for shoplifting, where the prior convictions are either felonies or misdemeanors, or any combination of felonies and misdemeanors, as defined by this Code section, the defendant commits a felony and shall be punished by imprisonment for not less than one nor more than ten years; and the first year of such sentence shall not be suspended, probated, deferred, or withheld.

RIGHT TO COUNSEL --WAIVER OF COUNSEL

SHOULD YOU HIRE AN ATTORNEY OR APPLY FOR APPOINTED COUNSEL

You have been charged with a crime for which the punishment may be 12 months or more.

Do you understand the **MAXIMUM** penalty for each offense for which you are charged?

Do you understand that you have the right to present defense to these charges? Do you know what those defenses are under the law?

Do you understand that you have the right to present any **mitigating evidence** in regard to these charge?

Do you understand that this Court strongly advises you against proceeding without an attorney?

If you are indigent, that is you have no funds to hire an attorney and you meet the income guidelines for appointed counsel, that this Court will appoint an attorney to represent you if you wish. This attorney can be appointed before your hearing.

This Court cannot assist you in the presentation of your case. Do you understand that you will be held to the same legal standards as an attorney in the presentation of your case?

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Do you understand that your failure to raise or challenge issues before this court will hurt or even foreclose issues to you in a higher court or on appeal?

How far did you go in school? Do you have any legal training, formal or informal?

Is your decision to represent yourself made freely and voluntarily?

Are you representing to this Court that this decision is made knowingly and intelligently by you?

These questions should help you analyze whether you should hire an attorney or apply for appointed counsel.

RIGHT TO COUNSEL: All persons may be represented by counsel. Persons unable to afford counsel may apply for court appointed counsel. This must be in writing & under oath. Forms are at the Magistrate Court or website, www.gwinnettcourts.com. You must immediately appear before a magistrate court judge to apply for appointed counsel. Hearings will not be continued because of your failure to hire counsel or timely apply for appointed counsel.

ADDITIONAL RIGHTS OF PERSONS ACCUSED OF CRIMES

The Accused has the right to remain silent and any testimony given by the Accused may be used against him or her. The Accused is under no duty to present any evidence tending to prove innocence and is not required to take the stand and testify. If the Accused elects not to testify, no inference hurtful, harmful, or adverse to the Accused shall be drawn by the magistrate, nor shall such fact be held against the Accused in any way.

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