

3-1972

Citation in Lieu of Arrest: The New California Law

Floyd F. Feeney

Follow this and additional works at: <https://scholarship.law.vanderbilt.edu/vlr>



Part of the [Law Enforcement and Corrections Commons](#)

Recommended Citation

Floyd F. Feeney, Citation in Lieu of Arrest: The New California Law, 25 *Vanderbilt Law Review* 367 (1972)
Available at: <https://scholarship.law.vanderbilt.edu/vlr/vol25/iss2/4>

This Article is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in Vanderbilt Law Review by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact mark.j.williams@vanderbilt.edu.

Citation in Lieu of Arrest: The New California Law

Floyd F. Feeney*

Indiscriminate exercise of the power of arrest is one of the most reprehensible features of American criminal justice. NATIONAL COMMISSION ON LAW OBSERVANCE AND ENFORCEMENT, REPORT NO. 8, at 14 (1931).

The law which defines when a peace officer can make an arrest has developed with almost no concern with whether the taking of immediate custody is necessary. W. LAFAVE, ARREST 168 (1965).

I. INTRODUCTION

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.¹ 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 of promise to appear. The new system proved to be both convenient and practical and in short order it virtually replaced the old arrest procedure.² Surprisingly, however, the invention of the new procedure did not

* Acting Professor and Executive Director, Center for Administration of Criminal Justice, University of California School of Law, Davis; B.S. 1955, Davidson College; LL.B. 1960, New York University. I would like to acknowledge the assistance of Mr. Peter Janiak in the research and writing of this article.

1. The term "arrest" as ordinarily used involves 2 components:

(1) a restraint of liberty, and (2) a taking into custody. Although the area has not been clearly defined, the issuance of a citation usually constitutes a restraint on liberty and in that sense is a technical arrest. The citation, however, does not involve the detention and custody that normally accompany the arrest situation. *See, e.g.*, E. FISHER, LAWS OF ARREST 7 (1967).

2. The citation procedure appears to have evolved from the summons procedure that has long been available in England and in some United States jurisdictions as an alternative to the magistrate's issuing a warrant for physical arrest. An English justice may issue a summons instead of an arrest warrant for the commission of any offense, including a felony, if he is satisfied that the person summoned will appear. Some American jurisdictions have statutes permitting or requiring a magistrate to issue a summons instead of a warrant. Most arrests, however, are made by police officers without warrant and without prior judicial contact. *See* Indictable Offenses Act of 1848, 11 & 12 Vict. c. 42, § 1; Comment, *Some Proposals for Modernizing the Law of Arrest*, 39 CALIF. L. REV. 96, 107-08 (1951). For pretrial release practices in other countries see B. BOTEIN & H. STURZ, *Pre-Trial Release Practices in Sweden, Denmark, England, and Italy*, in NATIONAL CONFERENCE ON BAIL AND CRIMINAL JUSTICE, PROCEEDINGS & INTERIM REPORT 319 (1965). On police use of the citation for traffic offenses see Warner, *The Uniform Arrest Act*, 28 VA. L. REV. 315, 334 (1942). The use of the citation for certain traffic offenses is required by § 66 of the UNIFORM

lead to a rethinking of the need to arrest and detain persons accused of other kinds of misconduct.

Somewhat more recently, the idea did develop that the citation procedure might be used in other situations.³ Many police departments now use such procedures extensively with juveniles⁴ and with regulatory offenses, such as housing code violations,⁵ in which there is little likelihood that the person to be charged will flee the jurisdiction.

Until very recently, few police agencies had considered the possibility of using this kind of procedure when dealing with more ordinary crimes. Physical arrest, whether or not there was any real need for immediate custody, has been the general method for initiating criminal proceedings.

In the spring of 1964, however, the New York City Police Department, in conjunction with the Vera Institute of Justice, began the Manhattan Summons Project as an experiment to test the proposition that "persons charged with minor offenses who possess verifiable roots in the community can be relied upon to appear in court voluntarily and need not be held in custody until arraignment."⁶ The experiment proved to

ACT REGULATING THE OPERATION OF VEHICLES ON HIGHWAYS. See HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS AND PROCEEDINGS OF THE THIRTY-SIXTH ANNUAL MEETING 565 (1926). In at least one state the use of citations grew up without statutory authority. See *Mormon v. Baran*, 35 N.Y.S.2d 906, 909 (Sup. Ct. 1942) (indicating no penalty for failure to appear). The first statutory authorization for the use of the citation in California for traffic offenses appears to have been in 1923. Ch. 266, § 154, [1923] Cal. Stats. 566. This section provides for the citation release of any person arrested for nonfelony violations of the Vehicle Code. This procedure was applied narrowly, and attempts to expand its use to nonvehicle code offenses were advised against by the Attorney General. See also W. LAFAVE, ARREST 171 n.10 (1965).

3. The idea was first suggested as long ago as 1927. See A. BEELEY, THE BAIL SYSTEM IN CHICAGO 13-16 (1966). Section 9 of the UNIFORM ARREST ACT, first proposed in 1939, also put forth this idea. See Warner, *supra* note 2, at 335.

4. See CAL. WELF. & INST'NS CODE § 626 (West 1966).

5. In 1955 the California Legislature instituted a procedure entitled Citations for the Violations of County Ordinances, ch. 537, § 1 [1955] Cal. Stats. 1006 (repealed 1967). The procedure was later incorporated into the more broadly worded Penal Code sections that allow for the release by citation of all misdemeanants. Act of Sept. 18, 1967, ch. 816, § 1, [1967] Cal. Stats. 2240. Citations for this kind of violation also may emanate from the district attorney. See, e.g., Hederman & Dahlinger, *Citation Hearing System*, 12 HASTINGS L.J. 275 (1961). See also FED. R. CRIM. P. 4; PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: THE COURTS 40-41 (1967).

6. See CRIMINAL JUSTICE COORDINATING COUNCIL OF NEW YORK CITY & VERA INSTITUTE OF JUSTICE, THE MANHATTAN SUMMONS PROJECT (1969) [hereinafter cited as THE MANHATTAN SUMMONS PROJECT]. For a discussion of the history of the Manhattan Summons Project see *Proceedings of the Conference on Bail and Indigency—Workshop: Establishing Bail Projects*, 1965 U. ILL. L.F. 1, 42 (remarks by R. Baron on the New York Projects). This project in part grew out of New York's successful efforts in the Manhattan Bail Project to release defendants from jail on their own recognizance. The project was based on simple investigations into the background of

be so successful in the pilot precincts that it was extended to all of Manhattan in 1966, and was adopted throughout the entire city in 1967.⁷

At about the same time that the Manhattan Summons Project was getting underway, several California police departments began experimenting with similar procedures. Perhaps the most widespread experience was developed in Contra Costa County, and in large part it was the experience of these police departments that led the California Legislature to adopt the new California law in this area.

The pre-1969 California law provided two methods of release on citation for misdemeanants: *field release*, which is similar to the method of release upon a traffic citation, and *jail or stationhouse release*, which is a release at the jail after booking.

The California statutes authorizing the use of the citation in lieu of arrest procedure were originally adopted in 1957 and 1959, but did not require any police agency to use the procedure.⁸ In 1969, a new law was adopted, continuing the authorization for both kinds of release, but providing that if the person arrested for a misdemeanor is not released under the field release procedure prior to being booked, then the arresting officer, the booking officer, or his superior, or any other person designated by the city or county:

shall make an immediate investigation into the background of the person to determine whether he should be released pursuant to the provisions of this chapter. Such investigation shall include, but need not be limited to, the person's name, address, length of residence at that address, length of residence within this state, marital and family status, employment, length of that employment, prior arrest record, and such other facts relating to the person's arrest which would bear on the question of his release pursuant to the provisions of this chapter.⁹

This law requires that police agencies investigate the possible use of the citation in lieu of arrest procedure for each misdemeanor arrest. It is this feature of a required investigation that makes the new California law a significant one, and that represents a wholly new departure from traditional American legislation on the subject of arrest.

Despite the innovation that the statute represents, some question

defendants—their family ties, residence, jobs, prior records, and other facts that might indicate the defendant had sufficient roots in the community to return voluntarily to court. For an in-depth analysis of the Manhattan Bail Project see Ares, Rankin, & Sturz, *The Manhattan Bail Project: An Interim Report on the Use of Pre-Trial Parole*, 38 N.Y.U.L. REV. 67 (1963). See also Botein, *The Manhattan Bail Project: Its Impact on Criminology and the Criminal Law Processes*, 43 TEXAS L. REV. 319 (1965).

7. THE MANHATTAN SUMMONS PROJECT, *supra* note 6, at 4.

8. See Act of July 3, 1959, ch. 1558, § 1, [1959] Cal. Stats. 3888 (amended 1969); Act of July 8, 1957, ch. 2147, § 6, [1957] Cal. Stats. 3808 (repealed 1969).

9. CAL. PENAL CODE § 853.6(i) (West 1970) (emphasis added).

remains about its requirements. The most important issue is whether, in addition to making the inquiry into the background of the person arrested, the police department concerned is required to come to some kind of judgment in each individual case on whether a citation is proper. In light of the provision that the purpose of the inquiry is "to determine whether he should be released pursuant to the provisions of this chapter,"¹⁰ the better view seems to be that a decision must be reached in each case; otherwise the provision and the statute would have no meaning.

It could be argued that the absence of a clearly stated standard for determining whether a citation should be issued renders the statute defective. The statute, however, does specify a number of the items to be inquired about and then indicates that these and other facts relating to the arrest "bear on the question of his release."¹¹ Since numerous studies around the country and the Contra Costa County experience have shown that persons who have resided in the community for some time, who have family or employment ties, and who do not have lengthy prior records can be trusted to appear voluntarily at trial,¹² the statute, while clearly giving individual departments considerable discretion with respect to the kind of release system to be used, would nonetheless seem to delineate an enforceable requirement that some kind of decision be made in the case of each misdemeanor-defendant.¹³ Departments failing to comply with this obligation may well subject themselves to either civil damages or injunctive action from persons or classes of persons detained.¹⁴

10. *Id.*

11. *Id.*

12. *E.g.*, material cited note 6 *supra*; notes 26-32 *infra* and accompanying text.

13. The existence of a requirement for a decision and the reviewability of the standard is indicated by the legislative history of the act. After passing the California Assembly, AB939 was amended in the Senate to provide that the "report prepared from the investigation shall be presented to the court prior to or at the arraignment of the person." AB939 as amended in Senate July 9, 1969. Although this amendment was stricken in conference, it seems to indicate a view that the standard is capable of judicial review. One lesson to be learned from this, of course, is that it would be preferable for legislators to specify more clearly the need for a decision as well as an investigation.

14. *See, e.g.*, *Culbertson v. County of Santa Clara*, 261 Cal. App. 2d 274, 67 Cal. Rptr. 752 (1968) (holding that failure of deputy sheriff to effect service, if proven, renders the detention of plaintiff wrongful). *See also Shakespeare v. City of Pasadena*, 230 Cal. App. 2d 375, 383, 40 Cal. Rptr. 863, 868 (1964); CAL. GOV'T CODE § 815.6 (West 1966); Manos, *Police Liability for False Arrest or Imprisonment*, 16 CLEV.-MAR. L. REV. 415, 425 (1967); Note, *Civil Liability for Illegal Arrests and Confinements in California*, 19 HASTINGS L.J. 974 (1968).

II. BACKGROUND CONSIDERATIONS

Three basic considerations combine to form the rationale for the use of the citation procedure in misdemeanor cases: the benefits in cost and time for police departments and other public agencies that the citation procedure affords; the harm to the defendant and to his rights that can be caused by the pretrial detention; and the conclusion that certain classes of persons can be released safely.

A. *Cost and Administrative Benefits*

Perhaps foremost in the minds of many administrators is the opportunity the citation procedure affords to cut costs and save manpower. During the second full year of city-wide operation of the Manhattan Summons Project, for example, the department released 22,685 persons for an estimated net saving of 1,587,950 dollars or the equivalent of saving the cost of more than 28,000 eight-hour tours of duty.¹⁵ Time and cost savings vary among departments depending upon the procedures employed and the form of release used. In New York City, the time saving is substantial even though the release normally occurs at the stationhouse after booking rather than in the field. The savings there result from technicalities concerning arraignment and transportation to court that do not apply to the same degree in other cities.¹⁶ Although it is not possible to estimate savings generally, the use of the citation procedure by a typical police department might disclose the following time saved on a per case basis:

In the case of the field or citation release 30 to 40 minutes transportation and booking time on the part of the arresting officer;

1 to 2 days jail detention costs;

15 to 30 minutes officer time for transportation to court;

15. Vera Institute of Justice, Manhattan Summons Project—Activity Report for the Second Year of City-Wide Operation—July 1, 1968 Through June 30, 1969, at 2, 6 (Aug. 25, 1969) [hereinafter cited as Vera Institute Activity Report]. According to R. MOLLEUR, BAIL REFORM IN THE NATION'S CAPITAL 89 (1966), "[t]he District of Columbia saved approximately fifty thousand dollars in jail costs alone by not having to support the additional 911 defendants released by the Bail Project in 1965." See also ABA PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO PRETRIAL RELEASE 24 (1968) [hereinafter cited as ABA MINIMUM STANDARDS]: "The cost to the community in terms of welfare expenditures and maintenance of jail facilities is practically incalculable. Average daily costs of maintaining a prisoner run from \$2.50 to perhaps as high as \$7.00. In 1960, 23,811 federal prisoners were held in custody for an average of 25.3 days. In 1962, pretrial detainees in the District of Columbia alone cost almost \$500,000. As previously noted, New York spent over \$10,000,000 to house and feed prisoners awaiting trial during 1962."

16. In New York City, officers commonly are required to be present at a defendant's first court appearance. In California, this is not required.

30 minutes time to complete complaint—the standard field citation form is itself an adequate complaint form.¹⁷

Stationhouse release normally results in some saving on jail costs, the time of jailors, and transportation to court, while field release saves the additional expense of transporting the prisoner to the station and, in some instances, of booking him. The potential for savings is illustrated by the large number of adult misdemeanor arrests—more than 700,000 in California alone in 1969.¹⁸

Benefits to the police departments concerned—in addition to manpower and cost savings—are not easy to catalogue. At least some of the departments using citation in lieu of arrest, however, feel that there are other benefits. Some of these benefits are indicated in the following statements taken from the files of the District Attorney of Contra Costa County. Each statement is from a chief of a department within the county.

I am especially pleased with the result of this program . . . I see no reason why a ranking officer of a police agency is not just as well qualified to authorize physical releases by citation or under the Penal Code section, which of course does not require the added burden of bail bond costs.¹⁹

The use of Section 849 (3)P.C. affords my staff with the necessary latitude to effect an intelligent and sound arrest release. Unless there are extenuating circumstances prohibiting an arrested person's release, the person is not incarcerated in our city jail. We have experienced an appreciable savings in cost for prisoners' meals. We have reduced drastically the man hours devoted to prisoner inspection and care, transporting to court, handling of visitors and attorney interviews and the processing and safeguarding of prisoners' property. There is an additional savings in reduced costs in lighting, heating, laundry and janitorial duties in our jail facilities. I believe our use of this method of release has been highly successful.²⁰

B. Concern for the Defendant

The American Bar Association Project on Minimum Standards for

17. In California, police departments employing either the Uniform Misdemeanor Citation or the Uniform Misdemeanor and Traffic Citation adopted by the California Judicial Council under CAL. PENAL CODE § 853.9 (West 1970), can use the citation to avoid the necessity of preparing an additional paper in misdemeanor cases. The Uniform Citations were adopted by the California Judicial Council pursuant to the statute to encourage the use of citation procedures by police agencies. Following adoption of the new law, the Council issued revised forms to reflect the fact that the new law authorizes additional persons to make the release. When one of these forms is used as the charging document, control over the charging process may be effectively shifted from the district attorney to the police department. This makes it desirable that a copy of the citation be sent automatically to the district attorney so he will be aware of the charge and can take action to increase or reduce the charge if he so desires.

18. BUREAU OF CRIMINAL STATISTICS, CRIME AND DELINQUENCY IN CALIFORNIA 7 (1969).

19. Statement on file with Center on Administration of Criminal Justice, University of California, Davis.

20. *Id.*

Criminal Justice states that "[t]he bare fact that a person has been charged with a crime does not justify his detention before conviction. Only if some legitimate purpose of the criminal process, such as prevention of flight, requires it, should the defendant be deprived of pretrial liberty."²¹ Finding that the history of the bail system and the constitutional prohibition against excessive bail indicate a principle that defendants are not to be locked up simply because of a criminal charge,²² the ABA Minimum Standards continue: "History aside, however, it is now clear that unnecessary pretrial detention involves unconscionable costs both to individual defendants and their families and to the public which must pay the financial price of detention."²³

If the misdemeanor defendant has the funds, he can, of course, be released prior to trial simply by posting bail, but if he lacks funds for bail, he usually must remain incarcerated. His ability to get out of jail, therefore, is based solely on his financial means—a clearly inequitable result.²⁴ In addition, often the defendant who posts bond is scraping from

21. ABA MINIMUM STANDARDS, *supra* note 15, at 23.

22. *Id.* See generally Foote, *The Coming Constitutional Crisis in Bail*, 113 U. PA. L. REV. 959 (1965); Note, *Compelling Appearance in Court: Administration of Bail in Philadelphia*, 102 U. PA. L. REV. 1031, 1038 (1954). For a discussion of bail and alternatives to bail see D. FREED & P. WALD, *BAIL IN THE UNITED STATES: 1964* (1964). On the California bail system in particular see Comment, *Tinkering with the California Bail System*, 56 CALIF. L. REV. 1134 (1968). For an earlier treatment see Gustafson, *Bail in California*, 44 CALIF. L. REV. 815 (1956). The literature on bail and release on personal recognizance programs has now become very extensive. Some of the better works are: Boyle, *Bail Under the Judicial Article*, 17 DE PAUL L. REV. 267 (1968); Levin, *The San Francisco Bail Project*, 55 A.B.A.J. 135 (1969); McCarthy, *Practical Results of Bail Reform*, 29 FED. PROB. 10 (Sept. 1965); O'Rourke & Carter, *The Connecticut Bail Commission*, 79 YALE L.J. 513 (1970); *Proceedings of the Conference on Bail and Indigency*, 1965 U. ILL. L.F. 1; Ralls, *Bail in the United States*, 48 MICH. S.B.J. 28 (Jan. 1969).

23. ABA MINIMUM STANDARDS *supra* note 15, at 23.

24. A further result of the defendant's inability to purchase his freedom is the increased likelihood that he will receive an unfavorable disposition of his case. See Wald, *Pretrial Detention and Ultimate Freedom: A Statistical Study*, 39 N.Y.U.L. REV. 631 (1964). See also Fabricant, *Bail as a Preferred Freedom and the Failures of New York's Revision*, 18 BUFFALO L. REV. 303 (1969), in which the author comments that he has "time and again encountered defendants unable to post bail who, solely because of intolerable living conditions, have insisted upon entering guilty pleas where they were either innocent in fact or where convictions could not have been otherwise obtained. These men preferred to begin 'doing their time' in prison rather than to wait for a trial under such conditions." *Id.* at 305 (footnote omitted). Some idea of the markedly greater impact that jail detention, as opposed to arrest without incarceration, has on the life of the individual and his family is indicated by some recently developed tests of social adjustment. See, e.g., Langsley, Pittman, & Swank, *Family Crises in Schizophrenics and Other Mental Patients*, 149 J. NERVOUS & MENTAL DISEASE 270, 271-76 (1969). This study gave numerical scores to each of 30 different kinds of events seen as hazardous to the social and mental health of the family. The most serious event, death of a spouse, was given a score of 100. Divorce had a score of 75; separation, 65; while an auto accident rated only 15. Having a family member in jail was scored at 60. This was higher than any crisis other than death, divorce, or separation. Arrest, however, was scored at only 10, the lowest score on the scale. *Id.* at 271.

already limited funds and may be pushing his family over the poverty line or onto the welfare rolls. Moreover, even when the defendant can post bond, it seems undesirable for the system of justice to depend upon money bail any more than necessary. If a person can be released safely, the release should be based on that fact rather than upon the payment of a fee. Even in the jurisdictions in which there are organized release-on-recognizance programs, these systems often do not operate effectively for misdemeanor defendants because the time span between arrest and initial disposition is too short to permit necessary investigation at the court level.

The ABA Minimum Standards state: "The defendant has not yet been convicted and, while the presumption of innocence surely does not preclude all pretrial detention, something akin to it does prevent the use of pretrial detention as a sort of anticipatory form of punishment."²⁵ Simply stated, the purpose of the citation program is to ensure that whenever possible misdemeanor defendants who are not likely to flee the jurisdiction be released without the payment of money bail.

C. Risk of Flight

Perhaps the most basic question in analyzing the utility of the citation release procedure is simply whether the person cited will appear as promised. In 1966 the *Hastings Law Journal* conducted a study of citation in lieu of arrest programs in several Contra Costa County communities. This study disclosed that 96 percent of the persons to whom citations were issued appeared in court as promised as shown in Table A.²⁶

TABLE A
RATE OF APPEARANCE
CITATION RELEASES
1966 CONTRA COSTA COUNTY SURVEY

	Release On Citation	Failures To Appear	Rate of Appearance (percent)
Contra Costa Sheriff(a)	92	1	99
Pittsburg (b)	530	23	96
Richmond (c)	69	3	96

(a) For a 6-month period; includes both field and jail releases.

(b) For a 27-month period; excludes releases for drunkenness.

(c) For a 2-month period; excludes releases for drunkenness.

25. ABA MINIMUM STANDARDS, *supra* note 15, at 23. The Project also states: "Detained defendants are deprived of an opportunity to work to support themselves and their families, to help in the preparation of their cases and to demonstrate, if possible, that they are good risks for probation if convicted. The hardship to families is no doubt frequently substantial." *Id.*

26. Note, *An Alternative to the Bail System: Penal Code Section 853.6*, 18 HASTINGS L.J. 643, 655, 657-58 (1967).

During the summer of 1969 the Center on Administration of Criminal Justice, University of California, Davis, conducted an additional survey of some of the same communities to determine the way in which the procedure had functioned over a longer period. The results of the one-month study are revealed in Table B.²⁷

TABLE B
RATE OF APPEARANCE
JAIL CITATION RELEASES FOR ONE MONTH IN 1969

	Jail Citation Releases	Failures To Appear	Rate of Appearance (percent)
Concord	1	0	100
Contra Costa Sheriff	15	2	87
Pittsburg	15	1	93
Richmond	76	9	88
San Pablo	17	0	100
Walnut Creek	12	0	100
	<u>136</u>	<u>12</u>	<u>91</u>

Thus only twelve defendants, or less than nine percent of 136 persons released using the jail or stationhouse procedure failed to appear.²⁸ This modification of the statistics can be justified because there is some doubt whether an actual appearance was really the result sought by the release in these cases.

The field release program in Contra Costa County is used by fewer departments, but generally produces results that are similar to jail release. Only two persons, or seven percent of the 33 field citations issued, failed to appear.²⁹

Other departments using these procedures have had a comparable

27. The month chosen was May 1969 for all departments except Walnut Creek. As used in this survey, "failure to appear" was defined to include any willful failure to appear at an initial court hearing. Not included are defendants who missed their first appearance but appeared within a week. Also excluded are defendants who made their initial appearance but who failed to make a subsequent appearance, since responsibility for appearance passed from the arresting agency to the court after the initial appearance. Research on arrest procedures in Contra Costa County conducted by F. Feeney & P. Janiak, University of California, Davis (1969).

28. These rates of appearance seem to compare favorably with data available for traffic citations. A 1969 study of 8,834 citations issued by the California Highway Patrol during the month of October 1969, indicated that about 4% of the citations in the study ended as "failures to appear." Since "citation" as used by the Highway Patrol is the equivalent of "offense," it is not clear whether each specific case involved a release, or if a release was involved, whether the release was without bond. CALIFORNIA DEP'T OF MOTOR VEHICLES, CONVICTION RATE FOR A SAMPLE OF CITATIONS ISSUED BY THE CALIFORNIA HIGHWAY PATROL (1969).

29. See note 27 *supra*.

experience. Data from New York City for the years 1968-69, for example, shows a successful appearance rate of better than 94 percent for over 22,000 citations issued.³⁰ Of those misdemeanor defendants who failed to appear at the appointed time, 52 persons later appeared voluntarily, and an additional 62 were unable to appear for reasons such as hospitalization or confinement by another agency. If late voluntary appearances and failures to appear because of hospitalization or confinement by another agency are deemed satisfactory appearances, then the rate of appearance would be 95.3 percent. The results for the first several months' operation of the San Francisco field citation program revealed a total of 496 releases on citation and 53 cases of failure to appear, for an appearance rate of 89.3 percent.³¹ Likewise, in Sacramento County, where the sheriff's office was using field citations for shoplifting, analysis of a five month period in 1969 showed a total of 94 field releases, with an appearance rate of 97 percent.³²

Some persons who do not appear in court as promised may not have understood the terms of the citation. Understanding is a problem particularly for poor readers and the poorly educated. This difficulty is alleviated to some extent in California by the requirement that the person arrested sign the notice on a line that indicates that he promises to appear at the time and place stated.³³ Two additional steps can improve the likelihood that the person cited will understand the notice and appear as promised: (1) The citing officer can verbally call attention to the time and place and attempt to ensure that the person cited understands; and (2) departments can modify the Notice to Appear Form to display the time and place of appearance more prominently.

While the time and place of appearance are clearly the most important single items of information provided in the notice, on some forms these items can be found only by searching. Some departments highlight these items by using larger, bolder, or different colored type, or by separating these items from the remainder of the form by additional space.³⁴

30. Vera Institute Activity Report, *supra* note 15, at 2.

31. Report on Misdemeanor Citation Program from Patrick J. Maloney, Jr., to Judge Joseph G. Kennedy, San Francisco Municipal Court, Oct. 9, 1969. The report covers July 18 to Oct. 3, 1969.

32. Research on arrest procedures in Sacramento County conducted by F. Feeney & P. Janiak, University of California, Davis (1969) [hereinafter cited as F. Feeney & P. Janiek Research].

33. CAL. PENAL CODE § 853.6 (West 1970).

34. See Model Citation, Appendix I.

D. Proportion of Misdemeanor Defendants Released

The preceding section has demonstrated that many misdemeanor defendants can be released safely on their signed promise to appear. The data, however, does not reveal the percentage of misdemeanants arrested who can be released on citation. Neither the new nor the old California statute indicates how extensively the citation procedure should be used; existing practices, however, do provide some useful insights into the possibilities for use.

In Contra Costa County usage seems to vary considerably by department, ranging from 26 percent of all misdemeanor offenses in the Concord department to 57 percent in Walnut Creek and Richmond.³⁵ In New York City the rate of release also differs substantially from area to area—ranging from 16.1 percent in Manhattan to 80 percent in Queens and 87.5 percent in Richmond.³⁶ The low rate of release in Manhattan is attributed by the department to the large number of transients arrested in that borough. It might be supposed that the departments with the highest rates of release also would have the highest rates of nonappearance, but this assumption is not borne out by the statistics. The rate of nonappearance is not directly related to the rate of release. The Walnut Creek department in Contra Costa County with the high rate of release for the period studied, for example, had an appearance rate of 100 percent.³⁷

If all forms of release—citation, bond, and release on own recognition—are considered, 286 of 365, or more than 75 percent of all persons charged with misdemeanors in Contra Costa County in the period studied were released by some method. If drunk charges are eliminated, the percentage is more than 85 percent.³⁸ The overall appearance rate counting all forms of release is better than 90 percent, as shown in Table C.³⁹

35. F. Feeney & P. Janiak Research, *supra* note 32.

36. *Id.*

37. Vera Institute Activity Report, *supra* note 15, at 11.

38. F. Feeney & P. Janiak Research, *supra* note 32.

39. *Id.* In many instances persons released on bail or through other procedures met the charging department's criteria for citation release but sought some other form of release because the release procedure was slow or cumbersome or because they were not aware of citation release possibilities.

TABLE C
 RATE OF APPEARANCE,
 CONTRA COSTA COUNTY
 FOR ONE MONTH IN 1969—
 ALL FORMS OF RELEASE

	Total Charged	Total Released	Failures To Appear	Rate of Appearance (percent)
Concord	38	31	3	90
Contra Costa Sheriff	77	65	4	94
Pittsburg	43	24	1	96
Richmond	133	111	9	92
San Pablo	53	40	0	100
Walnut Creek	21	15	0	100
Total	365	286	17	94

These figures suggest the possibility of even greater savings of police time and manpower than have been accomplished to date. If 75 percent of all misdemeanor cases can be released by some method with an appearance rate of better than 90 percent, it seems likely that many of these cases could be released in the field under the citation procedure rather than under the more cumbersome methods of release at the station. The field citation procedure would provide a considerable additional saving. It also seems clear from these figures that since citation procedures as speedy as bail have been used successfully, a great many more defendants could be released safely at the jail on citation.

E. Analysis by Offense

Two facts stand out when citation procedures are analyzed by offense: first, the wide variety of offenses for which jail or field citations are being issued regularly; and secondly, the high rate of appearance for each of these offenses, as shown in Table D.⁴⁰

40. *Id.*

TABLE D
FIELD AND JAIL CITATION RELEASES
CONTRA COSTA COUNTY
FOR ONE MONTH IN 1969

	Total Charged	Field & Jail Citation Releases	Failures To Appear	Rate of Appearance (percent)
Assault & battery	31	8	1	87.5
Petty theft	54	36	2	94
Drunkenness	123	46	5	89
Disturbing the peace	11	5	1	80
Drunk driving	43	19	3	84
Other traffic custody	32	14	1	93
Drugs	15	10	1	90
All other	56	31	1	97
Total	365	169	15	91

The field citation procedure seems particularly appropriate for most communities when the offense charged is petty theft or shoplifting. Of the persons charged with petty theft or shoplifting during a five month survey period in Sacramento County,⁴¹ 94 were released by a field citation, and only three of these failed to appear, for an appearance rate of 97 percent.⁴² The study also disclosed that there were few cases of this kind in which some kind of release was not ultimately provided. The overall appearance rate for all forms of release was also high; of 173 persons charged, 159 were released, with an appearance rate of 98 percent.⁴³

Assault and disorderly conduct are other misdemeanors for which the citation procedure may be appropriate. Departmental practices concerning when to arrest for assault or disorderly conduct differ considerably. Many departments do not make a physical arrest unless there is a need to separate the parties. In these cases there is little opportunity for use of the field citation; however, the jail citation often may be appropriate because the purpose of separating the parties will have been accomplished by the trip to the station. Similarly, the field citation usually is

41. *Id.* See also W. LAFAVE, *supra* note 2, at 180 & n.35 ("it is the rule in Detroit that a shoplifter without a criminal record is under no circumstances to be detained overnight. In a year and a half under this rule, no released person has failed to appear").

42. F. Feeney & P. Janiak Research, *supra* note 32.

43. *Id.*

not appropriate when the offense charged is drunkenness. Normally a person will not be arrested for drunkenness initially unless his condition is such that he would not qualify for a field release. Since the drunk's inability to care for himself ordinarily passes with time, and since the individual usually is not dangerous, the drunk case is often appropriate for a stationhouse release. In Contra Costa County 46 of 123 defendants charged with drunkenness were released in this manner.⁴⁴ This high rate of usage has been maintained over a relatively long period of time, even though persons arrested for drunkenness constitute the largest single group of defendants who fail to appear as promised. This continued high rate of release is largely attributable to a belief that the court can do little for the person accused of public intoxication and to a realization that he probably will be arrested again at some later time. Some police departments and courts also believe that the threat of the penalty for being caught after failing to appear will induce the drunkenness offender to try harder to avoid further arrests.

III. CITATION PROCEDURES IN OPERATION

The new California statute does not prescribe in detail the way in which the citation procedure is to operate. Police departments can employ the jail citation exclusively or use it in combination with the field citation system. Moreover, when criteria for release are established, a single standard such as residence may be looked to or a more complex system that also evaluates employment or family ties may be adopted.

A. *Criteria for Release on Citation*

When the single standard system is used in conjunction with a jail release, no sharp departure from standard operating techniques is required. Each defendant may be brought to the station, booked, photographed, fingerprinted, and checked through both the outstanding warrant and prior arrest files before a release decision is made by the officer

44. *Id.* In addition to jail release and other releases such as bail bond, cash bail, and recognizance, California departments are given a further option by CAL. PENAL CODE § 849(b) (2) (West 1970) which provides: "(b) Any peace officer may release from custody, instead of taking such person before a magistrate, any person arrested without a warrant whenever: . . .

(2) The person arrested was arrested for intoxication only, and no further proceedings are desirable."

In cases in which there is no particular reason to process the defendant further after he has sobered up, the § 849(b)(2) release is preferable to jail release. When it is desired to send the defendant on through the criminal justice process, jail release is preferable. In Contra Costa County the § 849(b)(2) procedure is used infrequently. In the one-month period studied only 4 out of 127 cases—3%—were released under this procedure.

in charge. A typical department using stationhouse release and a single criterion system, based on residence, is that of Richmond, California, a San Francisco Bay area city of nearly 100,000, with a large minority population. Each misdemeanor is eligible for release unless:

- (1) He does not have a permanent address in California.
- (2) Defendant has failed to appear in the past.
- (3) Further investigation concerning the misdemeanor is required.
- (4) Defendant has been arrested on a vice charge, and his release has not been cleared through the vice division.
- (5) Defendant has been arrested for intoxication and is not yet sober.
- (6) Defendant is the subject of an outstanding warrant.
- (7) Defendant has been arrested pursuant to a warrant.
- (8) There is a hold for another jurisdiction.⁴⁵

If these criteria are met, the decision whether to release is that of the shift commander. He is to use his judgment, but make releases as often as possible. When a defendant is not released, a brief notation of the reasons for nonrelease is made. Other Contra Costa County departments use similar procedures, although the definition of "residence," the level of command required to make the release, and the proportion of the defendants actually released differ from city to city.⁴⁶

A different system is used by the New York City Police Department. Under this system, the misdemeanor's ties to his community, the presence of family in the area, the defendant's history employment, and other factors are evaluated on the basis of a point scale. This highly successful system attempts to develop objective tests that reduce the discretionary factor to a minimum. The New York Police Department usually issues jail citations, and its program is the most extensive in use anywhere.

In practice the person to be charged is brought to the station and interviewed by the arresting officer.⁴⁷ The interviewing officer makes a name check with the identification section, and if the desk officer so requests, he also seeks to verify the information supplied concerning

45. Richmond Police Dep't General Order No. 70 (Apr. 23, 1964); Richmond Police Dep't General Order No. 36 (Feb. 29, 1960).

46. *See, e.g.*, San Pablo Police Dep't Policy Statement (May 1969); Walnut Creek Police Dep't Directive No. 28 (Nov. 15, 1967); Pittsburg Police Dep't General Order No. 68 (May 27, 1964).

47. For an example of the interview form used see Model Departmental Release Interview Form, Appendix 2.

residence, family ties, and employment. The point system utilized contains many items, including the following:⁴⁸

Residence	Over 1 year at current address—3 Points. 6 months at current address or present and prior 1 year—2 Points. Present 4 months or present and prior 6 months—1 Point.
Family Ties	Lives with family and has regular contact with other family members—3 points. Lives with family but has no other family contacts—2 points. Lives alone but has regular contact with other relatives—1 point.
Employment	Current job for over 1 year—3 points. Current job over 6 months—2 points. Present job 4-6 months, present and prior 6 months, or supported by family—1 point.
Prior arrests	No previous convictions—2 points. Two misdemeanor or violation convictions or one felony conviction—0 points. Three misdemeanors or 2 felony convictions—minus 1 point. Four or more misdemeanors or 3 or more felony convictions—minus 2 points.
Length of time in New York Area	over 10 years—1 point.
Discretionary information	Favorable factors—pregnancy, old age, poor health, continuous medical treatment, gets financial aid, attends school, etc.—1 point. Unfavorable—vague answers, lie detected, transient background—minus 1 point.

48. New York City Police Misc. Form No. 357. For a complete description see Sample Point System Summons Investigation Report, Appendix 3.

A defendant is eligible for citation if he: (1) attains a minimum of five points on the investigation; (2) is not incapacitated by virtue of intoxication or injury; and (3) is not a current narcotic user.⁴⁹

The interview investigation is mandatory for all misdemeanants except in cases of public intoxication or admitted current heroin users. In these instances the interview investigation is undertaken only for those who reasonably may qualify under the established criteria. The final decision whether to issue the citation rests with the desk officer and in most instances the citation is issued.

The chief difference between the single criterion and the point system is the way in which each relies on residence as the test for release. The point system weighs residence as one of a number of factors such as employment and family ties. The factors that will predict whether a person will appear voluntarily differ to some extent from community to community. Residence has been chosen by many departments as the most important single factor and often is a good predictor in and of itself. None of the standards used, however, has been adequately researched and it is not at all clear that all or even a substantial percentage of nonresidents will fail to appear.

Small- and medium-sized departments may find this single criterion system adequate to meet their needs; larger departments, however, may find the point system more effective for their purposes. It is more automatic and therefore easier to handle in training. Decisions are likely to be more uniform, and the system affords commanders better control over the decision-making process.

B. The Advantages of the Jail and Field Citation System

Under the field citation procedure the officer must decide at the point of arrest whether a field citation should be issued. Either the single standard system or the point system could be adopted for field use if the officer is able to verify the accuracy of the arrestee's statements by radio. The Contra Costa County sheriff utilizes the combined field citation and jail release. The criteria by which an arresting officer decides whether to issue a field citation are similar to those used by other departments in Contra Costa County in their jail release procedures. Arresting officers are instructed that "whenever appropriate, the person accused of a misdemeanor should be cited on the spot."⁵⁰ Prior to release both the

49. New York City Police Dep't T.O.P. 456, at 3 (Dec. 1968).

50. Contra Costa County Sheriff's Dep't General Orders, app. R. (undated); see Model Departmental Policy Statement, Appendix 4.

prior arrest record and the outstanding warrants are checked by the officer on his radio with the sheriff's office. If the suspect is a resident and clears both checks, he is given a field citation.

If the Contra Costa County experience is typical, there is a serious question about what is to be gained by using only the jail release and going through the booking process prior to appearance in court. A warrant check often is made and sometimes results in the discovery of a person for whom a warrant is outstanding, but this check usually can be made as easily from the field as from the jail.

In most Contra Costa departments, fingerprints are taken but generally are not checked against the local print file nor submitted to either the State or the FBI for checking. Ordinarily, a check of the alphabetical file of previous arrestees is made to see if it contains the name given by the arrestee. Because of this method of checking identification, it is rare that the booking of a misdemeanor suspect turns up anyone wanted on another charge. Booking does serve the purpose of enabling the department to place the person's fingerprints and photograph on file for future reference. In most instances this can be accomplished as easily through the field citation as through the jail procedure.⁵¹ About the only purpose that booking serves is to provide fingerprints and a photograph in case the suspect fails to appear. Since the overwhelming majority of suspects do appear, this seems like a small benefit for such a large cost—particularly since sufficient identification for apprehension generally is present in the failure to appear cases.

C. *Some Model Procedures*

The ABA Project on Minimum Standards for Criminal Justice, after an extensive study of pretrial release procedures, concluded: "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."⁵² For offenses for which total imprisonment does not exceed six months, the report recommends that the responsible officer "be required to issue a citation in lieu of continued custody" except:

51. In California, the Penal Code provides that the officer may indicate on the notice to appear that "he desires the arrested person to be hooked," and provides that "[i]n such event, the magistrate shall, before the proceedings are finally concluded, order the defendant to be booked by the arresting agency." CAL. PENAL CODE § 853.6(g) (West Supp. 1971). There are, of course, a variety of other possibilities for dealing with the problem including a mandatory booking before appearance.

52. ABA MINIMUM STANDARDS, *supra* note 15, at 31.

- (i) [W]here an accused subject to lawful arrest fails to identify himself satisfactorily;
- (ii) where an accused refuses to sign the citation;
- (iii) where arrest or detention is necessary to prevent imminent bodily harm to the accused or to another;
- (iv) where the accused has no ties to the jurisdiction reasonably sufficient to assure his appearance and there is a substantial likelihood that he will refuse to respond to a citation;
- (v) where the accused previously has failed to appear in response to a citation for an offense other than a minor one such as a parking violation.⁵³

For other misdemeanors the report recommends that police regulations "require such inquiry as is practicable into the accused's place and length of residence, his family relationships, references, present and past employment, his criminal record, and any other facts relevant to appearance in response to a citation."⁵⁴

One particularly well thought-out set of procedures developed by a police agency is that of the Oakland Police Department. These procedures provide for both field and jail releases. Officers are instructed to issue field citations to all adults arrested for any misdemeanor offense unless the attendant circumstances come within one of the following physical arrest criteria:

- (1) The suspect requires medical care or is unable to care for his own safety.
- (2) There is a reasonable likelihood that the misconduct would resume, or that persons or property would be endangered.
- (3) The suspect cannot or will not offer satisfactory evidence of his identity.
- (4) The prosecution of the offense for which the suspect was arrested or of another offense would be jeopardized.
- (5) A reasonable likelihood exists that the arrested person will fail to appear in court as promised (a warrant check is mandatory).
- (6) The misdemeanant demands to be taken before a magistrate or refuses to sign the citation.⁵⁵

While the field citation may be denied for a broad range of reasons, the power to deny a citation in the stationhouse is narrowly circumscribed.⁵⁶ Accordingly, a jail citation is issued for adult misdemeanants who have promised to appear unless the circumstances meet one or both

53. *Id.* at 33.

54. *Id.* at 36.

55. Oakland Police Dep't Citations for Adult Misdemeanants 2 (1969) (departmental General Order).

56. *Id.*

of the following detention criteria: (1) A reasonable likelihood exists that the suspect will fail to appear in court as promised; or (2) the evidence indicates that the suspect, if released, would commit an offense causing or threatening injury to persons or property.⁵⁷ When a citation is not issued, either in the field or at the jail, short descriptions of the reasons for nonissuance are indicated.

The Oakland Police Department has developed a point system for jail releases similar to the New York system. During the period February 23 to September 30, 1970, there were 2,882 misdemeanants eligible for citation release. Of these 1,811, or 62.8 percent of all eligible misdemeanants, were issued either a field or a jail citation.⁵⁸ In the early part of this period, the rate of persons cited who failed to appear in court as promised was approximately 25 percent. This rate has declined steadily to about seventeen percent, and is expected to decline still more, eventually stabilizing at ten to fifteen percent.⁵⁹

When the citation program was first instituted, it was expected that the number of jail citations would greatly exceed the number of field citations. Interestingly, the contrary has been true. The ratio of field citations to jail citations has been almost three to one, and the comparative nonappearance rates for field and jail citations have remained quite similar.

As expected, few field citations, but most jail citations, were issued for emotionally charged offenses such as disturbing the peace, battery, and resisting arrest. The vast majority of field citations were issued for petty theft. The department, on the basis of this experience, concluded that "after an enforced cooling-off period, an offender who could not be cited in the field can nonetheless constitute a good risk for citation later in the jail."⁶⁰

IV. CONCLUSION

How is the citation procedure initiated in a jurisdiction? Who must take action? The police? The courts? The legislature? The answer to this question seems to be whoever is interested in developing a better system. In New York City the procedure was developed by the police commissioner and the Vera Institute of Justice; in Contra Costa County the lead was taken by the district attorney and a committee of judges and police

57. *Id.*

58. *Id.*

59. *Id.*

60. Office of Chief of Police, Oakland, California, Memorandum, Oct. 20, 1970.

officials. In other jurisdictions other citizen and professional groups have assisted in bringing about adoption of the procedure. In New York City and in a number of California cities the procedure was developed largely by forward-thinking administrators and citizens without new authority or a special push from the legislature. In California as a whole, however, the legislature has played a vital role in encouraging the use and development of the citation procedure. The new California statute represents the strongest legislative step yet in support of the idea and provides something of a model to other legislative bodies who seek to develop the procedure.

Two of the great needs of the criminal justice system today are improved operational efficiency and a more sensible, humane treatment for those charged with crime. At a time when so many issues in criminal justice seem to require some choice between these two needs, it is refreshing to be reminded that they are not always competing values. Given the degree of effectiveness demonstrated by the citation in lieu of arrest procedure—in such widely differing settings as metropolitan New York City and suburban Contra Costa County—it seems likely that the procedure could be justified on either ground alone. That it need not be is only that much stronger an argument for adoption of the procedure on a much wider basis throughout the nation.

APPENDIX I

CITY OF DAVIS NOTICE TO APPEAR				NO.	
DATE		TIME		DAY OF WEEK	
NAME (FIRST, MIDDLE, LAST)					
RESIDENCE ADDRESS				CITY	
BUSINESS ADDRESS				CITY	
DRIVERS' LICENSE NO.				CLASS	BIRTHDATE
SEX	HAIR	EYES	HEIGHT	WEIGHT	OTHER DES.
M	F				
EMPLOYED BY			OCCUPATION		
BIRTHPLACE				SOCIAL SECURITY NO.	
VEHICLE LICENSE NO.				STATE	
YEAR OF VEH.	MAKE	MODEL	BODY STYLE	COLOR	
OFFENSE(S)	CODE	SECTION	DESCRIPTION		
EVIDENCE SEIZED				BOOKING REQUIRED <input type="checkbox"/>	
LOCATION OFFENSE(S) COMMITTED					
<input type="checkbox"/> OFFENSE(S) NOT COMMITTED IN MY PRESENCE, CERTIFIED ON INFORMATION AND BELIEF, I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON THE DATE SHOWN ABOVE AT _____ SERIAL NO. ISSUING OFFICER _____ CALIF. (PLACE)					
Name of arresting officer-if different from above		Serial no.		Vacation dates to	
WITHOUT ADMITTING GUILT, I PROMISE TO APPEAR AT THE TIME AND PLACE SHOWN BELOW.					
Signature X _____					
NOTICE TO APPEAR ROOM 300, MUNICIPAL COURT, 1250 LOCUST ST. Walnut Creek, California					
ON _____		, 19__ AT _____			
MDNTH	DATE	YEAR	TIME		
FORM APPROVED BY THE JUDICIAL COUNCIL OF CALIFORNIA REV. 11-10-92 P.C. 653.9				SEE REVERSE SIDE	

A Model Citation

This form corresponds to the Uniform Citation approved by the California Judicial Council. It is a composite from several cities and has been constructed to illustrate the way in which the time and place of appearance may be shown in a more prominent manner than is customary.

APPENDIX 2

Model Departmental Release Interview Form

Name _____ Address _____

How many Months at Current Address _____ Months in State _____

Married _____

Single _____ Lives with (name) _____ Relationship _____

Employed by _____ Type of Work _____

Supervisor _____ Business Telephone No. _____ How Long Employed at Present Job _____

If Less than 3 months, Last Previous Job _____ How Long _____

Other Positive Factors—Is Defendant: (Check if applicable)

Pregnant _____ Attending School or Training Program _____

Elderly _____ Receiving Welfare or Other Financial Aid _____

In Poor Health _____

Under Continuous Medical Treatment _____

Has Defendant: Ever Been Arrested Before? _____ How Many Times _____ For What? _____

Other Negative Factors about the Defendant? Evasive _____ Vague _____

Lie Detected _____

EVALUATE THE ABOVE ACCORDING TO THE FOLLOWING SCALE:

	Points
Established Local Residence (within a 30 mile-radius of jurisdiction) — 4 points	_____
Established Residence in State (award ONLY if no points given for established local residence)—2 points	_____
Job (has either a present job or has held some job for most of last 3 months)—4 points	_____
Lives with Family Member (parent, wife, child, other)—4 points	_____
Other Positive Factors (based on pregnancy, elderly, etc. above)—1 to 4 Points in discretion of investigating officer	_____
Prior Record: (check warrant and offense records)	
3 Misdemeanor or 2 Felony Convictions—Minus 2 Points	_____
4 or More Misdemeanor or 3 or More Felony Convictions—Minus 3 Points	_____
Other Negative Factors—Minus 1 Points, in discretion of investigating officer	_____
TOTAL POINTS (If 5 or more, release is recommended)	_____

DEPARTMENTAL RELEASE INTERVIEW FORM

Explanation

Other Positive and

Negative Factors— These factors relate to the likelihood that the person will voluntarily appear in court. Each of these factors relates to the person's ties to the community and the likelihood that the person will appear in court. Generally, pregnant women, elderly people, people receiving welfare, etc. are not likely to skip the jurisdiction whereas people who are evasive, vague, etc. may. Points for these factors are to be awarded in the discretion of the investigating officer based on his judgment as to the influence they should have in the particular case.

Established Local

Residence—

This category is intended to distinguish between people who have some kind of fixed residence and transients who are just passing through the jurisdiction. Normally the fact that a person has a house or an apartment address would indicate a fixed residence even if he had lived there only a few days. A motel, hotel, or boarding house address, however, would normally indicate transiency unless the person had lived there long enough to indicate he was not just passing through.

Job—

This factor measures the person's reliability. Since the effect of local residence is measured above, the job need not be a local one.

[Note: This explanation is placed on the back of the form.]

APPENDIX 3

SUMMONS INVESTIGATION REPORT		Precinct	Precinct Control Number	Date of Report	
<p>STATEMENT TO BE READ TO DEFENDANT: The crime with which you are charged may be processed in one of two ways: First, you may be detained until your court appearance and then possibly be held in bail. Second, by furnishing certain information concerning your background, employment and family, you may be found eligible for the issuance of a summons, in which case you may leave here today and return to court on your own on a specified date within the next three weeks. None of the questions you will be asked concern the crime with which you are charged. If you agree to be interviewed, you authorize the Police Department to verify the information by calling persons named by you as references.</p>					
<p>ACKNOWLEDGEMENT OF DEFENDANT: I hereby consent to interview and verification of the information given.</p>			Signature of Defendant		
Date of Arrest	Time	A.M. P.M.	Location of Arrest	Within Precinct No.	
ARRESTING OFFICER	Rank/TITLE	Name	Shield No.	Command / Agency	
Charge			Arrest No.		
SECTION 1 — IDENTIFICATION AND RESIDENCE					
Defendant's Surname		First Name and Initial		Date of Birth	Female <input type="checkbox"/> Male <input type="checkbox"/>
					Single <input type="checkbox"/> Married <input type="checkbox"/>
Address (Number and Street)		City or Post Office		State	How Long At Current Address How Long At Previous Address
Apt. No.	Telephone No.	Proof of Identity (Driver's Lic., Auto Reg., I.D. Card, etc. - Indicate Type and Serial Numbers)			
SEC. 1 SCORE	Residence Over 1 Year: 3 Points <input type="checkbox"/>	Present Residence—Six Months or Present and Prior—One Year: 2 Points <input type="checkbox"/>	Present Residence—Four Months or Present and Prior—Six Months: 1 Point <input type="checkbox"/>	Present and Prior—Under Six Months: 0 Points <input type="checkbox"/>	SCORE: _____ Points Verified <input type="checkbox"/> Interview <input type="checkbox"/>
SECTION 2 — FAMILY TIES					
Lives With (Name)		Relationship	If Married, Name of Defendant's Spouse		Number of Children
If Separated, Spouse's Address; OR If Minor Not Living At Home, Parent's Address		Number, Street, Borough, Apt. No.		Telephone No.	
Relatives In The N.Y.C. Area That Defendant Keeps In Close Contact With:					
Name		Address	Telephone No.	Relationship	How Often Seen
SEC. 2 SCORE	Lives With Family And Has Regular Contact With Other Family Members 3 Points <input type="checkbox"/>	Lives Alone But Has Regular Contact With Other Relatives 1 Point <input type="checkbox"/>	Lives With Family But Has No Other Family Contacts 2 Points <input type="checkbox"/>	Lives Alone Or With Non-family Person And Has No Contact With Relatives 0 Points <input type="checkbox"/>	SCORE: _____ Points Verified <input type="checkbox"/> Interview <input type="checkbox"/>
SECTION 3 — EMPLOYMENT					
Currently Employed By	Name of Company		Address		Telephone No.
How Long	If Under 1 Year, How Long At Previous Job	Type of Work		Name of Immediate Supervisor	
If Housewife Or Minor	Husband's or Parent's Occupation		Business Address		Telephone No.
SEC. 3 SCORE	Score Housewife Or Minor On Husband's Or Parent's Occupation	Current Job Over One Year 3 Points <input type="checkbox"/>	Current Job Over Six Months 2 Points <input type="checkbox"/>	Present Job Between 4-6 Months or Supported By Family Or Present and Prior Job—Six Months. 1 Point <input type="checkbox"/>	Unemployed Or Not Otherwise Supported 0 Points <input type="checkbox"/>
SCORE: _____ Points Verified <input type="checkbox"/> Interview <input type="checkbox"/>					
SECTION 4 — PRIOR ARRESTS AND CONVICTIONS					
Have You Ever Been Arrested Before		How Many Times	On What Charges		
Yes <input type="checkbox"/> No <input type="checkbox"/>					
Investigating Officer Must Conduct Name Check By Telephoning The Identification Section At 226-8000 And, In The Case Of A Minor, The Youth Records Section Through The Communications Section, Ext. 7/184					
Results Of Name Check	Det./PII/Trainee		Ident. Sect./Youth Records		
SEC. 4 SCORE	No Previous Convictions 2 Points <input type="checkbox"/>	One Misdemeanor Or Violation Conviction 1 Point <input type="checkbox"/>	Two Misd. Or Viol. Convictions Or One Felony Conviction 0 Points <input type="checkbox"/>	Three Misd. Or Viol. Convictions Or Two Felony Convictions Minus(-) 1 Point <input type="checkbox"/>	Four Or More Misd. Or Viol. Convictions Or Three Or More Felony Convictions Minus(-) 2 Points <input type="checkbox"/>
SCORE: _____ Points Verified <input type="checkbox"/> Interview <input type="checkbox"/>					

SECTION 5—DISCRETIONARY INFORMATION

Medical History	Are You Under A Doctor's Or Hospital Treatment Yes <input type="checkbox"/> No <input type="checkbox"/>	Name of Doctor Or Hospital	Location	How Often
Financial Assistance	Do You Receive Any Financial Assistance (Welfare, Unemployment Insurance, Etc.) Yes <input type="checkbox"/> No <input type="checkbox"/>	Name And Address Of Agency		
School Or Training	Are You Currently Enrolled In A School Or Training Program Yes <input type="checkbox"/> No <input type="checkbox"/>	Name And Address		Grade Or Length Of Course
SEC. 5 SCORE	FAVORABLE—Pregnancy, Old Age, Poor Health, Continuous Medical Treatment, Gets Financial Aid, Attends School, Etc. 1 Point <input type="checkbox"/>	NEUTRAL—No Evidence On Which To Base Discretionary Opinion. 0 Points <input type="checkbox"/>	UNFAVORABLE—Vague Answers, Lie Detected, Transient Background Minus(-) 1 Point <input type="checkbox"/>	SCORE: _____ Points Verified <input type="checkbox"/> Interview <input type="checkbox"/>

SECTION 6—LENGTH OF TIME IN THE NEW YORK CITY AREA

SEC. 6 SCORE	How Long Have You Lived In The New York City Area	Over Ten Years 1 Point <input type="checkbox"/>	Under Ten Years 0 Points <input type="checkbox"/>	SCORE: _____ Points Verified <input type="checkbox"/> Interview <input type="checkbox"/>
TOTAL POINTS	Total Points Scored By Defendant On Interview _____		Total Points Scored By Defendant On Verification If Conducted _____	

REFERENCES: Names Supplied By Defendant Of Persons Who May Verify The Information Given By Him. Defendant Must Supply The Names Of References Regardless Of Whether Or Not Verification Is To Be Conducted.

Name	Address	Telephone No.	Occupation	Relationship

VERIFICATION INTERVIEW

Person Interviewed	Surname	First Name	Address—Number And Street	City Or Post Office
Telephone No.	Relationship To Defendant	Years Known Def.	ITEMS VERIFIED	
Additional Information Supplied And Discrepancies			Identification <input type="checkbox"/>	Residence <input type="checkbox"/>
			Employment <input type="checkbox"/>	Discretionary Info. <input type="checkbox"/>
			Length Of Time In N.Y.C. Area <input type="checkbox"/>	

Reference's Physical Description Of Defendant

INVESTIGATOR'S REPORT

Identity Of Investigator	Rank/Title	Surname (Print)	First Name	Shield No.	Command/Agency
RECOMMENDATION OF INVESTIGATOR: SUMMONS RECOMMENDED <input type="checkbox"/> SUMMONS NOT RECOMMENDED <input type="checkbox"/>					
Signature Of Investigator _____					

DESK OFFICER'S REPORT

- Recommendation Of Investigator ACCEPTED REFUSED
- Summons Issued YES NO
- If Summons Issued: Return Date _____ Court Part _____ Borough _____
- Arrest No. _____ Summons Control No. _____
- If Summons Issued, Answer The Following Questions:
 - Tour Of Duty Performed By Arresting/Assigned Officer _____
 - If The Summons Had Not Been Issued, Court Arraignment Would Have Been In Day Court Night Court Week-End Court
- Signature Of Desk Officer _____
Rank _____ Name _____ Shield No. _____ Command _____

ADDITIONAL REMARKS (Reason For Refusal Of Summons Recommendations, Etc.)

APPENDIX 4*A Model Departmental Policy Statement**Field Release*

It is the general policy of this department to release persons 18 years or older accused of misdemeanor offenses in the field on a signed promise to appear. This policy applies where the parties have cooled down and there is little likelihood of continued violence. Defendants should be physically arrested in the following exceptional cases:

1. Failure to identify self satisfactorily.
2. Unable to care for self by virtue of intoxication or other condition. Drunk drivers will not be released in the field.
3. Necessary to prevent imminent bodily harm to accused or another, including law enforcement personnel.
4. If demands to be taken immediately before a magistrate.
5. Outstanding warrant or previous failure of accused to appear (a warrant check is mandatory).
6. Lacks ties to the area such as residence, job, or family *and* the arresting officer's judgment is that there is a substantial likelihood that the accused will fail to respond to a citation.
7. Refuses to sign citation.
8. There are other unusual circumstances which lead the arresting officer to conclude that the suspect should be booked and the case reviewed by another authority.

THE PROMISE TO APPEAR IS NOT TO BE USED WHERE THE APPROPRIATE POLICE ACTION IS TO COUNSEL AND REPRIMAND.

In any case in which a field citation is not issued, the arresting officer shall for internal departmental use give a short statement on the booking form of the reason for physical arrest.

Cases Not Involving Field Releases

In those cases in which it is not possible to release persons 18 years or older arrested for misdemeanor offenses in the field, it is the policy of this department to evaluate the case further at the time of booking, to determine whether the person arrested may be released at booking. The following procedures will be used:

1. Suspects should be booked in the normal manner.

2. The [arresting officer, jailor, other departmental designee] should complete the Departmental Release Interview Form and determine the number of points scored by the person arrested. The interrogating officer shall explain to the person arrested the general purpose of the questions.
3. If the arrested person scores 5 points or more he should be released unless:
 - a. Fails to identify self satisfactorily.
 - b. Necessary to prevent imminent bodily harm to accused or another, including law enforcement personnel. (Release as soon as condition no longer exists.)
 - c. Unable to care for self by virtue of intoxication or other condition. (Release as soon as condition no longer exists.)
 - d. Outstanding warrant or previous failure of accused to appear unless satisfied that the previous failure to appear was not willful and deliberate.
 - e. Refuses to sign citation.

Instructing the Person Cited

It is important that the person cited, whether the citation is issued in the field or not, understand that he is making a promise to appear at a specific place and time. In order to ensure that there can be no doubt in the defendant's mind about this, the citing officer shall, at the time he asks the defendant to sign the promise to appear, orally call attention to the time and place for appearance and may take any other steps he deems necessary to ensure that the defendant understands his promise.

[Note: It may be desirable for departments to combine the Departmental Release Interview Form with their present booking form.]