



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

Pursuant to this database:

- 46/51 states (and D.C.) permit citations for some offenses
- 9/51 have a presumption of citation over arrest for some offenses
- 10/51 at least conceivably permit citations for some types of felonies.

CITATION IN LIEU OF ARREST

A citation in lieu of arrest is permitted in most states for certain low-level crimes. A citation is a written order, in lieu of a warrantless arrest, that is issued by a law enforcement officer or other authorized official, requiring a person to appear in a designated court or governmental office at a specified time and date. Citations are commonly associated with traffic violations, local ordinances or infractions. Policies that apply citations to specified crimes affect what happens with regard to custody of a defendant either immediately before or after arrest. (An arrest is the point at which an arrestee is taken into custody, referred to as custodial arrest or continued custody.) Nineteen states allow citations to be issued after arrest, nine authorize prior to arrest, and 10 states allow both. State laws most often apply citation in lieu of arrest to misdemeanor crimes. Two states—Louisiana and Oregon—permit citations for some felonies. Seven states do not specify crimes for which an officer has discretion to issue a citation. Laws in 10 states create a presumption that citations be issued for certain crimes and under certain circumstances. For example, Maryland requires police officers to issue a citation for any misdemeanor that does not carry a penalty of imprisonment, most misdemeanors punishable by a maximum of 90 days imprisonment and for misdemeanor possession of marijuana.

State statutes guide the circumstances under which a citation can be issued, often determined by the class of the alleged crime and providing exceptions for certain crimes. The issuing authority is almost always required to consider one or more factors in determining whether or not to issue a citation. Even under circumstances in which there is presumption of citation, enumerated factors must first be considered. Generally, a custodial arrest must be made if one or more of these factors are present:

- There are reasonable grounds to believe the person will not appear for court, or the person has a history of not appearing. Officers consider the arrestee's residency, family, employment and other ties to the community, as well as matters of character.
- There are reasonable grounds to believe a person poses a danger to others, himself or herself, to property, the community, or that the person will not cease committing the alleged crime.
- The criminal record of the arrestee or outstanding warrants.
- Detention upon arrest is deemed necessary to carry out legitimate investigation, or if prosecution of the current or other alleged offenses would be jeopardized if not taken into custody.
- If the arrestee requires physical or mental health care, if the person is not able to care for herself or herself or if the person is intoxicated or under the influence of drugs or alcohol.

There are two common circumstances under which state laws generally prohibit a citation being issued:

- The arrestee refuses to sign a written promise to appear or requests to be taken before a judge.
- The person does not have or will not provide valid identification, identification is unable to be verified, or the person is unwilling to provide fingerprints.

The use of citations can contribute to lower jail populations and local cost savings by diverting from detention arrestees who pose little risk to public safety and are likely to appear for their court date. Citations issued before arrest also can have the effect of an arrest not being placed on a person's criminal record. Some legislatures have stated the intent of citations in statutory law. In Tennessee, the statute says:

In cases in which:

1. the public will not be endangered by the continued freedom of the suspected misdemeanor;
2. the law enforcement officer has reasonable proof of the identity of the suspected misdemeanor; and
3. there is no reason to believe the suspected misdemeanor will not appear as required by law, the general assembly finds that the issuance of a citation in lieu of arrest of the suspected misdemeanor will result in cost savings and increased public safety by

allowing the use of jail space for dangerous individuals and/or felons and by keeping officers on patrol. Accordingly, the general assembly encourages all law enforcement agencies to so utilize misdemeanor citations and to encourage their personnel to use those citations when reasonable and according to law.” [§40-7-118(m)]

By providing an alternative to pretrial detention and release processes for certain defendants, citation in lieu of arrest can be considered a component of state pretrial policies.

The chart below provides more information on citation in lieu of arrest state laws.

State & Statute	For What Offenses Can a Citation be Issued?	Exceptions	Presumption of Citation	When is Citation Issued?	Who Issues Citation?
Alabama §11-45-9.1	Class C Misdemeanors	Offenses involving violence, threat of violence, alcohol or drugs.	No	After arrest	Law enforcement officers
Alaska §12.25.180	Misdemeanors	Offenses involving violence to property or person; when there is probable cause that domestic abuse was involved.	No	Prior to arrest	Peace officers
Arizona §13-3903	Misdemeanors	Not specified	No	After arrest	Peace officers
Arkansas No statute located					
California Penal Code §853.6	Misdemeanors	Offenses involving domestic violence or abuse (unless the officer determines there is not a reasonable likelihood that the offense will continue). Offenses that require a bail hearing rather than release according to a bail schedule.	Yes	Either	Law enforcement officers or their superiors.
Colorado §16-3-105	Misdemeanors	Domestic violence offenses	No	After arrest	Law enforcement officers; responsible command officers.
Connecticut §54-1h	Misdemeanors; offenses punishable by a maximum of one year imprisonment	Not specified	No	After arrest	Arresting officer

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	or a maximum fine of \$1000.				
Delaware 11 Del. C. §1907	Misdemeanors	Not specified	No	Not specified	Peace officers
District of Columbia No statue located					
Florida §901.28 superseded by R. Cr. P. 3.125	1 st or 2 nd degree misdemeanors.	Not specified	No	After arrest	Law enforcement officers
Georgia No statute located					
Hawaii § 803-6	Misdemeanors and petty misdemeanors.	Not specified	No	Prior to arrest	Police officers
Idaho §19-3901	Misdemeanors	Not specified	No	Not specified	Law enforcement officers
Illinois 725, ILCS 5/107-12	When there are reasonable grounds to believe that a person is committing or has committed a crime.	Not specified	No	Not specified	Peace officers
	Class C misdemeanors	Not specified	No	After arrest	Sheriff
Indiana §35-33-4-1(f)	Misdemeanors	Traffic misdemeanors	No	Not specified	Law enforcement officers
Iowa § 805.1	When a crime has been committed in the presence of the police officer or there is reasonable grounds to believe that a crime has been committed.	Offenses not eligible for pretrial release; stalking; domestic violence offenses resulting in injury, where there was intent to inflict injury, involving use of dangerous weapon, or where there was pressure	No	Either	Peace officers

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		applied to throat or neck or obstructing nose or mouth.			
Kansas § 22-2408	Misdemeanors	Traffic violations	No	After arrest	Law enforcement officers
Kentucky § 431.015	Misdemeanors	Violation of a protective order	Yes	Prior to arrest	Peace officers
	Misdemeanor offenses of driving under the influence; assault; sexual crimes; crimes involving firearms or weapons; 4 th degree assault in a hospital room; 3 rd degree criminal trespass; harassment; and aggravated driving under the influence.	Violation of protective order	No	Prior to arrest	Peace officers
Louisiana C. Cr. P. Art 211	Misdemeanors; felony theft or illegal possession of stolen things if the value is between \$500 and \$1000; writing worthless checks.	Not specified	No	Prior to arrest	Peace officers
Maine 17-A § 17-A	When there is probable cause to believe a crime has been or is being committed.	Not specified	No	Prior to arrest	Law enforcement officers

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Maryland Cr. Pr. Law § 4-101	Misdemeanors that do not carry a penalty of imprisonment, any misdemeanor with a maximum penalty of 90 days or less, and possession of marijuana.	Failure to comply with a peace order; violation of a condition of pretrial release while charged with a sex crime against a minor; possession of an electronic control device after conviction of a drug felony or violent crime; violation of any out of state domestic violence ordinance; violation of an interim, temporary or final protective order; abuse or neglect of an animal.	Yes	Either	Peace officers
Massachusetts No statute located					
Michigan §764.9c	Misdemeanors with a maximum of 93 days.	Not specified	No	Prior to arrest	Police officers
	Any offense less than felony.	Domestic assault; violation of a protection order; crimes subject to mandatory confinement or mandatory condition of pretrial release.	No	Prior to arrest	Authorized public servants
Minnesota §626.862; §629.72	Not specified	Stalking; domestic abuse; violation of a protection order; violation of a domestic abuse no contact order.	No	Either	Peace officers
	Stalking; domestic abuse; violation of a protection order; violation of a domestic abuse no contact order.	Not specified	Yes	After arrest	Officer in charge of police station; county sheriff.
Mississippi § 99-3-18	Misdemeanors	Not specified	No	After arrest	Police officers; booking officers; superiors.

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Missouri No statute located					
Montana § 46-6-310; §46-6-311	When the officer has probable cause to believe a person has committed a crime.	Partner or family member assault involving injury to the victim, use of a weapon, violation of restraining order.	No	Not specified	Peace officers
Nebraska § 29-422	Misdemeanors	Violations of protection order for domestic violence	No	Either	Peace officers
Nevada § 171.1771; §171.177	Misdemeanors	Misdemeanors that require a bail hearing	No	After arrest	Peace officers
New Hampshire §594:14	Misdemeanors	Not specified	No	After arrest	Peace officers
New Jersey § 2B:12-21 authorizes R. Crim. P. Rule 3:4-1	Crimes committed in an officer's presence.	Not specified	Yes	After arrest	Law enforcement officers
New Mexico § 31-1-6	Petty misdemeanors	Not specified	No	After arrest	Law enforcement officers
New York Cr. P. Law §150.20; §140.10	Any offense	Class A, B, C, D felonies; 3 rd degree rape; 3 rd degree criminal sex act; 2 nd degree escape; 1 st degree absconding from a temporary release; absconding from a community treatment facility, 2 nd degree bail jumping; violation of a protection order.	No	After arrest	Police officers; authorized public servants.
Cr. P. Law §150.75	Possession of marijuana.	Not specified	Yes	After arrest	Police officers

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North Carolina § 15A-302	Misdemeanors	Not specified	No	Not specified	Law enforcement officers; other authorized persons.
North Dakota §29-05-31 superseded by R. Cr. P. 5(e)	Crimes committed in an officer's presence.	Not specified	No	Either	Law enforcement officers; prosecuting attorney must duly issue for felony offenses.
Ohio § 2935.26	Minor misdemeanors	Not specified	Yes	Prior to arrest	Law enforcement officers
Oklahoma 22 § 209	Misdemeanors	Not specified	No	After arrest	Law enforcement officers
Oregon § 133.055	Misdemeanors; felonies authorized by law to be reduced to a misdemeanor.	Domestic disturbance when the officer has probable cause to believe that an assault has occurred between family or household members or believes that an assault has occurred which has placed a person in fear of imminent danger.	No	Not specified	Peace officers
Pennsylvania R. Cr. P. 519 & 441	2 nd degree misdemeanors; 1 st degree driving under the influence; crimes punishable by a maximum of 90 days.	Not specified	Yes	After arrest	Law enforcement officers
Rhode Island § 12-7-11; §12-7-12	Misdemeanors	Not specified	No	Either	Peace officers; officer in charge of a police station.

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South Carolina §56-7-10; §56-7-15; §22-3-540	Offenses enumerated in §56-7-10; offenses under the jurisdiction of a magistrate (maximum penalty of 30 days jail and \$500 fine) that are committed in the presence of a law enforcement officer.	Not specified	No	Not specified	Law enforcement officers
South Dakota No statute located					
Tennessee § 40-7-118; §40-7-120	Misdemeanors	Driving under the influence unless the offender was admitted to a hospital or detained for medical treatment for at least three hours; misdemeanor traffic offenses.	Yes	After arrest	Peace officers
	Shoplifting; writing bad checks; assault or battery if the officer believes there is a reasonable likelihood of a danger to another person; prostitution if the officer has knowledge of past conduct of the defendant in prostitution or has reasonable cause to believe the prostitution will continue.	Not specified	No	After arrest	Peace officers
	Misdemeanors	Not specified	No	After arrest	Sheriff or designee.

State & Statute	For What Offenses Can a Citation be Issued?	Exceptions	Presumption of Citation	When is Citation Issued?	Who Issues Citation?
Texas C. Cr. P. Art. 14.06.	Class C misdemeanor; Class A or B misdemeanor of driving while license invalid, contraband in correctional facility, theft of service, theft, graffiti, criminal mischief, possession of substance penalty group 2-A, or possession of marijuana.	Public intoxication	No	After arrest	Peace officers
Utah § 77-7-18	Misdemeanors	Not specified	No	Either	Peace officers; public officials charged with enforcement of law; port of entry agents; authorized volunteers.
Vermont R. Cr. P. 3	Misdemeanors committed outside the presence of a officer.	Assault against a family member; operating a vehicle under the influence; hate-motivated crimes, stalking; simple assault; reckless endangerment; cruelty to children; failure to comply with sex offender registration; abuse of a vulnerable adult; violation of a protection order.	No	Prior to arrest	Law enforcement officers
Virginia § 19.2-74	Class 1 – 4 misdemeanors.	Driving while intoxicated; motor vehicle offenses; public drunkenness.	Yes	After arrest	Arresting officer
Washington CrRLJ 2.1	Misdemeanors or gross misdemeanors committed in the presence of an officer.	Offenses enumerated in §10.31.100	No	Either	Police officers

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West Virginia § 62-1-5a	Misdemeanors; persons being detained for investigation of shoplifting.	Offenses involving injury to a person	No	Prior to arrest	Law enforcement officers
Wisconsin § 968.085; § 968.075; § 813.12; § 813.122; § 813.125	Misdemeanors	Domestic abuse offenses if believed abuse will continue, involves physical injury or the arrestee is the predominant aggressor; violation of protection order involving domestic abuse, child abuse or harassment.	No	Either	Law enforcement officers
Wyoming § 7-2-103	Misdemeanors	Not specified	No	After arrest	Peace officers; district or city attorney.

50 STATE CHART | CITATION IN LIEU OF ARREST

Source: National Conference of State Legislatures, 2013