



DEPARTMENTAL REGULATIONS  
CONCORD POLICE DEPARTMENT

PROCEDURE 11  
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Chief of Police

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**MISDEMEANOR ARREST/CITIZEN'S ARREST**

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**A. POLICY STATEMENT**

When an officer makes a misdemeanor arrest, he/she has the option to release the arrested person at the scene on a promise to appear, or to book and cite release the arrestee. The decision on which course of action to follow will be based on established law and departmental policy. In addition, there are occasions when an offense is committed, but not in the presence of an officer, and a citizen demands that a course of action be taken immediately upon the officer's arrival. The action may be a demand for a citizen's arrest. The Concord Police Department is committed to handling such matters in accordance with established law.

**B. PURPOSE**

1. The purpose of this Departmental Procedure is to provide uniform procedures for the release of misdemeanor arrestees. In addition, this policy specifies the procedures to be used when accepting a citizen's arrest for a misdemeanor that is not committed in the officer's presence.

**C. GENERAL**

1. An officer may make an arrest, without a warrant, for a misdemeanor offense, when:
  - .1 The offense is committed in the presence of the officer, or
  - .2 In response to a citizen's arrest, or
  - .3 Based on probable cause, for a violation of a domestic violence protective order, or restraining order, even if the violation was not committed in the presence of the officer, or
  - .4 Based on probable cause, for an offense of domestic violence, as defined in Sections 836(d) through 836(d)(2) of the Penal Code, or
  - .5 Based on probable cause, for an offense of driving under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage or any drug, as specified in 40300.5 of the Vehicle Code.
2. It is the policy of the Concord Police Department to release on a notice to appear all adult persons arrested for misdemeanor offenses, in lieu of pre-arraignment confinement, unless reasons for non-release, described herein, exist.
3. The disposition of juvenile offenders who are arrested for misdemeanor offenses is covered in General Order 34.

**D. MISDEMEANOR ARRESTS-RELEASE UPON NOTICE TO APPEAR**

1. Unless there exists one or more of the conditions specified in this procedure, an arrestee shall be released upon a written promise to appear.
  - .1 The releasing officer shall issue, in triplicate, a written notice to appear in court.
    - .01 Officers shall use the standard "City of Concord Notice to Appear" form to accomplish this requirement.
  - .2 The notice to appear shall contain the name, address and description of the arrestee, the offense(s) charged, and the time and place the arrestee shall appear in court.
  - .3 If booking of the arrestee is desired, the box indicating "booking required" shall be checked.
  - .4 The arrestee must sign the promise to appear in order to be released.
  - .5 The officer shall deliver one copy of the notice to appear to the arrested person. The remaining copies shall be forwarded to the Records Bureau, normally by attaching them to the police report.
2. Release after booking:
  - .1 Misdemeanor arrestees not cite-released in the field shall be booked at the Concord Police Department temporary holding facility.
  - .2 Upon booking, the arresting officer shall make an immediate investigation into the background of the arrestee and the circumstances of the arrest to determine whether or not the arrestee should be released on a written promise to appear.
  - .3 If the arrestee is not released following the investigation, the arresting officer shall indicate the specific reason for non-release in the police report. If, during the period of custody, the reason for non-release changes, the arrestee shall be released on a written promise to appear.

#### **E. REASONS FOR NON-RELEASE**

1. Whenever any person is arrested by a peace officer for a misdemeanor, and one or more of the following conditions exist, the person may not be released with a notice to appear. (853.6 PC)
  - .1 In any case in which the person is arrested for an act of domestic violence or violation of a protective court order involving domestic violence, as defined in subdivision (b) of Penal Code Section 13700, and as outlined in Section D.1.9 of Departmental Procedure 48.
  - .2 The person arrested is so intoxicated that he/she could have been a danger to himself/herself or to others.
  - .3 The person arrested requires medical examination or medical care or is otherwise unable to care for his or her own safety.
    - .01 If the person is admitted to the hospital, he/she may be released pursuant to Section 849b of the Penal Code, provided that there are no other factors which would prohibit such a release.
  - .4 The person is arrested under one or more of the circumstances listed in Sections 40302 and 40303 of the Vehicle Code.
  - .5 There are one or more outstanding arrest warrants for the person, other than those for which the person can be cite released (CP-59 form).

- .6 The person cannot produce satisfactory evidence of personal identification.
  - .7 The prosecution of the offense or offenses for which the person is arrested, or the prosecution of any other offense or offenses, would be jeopardized by immediate release of the person arrested.
  - .8 There is reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by release of the person arrested.
  - .9 The person arrested demands to be taken before a magistrate or refuses to sign the notice to appear.
  - .10 There is reason to believe that the person will not appear at the time and place specified in the notice. The basis for this determination shall be specifically stated in the police report.
2. Unless the situation dictates otherwise, persons who are not released on a promise to appear shall be booked through the Concord Police Department temporary holding facility and then transported to MDF.
  3. If a person who is arrested for a misdemeanor is not released on a promise to appear, the specific reason(s) for the non-release shall be stated in a police report.

#### **F. CITIZEN'S ARREST**

1. If the crime is a misdemeanor not committed in the officer's presence, the officer should inform the citizen that the officer does not have the authority to make the arrest without a warrant and either outline the procedure for a citizen's arrest or the procedure for signing complaints for an arrest warrant if either course is appropriate under the circumstances.
  - .1 The officer should make sure that he/she is merely outlining the "Citizen's Arrest" procedure and is not advising, recommending or encouraging the citizen to make the arrest.
  - .2 Exceptions to an officer's right to make an arrest for a misdemeanor not committed in his/her presence are spelled out in Procedure No. 48 (Domestic Violence), Section 625 W&I, and 40300.5 VC.
2. When an officer is requested to take a person into custody following a citizen's arrest, he/she should make reasonable inquiry into the facts, as observed by the citizen making the arrest, to determine whether the arrest appears lawful under Section 837 PC.
  - .1 The officer should then require the arresting citizen to sign the arrest report and then comply with either Section 849(a) PC or Section 853.6 PC.
3. In making an arrest without a warrant, the law provides that an officer must act promptly at the time of the offense.
  - .1 If he/she does not act immediately after the offense has been committed, he/she can thereafter make an arrest **only** by procuring a warrant and proceeding in accordance with its terms.
    - .01 The same law applies to an arrest made by private citizens in cases in which an arrest without a warrant is permitted.

#### **G. CITIZEN'S ARREST - SUBJECT IN CUSTODY (OFFICER'S RESPONSIBILITY)**

1. Business/Store

- .1 Inquire into the facts of the case.
  - .2 Obtain a written statement from the security personnel.
  - .3 Interview all parties who have information relevant to the investigation.
  - .4 The reporting officer shall complete the Arrest Report (CP 415-1), having the arresting party sign the completed form at the scene of the arrest.
  - .5 Transport the subject to the Police Department if the subject is to be booked and/or held in custody.
  - .6 Interview the subject if he/she waves his/her constitutional rights.
  - .7 Book and/or process the subject as per Departmental procedure.
2. Arrest By Citizen Other Than Security Personnel
- .1 Inquire into the facts of the case.
  - .2 Obtain a statement from the arresting party.
  - .3 Complete the Arrest Report, having the arresting citizen sign the completed form at the scene of the arrest.
  - .4 Transport the defendant to the Police Department if the subject is to be booked and/or held in custody.
  - .5 Advise the subject of his/her constitutional rights.
    - .01 If possible, obtain a waiver of these rights.
    - .02 If the subject waives his/her rights, interview and attempt to obtain a statement about the incident.
  - .6 Book and process the subject according to Departmental procedure.
3. Arrest of Juveniles
- .1 Officers should consider the totality of the circumstances in cases involving juvenile offenders. Disposition of these cases may include:
    - .01 Immediate transfer and booking at Juvenile Hall.
    - .02 Booking the minor at the police department and then release to a parent or guardian.
    - .03 Issuing the minor a citation under the guidelines of 256 W&I.
  - .2 In cases where a juvenile has not been recently booked, officers should consider booking at the station prior to release to a parent or guardian. A booking photo and fingerprints can be critical elements of subsequent investigations.
  - .3 Physical detention should be considered when the juvenile's record and/or the gravity of the current offense is such that his/her release would constitute a threat to the public welfare.

- .4 The actual citizen's arrest on a juvenile should follow the same guidelines as with an adult up to the processing stage.
- .5 Officers should be cognizant of the provisions of 625 W&I.

#### **H. COMPLAINT PROCEDURE FOLLOWING A MISDEMEANOR/CITIZEN'S ARREST**

- 1. When the arrestee is released on a promise to appear.
  - .1 The Records Bureau legal desk is responsible for obtaining a copy of all reports involving the arrest and referring the report and a copy of the notice to appear to the District Attorney for the issuance of a formal complaint.
- 2. When the arrestee is denied a citation release in accordance with Penal Code Section 853.6(i).
  - .1 The booking officer is responsible for notifying the Records Bureau legal desk when a subject is being held in custody for a misdemeanor violation.
    - .01 The legal desk is responsible for presenting the necessary documents to the District Attorney for a complaint filing.
    - .02 If the arrestee is in custody at the County Jail, the Investigations and Administrative Services Division shall provide for his/her release, if necessary.
  - .2 If the arrestee is released on bail or O.R. signed by a magistrate, the legal desk shall refer the report to the District Attorney for issuance of a complaint.

#### **I. SIGNING OF FORMAL COMPLAINTS - NO ARREST MADE**

- 1. When a citizen requests that formal complaints be filed, the officer assigned the detail shall make reasonable inquiry into the facts as observed by the complainant and/or victim to determine if a crime in fact has been committed.
- 2. Obtain statements from the complainant and all witnesses.
- 3. If a crime has been committed and the complainant and/or victim can identify the responsible(s):
  - .1 Advise the complainant to contact the Investigations and Administrative Services Division in seven working days by phone regarding case follow-up.
  - .2 After review and/or further investigation, the follow-up investigator shall refer the case to the District Attorney's office for a complaint.