

CHAPTER 101
RELEASE AND BAIL PROCEDURES

DISCUSSION: The intent of this Chapter is to outline the formal procedures that will be employed in releasing a detainee or arrestee from Police custody. The emphasis here is upon the legal requirements for releasing a person from custody.

101.1 RELEASE

101.1.1 Release from Temporary Field Detention

- A. A Police Officer may release a person who has been temporarily detained in the field. No liability attaches to either the officer or the department if the person is released from such detention without a charge being brought, provided that the original basis for the detention was lawful.
- B. Release from temporary detention in the field should be accomplished as soon as feasible. The duration of any detention should be limited to the time necessary to deal with the issues that gave rise to the detention. Examples of the types of situations that give rise to this type of detention are as follows:
 - 1. The officer has probable cause to believe that the subject detained has violated or was about to violate the law.
 - 2. An investigative stop where the officer does not have probable cause, but does have specific and articulate facts combined with reasonable inference from those facts that warrant a limited stop of the individual in the field.

101.1.2 Release of Arrested Person Without Charge

- A. A person arrested without a warrant may be released if the supervisor is satisfied that there is no grounds for bringing a criminal complaint and no further proceedings are necessary.
- B. A person so released has no right to sue on the ground that he was released without being brought before a court. This does not mean that he cannot sue the officer and/or the department if the arrest itself was improper or lacking probable cause.

101.1.3 Release from Protective Custody

A person who has been taken into police custody because he has been judged to be either incapacitated or intoxicated may be released without charge.

101.1.4 Post Arrest Release

- A. Post Arrest Release may be used as an alternative to incarceration for NONVIOLENT misdemeanor arrest at the discretion of the arresting officer. The Post Arrest Release may serve as an affidavit, court summons or both for the person being arrested.

- B. When an officer is making a misdemeanor arrest, either pursuant to a warrant issued by the Hattiesburg Municipal Court or for a misdemeanor that has occurred in the officer's presence, the officer may use Post arrest release in accordance with this procedure. No exceptions will be made without the approval of a supervisor.
1. The Post Arrest Release Form shall be completed by the arresting officer and sworn in to the court clerk in the same manner as traffic citations.
 2. Post Arrest Release shall not be used in the following instances:
 - a. For any arrest for Shoplifting or Domestic violence whether the arrest is pursuant to a warrant or an act that occurred in the officer's presence.
 - b. When the arrestee has an outstanding Bench Warrant or Mittimus by Hattiesburg Municipal Court.
 - c. When the arrest is pursuant to any warrant issued by any other agency.
 - d. When the arrest is being made for any violent misdemeanor, including any misdemeanor where a weapon was present, whether or not it was used.
 - e. When the arrestee is obviously intoxicated or is physically or mentally impaired and may be a danger to the public or themselves if released.

101.2 RELEASE ON SUMMONS

101.2.1 Use of Summons

- A. A summons is a written order to appear in court to answer for a violation of the law or criminal conduct and may be issued by any Police Officer when it is lawful to make an arrest without a warrant of a person for a misdemeanor or other violation. (MS Code 13-3-5)
- B. Summonses may be issued to juveniles who are fifteen (15) years of age or older who violate a city ordinance or any provision of alcohol beverage laws as well as motor vehicle, aeronautics, and fish and game laws.
- C. Juveniles under the age of fifteen (15) shall not be summonsed to Municipal Court and are referred to the Forrest County Youth Court.

101.2.2 First Appearance

Court dates for first weeks with holidays. will be dated for the appearance shall be dated for Tuesdays excluding Beginning at 2400 hours each Thursday summons second Tuesday from that Thursday's date.

101.2.3 Accountability for Traffic Summonses (Citations)

- A. Personnel shall be responsible for all summons forms issued to them. Traffic citations are provided by the State, bound in groups of twenty-five (25) and numbered sequentially. As these booklets are issued to officers the numbers are recorded in the AS 400.
- B. If a form is damaged or must be voided for any reason, it must be turned into the on duty desk clerk. The voided citation number is recorded in the AS 400.

101.3 BAIL

101.3.1 Conditions for Release on Personal Recognizance

- A. In the case of misdemeanors or traffic violations, every person shall be eligible for and entitled to be released on personal recognizance upon satisfying the court of the following conditions: (MS Code 99-5-11)
 - 1. The release will jeopardize neither the arrestee nor the public. That employment, family ties, and residence within the state or other sufficient connection with the state make failure to appear unlikely.
 - 2. Has not failed to appear in any court when required.
 - 3. No other special circumstances exist creating a likelihood that he/she would fail to appear.
- B. Only the Municipal Court can set bail for misdemeanor charges.

101.3.2 Setting of Bail

- A. Bail is preset for all misdemeanor charges.
- B. If bail was set as personal recognizance, the prisoner shall not be held if he or she does not have the preset fee.
- C. Bail shall not be set on a person who charged as a juvenile.
- D. Any person that is arrested for a felony with or without a warrant that is unable to obtain the necessary cash bail, shall be brought before a judge within forty eight (48) hours of the time of the arrest, Sundays and holidays excluded. (Ref U.S. Supreme Court, Riverside vs. MCLAughlin, May 1991).