

**8 GCA CRIMINAL PROCEDURE
CH. 25 CITATIONS**

**CHAPTER 25
CITATIONS**

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§ 25.10. Release Without Appearance Before Judge: Regulated by This Chapter.

(a) In any case where a person is not arrested upon a warrant and such person does not demand to be taken before a judge, the arresting officer or any other officer into whose custody the person is placed instead of taking such person before a judge as required by § 45.10, may release him pursuant to the procedure provided by this Chapter.

(b) In making a determination whether to release any person pursuant to this Chapter an officer may consider any factors relevant to whether the person's release would be likely to create a risk of immediate harm to himself or others or to result in a failure of the person to appear when required.

NOTE: Chapter 25 (commencing with § 25.10) is new but provides an alternative to arrest and detention where a peace officer apprehends a person accused of a crime. Compare former Rule 46(a)(1). These provisions are inspired by §§ 853.6 through 853.9 of the California Penal Code and §§ 2.1 through 2.5 of ABA, Project on Minimum Standards for Criminal Justice Pretrial Release (Approved draft 1968). Unlike the California procedure, the procedure provided here is not limited to cases involving a misdemeanor. In contrast to the ABA standards, release on a citation is never mandatory but rather always at the discretion of the arresting officer (or other officers into whose custody the person comes). The procedure is available only where the arrest is without a warrant. Where a warrant has been issued, the officer must obey its commands.

It seems impossible to establish in advance absolute guidelines for release. Factors which may be relevant in certain cases include: the nature and circumstances of the offense, the accused's place and length of residence, employment, length of employment, family relationships, past history of response to legal process, past criminal record, and present physical and mental condition and attitude. To be more specific, has the person refused to identify himself, is he intoxicated, is he threatened by or threatening to cause further violence. Obviously each of these factors would

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mitigate against release. On the other hand, if the offense is minor one, the person is cooperative and appears to have substantial ties to the community so that there seems little likelihood that he will fail to appear as required, release upon a citation would be appropriate.

Section 25.10 refers to the arresting officer and *any other officer* whose custody the arrested person is placed. In some cases, the officer in the field may exercise his discretion to release the arrested person. However, in others, the person will be arrested, brought to the station house and booked. Often there may be no reason to further detain the person after the booking and the booking officer is therefore also given the discretion to release.

Of course, nothing in this Chapter affects the authority of the officer to conduct an otherwise lawful search as an incident to the initial arrest.

§ 25.20. Notice to Appear: Form; Permitted.

(a) If an officer determines that the person arrested should be released, the officer shall prepare in duplicate a written notice to appear in court, containing the name and address of the person, the offense charged, and the time and place when and where the person shall appear in court. Unless waived by the person the time specified in the notice to appear shall be at least five days after the arrest. The place specified in the notice shall be the court of the judge before whom the person would be taken if the requirement of § 45.10 were satisfied.

(b) The arrested person, in order to secure his release, shall give his written promise to appear in court by signing the duplicate notice. The officer shall retain one copy and give one copy of the notice to such person. Thereupon, the officer shall forthwith release the person from custody.

NOTE: Section 25.20 is substantively the same as portions of Subdivisions (a) through (d) of § 853.6 of the California Penal Code.

§ 25.30. Notice to Appear: Where Delivered.

The officer shall forthwith deliver the copy of the notice to appear to the prosecuting attorney charged with the duty to prosecute the offense charged. At or before the time at which the person promised to appear, if the prosecuting attorney determines that the offense should be prosecuted, he shall file the notice to appear and a complaint and affidavits which satisfy the requirements of § 45.20 in the court in which the person has promised to appear. If the prosecuting attorney determines that the offense should not be prosecuted he shall make a reasonable effort to notify the person arrested that his appearance will not be required.

NOTE: Section 25.30 provides a means for notice to the prosecuting attorney of the offense charged and the scheduled appearance. If the prosecuting attorney determines

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that the offense charged should be prosecuted, he must file a complaint and affidavits showing probable cause in the court at or before the scheduled time of appearance. If the prosecuting attorney determines that the offense should not be prosecuted, a reasonable attempt should be made to notify the person arrested that his appearance will not be required. It should be noted, however, that control of the prosecution of the case is placed with the prosecuting attorney.

§ 25.40. Warrant to be Issued Upon Failure to Appear After Signing Notice to Appear.

When a person signs a written promise to appear as provided in this Chapter and fails to appear as promised, a warrant for his arrest may be issued by the court in which he promised to appear at any time after such failure.

NOTE: Section § 25.40 provides separate authority for issuance of an arrest warrant. The court is not required to determine from the complaint if any offense occurred and if reasonable grounds implicate the defendant. See *People v. Superior Court*, 262 C.A.2d 283, 68 Cal. Rptr. 629, cert. denied 393 U.S. 967 (1968) (construing California counterpart Cal. Pen. Code § 853.8). § 25.20 through 25.50 give force of law to the procedure now in use by the Attorney General and generally followed by the courts. Certain modifications have been made here to the informal existing procedure.

§ 25.50. Willful Failure to Appear: Felony if Offense Underlying Notice is Felony; Misdemeanor if Offense Misdemeanor.

Any person who willfully violates his written promise to appear in court is:

- (a) guilty of a felony, if he was released in connection with a charge of felony.
- (b) guilty of a misdemeanor, if he was released in connection with a charge of any offense not a felony.

NOTE: Section 25.40 states the same policy as that expressed in § 40.90.
