

CHAPTER 804

COMMENCEMENT OF ACTIONS — ARREST — DISPOSITIONS OF PRISONERS

[P]

See chapter 805

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804.1 Arrest by warrant — complaint and citation defined.

A criminal proceeding may be commenced by the filing of a complaint before a magistrate. When such complaint is made, charging the commission of some designated public offense in which such magistrate has jurisdiction, and it appears from the complaint or from affidavits filed with it that there is probable cause to believe an offense has been committed and a designated person has committed it, the magistrate shall, except as otherwise provided, issue a warrant for the arrest of such person.

If the complaint charges a public offense, the magistrate may issue a citation instead of a warrant of arrest. The citation shall set forth substantially the nature of the offense and shall command the person against whom the complaint was made to appear before the magistrate issuing the citation at a time and place stated in the citation. The magistrate shall prescribe the manner of service for the citation at the time the citation is issued.

The citation may be served in the same manner as an original notice in a civil action.

If the person named in the citation is actually served as provided herein and willfully fails without good cause to appear as commanded by the citation, the person shall be guilty of a simple misdemeanor and the magistrate may issue a warrant of arrest for the offense originally charged.

If after issuing a citation the magistrate becomes satisfied that the person to whom such citation has been directed will not appear, the magistrate may at once issue a warrant of arrest without waiting for the date mentioned in the citation.

[C51, §2822; R60, §4530; C73, §4111, 4185; C97, §5101, 5182; C24, 27, 31, 35, 39, §13458 – 13460; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §754.1 – 754.3; C79, 81, §804.1]

83 Acts, ch 50, §1, 7

[P] See §805.1, 805.4, 805.6; R.Cr.P. 2.54, 2.72, 2.76 – Form 1

804.2 Contents of arrest warrant.

The warrant must be directed to any peace officer in the state; give the name of the defendant, if known to the magistrate; if unknown, may designate “name unknown”; and must state by name or general description an offense which authorizes a warrant to issue, the date of issuing it, the county or city where issued, and be signed by the magistrate with the magistrate’s name of office.

[C51, §2828, 2829; R60, §4535, 4536; C73, §4187, 4188; C97, §5184; C24, 27, 31, 35, 39, §13462; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §754.5; C79, 81, §804.2]

[P] See R.Cr.P. 2.36 – Form 5

804.3 Order for bail — endorsed on warrant.

If the offense stated in the warrant be bailable, the magistrate issuing it must make an endorsement thereon as follows: “Let the defendant, when arrested, be (admitted to bail in the sum of dollars) or (stating other conditions of release).”

[R60, §4537; C73, §4189; C97, §5185; C24 27, 31, 35, 39, §13463; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §754.6; C79, 81, §804.3]

[P] See R.Cr.P. 2.36 – Form 6

804.4 Manner of executing warrant.

The warrant may be delivered to any peace officer for execution, and served in any county in the state.

[R60, §4538; C73, §4190; C97, §5186; C24, 27, 31, 35, 39, §13464; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §754.7; C79, 81, §804.4]

804.5 Arrest defined.

Arrest is the taking of a person into custody when and in the manner authorized by law, including restraint of the person or the person’s submission to custody.

[C51, §2837, 2838, 2850; R60, §4545, 4551, 4557 – 4559; C73, §4197, 4203, 4209 – 4211; C97, §5193, 5194; C24, 27, 31, 35, 39, §13465, 13466; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §755.1, 755.2; C79, 81, §804.5]

804.6 Persons authorized to make an arrest.

An arrest pursuant to a warrant shall be made only by a peace officer; in other cases, an arrest may be made by a peace officer or by a private person as provided in this chapter.

[R60, §4546; C73, §4198; C97, §5195; C24, 27, 31, 35, 39, §13467; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §755.3; C79, 81, §804.6]

804.7 Arrests by peace officers.

A peace officer may make an arrest in obedience to a warrant delivered to the peace officer; and without a warrant:

1. For a public offense committed or attempted in the peace officer’s presence.
2. Where a public offense has in fact been committed, and the peace officer has reasonable ground for believing that the person to be arrested has committed it.
3. Where the peace officer has reasonable ground for believing that an indictable public offense has been committed and has reasonable ground for believing that the person to be arrested has committed it.
4. Where the peace officer has received from the department of public safety, or from any other peace officer of this state or any other state or the United States an official communication by bulletin, radio, telegraph, telephone, or otherwise, informing the peace officer that a warrant has been issued and is being held for the arrest of the person to be arrested on a designated charge.
5. If the peace officer has reasonable grounds for believing that domestic abuse, as defined in section 236.2, has occurred and has reasonable grounds for believing that the person to be arrested has committed it.

6. As required by section 236.12, subsection 2.

[C51, §2840; R60, §4547, 4548; C73, §4199, 4200; C97, §5196; C24, 27, 31, 35, 39, §13468; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §755.4; C79, 81, §804.7]

85 Acts, ch 175, §12; 86 Acts, ch 1179, §7

[P] See R.Cr.P. 2.36 – Form 6

804.7A Arrests by federal law enforcement officers.

1. For purposes of this section, “*federal law enforcement officer*” means a person employed full time by the United States government who is empowered to effect an arrest with or without a warrant for a violation of the United States Code and who is authorized to carry a firearm in the performance of the person’s duties as a federal law enforcement officer.

2. A federal law enforcement officer has the same authority, as provided in section 804.7, subsection 3, and has the same immunity from suit in this state as a peace officer, as defined in section 801.4, subsection 11, when making an arrest in this state for a nonfederal crime if either of the following exists:

a. The federal law enforcement officer has reasonable grounds for believing that an indictable public offense has been committed and has reasonable grounds for believing that the person to be arrested has committed it.

b. The federal law enforcement officer is rendering assistance to a peace officer of this state in an emergency or at the request of the peace officer.

90 Acts, ch 1014, §1

804.7B Arrests by out-of-state peace officers.

1. For purposes of this section, “*out-of-state peace officer*” means a person employed full time as a peace officer by a state other than Iowa or a political subdivision of a state other than Iowa who is empowered to effect an arrest with or without a warrant under the laws of that jurisdiction, who is authorized to carry a firearm in the performance of the person’s duties, and who is certified or licensed as a regular peace officer in the jurisdiction in which the person’s employing agency or appointing authority is located. Notwithstanding section 804.7A, for purposes of this section “*out-of-state peace officer*” also means a person employed full time by the United States government who is empowered to effect an arrest with or without a warrant for a violation of the United States Code and who is authorized to carry a firearm in the performance of the person’s duties as a federal law enforcement officer.

2. a. An out-of-state peace officer may make arrests and conduct other law enforcement activities in this state pursuant to an agreement entered into under chapter 28E by the peace officer’s employing agency or appointing authority and the state of Iowa or a political subdivision of the state of Iowa. Any arrests made or activities conducted by an out-of-state peace officer shall be in accordance with any conditions and specifications contained in the agreement and shall be in accordance with Iowa law. An out-of-state peace officer who makes an arrest or conducts an activity in this state shall immediately contact and cooperate with a law enforcement agency having jurisdiction over the area in which the activities have occurred. An out-of-state peace officer who acts in accordance with an agreement entered into pursuant to this section and Iowa law has the same immunity from suit in this state as a peace officer, as defined in section 801.4.

b. Out-of-state peace officers making arrests or conducting law enforcement activities in this state pursuant to a chapter 28E agreement are not employees or agents of the state of Iowa or any political subdivision of the state of Iowa. To the extent permitted by law, the employing agency or appointing agency of the out-of-state peace officer and the out-of-state peace officer are liable for any acts or omissions which arise out of the arrests or law enforcement activities of the out-of-state peace officer.

c. Agreements made under this section shall not exceed any jurisdictional limitations to which the state or the political subdivision of this state are subject. Agreements made under this section shall not permit out-of-state peace officers to perform regularly scheduled or routine patrol functions. This section shall not be construed to limit the authority of an

employing agency or appointing authority to restrict the exercise of power or authority of peace officers who are employed by or are the agents of the agency or authority.

98 Acts, ch 1140, §1

804.8 Use of force by peace officer making an arrest.

A peace officer, while making a lawful arrest, is justified in the use of any force which the peace officer reasonably believes to be necessary to effect the arrest or to defend any person from bodily harm while making the arrest. However, the use of deadly force is only justified when a person cannot be captured any other way and either

1. The person has used or threatened to use deadly force in committing a felony or
2. The peace officer reasonably believes the person would use deadly force against any person unless immediately apprehended.

A peace officer making an arrest pursuant to an invalid warrant is justified in the use of any force which the peace officer would be justified in using if the warrant were valid, unless the peace officer knows that the warrant is invalid.

[C51, §2844; R60, §4553; C73, §4205; C97, §5200; C24, 27, 31, 35, 39, §13472; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §755.8; C79, 81, §804.8]

[P] See §704.1 – 704.3

804.9 Arrests by private persons.

A private person may make an arrest:

1. For a public offense committed or attempted in the person's presence.
2. When a felony has been committed, and the person has reasonable ground for believing that the person to be arrested has committed it.

[C51, §2846; R60, §4549; C73, §4201; C97, §5197; C24, 27, 31, 35, 39, §13469; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §755.5; C79, 81, §804.9]

804.10 Use of force in arrest by private person.

A private person who makes or assists another private person in making a lawful arrest is justified in using any force which the person reasonably believes to be necessary to make the arrest or which the person reasonably believes to be necessary to prevent serious injury to any person.

A private person who is summoned or directed by a peace officer to assist in making an arrest may use whatever force the peace officer could use under the circumstances, provided that, if the arrest is unlawful, the private person assisting the officer shall be justified as if the arrest were a lawful arrest, unless the person knows that the arrest is unlawful.

[C79, 81, §804.10]

[P] See §704.1 – 704.3

804.11 Arrest of material witness.

When a law enforcement officer has probable cause to believe that a person is a necessary and material witness to a felony and that such person might be unavailable for service of a subpoena, the officer may arrest such person as a material witness with or without an arrest warrant.

At the time of the arrest, the law enforcement officer shall inform the person of:

1. The officer's identity as a law enforcement officer; and
2. The reason for the arrest which is that the person is believed to be a material witness to an identified felony and that the person might be unavailable for service of a subpoena.

[C51, §2876 – 2879; R60, §4601 – 4604; C73, §4248 – 4251; C97, §5232 – 5235; C24, 27, 31, 35, 39, §13547 – 13550; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §761.21 – 761.24; C79, 81, §804.11]

[P] See §815.6

804.12 Use of force in resisting arrest.

A person is not authorized to use force to resist an arrest, either of the person's self, or another which the person knows is being made either by a peace officer or by a private person

summoned and directed by a peace officer to make the arrest, even if the person believes that the arrest is unlawful or the arrest is in fact unlawful.

[C51, §2669; R60, §4296; C73, §3960; C97, §4899; C24, 27, 31, 35, 39, §13331; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §742.1; C79, 81, §804.12]

804.13 Use of force in preventing an escape.

A peace officer or other person who has an arrested person in custody is justified in the use of such force to prevent the escape of the arrested person from custody as the officer or other person would be justified in using if the officer or other person were arresting such person.

[C51, §2844; R60, §4553; C73, §4205; C97, §5200; C24, 27, 31, 35, 39, §13472; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §755.8; C79, 81, §804.13]

804.14 Manner of making arrest.

The person making the arrest must inform the person to be arrested of the intention to arrest the person, the reason for arrest, and that the person making the arrest is a peace officer, if such be the case, and require the person being arrested to submit to the person's custody, except when the person to be arrested is actually engaged in the commission of or attempt to commit an offense, or escapes, so that there is no time or opportunity to do so; if acting under the authority of a warrant, the law enforcement officer need not have the warrant in the officer's possession at the time of the arrest, but upon request the officer shall show the warrant to the person being arrested as soon as possible. If the officer does not have the warrant in the officer's possession at the time of arrest, the officer shall inform the person being arrested of the fact that a warrant has been issued.

[C51, §2839, 2841, 2847; R60, §4552; C73, §4204; C97, §5199; C24, 27, 31, 35, 39, §13471; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §755.7; C79, 81, §804.14]

804.15 Breaking and entering premises — demand to enter.

If a law enforcement officer has reasonable cause to believe that a person whom the officer is authorized to arrest is present on any private premises, the officer may upon identifying the officer as such, demand that the officer be admitted to such premises for the purpose of making the arrest. If such demand is not promptly complied with, the officer may thereupon enter such premises to make the arrest, using such force as is reasonably necessary.

[C51, §2843, 2848; R60, §4554; C73, §4206; C97, §5201; C24, 27, 31, 35, 39, §13473; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §755.9; C79, 81, §804.15]

804.16 Time of arrest.

An arrest may be made on any day and at any time of the day or night.

[C51, §2837, 2850; R60, §4545, 4551; C73, §4197, 4203; C97, §5193; C24, 27, 31, 35, 39, §13465; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §755.1; C79, 81, §804.16]

804.17 Summoning aid.

Any peace officer making a legal arrest may orally summon as many persons as the officer reasonably finds necessary to aid the officer in making the arrest.

[R60, §4556; C73, §4208; C97, §5203; C24, 27, 31, 35, 39, §13475; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §755.11; C79, 81, §804.17]

804.18 Taking weapons.

Any person who makes an arrest may take from the person arrested all items which are capable of causing bodily harm which the arrested person may have within the arrested person's control to be disposed of according to law.

[R60, §4560; C73, §4212; C97, §5204; C24, 27, 31, 35, 39, §13476; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §755.12; C79, 81, §804.18]

804.19 Receipt given.

When money or other property is taken from the defendant arrested on a charge of a public offense, the officer taking it shall, at the time, give duplicate receipts therefor, specifying

particularly the amount of money and the kind of property taken. The officer shall deliver one of the receipts to the defendant, and shall retain the other receipt with the defendant's file.

[C79, 81, §804.19]

94 Acts, ch 1047, §1

804.20 Communications by arrested persons.

Any peace officer or other person having custody of any person arrested or restrained of the person's liberty for any reason whatever, shall permit that person, without unnecessary delay after arrival at the place of detention, to call, consult, and see a member of the person's family or an attorney of the person's choice, or both. Such person shall be permitted to make a reasonable number of telephone calls as may be required to secure an attorney. If a call is made, it shall be made in the presence of the person having custody of the one arrested or restrained. If such person is intoxicated, or a person under eighteen years of age, the call may be made by the person having custody. An attorney shall be permitted to see and consult confidentially with such person alone and in private at the jail or other place of custody without unreasonable delay. A violation of this section shall constitute a simple misdemeanor.

[C62, 66, 71, 73, 75, 77, §755.17; C79, 81, §804.20]

804.21 Initial appearance before magistrate — arrest by warrant — release — bond schedule.

1. A person arrested in obedience to a warrant shall be taken without unnecessary delay before the nearest or most accessible magistrate. The officer shall at the same time deliver to the magistrate the warrant with the officer's return endorsed on it and subscribed by the officer with the officer's official title. However, this section, and sections 804.22 and 804.23, do not preclude the release of an arrested person within the period of time the person would otherwise remain incarcerated while waiting to be taken before a magistrate if the release is pursuant to pretrial release guidelines or a bond schedule promulgated by the judicial council, unless the person is charged with manufacture, delivery, possession with intent to manufacture or deliver, or distribution of methamphetamine. If, however, a person is released pursuant to pretrial release guidelines, a magistrate must, within twenty-four hours of the release, or as soon as practicable on the next subsequent working day of the court, either approve in writing of the release, or disapprove of the release and issue a warrant for the person's arrest.

2. Where the offense is bailable, the magistrate shall fix bail giving due consideration to the bail endorsed on the warrant or other conditions stipulated on the warrant for the defendant's appearance in the court which issued the warrant; if such person is not released on bail, the magistrate must redeliver the warrant to the officer, and the officer shall retain custody of the arrested person until the person's removal to appear before the magistrate who issued the warrant.

3. If the magistrate who issued the warrant is absent or unable to act, the arrested person shall be taken to the nearest or most accessible magistrate in the judicial district where the offense occurred or a magistrate in an approved judicial district, and all documents on which the warrant was issued must be sent to such magistrate, or if they cannot be procured, the informant and the informant's witnesses must be subpoenaed to make new affidavits. For purposes of this subsection, an "*approved judicial district*" means, as to any particular arrest of a person described in this subsection, any judicial district in this state in which the chief judge of that judicial district and the chief judge of the judicial district in which the offense occurred have previously entered an order permitting a person arrested or described in this subsection to be taken to a magistrate from any judicial district subject to the order.

4. When the court is not in session, a person arrested and placed in jail may be released on the person's own recognizance with or without other conditions, by the verbal or written order of a judge or magistrate. The verbal order may be communicated by telephone. The judge or magistrate may issue such order of release only upon the request of an attorney or person believed by the judge or magistrate to be reliable.

5. *a.* The judicial council shall promulgate rules and bond levels to be contained within a bond schedule for the release of an arrested person.

b. The bond schedule shall not be used unless both the following conditions are met:

- (1) The person was arrested for a crime other than a forcible felony, and
- (2) The courts are not in session.

6. This section does not prevent the release of the arrested person pending initial appearance upon the furnishing of bail in the amount endorsed on the warrant. The initial appearance of a person so released shall be scheduled for a time not more than thirty days after the date of release.

[C51, §2831 – 2836; R60, §4539 – 4544, 4565; C73, §4191 – 4196, 4217; C97, §5187 – 5192, 5207; C24, 27, 31, 35, 39, §13480 – 13487; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §757.1 – 757.8; C79, 81, §804.21]

83 Acts, ch 50, §2, 3, 7; 83 Acts, ch 51, §5, 9; 89 Acts, ch 83, §85; 98 Acts, ch 1115, §18; 2000 Acts, ch 1032, §4; 2005 Acts, ch 15, §7, 14; 2005 Acts, ch 174, §21, 25

804.22 Initial appearance before magistrate — arrest without warrant.

When an arrest is made without a warrant, the person arrested shall, without unnecessary delay, be taken before the nearest or most accessible magistrate in the judicial district in which such arrest was made or before a magistrate in an approved judicial district, and the grounds on which the arrest was made shall be stated to the magistrate by complaint, subscribed and sworn to by the complainant, or supported by the complainant's affirmation, and such magistrate shall proceed as follows:

1. If the magistrate believes from such complaint that the offense charged is triable in the magistrate's court, the magistrate shall proceed with the case.

2. If the magistrate believes from such complaint that the offense charged is triable in another court, the magistrate shall by written order, commit the person arrested to a peace officer, to be taken before the appropriate magistrate in the district in which the offense is triable, and shall fix the amount of bail or other conditions of release which the person arrested may give for the person's appearance at the other court.

This section and the rules of criminal procedure do not affect the provisions of chapter 805 authorizing the release of a person on citation or bail prior to initial appearance, unless the person is charged with manufacture, delivery, possession with intent to manufacture or deliver, or distribution of methamphetamine. The initial appearance of a person so released shall be scheduled for a time not more than thirty days after the date of release.

For purposes of this section, an "*approved judicial district*" means, as to any particular arrest of a person made without a warrant, any judicial district in this state in which the chief judge of that judicial district and the chief judge of the judicial district in which the arrest was made have previously entered an order permitting a person arrested without warrant to be taken to a magistrate from any judicial district subject to the order.

[R60, §4566, 4567, 4569; C73, §4218, 4219, 4221; C97, §5208, 5209, 5211; C24, 27, 31, 35, 39, §13488, 13489, 13492; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §758.1, 758.2, 758.5; C79, 81, §804.22]

83 Acts, ch 50, §4, 7; 98 Acts, ch 1115, §19, 20; 2000 Acts, ch 1032, §5; 2005 Acts, ch 15, §8, 14; 2005 Acts, ch 174, §22, 25

[P] See R.Cr.P. 2.2, 2.51 – 2.62; chapters 805, 811

804.23 Initial appearance of arrested material witness before magistrate.

The officer shall, without unnecessary delay, take the person arrested pursuant to section 804.11 before the nearest or most accessible magistrate to the place where the arrest occurred.

At the appearance before the magistrate, the law enforcement officer shall make a showing to the magistrate, by sworn affidavit, that probable cause exists to believe that a person is a necessary and material witness to a felony and that such person might be unavailable for

service of a subpoena. The magistrate may order the person released pursuant to section 811.2.

[C51, §2876 – 2879; R60, §4601 – 4604; C73, §4248 – 4251; C97, §5232 – 5235; C24, 27, 31, 35, 39, §13547 – 13550; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §761.21 – 761.24; C79, 81, §804.23]

804.24 Arrests by private persons — disposition of prisoner.

A private citizen who has arrested another for the commission of an offense must, without unnecessary delay, take the arrested person before a magistrate, or deliver the arrested person to a peace officer, who may take the arrested person before a magistrate, but the person making the arrest must also accompany the officer before the magistrate.

[C51, §2842, 2849; R60, §4562 – 4564; C73, §4214-4216; C97, §5206; C24, 27, 31, 35, 39, §13478; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §755.14; C79, 81, §804.24]

804.25 Bail — discharge.

Any magistrate who receives bail as provided for in sections 804.21, subsection 2, and 804.22, subsection 2, shall endorse, on the order of commitment or on the warrant, an order for the discharge from custody of the arrested person, who shall forthwith be discharged, and shall transmit by mail, or otherwise, as soon as it can be conveniently done, to the court at which the person is bound to appear, the affidavits, order of commitment or warrant, and discharge, together with the undertaking of bail.

[C51, §2833; R60, §4541, 4570; C73, §4193, 4222; C97, §5189, 5212; C24, 27, 31, 35, 39, §13483, 13493; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §757.4, 758.6; C79, 81, §804.25]

[P] See R.Cr.P. 2.37 – Forms 2 and 3

804.26 Officer's return.

In all cases, the peace officer, when the officer takes a person committed to the officer under an order as provided in this chapter before a magistrate, either for the purpose of giving bail, if bail be taken, or for trial or preliminary examination, must make a return on such order, and sign such return with the officer's name of office, and deliver the same to the magistrate.

[R60, §4573; C73, §4225; C97, §5215; C24, 27, 31, 35, 39, §13496; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §758.9; C79, 81, §804.26]

804.27 Conveying prisoner to jail — fees and expenses.

Every officer or person who shall arrest anyone with a warrant or order issued by any court or officer, or who shall be required to convey a prisoner to such jail on an order of commitment, may be allowed the same fees and expenses as provided for in case of such services by the sheriff.

[C73, §3820; C97, §1292; C24, 27, 31, 35, 39, §13479; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §755.15; C79, 81, §804.27]

804.28 Department of public safety prisoners.

The sheriff of any county shall accept for custody in the county jail of the sheriff's respective county any person handed over to the sheriff for safekeeping and lodging by any member of the department of public safety. The county shall not be liable for medical treatment for injuries incurred by a person before the person is transferred to the custody of the sheriff. Any expenses payable by the state pursuant to this section shall be paid out of any moneys in the state treasury not otherwise appropriated. The expenses shall be paid on claims filed with the department of administrative services.

[C39, §13479.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §755.16; C79, 81, §804.28]

98 Acts, ch 1086, §4; 2003 Acts, ch 145, §286

804.29 Confidentiality.

All information filed with the court for the purpose of securing a warrant for an arrest, including but not limited to a citation and affidavits, shall be a confidential record until such time as a peace officer has made the arrest and has made the officer's return on the warrant.

During the period of time that information is confidential, it shall be sealed by the court and the information contained therein shall not be disseminated to any person other than a peace officer, employee of a county attorney's office, magistrate, or another court employee, in the course of official duties.

[C79, 81, §804.29]

2006 Acts, ch 1048, §1

804.30 Strip searches.

A person arrested for a scheduled violation or a simple misdemeanor shall not be subjected to a strip search unless there is probable cause to believe the person is concealing a weapon or contraband. A strip search pursuant to this section shall not be conducted except under all of the following conditions:

1. Written authorization of the supervisor on duty is obtained.
2. A search warrant is obtained for the probing of any body cavity other than the mouth, ears or nose.
3. A visual search or probing of any body cavity shall be performed under sanitary conditions. A physical probe of a body cavity other than the mouth, ears or nose shall be performed only by a licensed physician unless voluntarily waived in writing by the arrested person.
4. The search is conducted in a place where it cannot be observed by persons not conducting the search.
5. The search is conducted by a person of the same sex as the arrested person, unless conducted by a physician.

Subsequent to a strip search a written report shall be prepared which includes the written authorization required by subsection 1, the name of the person subjected to the search, the names of the persons conducting the search, the time, date and place of the search and, if required by subsection 2, a copy of the search warrant authorizing the search. A copy of the report shall be provided to the person searched.

[C81, §804.30]

804.31 Arrest of deaf or hard-of-hearing person — use of interpreters — fee.

When a person is detained for questioning or arrested for an alleged violation of a law or ordinance and there is reason to believe that the person is deaf or hard-of-hearing, the peace officer making the arrest or taking the person into custody or any other officer detaining the person shall determine if the person is a deaf or hard-of-hearing person as defined in section 622B.1. If the officer so determines, the officer, at the earliest possible time and prior to commencing any custodial interrogation of the person, shall procure a qualified interpreter in accordance with section 622B.2 and the rules adopted by the supreme court under section 622B.1 unless the deaf or hard-of-hearing person knowingly, voluntarily, and intelligently waives the right to an interpreter in writing by executing a form prescribed by the department of human rights and the Iowa county attorneys association. The interpreter shall interpret the officer's warnings of constitutional rights and protections and all other warnings, statements, and questions spoken or written by any officer, attorney, or other person present and all statements and questions communicated in sign language by the deaf or hard-of-hearing person.

This section does not prohibit the request for and administration of a preliminary breath screening test or the request for and administration of a chemical test of a body substance or substances under chapter 321J prior to the arrival of a qualified interpreter for a deaf or hard-of-hearing person who is believed to have committed a violation of section 321J.2. However, upon the arrival of the interpreter the officer who requested the chemical test shall explain through the interpreter the reason for the testing, the consequences of the person's consent or refusal, and the ramifications of the results of the test, if one was administered.

When an interpreter is not readily available and the deaf or hard-of-hearing person's identity is known, the person may be released by the law enforcement agency into the temporary custody of a reliable family member or other reliable person to await the arrival

of the interpreter, if the person is eligible for release on bail and is not believed to be an immediate threat to the person's own safety or the safety of others.

An answer, statement, or admission, oral or written, made by a deaf or hard-of-hearing person in reply to a question of a law enforcement officer or any other person having a prosecutorial function in a criminal proceeding is not admissible in court and shall not be used against the deaf or hard-of-hearing person if that answer, statement, or admission was not made or elicited through a qualified interpreter, unless the deaf or hard-of-hearing person had waived the right to an interpreter pursuant to this section. In the event of a waiver and criminal proceeding, the court shall determine whether the waiver and any subsequent answer, statement, or admission made by the deaf or hard-of-hearing person were knowingly, voluntarily, and intelligently made.

When communication occurs with a person through an interpreter pursuant to this section, all questions or statements and responses shall be relayed through the interpreter. The role of the interpreter is to facilitate communication between the hearing and deaf or hard-of-hearing parties. An interpreter shall not be compelled to answer any question or respond to any statement that serves to violate that role at the time of questioning or arrest or at any subsequent administrative or judicial proceeding.

An interpreter procured under this section shall be paid a reasonable fee and expenses by the governmental subdivision funding the law enforcement agency that procured the interpreter.

84 Acts, ch 1264, §1; 85 Acts, ch 131, §2; 86 Acts, ch 1220, §42; 88 Acts, ch 1134, §115; 93 Acts, ch 75, §14