

Amended 3/3
SENATE FILE 334
Amended per 32403
Do Pass 3/16/83 (p 789)

Reprinted 2/21/83

Judiciary
Deluhery, Chair
Mann
Ritsema

REC'D MAR 2 1983

SENATE FILE 334

BY DELUHERY

Passed Senate, Date 3-30-83 (p 1025) Passed House, Date _____

Vote: Ayes 48 Nays 0 Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to the release of a defendant before an
2 appearance before a magistrate.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 334

1 Section 1. Section 804.21, subsection 1, Code 1983, is
2 amended to read as follows:

3 1. Any A person arrested in obedience to a warrant shall,
4 ~~without-unnecessary-delay,~~ be taken without unnecessary delay
5 before the nearest or most accessible magistrate to the place
6 where the arrest occurred, ~~and the.~~ The officer must shall
7 at the same time deliver to the magistrate the warrant with
8 the officer's return ~~thereon~~ on it and subscribed
9 by the officer with ~~his-or-her~~ the officer's official title.
10 However, this section, and sections 804.22 and 804.23, do
11 not preclude the release of an arrested person within the
12 period of time the person would otherwise remain incarcerated
13 while waiting to be taken before a magistrate if the release
14 is pursuant to pretrial release guidelines promulgated under
15 R.Cr.P. 29 and R.C.P. 372.

16 Sec. 2. Section 811.2, Code 1983, is amended by adding
17 the following new subsection 3 and renumbering the remaining
18 subsections:

19 NEW SUBSECTION. 3. This chapter does not preclude the
20 release of an arrested person as authorized by section 804.21.

21 Sec. 3. Rule of criminal procedure 2, subsection 1, Iowa
22 court rules, 2d ed., is amended to read as follows:

23 1. INITIAL APPEARANCE OF DEFENDANT. An officer making
24 an arrest with or without a warrant shall take the arrested
25 person without unnecessary delay before a committing magistrate
26 as provided by law. However, this section does not preclude
27 the release of an arrested person within the period of time
28 the person would otherwise remain incarcerated while waiting
29 to be taken before a magistrate, if the release is pursuant
30 to pretrial release guidelines which have been promulgated
31 under R.Cr.P. 29 and R.C.P. 372. When a person arrested
32 without a warrant is brought before a magistrate, a complaint
33 shall be filed forthwith. If the defendant received a citation
34 or was arrested without a warrant, the magistrate shall, prior
35 to further proceedings in the case, make an initial,

1 preliminary determination from the complaint, or from an
2 affidavit or affidavits filed with the complaint or from an
3 oral statement under oath or affirmation from the arresting
4 officer or other person, whether there is probable cause to
5 believe that an offense has been committed and that the
6 defendant has committed it. The magistrate's decision in
7 this regard shall be entered in the magistrate's record of
8 the case.

9 EXPLANATION

10 This bill amends the Code and rule of criminal procedure
11 2 to allow an arrested person to be released pursuant to
12 pretrial release guidelines, while waiting to be taken before
13 a magistrate.

14 Presently a supervisory order of the supreme court filed
15 January 14, 1983 interpreting Iowa rules of criminal procedure
16 1 and 2, prohibits this type of release.

17 The bill takes effect July 1 following its enactment.

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SENATE FILE 334

BY DELUHERY

(AS AMENDED AND PASSED BY THE SENATE MARCH 30, 1983)

Passed Senate, Date 3-30-83 (p.1025) *Substituted for H. F. 583* Passed House, Date 3-31-83 (p.1064)
 Vote: Ayes 48 Nays 0 Vote: Ayes 96 Nays 0
 Approved April 28, 1983 (p. 1473)

A BILL FOR

1 An Act relating to the release of a defendant before an
 2 appearance before a magistrate.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

4

5

6

121st Day

TUESDAY, MAY 10, 1983

1641

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COMMUNICATION FROM THE SECRETARY OF STATE

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May 9, 1983

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Ms. K. Marie Thayer
 Secretary of the Senate
 State Capitol Building
 LOCAL

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Dear Ms. Thayer:

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I hereby certify that Senate File 334 was published in the Quad City Times,
 Davenport, Iowa, on May 5, 1983, and in The Onawa Sentinel, Onawa, Iowa, on May
 5, 1983.

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Respectfully submitted,
 MARY JANE ODELI,
 Secretary of State

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1 Section 1. Section 804.1, unnumbered paragraph 2, Code
2 1983, is amended to read as follows:

3 ~~Whenever~~ If the complaint charges a ~~simple-misdemeanor~~
4 public offense, the magistrate may issue a citation instead
5 of a warrant of arrest. The citation shall set forth
6 substantially the nature of the offense and shall command
7 the person against whom the complaint was made to appear
8 before the magistrate issuing the citation at a time and place
9 stated ~~therein~~ in the citation. The magistrate shall prescribe
10 the manner of service for the citation at the time the citation
11 is issued.

12 Sec. 2. Section 804.21, subsection 1, Code 1983, is amended
13 to read as follows:

14 1. ~~Any~~ A person arrested in obedience to a warrant shall,
15 ~~without-unnecessary-delay~~, be taken without unnecessary delay
16 before the nearest or most accessible magistrate ~~to-the-place~~
17 ~~where-the-arrest-occurred,-and-the~~. The officer must shall
18 at the same time deliver to the magistrate the warrant with
19 the officer's return ~~thereon~~ on it and subscribed
20 by the officer with ~~his-or-her~~ the officer's official title.
21 However, this section, and sections 804.22 and 804.23, do
22 not preclude the release of an arrested person within the
23 period of time the person would otherwise remain incarcerated
24 while waiting to be taken before a magistrate if the release
25 is pursuant to pretrial release guidelines or a bond schedule
26 promulgated by the judicial council acting pursuant to Iowa
27 rule of civil procedure 380. If, however, a person is released
28 pursuant to pretrial release guidelines, a magistrate must,
29 within twenty-four hours of such release, or as soon as
30 practicable on the next subsequent working day of the court,
31 either (1) approve in writing of the release, or (2) disapprove
32 of the release and issue a warrant for the person's arrest.

33 Sec. 3. Section 804.21, Code 1983, is amended by adding
34 the following new subsections:

35 NEW SUBSECTION. 4. a. The judicial council shall

1 promulgate rules and bond levels to be contained within a
2 bond schedule for the release of an arrested person.

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

5 (1) The person was arrested for a crime other than a
6 forcible felony, and

7 (2) The courts are not in session.

8 NEW SUBSECTION. 5. This section does not prevent the
9 release of the arrested person pending initial appearance
10 upon the furnishing of bail in the amount endorsed on the
11 warrant. The initial appearance of a person so released shall
12 be scheduled for a time not more than ten days after the date
13 of release.

14 Sec. 4. Section 804.22, Code 1983, is amended by adding
15 the following new unnumbered paragraph:

16 NEW UNNUMBERED PARAGRAPH. This section and the rules of
17 criminal procedure do not affect the provisions of chapter
18 805 authorizing the release of a person on citation or bail
19 prior to initial appearance. The initial appearance of a
20 person so released shall be scheduled for a time not more
21 than ten days after the date of release.

22 Sec. 5. Section 805.1, Code 1983, is amended by striking
23 the section and inserting in lieu thereof the following:

24 805.1 WHEN POLICE CITATION MAY ISSUE.

25 1. Except as to an offense for which an accused would
26 not be eligible for bail after conviction pursuant to section
27 811.1, a law enforcement officer has authority to issue a
28 citation in lieu of an arrest without a warrant or in lieu
29 of continued custody after a warrantless arrest. The decision
30 whether to issue a citation in lieu of arrest shall be made
31 by an officer with grounds to make an arrest. The decision
32 whether to issue a citation in lieu of continued custody after
33 an arrest or to release the person on bail shall be made by
34 the ranking officer on duty.

35 2. The citation procedure for traffic and other violations

1 designated as scheduled violations is governed by sections
2 805.6 through 805.15.

3 3. A law enforcement officer who has grounds to charge
4 a person with other simple misdemeanors shall issue a citation
5 in lieu of arrest or, if an arrest has been made, the ranking
6 officer on duty shall issue a citation or shall release the
7 person pursuant to pretrial release guidelines or a bond
8 schedule promulgated pursuant to section 804.21, subsection
9 1, in lieu of keeping the person in custody. This requirement
10 does not apply, and the officer may arrest or retain a person
11 in custody in any of the following situations:

12 a. When the person refuses or fails to offer satisfactory
13 identification.

14 b. When the person refuses to sign the citation.

15 c. When detention is reasonably necessary to prevent
16 bodily harm to the accused or to another.

17 d. When the person appears to be under the influence of
18 intoxicants or drugs and no one is available to take
19 responsibility for the person's custody and safety.

20 e. When the person has insufficient ties to the
21 jurisdiction, or a contiguous jurisdiction, to assure the
22 person's appearance and a substantial likelihood exists that
23 the person will refuse to respond to a citation.

24 f. When the person previously failed to respond to a
25 citation or to appear after release on pretrial release
26 guidelines.

27 4. In other cases in which a citation is authorized, a
28 law enforcement officer who has grounds to make an arrest
29 may instead issue a citation or, after arrest, the ranking
30 officer on duty may issue a citation or may release the person
31 pursuant to pretrial release guidelines or a bond schedule
32 promulgated pursuant to section 804.21, subsection 1, in lieu
33 of continued custody. In determining whether to issue a
34 citation the officer shall consider the safety of the community
35 and all of the following facts concerning the person:

- 1 a. Place and length of residence.
- 2 b. Family relationships.
- 3 c. References.
- 4 d. Present and past employment.
- 5 e. Criminal record.
- 6 f. Nature and circumstances of the alleged offense.
- 7 g. Other facts relevant to the likelihood of the person's
- 8 response to a citation.

9 In making this decision, the officer shall follow the
10 recommendations of the pretrial release services of the
11 judicial district department of correctional services, when
12 available.

13 5. The issuance of a citation in lieu of arrest or
14 continued custody does not affect the officer's authority
15 to conduct an otherwise lawful search. The issuance of a
16 citation in lieu of arrest shall be deemed an arrest for
17 purposes of the speedy indictment requirements of R.Cr.P.
18 27, subsection 2, paragraph a, Ia. Ct. Rules, 2d ed.

19 6. Even if a citation is issued, the officer has authority
20 to take the cited person to an appropriate medical facility
21 if the person reasonably appears to need such care.

22 7. When an officer determines pursuant to subsection 3
23 or 4 that a citation should not be issued, the officer has
24 authority to release the arrested person on bail or on other
25 conditions as determined by the supreme court in pretrial
26 release guidelines promulgated pursuant to section 804.21,
27 subsection 1. In following the pretrial release guidelines
28 the officer shall follow the recommendations of the pretrial
29 release services of the judicial district department of
30 correctional services, when available. When the arrested
31 person furnishes bail, the officer shall maintain it in
32 safekeeping and shall turn it over to the clerk of court not
33 later than during the next subsequent regular business day
34 that the clerk's office is open.

35 8. When the offense is one for which citation is not

1 authorized, the person does not meet the pretrial release
2 criteria and the person is not releasable under a bond
3 schedule, the person may be released on bail or otherwise
4 only after initial appearance before a magistrate as provided
5 in chapter 804 and the rules of criminal procedure.

6 Sec. 6. Section 811.2, Code 1983, is amended by adding
7 the following new subsection 3 and renumbering the remaining
8 subsections:

9 NEW SUBSECTION. 3. This chapter does not preclude the
10 release of an arrested person as authorized by section 804.21.

11 Sec. 7. This Act, being deemed of immediate importance,
12 takes effect from and after its publication in the Quad City
13 Times, a newspaper published in Davenport, Iowa, and in The
14 Onawa Sentinel, a newspaper published in Onawa, Iowa.

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SENATE FILE 334

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1 Amend Senate File 334 as follows:

2 1. Page 1, by inserting before line 1 the
3 following:

4 "Section 1. Section 804.1, unnumbered paragraph
5 2, Code 1983, is amended to read as follows:
6 Whenever if the complaint charges a simple
7 misdemeanor public offense, the magistrate may issue
8 a citation instead of a warrant of arrest. The
9 citation shall set forth substantially the nature
10 of the offense and shall command the person against
11 whom the complaint was made to appear before the
12 magistrate issuing the citation at a time and place
13 stated therein in the citation."

14 2. Page 1, line 1, by striking the word and figure
15 "Section 1" and inserting in lieu thereof the word
16 and figure "Sec. 2".

17 3. Page 1, by striking lines 10 through 15 and
18 inserting in lieu thereof the following:

19 "Sec. 3. Section 804.21, Code 1983, is amended
20 by adding the following new subsection:

21 NEW SUBSECTION. This section does not prevent
22 the release of the arrested person pending initial
23 appearance upon the furnishing of bail in the amount
24 endorsed on the warrant. The initial appearance of
25 a person so released shall be scheduled for a time
26 not more than five days after the date of release.
27 This section, and sections 804.22 and 804.23, do not
28 preclude the release of an arrested person within
29 the period of time the person would otherwise remain
30 incarcerated while waiting to be taken before a
31 magistrate if the release is pursuant to pretrial
32 release guidelines promulgated under R.C.P. 29 and
33 R.C.P. 372.

34 Sec. 4. Section 804.22, Code 1983, is amended
35 by adding the following new unnumbered paragraph:

36 NEW UNNUMBERED PARAGRAPH. This section and the
37 rules of criminal procedure do not affect the
38 provisions of chapter 805 authorizing the release
39 of a person on citation or bail prior to initial ap-
40 pearance. The initial appearance of a person so
41 released shall be scheduled for a time not more than
42 five days after the date of release.

43 Sec. 5. Section 805.1, Code 1983, is amended by
44 striking the section and inserting in lieu thereof
45 the following:

46 805.1 WHEN POLICE CITATION MAY ISSUE.

47 1. Except as to an offense for which an accused
48 would not be eligible for bail after conviction
49 pursuant to section 811.1, a law enforcement officer
50 has authority to issue a citation in lieu of an ar-

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PAGE 2

1 rest without a warrant or in lieu of continued custody
2 after a warrantless arrest. The decision whether
3 to issue a citation in lieu of arrest shall be made
4 by an officer with grounds to make an arrest. The
5 decision whether to issue a citation in lieu of
6 continued custody after an arrest or to release the
7 person on bail shall be made by the ranking officer
8 on duty.

9 2. The citation procedure for traffic and other
10 violations designated as scheduled violations is
11 governed by sections 805.6 through 805.15.

12 3. A law enforcement officer who has grounds to
13 charge a person with other simple misdemeanors shall
14 issue a citation in lieu of arrest or, if an arrest
15 has been made, the ranking officer on duty shall issue
16 a citation or shall release the person pursuant to
17 pretrial release guidelines promulgated under R.C.P.
18 29 or R.C.P. 372, in lieu of keeping the person in
19 custody. This requirement does not apply, and the
20 officer may arrest or retain a person in custody in
21 any of the following situations:

22 a. When the person refuses or fails to offer
23 satisfactory identification.

24 b. When the person refuses to sign the citation.

25 c. When detention is reasonably necessary to
26 prevent bodily harm to the accused or to another.

27 d. When the person appears to be under the
28 influence of intoxicants or drugs and no one is
29 available to take responsibility for the person's
30 custody and safety.

31 e. When the person has insufficient ties to the
32 jurisdiction to assure the person's appearance and
33 a substantial likelihood exists that the person will
34 refuse to respond to a citation.

35 f. When the person previously failed to respond
36 to a citation or to appear after release on pretrial
37 release guidelines.

38 4. In other cases in which a citation is
39 authorized, a law enforcement officer who has grounds
40 to make an arrest may instead issue a citation or,
41 after arrest, the ranking officer on duty may issue
42 a citation or may release the person pursuant to
43 pretrial release guidelines promulgated pursuant to
44 R.C.P. 29 or R.C.P. 372, in lieu of continued custody.
45 In determining whether to issue a citation the officer
46 shall consider the safety of the community and all
47 of the following facts concerning the person:

48 a. Place and length of residence.

49 b. Family relationships.

50 c. References.

- 1 d. Present and past employment.
- 2 e. Criminal record.
- 3 f. Nature and circumstances of the alleged offense.
- 4 g. Other facts relevant to the likelihood of the
- 5 person's response to a citation.

6 In making this decision, the officer shall utilize
7 the pretrial release services of the judicial district
8 department of correctional services, when available,
9 and shall be assisted by the recommendations of that
10 agency.

11 5. The issuance of a citation in lieu of arrest
12 or continued custody or the release pursuant to
13 pretrial release guidelines promulgated under R.Cr.P.
14 29 or R.C.P. 372, does not affect the officer's
15 authority to conduct an otherwise lawful search.
16 The issuance of a citation in lieu of arrest shall
17 be deemed an arrest for purposes of the speedy in-
18 dictment requirements of R.Cr.P. 27, subsection 2,
19 paragraph a, Ia. Ct. Rules, 2d ed.

20 6. Even if a citation is issued or release made
21 pursuant to pretrial release guidelines, the officer
22 has authority to take the cited person to an
23 appropriate medical facility if the person reasonably
24 appears to need such care.

25 7. When an officer determines pursuant to
26 subsection 3 or 4 that a citation should not be issued,
27 the officer has authority to release the arrested
28 person on bail or on other conditions as determined
29 by the supreme court in pretrial release guidelines
30 promulgated under R.Cr.P. 29 or R.C.P. 372. In
31 following the pretrial release guidelines the officer
32 shall utilize the pretrial release services of the
33 judicial district department of correctional services,
34 when available, and shall be assisted by the
35 recommendations of that agency. When the arrested
36 person furnishes bail, the officer shall maintain
37 it in safekeeping and shall turn it over to the clerk
38 of court not later than during the next subsequent
39 regular business day that the clerk's office is open.

40 8. When the offense is one for which citation
41 is not authorized and when the person does not meet
42 the pretrial release criteria, the person may be
43 released on bail or otherwise only after initial
44 appearance before a magistrate as provided in chapter
45 804 and the rules of criminal procedure."

46 4. Page 1, line 16, by striking the figure "2"
47 and inserting in lieu thereof the figure "5".

48 5. Page 1, line 21, by striking the figure "3"
49 and inserting in lieu thereof the figure "6".

S-3406

1 Amend Senate File 334 as follows:

2 1. By striking everything after the enacting
3 clause and inserting in lieu thereof the following:
4 "Section 1. Section 804.1, unnumbered paragraph
5 2, Code 1983, is amended to read as follows:
6 ~~Whenever~~ If the complaint charges a ~~simple~~
7 ~~misdemeanor~~ public offense, the magistrate may issue
8 a citation instead of a warrant of arrest. The
9 citation shall set forth substantially the nature
10 of the offense and shall command the person against
11 whom the complaint was made to appear before the
12 magistrate issuing the citation at a time and place
13 stated ~~therein~~ in the citation. The magistrate shall
14 prescribe the manner of service for the citation at
15 the time the citation is issued.

16 Sec. 2. Section 804.21, subsection 1, Code 1983,
17 is amended to read as follows:

18 1. ~~Any~~ A person arrested in obedience to a warrant
19 shall, ~~without-unnecessary-delay,~~ be taken without
20 unnecessary delay before the nearest or most accessible
21 ~~magistrate to-the-place-where-the-arrest-occurred,~~
22 ~~and-the.~~ The officer must shall at the same time
23 deliver to the magistrate the warrant with the
24 officer's return ~~thereon~~ endorsed on it and subscribed
25 by the officer with ~~his-or-her~~ the officer's official
26 title. However, this section, and sections 804.22
27 and 804.23, do not preclude the release of an arrested
28 person within the period of time the person would
29 otherwise remain incarcerated while waiting to be
30 taken before a magistrate if the release is pursuant
31 to pretrial release guidelines or a bond schedule
32 promulgated by the judicial council acting pursuant
33 to Iowa rule of civil procedure 380. If, however,
34 a person is released pursuant to pretrial release
35 guidelines, a magistrate must, within twenty-four
36 hours of such release, or as soon as practicable on
37 the next subsequent working day of the court, either
38 (1) approve in writing of the release, or (2)
39 disapprove of the release and issue a warrant for
40 the person's arrest.

41 Sec. 3. Section 804.21, Code 1983, is amended
42 by adding the following new subsections:

43 NEW SUBSECTION. 4. a. The judicial council shall
44 promulgate rules and bond levels to be contained
45 within a bond schedule for the release of an arrested
46 person.

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

49 (1) The person was arrested for a crime other
50 than a forcible felony, and

1 (2) The courts are not in session.

2 NEW SUBSECTION. 5. This section does not prevent
3 the release of the arrested person pending initial
4 appearance upon the furnishing of bail in the amount
5 endorsed on the warrant. The initial appearance of
6 a person so released shall be scheduled for a time
7 not more than ten days after the date of release.

8 Sec. 4. Section 804.22, Code 1983, is amended
9 by adding the following new unnumbered paragraph:

10 NEW UNNUMBERED PARAGRAPH. This section and the
11 rules of criminal procedure do not affect the
12 provisions of chapter 805 authorizing the release
13 of a person on citation or bail prior to initial ap-
14 pearance. The initial appearance of a person so
15 released shall be scheduled for a time not more than
16 ten days after the date of release.

17 Sec. 5. Section 805.1, Code 1983, is amended by
18 striking the section and inserting in lieu thereof
19 the following:

20 805.1 WHEN POLICE CITATION MAY ISSUE.

21 1. Except as to an offense for which an accused
22 would not be eligible for bail after conviction
23 pursuant to section 811.1, a law enforcement officer
24 has authority to issue a citation in lieu of an ar-
25 rest without a warrant or in lieu of continued custody
26 after a warrantless arrest. The decision whether
27 to issue a citation in lieu of arrest shall be made
28 by an officer with grounds to make an arrest. The
29 decision whether to issue a citation in lieu of
30 continued custody after an arrest or to release the
31 person on bail shall be made by the ranking officer
32 on duty.

33 2. The citation procedure for traffic and other
34 violations designated as scheduled violations is
35 governed by sections 805.6 through 805.15.

36 3. A law enforcement officer who has grounds to
37 charge a person with other simple misdemeanors shall
38 issue a citation in lieu of arrest or, if an arrest
39 has been made, the ranking officer on duty shall issue
40 a citation or shall release the person pursuant to
41 pretrial release guidelines or a bond schedule
42 promulgated pursuant to section 804.21, subsection
43 1, in lieu of keeping the person in custody. This
44 requirement does not apply, and the officer may arrest
45 or retain a person in custody in any of the follow-
46 ing situations:

47 a. When the person refuses or fails to offer
48 satisfactory identification.

49 b. When the person refuses to sign the citation.

50 c. When detention is reasonably necessary to

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Page 3

1 prevent bodily harm to the accused or to another.

2 d. When the person appears to be under the
3 influence of intoxicants or drugs and no one is
4 available to take responsibility for the person's
5 custody and safety.

6 e. When the person has insufficient ties to the
7 jurisdiction, or a contiguous jurisdiction, to assure
8 the person's appearance and a substantial likelihood
9 exists that the person will refuse to respond to a
10 citation.

11 f. When the person previously failed to respond
12 to a citation or to appear after release on pretrial
13 release guidelines.

14 4. In other cases in which a citation is
15 authorized, a law enforcement officer who has grounds
16 to make an arrest may instead issue a citation or,
17 after arrest, the ranking officer on duty may issue
18 a citation or may release the person pursuant to
19 pretrial release guidelines or a bond schedule
20 promulgated pursuant to section 804.21, subsection
21 1, in lieu of continued custody. In determining
22 whether to issue a citation the officer shall consider
23 the safety of the community and all of the following
24 facts concerning the person:

25 a. Place and length of residence.

26 b. Family relationships.

27 c. References.

28 d. Present and past employment.

29 e. Criminal record.

30 f. Nature and circumstances of the alleged offense.

31 g. Other facts relevant to the likelihood of the
32 person's response to a citation.

33 In making this decision, the officer shall follow
34 the recommendations of the pretrial release services
35 of the judicial district department of correctional
36 services, when available.

37 5. The issuance of a citation in lieu of arrest
38 or continued custody does not affect the officer's
39 authority to conduct an otherwise lawful search.
40 The issuance of a citation in lieu of arrest shall
41 be deemed an arrest for purposes of the speedy in-
42 dictment requirements of R.Cr.P. 27, subsection 2,
43 paragraph a, Ia. Ct. Rules, 2d ed.

44 6. Even if a citation is issued, the officer has
45 authority to take the cited person to an appropriate
46 medical facility if the person reasonably appears
47 to need such care.

48 7. When an officer determines pursuant to
49 subsection 3 or 4 that a citation should not be issued,
50 the officer has authority to release the arrested

S-3406 -- SF 334

1 person on bail or on other conditions as determined
2 by the supreme court in pretrial release guidelines
3 promulgated pursuant to section 804.21, subsection
4 1. In following the pretrial release guidelines the
5 officer shall follow the recommendations of the
6 pretrial release services of the judicial district
7 department of correctional services, when available.
8 When the arrested person furnishes bail, the officer
9 shall maintain it in safekeeping and shall turn it
10 over to the clerk of court not later than during the
11 next subsequent regular business day that the clerk's
12 office is open.

13 8. When the offense is one for which citation
14 is not authorized, the person does not meet the
15 pretrial release criteria and the person is not
16 releasable under a bond schedule, the person may be
17 released on bail or otherwise only after initial
18 appearance before a magistrate as provided in chapter
19 804 and the rules of criminal procedure.

20 Sec. 6. Section 811.2, Code 1983, is amended by
21 adding the following new subsection 3 and renumbering
22 the remaining subsections:

23 NEW SUBSECTION. 3. This chapter does not preclude
24 the release of an arrested person as authorized by
25 section 804.21.

26 Sec. 7. This Act, being deemed of immediate
27 importance, takes effect from and after its publication
28 in the Quad City Times, a newspaper published in
29 Davenport, Iowa, and in The Onawa Sentinel, a newspaper
30 published in Onawa, Iowa."

S-3406 FILED & ADOPTED
MARCH 30, 1983 (7.1025)

BY PATRICK J. DELUHERY
DONALD V. DOYLE
TOM MANN, JR.
DOUGLAS RITSEMA

SENATE FILE 334

AN ACT

RELATING TO THE RELEASE OF A DEFENDANT BEFORE AN APPEARANCE
BEFORE A MAGISTRATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 804.1, unnumbered paragraph 2, Code 1983, is amended to read as follows:

~~Whenever~~ If the complaint charges a ~~simple-misdemeanor~~ 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 ~~therein~~ in the citation. The magistrate shall prescribe the manner of service for the citation at the time the citation is issued.

Sec. 2. Section 804.21, subsection 1, Code 1983, is amended to read as follows:

1. ~~Any~~ A person arrested in obedience to a warrant shall ~~without-unnecessary-delay~~ be taken without unnecessary delay before the nearest or most accessible magistrate ~~to-the-place where-the-arrest-occurred-and-the~~ The officer must ~~shall~~ at the same time deliver to the magistrate the warrant with the officer's return ~~thereon~~ endorsed on it and subscribed by the officer with ~~his-or-her~~ 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 acting pursuant to Iowa rule of civil procedure 380. If, however, a person is released pursuant to pretrial release guidelines, a magistrate must,

within twenty-four hours of such release, or as soon as practicable on the next subsequent working day of the court, either (1) approve in writing of the release, or (2) disapprove of the release and issue a warrant for the person's arrest.

Sec. 3. Section 804.21, Code 1983, is amended by adding the following new subsections:

NEW SUBSECTION. 4. 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.

NEW SUBSECTION. 5. 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 ten days after the date of release.

Sec. 4. Section 804.22, Code 1983, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. 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. The initial appearance of a person so released shall be scheduled for a time not more than ten days after the date of release.

Sec. 5. Section 805.1, Code 1983, is amended by striking the section and inserting in lieu thereof the following:

805.1 WHEN POLICE CITATION MAY ISSUE.

1. Except as to an offense for which an accused would not be eligible for bail after conviction pursuant to section 811.1, a law enforcement officer has authority to issue a citation in lieu of an arrest without a warrant or in lieu of continued custody after a warrantless arrest. The decision whether to issue a citation in lieu of arrest shall be made by an officer with grounds to make an arrest. The decision

whether to issue a citation in lieu of continued custody after an arrest or to release the person on bail shall be made by the ranking officer on duty.

2. The citation procedure for traffic and other violations designated as scheduled violations is governed by sections 805.6 through 805.15.

3. A law enforcement officer who has grounds to charge a person with other simple misdemeanors shall issue a citation in lieu of arrest or, if an arrest has been made, the ranking officer on duty shall issue a citation or shall release the person pursuant to pretrial release guidelines or a bond schedule promulgated pursuant to section 804.21, subsection 1, in lieu of keeping the person in custody. This requirement does not apply, and the officer may arrest or retain a person in custody in any of the following situations:

- a. When the person refuses or fails to offer satisfactory identification.
- b. When the person refuses to sign the citation.
- c. When detention is reasonably necessary to prevent bodily harm to the accused or to another.
- d. When the person appears to be under the influence of intoxicants or drugs and no one is available to take responsibility for the person's custody and safety.
- e. When the person has insufficient ties to the jurisdiction, or a contiguous jurisdiction, to assure the person's appearance and a substantial likelihood exists that the person will refuse to respond to a citation.
- f. When the person previously failed to respond to a citation or to appear after release on pretrial release guidelines.

4. In other cases in which a citation is authorized, a law enforcement officer who has grounds to make an arrest may instead issue a citation or, after arrest, the ranking officer on duty may issue a citation or may release the person pursuant to pretrial release guidelines or a bond schedule promulgated pursuant to section 804.21, subsection 1, in lieu of continued custody. In determining whether to issue a citation the officer shall consider the safety of the community

and all of the following facts concerning the person:

- a. Place and length of residence.
- b. Family relationships.
- c. References.
- d. Present and past employment.
- e. Criminal record.
- f. Nature and circumstances of the alleged offense.
- g. Other facts relevant to the likelihood of the person's response to a citation.

In making this decision, the officer shall follow the recommendations of the pretrial release services of the judicial district department of correctional services, when available.

5. The issuance of a citation in lieu of arrest or continued custody does not affect the officer's authority to conduct an otherwise lawful search. The issuance of a citation in lieu of arrest shall be deemed an arrest for purposes of the speedy indictment requirements of R.Cr.P. 27, subsection 2, paragraph a, 1a. Ct. Rules, 2d ed.

6. Even if a citation is issued, the officer has authority to take the cited person to an appropriate medical facility if the person reasonably appears to need such care.

7. When an officer determines pursuant to subsection 3 or 4 that a citation should not be issued, the officer has authority to release the arrested person on bail or on other conditions as determined by the supreme court in pretrial release guidelines promulgated pursuant to section 804.21, subsection 1. In following the pretrial release guidelines the officer shall follow the recommendations of the pretrial release services of the judicial district department of correctional services, when available. When the arrested person furnishes bail, the officer shall maintain it in safekeeping and shall turn it over to the clerk of court not later than during the next subsequent regular business day that the clerk's office is open.

8. When the offense is one for which citation is not authorized, the person does not meet the pretrial release criteria and the person is not releasable under a bond

schedule, the person may be released on bail or otherwise only after initial appearance before a magistrate as provided in chapter 804 and the rules of criminal procedure.

Sec. 6. Section 811.2, Code 1983, is amended by adding the following new subsection 3 and renumbering the remaining subsections:

NEW SUBSECTION. 3. This chapter does not preclude the release of an arrested person as authorized by section 804.21.

Sec. 7. This Act, being deemed of immediate importance, takes effect from and after its publication in the Quad City Times, a newspaper published in Davenport, Iowa, and in The Onawa Sentinel, a newspaper published in Onawa, Iowa.

ROBERT T. ANDERSON
President of the Senate

DONALD D. AVENSON
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 334, Seventieth General Assembly.

K. MARIE THAYER
Secretary of the Senate

Approved _____, 1983

TERRY E. BRANSTAD
Governor

S.F. 334