

LEGISLATIVE BILL 829

Approved by the Governor March 14, 1974

Introduced by Judiciary Committee, Luedtke, 26, Chmn.;
Richendifer, 16; Chambers, 11; Carpenter, 48;
Barnett, 26; Fellman, 4

AN ACT relating to criminal procedure; to establish uniform procedures for the issuance of citations in lieu of arrest as prescribed; to amend sections 39-6,105, 39-6,107, 39-6,108, and 39-6,112, Revised Statutes Supplement, 1973; to provide an operative date; to repeal the original sections, and also sections 39-6,103 and 39-6,106, Revised Statutes Supplement, 1973; and to declare an emergency.
Be it enacted by the people of the State of Nebraska,

Section 1. It is hereby declared to be the policy of the State of Nebraska to issue citations in lieu of arrest or continued custody to the maximum extent consistent with the effective enforcement of the law and the protection of the public. In furtherance of that policy, any peace officer shall be authorized to issue a citation in lieu of arrest or continued custody for any offense which is a traffic infraction or misdemeanor and for any violation of a city or village ordinance. Such authorization shall be carried out in the manner specified in this act.

Sec. 2. To achieve uniformity, the Supreme Court may prescribe the form of citation. The citation shall include a description of the crime or offense charged, the time and place at which the person cited is to appear, a warning that failure to appear in accordance with the command of the citation is a punishable offense, and such other matter as the court deems appropriate. The court may provide that a copy of the citation shall constitute the complaint filed in the trial court.

Sec. 3. When a citation is used by a peace officer, he shall enter thereon all required information, including the name and address of the cited person, the offense charged, and the time and place the person cited is to appear in court. Unless the person cited requests an earlier date, the time of appearance shall be at least three days after the issuance of the citation. One copy of the citation shall be delivered to the person cited, and a duplicate thereof shall be signed by such person, giving his promise to appear at the time and place stated therein. Such person thereupon shall be released from

custody. As soon as practicable, one copy of the citation shall be filed with the court specified therein, and the copy signed by the person cited shall be delivered to the prosecuting attorney. At least twenty-four hours before the time set for appearance of the cited person, the prosecuting attorney or other person authorized by law to issue a complaint for the particular offense shall either issue and file a complaint charging such person with an offense, or file with the court and deliver to such person a notice that a complaint has been refused and that such person is released from his obligation to appear or that the offense charged in the original citation has been changed or amended as specified.

Sec. 4. Citations may also be issued under the following circumstances:

(1) In any case in which the prosecuting officer is convinced that a citation would serve all of the purposes of an arrest warrant; and

(2) Whenever any complaint or information is filed in any court in this state charging a felony, misdemeanor, traffic infraction, or violation of a city or village ordinance when the court is convinced that a citation would serve all of the purposes of the arrest warrant procedure.

The citations provided for in this section may be served in the same manner as an arrest warrant, in the same manner as a summons in a civil action, or may be served by certified mail.

Sec. 5. Any person failing to appear or otherwise comply with the command of a citation shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment.

Sec. 6. Any peace officer having grounds for making an arrest may take the accused into custody or, already having done so, detain him further when the accused fails to identify himself satisfactorily, or refuses to sign the citation, or when the officer has reasonable grounds to believe that (1) the accused will refuse to respond to the citation, (2) such custody is necessary to protect the accused or others when his continued liberty would constitute a risk of immediate harm, (3) such action is necessary in order to carry out legitimate investigative functions, (4) the accused has

no ties to the jurisdiction reasonably sufficient to assure his appearance, or (5) the accused has previously failed to appear in response to a citation.

Sec. 7. Nothing in this act shall be construed to affect the rights, lawful procedures, or responsibilities of law enforcement agencies or peace officers using the citation procedure in lieu of the arrest or warrant procedure.

Sec. 8. Notwithstanding that a citation is issued, a peace officer is authorized to take a cited person to an appropriate medical facility if he appears mentally or physically unable to care for himself.

Sec. 9. That section 39-6,105, Revised Statutes Supplement, 1973, be amended to read as follows:

39-6,105. Whenever any person shall be charged with a violation of any provision of sections 39-601 to 39-6,122, or of Chapter 39, article 7, the officer making such charge shall, except as otherwise provided in sections 39-601 to 39-6,122, take the name and address of such person and the license number of the motor vehicle such person shall have been driving if any such license is assigned. The officer shall then issue a summons or otherwise notify such person in writing to appear at a specific time and place to answer such charge. Such time specified shall be at least five days after service of such summons or notice, unless such person shall demand an earlier hearing. Upon such demand such person shall have a right to a hearing within twenty-four hours at a convenient hour before a court within the county where such alleged offense was committed. traffic infraction, such person shall be issued a citation pursuant to the provisions of section 3 of this act. Any person who refuses to sign the citation shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished as provided by the provisions of section 5 of this act.

Sec. 10. That section 39-6,107, Revised Statutes Supplement, 1973, be amended to read as follows:

39-6,107. When a person has been charged with any act declared by sections 39-601 to 39-6,122 to be a misdemeanor or traffic infraction by sections 39-601 to 39-6,122, Chapter 39, article 7, or Chapter 60, article 3, 4, or 5, and is issued a summons citation meeting the requirements of sections 39-601 to 39-6,122 prescribed by the Supreme Court, if such summons citation includes the information and is sworn to as required by the laws of this state, then such citation when filed with a court

having jurisdiction shall be deemed a lawful complaint for the purpose of prosecution, ~~under sections 39-601 to 39-6,122.~~

Sec. 11. That section 39-6,108, Revised Statutes Supplement, 1973, be amended to read as follows:

39-6,108. (1) When any person is required to post bond under any of the provisions of sections 39-601 to 39-6,122, such bond may consist of an unexpired guaranteed arrest bond certificate or a similar written instrument by its terms of current force and effect signed by such person and issued to him by an automobile club or a similar association or insurance company jointly and severally with a corporate surety duly authorized to transact fidelity or surety insurance business in this state or with an insurance company duly authorized to transact both automobile liability and fidelity and surety insurance business in this state to guarantee the appearance of such person at any hearing upon any arrest or apprehension or any violation or, in default of any such appearance, the prompt payment by or on behalf of such person of any fine or forfeiture imposed for such default not in excess of two hundred dollars.

(2) The provisions of subsection (1) of this section shall not apply to any person who is charged with a felony, ~~or a misdemeanor.~~

Sec. 12. That section 39-6,112, Revised Statutes Supplement, 1973, be amended to read as follows:

39-6,112. ~~(1)~~ Any person who is found guilty of a violation of sections 39-601 to 39-6,122 or of Chapter 39, article 7, for which a penalty has not been specifically provided shall be fined: ~~(1)~~ 1 Not more than one hundred dollars for the first offense, ~~(2)~~ 2 not more than two hundred dollars for a second offense within a one-year period, and ~~(3)~~ 3 not more than three hundred dollars for a third and subsequent offense within a one-year period.

~~(2) When a defendant charged with a violation of sections 39-601 to 39-6,122 or of Chapter 39, article 7, fails to appear in answer to such charge, the court shall enter a default judgment against him in the amount of the usual fine for such violation.~~

~~(3) Any fine assessed under this section and not paid within thirty days of such judgment shall become a security interest upon any personal property in which the defendant has a beneficial interest. The court shall~~

~~certify copies of the judgment showing the assessed fine which shall be transcribed to the district court of the county where such property is located to be shown upon the judgment docket and to the county clerk's office in the county where such property is located to be recorded as a security interest.~~

Sec. 13. Any provision of this act regarding citations issued for any offense involving the operation of a motor vehicle shall become operative on the effective date of this act. The provisions of this act with regard to any other offense shall become operative on July 1, 1974 or on the effective date of this act, whichever is the later.

Sec. 14. That original sections 39-6,105, 39-6,107, 39-6,108, and 39-6,112, Revised Statutes Supplement, 1973, and also sections 39-6,103 and 39-6,106, Revised Statutes Supplement, 1973, are repealed.

Sec. 15. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.