# Austin Police Department

Policy Manual

## **Misdemeanor Citations**

## 308.1 PURPOSE AND SCOPE

Tex. Code of Crim. Pro. art. 14.06 permits law enforcement agencies to use citation release procedures in lieu of arrest for Class A, B, and C misdemeanor offenses with certain exceptions.

This policy does not apply to juveniles or traffic citations. Officers shall refer to the following policies regarding these topics:

- (a) Policy 317 (Juveniles).
- (b) Policy 342 (Traffic Citations).

## 308.2 STATUTORY REQUIREMENTS

A citation, or field release, is when the violator is released in the field without being transported to a jail facility.

#### 308,3 MISDEMEANOR CITATION CONSIDERATIONS

- (a) The following shall be considered when making the determination to issue a misdemeanor citation:
  - 1. The subject has sufficient identification; and
  - 2. The officer has no substantial reason to believe the subject will fail to appear; and
  - 3. The officer has reason to believe that release by citation will result in termination of the violation; and
  - 4. The subject did not resist detention, assault anyone during the offense, or appear to be combative or violent.
- (b) For a misdemeanor offense that can be enhanced due to prior convictions, a criminal history check should be performed to determine if a custody arrest is more appropriate.

#### 308.3.1 Misdemeanor Citation Use

Officers are authorized to use verbal or written warnings to resolve minor violations when appropriate.

## (a) Class A and Class B Misdemeanor Citations

On-duty officers who make the decision to take enforcement action on a subject who
violates a Class A or Class B offense eligible for a misdemeanor citation shall issue
a citation when all considerations outlined in this policy have been met.

2. Supervisor approval is required to make a custody arrest in lieu of a citation for eligible Class A or Class B offenses that meet all the considerations outlined in this policy.

## (b) Class C Misdemeanor Citations

- 1. Officers enforcing a Class C misdemeanor, other than traffic, should use the considerations outlined in this policy for the issuance of a citation. Officers shall select the least intrusive or severe method, which will:
  - (a) Stop existing criminal conduct.
  - (b) Remove the imminent threat of violence or criminal conduct.
  - (c) Prevent persons from endangering themselves or others.

## 308.3.2 Disqualifying Circumstances

A citation shall not be issued if the following situations are present:

- (a) The subject is so intoxicated that he could be a danger to himself or to others. Release may occur as soon as this condition no longer exists.
- (b) The subject requires medical examination or medical care or is otherwise unable to care for his own safety.
  - 1. An arrestee shall not be released from custody for the sole purpose of allowing that subject to obtain medical care and with the intention of immediately re-arresting the same individual upon discharge from the hospital unless it can be determined that the hospital can bill and collect from a third-party payment source.
- (c) There are one or more outstanding arrest warrants for the subject.
- (d) The subject could not provide satisfactory evidence of personal identification.
- (e) A full custody arrest is called for, or the officer has reason to suspect the subject is involved in a more serious offense and a custody arrest would serve to gather evidence to support another charge.
- (f) There is a reasonable likelihood that the offense(s) would continue or resume, or that the safety of persons or property would be imminently endangered by the release of the subject arrested.
- (g) The subject arrested demands to be taken before a magistrate or has refused to sign the citation.
- (h) There is reason to believe the subject would not appear at the time and place specified in the citation. The basis for this determination shall be specifically stated.
- (i) The offense is DOC 12 (Exposure) and the exposure appears to have been committed deliberately, maliciously, or with sexual motivation.

## 308.3.3 Supervisory Orders

Supervisors will not order any subordinate to cite a person suspected of a misdemeanor violation of law witnessed by the supervisor but not witnessed by the subordinate unless:

- (a) The supervisor articulates the probable cause upon which the citation is based as soon as practicable; and
- (b) The supervisor is listed on the citation.

#### 308.3.4 Instructions To Cited Person

The citing officer shall, at the time he asks the defendant to sign the notice to appear, call attention to the time and place for appearance and take any other steps he deems necessary to ensure that the defendant understands his written promise to appear (Tex. Code of Crim. Pro. art. 14.06).

## 308.4 CLASS A AND CLASS B MISDEMEANOR CITATIONS

In addition to the above considerations, officers must meet all of the following requirements in order to issue a Class A or B misdemeanor citation:

- (a) The offense is eligible for release by citation; and
- (b) The violator is not a juvenile; and
- (c) The violator must have sufficient identification so his identity can be validated during court testimony. The violator must be able to present this identification when he appears for his court date; and
- (d) The violator committed the offense in:
  - 1. Travis County and the violator resides in Travis County; or
  - 2. Hays County and the violator resides in Hays County.

## 308.4.1 Eligible Offenses

The following Class A and B misdemeanors are eligible for a release by citation:

- (a) Possession of Marijuana less than two (2) ounces (Class B).
- (b) Possession of Marijuana of two (2) ounces but less than four (4) ounces (Class A).
- (c) Criminal mischief where the value of the damage inflicted is \$50 or more but less than \$500 (Class B).
- (d) Graffiti where the value of the damage inflicted is less than \$500 (Class B).
- (e) Theft where the value of the property stolen is \$50 or more but less than \$500 (Class B).
- (f) Theft of Service where the value of the property stolen was \$20 or more but less than \$500 (Class B).

(g) Driving While License Invalid - (Class B only).

## 308.4.2 Documentation And Filing Procedures

The following documentation and required procedures shall be used when issuing a Class A or B Misdemeanor citation:

- (a) Officers shall complete a(n):
  - 1. Incident report with the appropriate title code(s); and
  - 2. PC affidavit that shall be notarized by a second officer.
- (b) Write the incident number on any photos or receipts.
- (c) Attach a copy of the citation, PC affidavit, and any photos and/or receipts together to be turned in to the Class A or B Misdemeanor drop box by the end of the officer's tour of duty.
- (d) Follow the guidelines of Policy 618 (Property and Evidence Collection Procedures) when submitting narcotic or other evidence in relation to a Class A or Class B Misdemeanor Citation.

## 308.4.3 Specific Class A And Class B Misdemeanor Citation Requirements

Additional Reporting Requirements for Specific Violations:

- (a) Theft and Theft of Service: Include a description on the affidavit of the item(s)/service stolen.
- (b) Driving While License Invalid (DWLI): Include the reason, date, and counties for current and prior suspensions, as well as the specific reason for the enhancement to a Class B Misdemeanor.
  - 1. Class C violations may be handled by issuance of a traffic citation.

## 308.5 CLASS C MISDEMEANOR CITATIONS

Incident reports are generated by Central Records from the information on Class C Misdemeanor citations issued by officers. Having accurate and sufficient information (e.g. witness/victim information, property involved, brief narrative) on the front and back of a citation is critical for Central Records to complete these reports.

Class C Misdemeanor citation may only be used when the offense is a Class C Misdemeanor other than a traffic violation. Guidelines for issuing traffic citations are outlined in Policy 342 (Traffic Citations).

## 308.5.1 Specific Class C Misdemeanor Citation Requirements

The following charges have specific additional requirements when issuing a citation:

(a) Misdemeanor Possession of Drug Paraphernalia

#### Misdemeanor Citations

- 1. Class C misdemeanor citations may be issued to subjects found in possession of drug residue. The citation shall be titled Possession of Drug Paraphernalia.
- 2. An incident report with the appropriate title code(s) shall be completed.
- 3. The drug residue (non-usable amount), or object with drug residue, shall be seized and submitted according to policy 618.4.2, SUBMITTING NARCOTICS AND NARCOTIC PARAPHERNALIA.
- 4. The misdemeanor citation(s) shall be turned in by the end of the officer's tour of duty.
- 5. This citation shall not be used in lieu of a Possession of Marijuana charge.

## (b) Thefts and Shoplifting

- 1. Class C misdemeanor citations may be issued for theft or shoplifting if the property value is under \$50.
- 2. An incident report with the appropriate title code(s) shall be completed.
- 3. The stolen property (evidence) shall be properly photographed and returned to the business.
- 4. A sales receipt from the business shall be obtained clearly showing the value of the stolen property without sales tax.
- 5. The misdemeanor citation(s), photograph and sales receipt(s) shall be turned in by the end of the officer's tour of duty.
- 6. A Class C Attempted Theft citation shall not be used in lieu of a Class B theft.