



STATE OF NEW HAMPSHIRE
DEPARTMENT OF SAFETY
DIVISION OF STATE POLICE
PROFESSIONAL STANDARDS OF CONDUCT



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CHAPTER 41-B
RELEASE AND BAIL PROCEDURES

41-B.1.0 Discussion:

The intent of this directive is to outline the normal procedures that will be employed in releasing a detainee or arrestee from Division custody. The emphasis here is upon the legal basis or requirements for releasing a person from custody. Specific administrative procedures relating to the booking of prisoners and specific procedures to be followed during the release of prisoners are covered in Chapter 41-T "Prisoner Transportation." Special or unusual bail or arrest procedures are covered in Chapter 41-C, "Special Arrest & Bail Situations".

41-B.1 Release from Custody without Charge

41-B.1.1 Release from Temporary Field Detention:

- A. A Division member may release a person who has been temporarily detained in the field. No liability attaches to either the Division or the Division member if the person is released from such detention without a charge being brought, provided that the original basis for the detention was lawful.
- B. Release from temporary detention in the field should be accomplished as soon as feasible. The duration of any detention should be limited to the time necessary to deal with the issues that gave rise to the detention.
- C. Examples of the types of situations that may give rise to this type of detention are as follows:
 1. The Division member has probable cause to believe that the subject detained has violated or was about to violate the law. The most common example of this type of situation is the person who is stopped for a motor vehicle violation and released with a warning.

2. An investigative stop where the Division member does not have probable cause, but does have specific and articulable facts combined with "reasonable inferences from those facts" that warrant a limited stop of the individual in the field. In these cases, a Division member must release the individual after conducting a limited and reasonable inquiry unless probable cause to arrest exists. [State v. White 119 NH 567, 571 (1979); Terry v. Ohio 392 US 1 (1968)]

41-B.1.2 Release of Arrested Person without Charge:

- A. A person arrested **without a warrant** may be released by the Division member without taking him/her before a magistrate if the Division member is satisfied that there is no ground for bringing a criminal complaint and no further proceedings are necessary.
- B. A person so released has no right to sue on the ground that he was released without being brought before a court (RSA 594:18-a). This does not mean he cannot sue the Division member or the Division if the arrest itself was improper or lacking probable cause.

41-B.1.3 Release from Protective Custody:

- A. A person who has been taken into Division custody because he has been determined to be either incapacitated or intoxicated may be released without charge pursuant to RSA 172-B:3.

41-B.2 Release on a Summons

41-B.2.1 Use of Summons:

- A. A summons is a written order to appear in court to answer for a violation of the law and may be issued by any Division member when it is lawful to make an arrest without a warrant of a person for a misdemeanor or violation (RSA 594:14).
 1. In applicable counties, the Department of Safety summonses will be used in lieu of standard court summonses.
- B. A court date shall appear on all standard court summonses. The court date will designate the date of arraignment. In the case of a not guilty plea a trial date will be scheduled by the court.
 1. In applicable counties, the Department of Safety summonses will be marked with the date of issuance of the summons (the exception being "must appear" situations).

41-B.2.2 Charging Procedures for Persons 16 Years of Age for Specific Offenses

- A. Persons 16 years of age or over are treated as adults upon violating any of the following specific areas of law (RSA 169-B:32):

1. Any town or municipal ordinance which provides for a penalty not exceeding \$100 plus penalty assessment (RSA 169-D:22)
2. Aeronautics
3. Boating
4. Fish and Game
5. Liquor (Title VIII)
6. Fireworks (under RSA 160-B)
7. Motor Vehicle

Example: A 16 year old driver charged with Aggravated DWI would be arrested, bailed and prosecuted as an adult. Any resulting incarceration would be at a juvenile facility. NOTE: While processing the 16 year old, the protocol regarding the handling of juveniles shall be adhered to, such as sight and sound separation, etc.

- B. Summonses may also be issued to persons over 12 years of age who violate laws relating to the possession, sale or distribution of tobacco products by or to a person under age 18.
- C. For violation-level offenses of any other state law not listed in the above seven exceptions, all persons under age eighteen (18) shall be processed in accordance with juvenile law, i.e. CHINS petitions vs. summonses, etc.

41-B.3 Bail

- A. Except as provided in RSA 597:1-a, 597:1-c, or 597:1-d, all persons arrested for an offense are eligible to be released pending judicial proceedings upon compliance with the provisions of the NH Revised Statutes Annotated, Chapter 597 (RSA 597:1).
 1. RSA 591:1 establishes a policy in favor of bail for defendants in virtually all criminal cases with the exception of capital murder (an offense punishable by death) or murder in the first degree, where the proof is evident or the presumption is great.
- B. The purpose of bail is to ensure the appearance of the accused at subsequent proceedings and to assure the safety of the person arrested or the community. A person may be released upon his/her personal recognizance (RSA 597:2, II) or upon a series of conditions or combination of conditions including bond agreement or posting of cash bail (RSA 597:2 III).
- C. It is important for Division members to be familiar with areas that can and should be considered in releasing a person from custody and also when providing information to a judge or bail commissioner by which they will set bail. This will help to ensure that cash bail is set when the circumstances are appropriate, minimizing the

incidence of bail jumping on personal recognizance bail.

- D. Except for capital offenses or murder in the first degree, bail commissioners are authorized to fix the amount of and receive bail in the same manner as the court (RSA 597:18). Bail shall be set by a bail commissioner of the district court having jurisdiction.

41-B.3.1 Release on Personal Recognizance

A. A person is eligible for release on personal recognizance upon satisfying a bail commissioner or judge of the following conditions:

- 1. The person's appearance as required is reasonably assured i.e.,
 - a. The person's employment, family ties, residence or connections make his/her failure to appear unlikely; or
 - b. The person has not previously failed to appear in Court when required to do so; or
 - c. No other special circumstances exist creating a likelihood that the person would fail to appear.
- 2. The person will not endanger the safety of himself/herself or any other person or the community.
- 3. The person will not commit any crime during his/her release.
- 4. Any further condition or combination of conditions that a bail commissioner or judge may require.
 - a. This provides an opportunity for Division members to articulate to a bail commissioner or judge additional conditions they feel are necessary to ensure the safety of the public or help to ensure the appearance of the person (i.e. requiring the person to surrender all weapons, refrain from use of alcohol, etc.).

- B. If PR bail is set, the person shall not be held if he/she does not have the bail commissioner's fee.

41-B.3.2 Release on Conditions (Bond or Cash Bail)

A. If a bail commissioner or judge determines that the above conditions are not enough to assure the appearance of the person as required or assure the safety of the person or any other person or the community, the bail commissioner or judge may require further bail conditions or combination of conditions which require that the person:

- 1. Furnish cash bail
- 2. Execute an agreement to forfeit designated property, including money, upon failing to appear as required.

- a. The court may upon its own motion, or shall upon the motion of the state, conduct an inquiry into the source of the property to be designated for potential forfeiture or offered as collateral to secure a bond. [US vs. Nebbia 357 F.2d 303; RSA 597:2 III (b) 3]
3. Satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of the person or of any other person or the community.

41-B.3.3 Bail of Persons 17 Years of Age Charged with a Crime

A. Persons 17 years of age or over who are charged with a crime (misdemeanor or felony) shall be treated as adults and therefore are subject to adult penalties and process, including bail.

1. Persons under 17 who are charged with a crime (misdemeanor or felony) shall be processed in accordance with juvenile laws (Refer to Professional Standards of Conduct, Chapter 41-C "Special Arrest & Bail Situations" and Chapter 44-A "Juvenile Procedures").

41-B.3.4 Bail of Persons on Probation or Parole

A. Any person arrested while on probation or parole, or on release pending trial for a felony or misdemeanor, or pending sentencing or appeal may be detained for 72 hours upon meeting certain conditions (RSA 597:2, V) Refer to Chapter 41-C "Special Arrest and Bail Situations".

41-B.3.5 Bail of Persons Arrested For An Offense Who Are Intoxicated or Incapacitated:

A. Anytime a Division member arrests a person for an offense who is also intoxicated or incapacitated, the Division member shall:

1. Process the person on the criminal charge and, if applicable, have bail set, then;
2. Process the person for the intoxication or incapacitation in accordance with RSA 172-B:3 which includes:
 - a. Releasing the person to another person willing to assume responsibility of the intoxicated/incapacitated person, or;
 - b. Bringing the person to jail, to be released upon sobering

B. Division members shall document in the criminal case report any time they hold a person in protective custody for intoxication or incapacitation after releasing/bailing the person on the criminal offense.

41-B.3.6 Detention

- A. In serious criminal cases and/or situations where the conditions for the release of a person cannot be reasonably satisfied (i.e., is unable to obtain cash bail) a person may be held and bail set by the district court judge at arraignment.
 - 1. Any person that is arrested and detained (with or without a warrant) shall be brought before a Justice of the District Court having jurisdiction within 24 hours of the time of the arrest, Sundays and Holidays excluded. (RSA 594:20-a)
 - a. Prior to consideration of any bail issues, the court shall require the State to demonstrate probable cause for the defendant's arrest (Gerstein detention hearing).

SOURCES: NH RSA Chapter 597 & 594. Office of the Attorney General Law

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