
Unintended Consequences of Cite and Release Policies

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Cite and release programs enable law enforcement to release a subject after being contacted and detained for an offense rather than requiring that the subject be formally arrested and booked. Cite and release (or citation in lieu of arrest) is effectively the same process as providing an offender with a “ticket” or citation. Most states apply citation in lieu of arrest to misdemeanor offenses. However, two states, Louisiana and Oregon, permit citations for some felonies. For example, Louisiana permits citation in lieu of arrest for felony theft or illegal possession of stolen items if the value is between \$500 and \$1000, and for writing worthless checks. Oregon permits citation in lieu of arrest for felonies authorized by law to be reduced to misdemeanors (Legislatures, 2013).

Seven states do not specify crimes for which an officer has discretion to issue a citation. Ten states create a presumption that citations be issued for certain crimes and under certain circumstances (i.e., for any misdemeanor that does not carry a penalty of imprisonment, or misdemeanors punishable by a maximum of 90 days imprisonment, or misdemeanor possession of marijuana) (Legislatures, 2013). For a complete listing of laws in all 50 states, please see <http://www.ncsl.org/issues-research/justice/citation-in-lieu-of-arrest.aspx>.

Benefits

Cite and release programs provide multiple benefits. First, because the offender is not required to be formally arrested, cite and release policies significantly reduce the amount of time required to complete the encounter. Second, law enforcement officials are not required to spend valuable time away from other law enforcement activities to process the offender for a minor offense or infraction. Third, jails are not called upon to complete booking and intake processes required prior to detaining or releasing the individual on bail. Finally, jails are not burdened with the cost of housing low-level offenders who are unable to make bail.

Unintended Consequences

One of the biggest unintended consequences of cite and release policies is the adverse impact on recording complete arrest information in state criminal history repositories. In most states, criminal histories are populated as a consequence of the fingerprinting that occurs during the booking process. Each entry is based on the offender’s biometric identifier generated as a result of being fingerprinted. Cite and release programs that allow for the release of the offender without being fingerprinted, result

in no criminal history record entry for the offense. Although the prosecution of the offender continues in most cases, the outcome cannot be accurately recorded in the criminal history because a) no original arrest record exists in the criminal history, and b) the court has no biometric identifier associated with the offender. This problem also adversely impacts the reporting of alternative dispositions, such as diversion programs, and even decisions not to prosecute.

As noted above, the most common challenge for courts and repositories in building and maintaining accurate criminal histories is the difficulty linking court dispositions to arrests because of a missing biometric identifier and associated incident number for the offender. This problem is impossible to solve when the offender is never fingerprinted in the first place and no arrest record exists for a disposition to match. Without the biometric identifier for the offender, there is no way to positively link the offender to his or her arrest record or criminal history as a whole. This leaves many court dispositions “dangling,” never being linked to the appropriate criminal history. If a link is made, it is typically based on other demographics and identifying information that requires a subjective interpretation by the person reading the criminal history, which can impact the accuracy and effectiveness of the system.

A second issue can be the high rate at which offenders fail to appear for their scheduled court date, which is as high as 40% in one Texas county between 2009 and 2012, compared to a 15.3% failure to appear rate for offenders during the same period who were booked and released (Plohetski, 2013).

Conclusion:

Cite and release programs have many benefits, but laws and procedures should be modified to require fingerprinting of the offender at some point in the process, so the criminal history record accurately reflects these offenses. Business processes could be changed to require law enforcement to fingerprint offenders prior to release or courts could be responsible for ensuring that offenders without an arrest record for the case before them are fingerprinted. Without capturing the arrest record through the fingerprinting process, many of these offenses are never recorded in the criminal history, which adversely impacts all criminal justice professionals who rely on these records.



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