

Rule 6. Pretrial Release**Rule 6.01 Release on Citation****Subd. 1. Mandatory Citation Issuance in Misdemeanor Cases.**

(a) **By Arresting Officer.** In misdemeanor cases, peace officers who decide to proceed with prosecution and who act without a warrant must issue a citation and release the defendant unless it reasonably appears:

- (1) the person must be detained to prevent bodily injury to that person or another;
- (2) further criminal conduct will occur; or
- (3) a substantial likelihood exists that the person will not respond to a citation.

If the officer has already arrested the person, a citation must issue in lieu of continued detention, and the person must be released, unless any of the circumstances in subdivision 1(a)(1)-(3) above exist.

(b) **At Place of Detention.** When an officer brings a person arrested without a warrant for a misdemeanor to a police station or county jail, the officer in charge of the police station, sheriff in charge of the jail, or officer designated by the sheriff must issue a citation in lieu of continued detention unless it reasonably appears to the officer that any of the circumstances in subdivision 1(a)(1)-(3) exist.

(c) **Offenses Not Punishable by Incarceration.** A citation must be issued for petty misdemeanors and misdemeanors not punishable by incarceration. If an arrest has been made, a citation must be issued in lieu of continued detention.

(d) **Reporting Requirements.** If the defendant is not released at the scene or place of detention, the officer in charge of the place of detention must report to the court the reasons why.

Subd. 2. Permissive Authority to Issue Citations in Gross Misdemeanor and Felony Cases at Place of Detention.

When an officer brings a person arrested without a warrant for a felony or gross misdemeanor to a police station or county jail, the officer in charge of the police station, sheriff in charge of the jail, or officer designated by the sheriff may issue a citation and release the defendant unless it reasonably appears to the officer that any of the circumstances in subdivision 1(a)(1)-(3) exist.

Subd. 3. Mandatory Release on Citation When Ordered by Prosecutor or Court.

In felony, gross misdemeanor, and misdemeanor cases, a person arrested without a warrant must be issued a citation and released if so ordered by the prosecutor or by the district court, or by any person designated by the court to perform that function.

Subd. 4. Form of Citation.

(a) **General Form.** Any citation, including an electronic citation, filed or e-filed with the court must be in a form prescribed by this rule and approved by the State Court Administrator and the Commissioner of Public Safety, who shall, to the extent practicable, include in the citation the information required by Minnesota Statutes, sections 169.99, subdivisions 1, 1a, 1b, and 1c, and 97A.211, subdivision 1. The citation must contain the summons and complaint, and must direct the defendant to appear at a designated time and place or to contact the court or violations bureau to schedule an appearance.

(b) **Notices Regarding Failure to Appear.** The citation must state that failure to appear or contact the court or violations bureau as directed may result in the issuance of a warrant. A summons or warrant issued after failure to respond to a citation may be based on sworn facts establishing probable cause contained in or with the citation and attached to the complaint.

The citation must contain notice regarding failure to appear when the offense is a petty misdemeanor as required in Minnesota Statutes, sections 169.99, subdivision 1(b), and 609.491, subdivision 1.

(c) **Notice Regarding Fine Payment.** The citation must contain the notice regarding fine payment and waiver of rights in Rule 23.03, subd. 3.

MINNESOTA COURT RULES

CRIMINAL PROCEDURE

2

(d) Electronic Citation. If the defendant is charged by electronic citation, the defendant must be issued a copy of the citation. This copy must include:

- (1) the directive to appear or contact the court or violations bureau in paragraph (a); and
- (2) the notices in paragraphs (b) and (c).

(Amended effective January 1, 2012.)

Subd. 5. Lawful Searches. The issuance of a citation does not affect an officer's authority to conduct an otherwise lawful search.

Subd. 6. Persons in Need of Care. Even if a citation has been issued, an officer can take the person cited to an appropriate medical or mental health facility if that person appears mentally or physically incapable of self care.

Rule 6.02 Release by Court or Prosecutor

Subd. 1. Conditions of Release. A person charged with an offense must be released without bail when ordered by the prosecutor, court, or any person designated by the court to perform that function. On appearance before the court, a person must be released on personal recognizance or an unsecured appearance bond unless a court determines that release will endanger the public safety or will not reasonably assure the defendant's appearance. When this determination is made, the court must, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release that will reasonably assure the person's appearance as ordered, or, if no single condition gives that assurance, any combination of the following conditions:

- (a) Place the defendant under the supervision of a person who, or an organization that, agrees to supervise;
- (b) Place restrictions on travel, association, or residence during release;
- (c) Require an appearance bond, cash deposit, or other security; or
- (d) Impose other conditions necessary to assure appearance as ordered.

If the court sets conditions of release, it must issue a written order containing them. A copy of the order must be provided to the defendant and to the law enforcement agency that has or had custody. The law enforcement agency must also be provided with the victim's name and location.

The court must set money bail without other conditions on which the defendant may be released by posting cash or sureties.

The defendant's release must be conditioned on appearance at all future court proceedings.

Subd. 2. Release Conditions. In determining conditions of release the court must consider:

- (a) the nature and circumstances of the offense charged;
- (b) the weight of the evidence;
- (c) family ties;
- (d) employment;
- (e) financial resources;
- (f) character and mental condition;
- (g) length of residence in the community;
- (h) criminal convictions;
- (i) prior history of appearing in court;
- (j) prior flight to avoid prosecution;
- (k) the victim's safety;
- (l) any other person's safety;

(m) the community's safety.

Subd. 3. Pre-Release Investigation. To determine conditions of release, the court may investigate the defendant's background before or at the defendant's court appearance. The investigation may be conducted by probation services or by any other qualified agency as directed by the court.

Information obtained in the pre-release investigation from the defendant in response to an inquiry during the investigation and any derivative evidence must not be used against the defendant at trial. Evidence obtained by independent investigation may be used.

Subd. 4. Review of Release Conditions. The court must review conditions of release on request of any party.

Rule 6.03 Violation of Release Conditions

Subd. 1. Authority to Apply for a Summons or Warrant. On application by the prosecutor, court services, or probation officer alleging probable cause that defendant violated a release condition, the court may issue a summons or warrant, using the procedure in paragraphs (a) and (b).

(a) Summons. A summons must be issued instead of a warrant unless a warrant is authorized under paragraph (b). The summons must direct the defendant to appear in court and include a date and time for a hearing.

(b) Warrant. The court may issue a warrant instead of a summons if a substantial likelihood exists that the defendant will fail to respond to a summons, that continued release of the defendant will endanger any person, or the defendant's location is not known. The warrant must direct the defendant's arrest and prompt appearance in court.

Subd. 2. Arrest Without Warrant. A peace officer may arrest a released defendant if the officer has probable cause to believe a release condition has been violated and it reasonably appears continued release will endanger the safety of any person. The officer must promptly take the defendant before a judge. When possible, a warrant should be obtained before making an arrest under this rule.

Subd. 3. Hearing. The defendant is entitled to a hearing on alleged violations of release conditions. If the court finds a violation, the court may revise the conditions of release as provided in Rule 6.02, subd. 1.

Subd. 4. Commission of Crime. When a complaint is filed or indictment returned charging a defendant with committing a crime while released pending adjudication of a prior charge, the court with jurisdiction over the prior charge may, after notice and hearing, review and revise the conditions of release as provided for in Rule 6.02, subd. 1.

Rule 6.04 Forfeiture

Forfeiture of an appearance bond must be as provided by law.

Rule 6.05 Detention Supervision

The court must supervise a defendant's detention to eliminate all unnecessary detention. A detention facility must make at least bi-weekly reports to the prosecutor and the court listing prisoners in custody for more than ten days in felony and gross misdemeanor cases, and prisoners in custody more than two days in misdemeanor cases.

Rule 6.06 Misdemeanor Trial Dates

A defendant must be tried promptly after entering a not guilty plea. If a defendant or the prosecutor demands a speedy trial in writing or on the record, the trial must begin within 60 days.

The 60-day period begins to run on the day of the not guilty plea, and may be extended for good cause shown on motion of the prosecutor or the defendant, or on the court's initiative. If an in-custody defendant's trial does not begin in ten days, the defendant be released subject to nonmonetary release conditions as set by the court under Rule 6.02, subd. 1.

Comment - Rule 6

In misdemeanor cases a citation must be issued if the misdemeanor charged is not punishable by incarceration. A person should not be taken into custody for an offense that cannot be punished by incarceration. Rule 1.04(a) defines misdemeanors.

The "uniform traffic ticket" as defined in Minnesota Statutes, section 169.99, is used to issue a citation under Rule 6. The citation is used to charge not only traffic offenses under Minnesota Statutes, chapter 169, but also criminal or Department of Natural Resources (DNR) offenses defined in other chapters. The State Court Administrator and the Commissioner of Public Safety determine the required content of the citation in consultation with the courts, law enforcement, and other affected agencies, including the DNR.

*Rule 6.01, subd. 4(b), reiterates that the citation must contain the statutorily required notice that failure to appear for a petty misdemeanor offense results in a conviction. As stated in the rule, the citation must direct the defendant to either appear or contact the court by a particular date. This means a conviction will be entered under the statutory process: (1) if the defendant fails to appear on the scheduled court date; (2) if the defendant fails to pay the fine or otherwise contact the court by the scheduled deadline; or (3) if the defendant requests an initial hearing on the citation but then fails to appear for it. The statutory conviction procedure is not applicable, however, if the defendant invokes the process available in the Rules of Criminal Procedure by making an initial appearance but then fails to appear for a subsequent hearing. See *State v. Haney*, 600 N.W.2d 469 (Minn. Ct. App. 1999) and Judicial Council Policy 515, *Petty Misdemeanor Failure to Appear*.*

Rule 6.01, subd. 4(d), sets forth the content that must be included on the defendant's copy of an electronic citation. The defendant's copy of a paper citation typically contains additional information such as court contact information, payment methods, and collateral consequences. Since the Rules do not specifically require this information to be on the citation, when the defendant is issued an electronic citation, the additional information could be given to the defendant by other means such as directing the defendant to a website or providing a separate information sheet.

The arresting officer is to decide whether to issue a citation using the information available at the time. If that officer decides not to issue a citation, the officer-in-charge of the stationhouse will then make a determination from all the information then available, including any additional information disclosed by further interrogation and investigation.

Rule 6.01, subd. 6 is intended merely to stress that issuing a citation in lieu of a custodial arrest or continued detention does not affect a law enforcement officer's statutory right to transport a person in need of care to an appropriate medical facility. A law enforcement officer's power to transport a person for such purposes is still governed by statute and is neither expanded nor contracted by Rule 6.01, subd. 6. See, e.g., Minnesota Statutes, section 609.06, subdivision 1, clause (9), about the right to use reasonable force, in certain situations, toward mentally ill or mentally defective persons and Minnesota Statutes, section 253B.05, subdivision 2, governing the right of a health or peace officer to transport mentally ill or intoxicated persons to various places for care.

These rules do not prescribe the consequences of failing to obey a citation. The remedy available is the issuance of a warrant or summons upon a complaint.

Rule 6.02, subd. 1 specifies the conditions of release that can be imposed on a defendant at the first appearance. If conditions of release are endorsed on the warrant (Rule 3.02, subd. 1), the defendant must be released on meeting those conditions.

Release on "personal recognizance" is a release without bail on defendant's promise to appear at appropriate times. An "Order to Appear" is an order issued by the court releasing the defendant from custody or continuing the defendant at large pending disposition of the case, but requiring the defendant to appear in court or in some other place at all appropriate times.

The conditions of release must proceed from the least restrictive to the ultimate imposition of cash bail depending on the circumstances in each case. Release on monetary conditions should only be required

when no other conditions will reasonably ensure the defendant's appearance. When monetary conditions are imposed, bail should be set at the lowest level necessary to ensure the defendant's reappearance.

Rule 341(g)(2) of the Uniform Rules of Criminal Procedure (1987) and Standard 10-5.3(d) of the American Bar Association Standards for Criminal Justice (1985) provide for release upon posting of ten percent of the face value of an unsecured bond and upon posting of a secured bond by an uncompensated surety. Although Rule 6.02 does not expressly authorize these options, the rule is broad enough to permit the court to set such conditions of release in an unusual case. If the ten percent cash option is authorized by the district court, it should be in lieu of, not in addition to, an unsecured bond, because there is generally no reasonable expectation of collecting on the unsecured bond and the public should not be deluded into thinking it will be collected. The court should consider the availability of a reliable person to help assure the defendant's appearance. If cash bail is deposited with the court it is deemed the property of the defendant under Minnesota Statutes, section 629.53, and according to that statute the court can apply the deposit to any fine or restitution imposed.

For certain driving while intoxicated prosecutions under Minnesota Statutes, section 169A.20, if the defendant has prior convictions under that or related statutes, the court may impose the conditions of release set forth in Minnesota Statutes, section 169A.44. Conditions may include alcohol testing and license plate impoundment. However, Rule 6.02, subd. 1 requires that the court must set the amount of money bail without any other conditions on which the defendant can obtain release. The Advisory Committee was of the opinion that this is required by the defendant's constitutional right to bail. Minnesota Constitution, article I, section 7, makes all persons bailable by sufficient sureties for all offenses. It would violate this constitutional provision for the court to require that the monetary bail could be satisfied only by a cash deposit. The defendant must also be given the option of satisfying the monetary bail by sufficient sureties. State v. Brooks, 604 N.W.2d 345 (Minn. 2000).

If the court sets conditions of release, aside from an appearance bond, then the court must issue a written order stating those conditions. Any written order must be issued promptly and the defendant's release must not be delayed. In addition to providing a copy of the order to the defendant, the court must immediately provide it to the law enforcement agency that has or had custody of the defendant along with information about the named victim's whereabouts. This provision for a written order is in accord with Minnesota Statutes, section 629.715, which concerns conditions of release for defendants charged with crimes against persons. Written orders are required because it is important that the defendant, concerned persons, and law enforcement officers know precisely the conditions that govern the defendant's release.

When setting bail or other conditions of release, see Minnesota Statutes, sections 629.72, subdivision 7; and 629.725, as to the court's duty to provide notice of a hearing on the defendant's release from pretrial detention in domestic abuse, harassment or crimes of violence cases. Also see Minnesota Statutes, sections 629.72, subdivision 6; and 629.73, as to the duty of the law enforcement agency having custody of the defendant in such cases to provide notice of the defendant's impending release.

When imposing release conditions under Rule 6.02, subd. 2, Recommendation 5, concerning sexual assault, in the Final Report of the Minnesota Supreme Court Task Force on Gender Fairness in the Courts, 15 Wm. Mitchell L.Rev. 827 (1989), states that "Minnesota judges should not distinguish in setting bail, conditions of release, or sentencing in non-familial criminal sexual conduct cases on the basis of whether the victim and defendant were acquainted." This prohibition should be applied in setting bail in other cases as well.

NOTE: Rule 6 does not cover appeal of the release decision nor does it include release after a conviction. Appeal of the release decision is permitted under Rules 28 and 29. These rules also set standards and procedures for releasing a defendant after a conviction.

Rule 6.03 prescribes the procedures followed when conditions of release are violated. The Rule requires issuing a summons rather than a warrant under circumstances similar to those required under Rule 3.01. Rule 6.03, subd. 3, requires only an informal hearing and does not require a showing of willful default, but leaves it to the court's discretion to determine under all of the circumstances whether to continue or revise the possible release conditions. On finding a violation, the court is not authorized to

MINNESOTA COURT RULES

CRIMINAL PROCEDURE

6

revoke the defendant's release without setting bail because such action is not permitted under Minnesota Constitution, article I, section 5. The court must continue or revise the release conditions, governed by the considerations set forth in Rule 6.02, subs. 1 and 2. Under those rules, the court may increase the defendant's bail. If the defendant is unable to post the increased bail or to meet alternative conditions of release, the defendant may be kept in custody.

There are no provisions similar to Rule 6.03 in existing Minnesota statutory law except Minnesota Statutes, section 629.58, which provides that if a defendant fails to perform the conditions of a recognizance, process must be issued against the persons so bound. Rule 6.03, subs. 1 and 2 take the place of that statute.

Minnesota Statutes, section 629.63, providing for surrender of the defendant by the surety on the defendant's bond is not affected by Rule 6.03. To the extent that it is inconsistent with Rule 6.03 and Rule 6.02, subs. 1 and 2, however, Minnesota Statutes, section 629.64, requiring that in the event a defendant is surrendered by such surety money bail must be set, is superseded.

As to sanctions for violating Rule 6.06 speedy trial provisions, see State v. Kasper, 411 N.W.2d 182 (Minn. 1987) and State v. Friberg, 435 N.W.2d 509 (Minn. 1989). As to the right to a speedy trial generally, see the comments to Rule 11.09.