

STATE OF SOUTH DAKOTA

COUNTY OF YANKTON

IN CIRCUIT COURT
FIRST JUDICIAL CIRCUIT
Civ 09-01
FILED
MAY 26 2009

In Re The Administration of the First
Judicial Circuit

Gody Johnson
YANKTON COUNTY CLERK OF COURTS
FIRST JUDICIAL CIRCUIT
ARREST AND RELEASE PROCEDURE

ARREST AND RELEASE PROCEDURE (Revised 05/26/09)

IT IS HEREBY ORDERED that the following **First Circuit Arrest and Release Procedure** shall be effective immediately.

ISSUANCE OF WARRANTS - No arrest warrants are to be issued by any Clerk Magistrate, Magistrate Judge or Circuit Judge without a showing of probable cause. That showing of probable cause will be made by affidavit at the time the warrant is requested. Probable cause showing can be made by sworn complaint if sufficiently detailed.

WARRANTLESS ARRESTS - In the event of a warrantless arrest of an individual who is not released on bond, the prosecutor must show probable cause for the arrest to a Clerk Magistrate, Magistrate Judge or Circuit Judge within 48 hours including weekends and holidays. This applies only if the arrested person is still in custody and is required by the United States Supreme Court (*Gerstein v. Pugh*, 420 US 103, 95 SCt 854 (1975) and *Riverside v. McLaughlin*, 500 US 44, 111 SCt 1661 (1991)). This will normally be done by affidavit. This showing of probable cause may be done on Monday morning if that falls within the 48 hour period, otherwise the prosecutor must make arrangements with a magistrate or judge on their county "call list." It will be up to the magistrate or judge whether they want to come to the courthouse to review the probable cause showing or whether they want law enforcement to bring the requisite papers to their home. If probable cause is not shown, the jail has no legal authority to hold a defendant and could be held liable in a civil lawsuit.

PROCEDURE FOLLOWING ARREST - It is the responsibility of any law enforcement officer making an arrest to 1) obtain a bond and 2) take the arrested person before the nearest available committing magistrate without unnecessary delay (SDCL 23A-4-1). Generally this will take place when the court opens on the following morning or on Monday morning if the arrest takes place over a weekend. Only if someone else agrees to assume that responsibility (such as a jailor) is the arresting officer relieved from that obligation.

JUVENILES - If a juvenile is not immediately released to their parent or guardian, the arresting officer must immediately call a juvenile intake officer and notify a prosecuting attorney.

SETTING BONDS - *Bonds are to be set according to the following instructions without the necessity of personally contacting a magistrate or judge. Law enforcement can not change these terms either by adding any terms or by removing any terms without authorization of a judge or magistrate.* However, if there are any exceptional circumstances which would bear on the amount or conditions of a bond to be set, such as indications of flight risk or danger to others or the community, the arresting officer should contact a magistrate or judge (according to the county "call list") to have a bond set with other or different conditions.

AURORA, BON HOMME, BRULE, BUFFALO, CHARLES MIX, CLAY, DAVISON,
DOUGLAS, HANSON, HUTCHINSON, McCOOK, TURNER, UNION, & YANKTON COUNTIES

First Circuit Arrest Procedure; je 2

1. GENERAL MISDEMEANORS - All misdemeanor bonds may be set by means of a phone call to the magistrate or judge on their county "call list." The call list is in general: 1st - Clerk/Magistrate; 2nd - Magistrate Judge; and 3rd - Circuit Judge. If a bond needs to be set between 11:00 p.m. and 8:00 a.m. the bond will not be set until after 8:00 a.m. the following morning.

1.1 In all cases where an arrested person posts a bond (cash, surety or personal recognizance) the processing officer is responsible for making sure that a bond release form (UJS form 228 or similar document approved by the judges in that county) is signed and filed.

1.2 **Domestic Violence** - All domestic violence bonds, including violation of protection order bonds, are to be set by a magistrate judge or circuit judge. Bonds may be set by phone. They are to be obtained by the processing officer immediately after, or as part of the processing. All domestic violence bonds are to have an additional "no-contact" provision.

1.3 **Driving While Under the Influence (First and Second offense)** - Arrested persons who are residents of South Dakota are to be released on a **\$500 unsecured bond**; but if they are still under the influence, they can only be released to a responsible person who has not been drinking. Arrested persons who are non-residents must post a **\$500 cash or surety bond on first offense and \$700 cash or surety bond on second offense**. They also may only be released to a responsible person who has not been drinking if they are still under the influence. Participation in the 24/7 program for persons arrested for DUI second offense may be required at the discretion of the sitting circuit or magistrate court judge of that particular county.

1.4 **Other Misdemeanors** - Persons who are residents of South Dakota are to be released on a **\$500 unsecured bond**. Persons who are non-residents must post a **\$500 cash or surety bond on Class I Misdemeanors and \$150 cash or surety bond on Class II Misdemeanors**. If the arrested person is under the influence they can only be released to a responsible person who has not been drinking.

1.5 **24/7 Program** - No jail is authorized to make the 24/7 program a condition of bond unless specifically authorized by a Clerk Magistrate or Judge.

2. FELONIES - All felony bonds are to be set by a magistrate or judge. Bonds may be set by phone. They are to be obtained by the processing officer immediately after, or as part of the processing. All bonds can be set by means of a phone call to the magistrate or judge on their county "call list." The call list is in general 1st - Clerk/Magistrate; 2nd - Magistrate Judge; and 3rd - Circuit Judge. However, if a bond needs to set between 11:00 p.m. and 8:00 a.m. the bond will not be set until after 8:00 a.m. the following morning.

Dated this 26th day of May, 2009, at Yankton, South Dakota

STATE OF SOUTH DAKOTA
First Judicial Circuit Court
I hereby certify that the foregoing instrument
is a true and correct copy of the original as the
same appears on file in my office on this date:


MAY 26 2009

Jody L. Johnson
Yankton County Clerk of Courts

By: 

AURORA, BON HOMME, BRULE, BUFFALO, CHARLES MIX, CLAY, DAVISON,
DOUGLAS, HANSON, HUTCHINSON, McCOOK, TURNER, UNION, & YANKTON COUNTIES

BY THE COURT


Arthur L. Rusch
Presiding Circuit Judge