

THE LOWDOWN

Sheriff Charles S. Blackwood

The criminal justice system is complicated; many people are not familiar with the different components operating within it nor do they understand the functions of each. I want to discuss bail reform with readers of *The Lowdown*; however, to do this, I feel I should first provide some background information about our justice system to better frame the issues and provide important context.

To some, it might be a surprising realization that my deputies and I do not put people in jail, nor do we let them out. We certainly have an important role to play in bringing people to justice, but as part of a person's due process protections, only a judge or a magistrate can put someone into the jail, also known as the detention center. In what might be another surprising realization, jail and prison are not synonyms. They are different places with different purposes. In simplest terms, jail is where someone is incarcerated for the safety of the community before his or her case is resolved within the court system. Prison is where a person serves a criminal sentence after he or she is found guilty by the courts and sentenced to a term of incarceration.

There are four different processes a deputy can use to compel a person to appear in court. A deputy uses a **citation** for low level misdemeanor crimes or violations of local ordinances (for example, littering, public urination, or violation of a noise ordinance). Citations are also used for violations of the motor vehicle code (although most people call these traffic tickets!). The deputy has the authority to issue a citation without appearing before a judicial official. The person cited has the option to pay the associated fines and fees, thereby essentially pleading guilty or responsible to the offense, or to appear in court and present a defense to the charge. Notice that a citation compels a person to court without requiring his or her arrest.

Another process is the **criminal summons**. To obtain one, a deputy must appear before a magistrate and present testimony under oath about a crime. The magistrate will determine if the deputy's testimony establishes probable cause that the identified person committed the specified crime. Probable cause is more than a suspicion or hunch, but less than absolute certainty. It must be based on objective circumstances.

A magistrate is an independent judicial official, not employed by the sheriff's office. If the magistrate issues a criminal summons, a deputy will then locate the defendant and serve the process. The person is summoned to court, but not arrested or taken into

custody. If he or she fails to appear on the assigned court date, further sanctions ensue (usually the judge will issue an order for arrest for failure to appear). Primarily used for misdemeanor charges, a criminal summons can also be issued in some low level felony cases. If ultimately convicted of the charge, the accused may face a financial penalty, community service, or a period of incarceration.

The primary distinction between the two remaining processes, **arrest warrants** and **magistrate's orders**, is whether the defendant is present or not when the deputy appears before the magistrate. When an investigation into a crime develops both a suspect and evidence against that person, a deputy will appear before a magistrate to give testimony. If the magistrate finds probable cause that the suspect committed the crime, he or she will enter a warrant for that person's arrest into a statewide database. Any law enforcement officer who locates the defendant must serve the warrant, arrest the individual, and transport him or her directly back to a magistrate for processing. By contrast, if the deputy catches a person "red-handed" and makes an on-view arrest, he or she will place the person in custody without a warrant, and take the suspect to the magistrate's office seeking a magistrate's order. If the magistrate finds probable cause, he or she will process the arrest; if not, he or she will order the person's immediate release.

In next month's column, I will discuss the initial appearance hearing at which the magistrate establishes pretrial conditions of release at the time of arrest. I will also explore the purpose of bail and the different types. I will conclude this three-part series with a discussion of bail reform in my March column.