

<b>Anchorage Police Department</b> Regulations and Procedures Manual	<b>Operational Procedures</b> <b>3.02.075</b>	
<b>Policy and Procedure Title</b> Investigations- Warrants/Summons/Subpoenas	<b>Effective Date</b> April 12, 2021	Page 1 of 6
<b>Replaces Prior Policy:</b> August 10, 2009	<b>Approved by:</b> Chief Justin Doll	

**This policy is the internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.**

### **3.02.075 Investigations-Warrants/Summons/Subpoenas**

#### **PURPOSE**

To advise all employees of the processes affecting arrest and search warrants, and the various summons/subpoenas encountered in law enforcement.

#### **DISCUSSION**

The Constitution provides for a variety of "checks and balances" to ensure that no one branch of government becomes too strong, nor that the government in general intrude unnecessarily into the private lives of its citizens. One such balancing process is the presumption that the police shall get authority from the courts for any search and/or arrest. This is done by applying for a "warrant," and it is only in specifically and narrowly defined situations that an officer can make an arrest or conduct a search without a warrant.

In practice, however, warrantless searches and arrests seem to be the rule instead of the exception--that is, on a day-to-day basis, officers operate often and routinely in the "specific and narrowly defined situations" which allow exclusion from the warrant requirements. The end result is that some officers come to regard petitioning for warrants as an infrequently used process that is applied only in the most complex cases. This procedure will assist officers in determining when and how to petition for those documents.

#### **DEFINITIONS**

**Warrant:** For purposes of this procedure, a judicial authorization to do something. In law enforcement, the most common types of warrants are:

**Arrest Warrants:** Which authorize the government (usually represented by the police) to seize person(s); and

**Search Warrants:** Which authorize the government (usually represented by the police) to search a person or place and to seize certain property.

**Probable Cause--Arrest Warrants:** That level of proof which exists if the facts and circumstances known to the officer would warrant a prudent man in believing that an offense had been or was being committed, and that the person to be arrested is responsible.

**Probable Cause--Search Warrants:** The sufficiency of information required to permit the conclusion that criminal activity or evidence of crime will be found at the place to be searched.

**Summons:** For purposes of this procedure, a command to appear in court for arraignment.

**Subpoena:** For purposes of this procedure, a command, under penalty, for either a person to appear in court, and/or a person to appear in court with documents or other material.

## **PROCEDURE**

### **I. ARREST WARRANTS AND SUMMONS**

#### **A. Types of Arrest Warrants.**

1. Arrest Warrants.
  - a). Misdemeanor Arrest Warrants.
  - b). Felony Arrest Warrants.
  - c). Juvenile Detention Orders.
  - d). Ex-Parte Orders (normally for mental commitments).

#### **B. Sources of Arrest Warrants.** Warrants originate from two broad sources:

1. Warrants which result from an investigation, where application is made to the courts for authority to arrest or search; or
2. Warrants issued by the court itself, known as "Bench Warrants." These warrants are normally issued as a result of a defendant's failure to perform some required act, so are almost always arrest warrants. Commonly, these are:
  - a). Failure to Appear (FTA).
  - b). Contempt of Court (COC).
  - c). Failure to Satisfy (FTS).
  - d). Failure to Comply (FTC).
  - e). Violation of Conditions of Release (VCR).
  - f). Probation/Parole Revocation.

#### **C. Warrant and Summons Application--Misdemeanors.**

1. General Processing. Any peace officer can apply for a warrant or, as mentioned, a court may issue a warrant on its own initiative. Once issued, a warrant may be immediately served by a police officer (a private person

cannot serve a warrant). Officers need only to know a warrant exists, either through personal knowledge or, more typically, through "police information" from the Dispatch Center or Mobile Data Computer.

2. Application procedure for misdemeanor warrants or summons through the judicial system. When officers apply for a misdemeanor warrant or summons, the following procedure shall apply. Note that paragraph "3" of this section identifies the Uniform Summons and Complaint as an officer-issued summons, as contrasted with this judicially issued document.

a). Municipal misdemeanor warrant/summons application:

i. Ensure the investigation is complete.

ii. Prepare a Complaint as normal. Be alert to the following:

(1). Supply ample "probable cause" in the designated area of the Complaint.

(2). The Complaint is the application for either a Summons (which does not allow an arrest, but serves to advise the defendant of the court date and charges) or a Warrant (which does require/allow an arrest to ensure the defendant will appear).

iii. When possible, the Municipal Prosecutor's Office will be furnished with the full Police Report and Complaint for review of accuracy, clarity, and legal sufficiency. The Municipal Prosecutor reviews, approves, and initials the package.

iv. Officers will proceed to the State Court Building to contact a judge or magistrate.

(1). The Complaint will be sworn to and signed before that judicial officer; and

(2). There will be a determination made of whether a summons or warrant shall issue; and

(3). The judicial officer will fill out the Complaint as appropriate to a summons or warrant.

**Note:** If a warrant is issued, bail will be set and entered on the document, but no court date will be specified as the defendant is not yet in custody.

**However,**

If a summons is issued, a hearing date is set, but bail is not an issue. Recall that a summons is used when there is no reason to believe the defendant should be arrested--the person is merely advised of the court date and is expected to appear. A summons specifies the court date and is served on the defendant to ensure he or she is in receipt of both the charges and the date to appear in court.

v. Officers will deliver or cause to be delivered the finalized documents to the Clerk of Courts, where they will be processed.

vii. After filing with the Clerk of Courts, officers may deliver the appropriate documents to the Warrants Section to expedite entry of the warrant into the computer or, in the case of a summons, to ensure expedient service.

b). State misdemeanor warrant application. The application for summons or warrant for a State violation is nearly identical to that of a Municipal application.

i. Ensure the investigation is complete.

ii. When possible officers should contact the intake District Attorney. The case will be reviewed with that person and, if a summons or warrant is appropriate, that office will prepare the document.

iii. The applying officer will then take the material to the State Court Building for signing before a judicial officer and subsequent handling, as described above under the Municipal procedure.

3. Officer-issued summons. Recall that officers may issue a summons for certain violators to appear in court on certain misdemeanors. This occurs when officers issue a Uniform Summons and Complaint or Order and Conditions Release Per Schedule.

**D. Felony Warrant or Summons Application Procedure.** Applying for felony warrants/summons differs from its misdemeanor counterpart only because the prosecuting agency changes to the District Attorney's Office. The principle remains the same, however, and the following guidelines apply:

1. Ensure the investigation is complete.

2. Arrange to meet with a District Attorney to discuss the case, when possible. The report will be reviewed for clarity, accuracy, and completeness, and the case will be reviewed for both legal sufficiency and foundation for warrant/summons issuance.

3. If approved, the District Attorney will prepare:

a). An affidavit setting out the probable cause; and

b). A Summons/Warrant form similar to what appears on the Complaint in misdemeanor cases.

4. Officers will then take the package to an available judge or magistrate, where the affidavit will be sworn to, and the case considered.

5. That judicial officer will ascertain if a warrant or summons is appropriate, and:

a). If a warrant, establish a bail amount, but no court date.

b). If a summons, establish a court date only, as bail is inappropriate.

6. Officers will then take the finalized package to the Clerk of Courts, where the documents will be certified and processed.

7. Officers may deliver the appropriate documents to the Judicial Services (JS) Section of the Alaska State Troopers to allow a more expeditious entry of the warrant into the computer or, in the rare case of a summons, ensure more expedient service.

**E. Summons Application Procedure--Infraction.** Officers will normally issue a Uniform Summons and Complaint for an infraction in the field at the time of the incident. However, there are situations which lead to charging an infraction at a later time, such as at the conclusion of a traffic accident investigation. Notice there is a difference between this process and officer-initiated issuance of a misdemeanor summons by way of a Charging Document, Uniform Summons and Complaint or Order and Conditions Release Per Schedule, Form CR-766. Should officers need to summon a person for an infraction, the following guidelines shall apply:

1. Properly complete the Charging Document.

**Note:**

a). As the name implies, that form acts as both the charging document and the formal summons to appear in court.

b). The date to appear in court shall be in compliance with the "points and bail forfeiture schedule" furnished the officer.

i. Normally this would be "Within 30 days" for infractions (technically, there is one exception to this--"Within 15 days" for charging the *infraction* of littering under AS 46.06.080. Charging under this statute, if ever appropriate, would only be when the amount of litter is under 5 pounds. See "Littering", 3.01.080, for details); or

ii. "Inspectable within 30 days at 716 W 4<sup>th</sup> Ave" for most correctable equipment violations. The exceptions within this section (AMC 9.44) are:

(1). Excessive exhaust noise or excessive fumes or smoke, which is inspectable within 30 days at the MOA Environmental Health Services Department, 825 L Street, during normal business hours. Call for an appointment 907-343-4200.

2. Take the Uniform Summons and Complaint to the Traffic division of the Court system. A clerk will take the citation and arrange for service. Since the complaint is for an infraction, no judicial review is required, and the citation itself acts as a summons.

## **II. SEARCH WARRANTS**

A. **General.** Search warrants are judicial authorizations to search persons or property, and to seize certain property as a result of that search. Note that, in

Alaska, there is a special requirement for seizing conversation, as described in the *Glass* decision. Warrants for such seizures are known as "*Glass Warrants*."

**B. Sources of Search Warrants.** Search warrants are normally the result of police application only, and not on the initiative of the "bench" (judiciary) as commonly found in arrest warrants.

**C. Application for Search Warrants.**

1. Method. Officers will normally seek a search warrant by:

a). Telephone. This is appropriate for emergency authorization to search; or

b). Appearing in person to swear to the affidavit. Most cases lack the urgency necessitating a telephonic search warrant, and personal application is appropriate.'

2. Application. When applying for a search warrant, officers should coordinate with the appropriate prosecuting agency. Although misdemeanor search warrants are possible (most notably with Operating Under the Influence cases), most search warrants are for felony offenses, and will be coordinated with the District Attorney's Office. Officers should abide by the advice and instructions of that agency.

**D. Confidentiality and Reporting.** Alaska Rule of Criminal Procedure 37 provides that:

1. The record of all search warrant proceedings, and all documents related to those hearings, will be kept sealed unless the court orders otherwise for good cause shown; and

2. Once charges are filed, however, those materials will be open to the public unless the court orders otherwise; and

3. The State must list, by search warrant number, the search warrants that were executed during the course of the investigation. To comply with this requirement, officers shall:

a). Record the search warrant number(s) in the text of the Police Report; and

b). Make available the search warrant number(s) to the screening prosecutor to facilitate the inclusion of those numbers in the probable cause statement of the charging document.

\*\*\*END OF DOCUMENT\*\*\*