




## ARLINGTON COUNTY POLICE DEPARTMENT DIRECTIVE MANUAL

<b>Chapter: 5</b> Procedures	<b>Effective Date:</b> July 20, 2018	<b>Amends/Supersedes:</b> March 1, 2005	<b>By Authority of the Chief of Police</b>   Charles A. Penn
<b>Accreditation Standard(s):</b> ADM.25.01, OPR.04.02, OPR.07.01, OPR.12.04			

### 536.01 Virginia Uniform Summons

#### I. Policy

The issuance of a Virginia Uniform Summons (VUS) is governed by the Code of Virginia and is generally an alternate form of arrest. The offense committed and the discretion given to an arresting officer determines whether an arrestee must be released on a summons or taken before a magistrate. Each employee is responsible for knowing when to utilize a VUS as well as its distribution.

#### II. Procedure

- A. Virginia Uniform Summons (VUS) – A VUS is used by law enforcement officers throughout Virginia, in most traffic and misdemeanor related offenses, to capture identifying information about an accused and the violation committed. Additionally, it allows a defendant, upon his written promise to appear in court, to avoid a full custodial arrest. A VUS should be filled out by the officer as completely as possible and include the following:
1. Check the appropriate General District Court designation – Traffic, Criminal, or J&DR.
  2. The court date on a VUS should be set at a minimum of two weeks from the date of issue.
  3. Include the appropriate Virginia and/or Arlington County Code section and describe the charge - only one charge per VUS is permitted.
  4. Enter the Virginia Crime Code for any jailable offense. These codes are available online from the Virginia Sentencing Commission.
  5. The violator is required by law to sign the VUS as a promise to appear in court. Violators refusing to sign a VUS must be taken before a magistrate.
  6. If the offense is prepayable the appropriate box on the VUS should be checked.
  7. All applicable information, including the accused's name, address, vehicle information, jurisdiction code, date/time of offense, location of offense, arrest location, officer name/badge, case number etc., should be included on the VUS.
  8. The mailing address on the VUS should be confirmed by the officer prior to providing a copy of the VUS to the violator.

B. Issuance of a Virginia Uniform Summons in Lieu of Arrest

1. Traffic Violations - In accordance with [Virginia Code § 46.2-936](#) and § 46.2-945 officers are required to issue a VUS instead of making an arrest and taking the accused before a magistrate for a violation of any provision of Title 46.2 that is punishable as a misdemeanor. Virginia Code § 46.2-937 states that for the purposes of arrest, traffic infractions shall be treated as misdemeanors and the duties of the arresting officer shall be the same for traffic infractions as for misdemeanors. An officer shall arrest and bring the accused before a magistrate under the following circumstances stated in Virginia Code § 46.2-940 and § 46.2-936:
  - a. The arresting officer believes that the accused has committed a felony; or
  - b. The arresting officer believes that the accused will disregard a summons; or
  - c. The accused refuses to give a written promise to appear.
  - d. The accused is arrested for driving a commercial motor vehicle in violation of [Virginia Code §§ 46.2-341.24, 46.2-341.24\(B\)](#), or 46.2-341.31.

Except for Hit & Run accidents, traffic offenses charged on a VUS do not need a case report, even if the offense carries a potential jail sentence.

2. Criminal Violations - All arrests for non-traffic crimes occurring in Arlington County must have an associated case report and arrest report regardless of whether an arrestee was released on a summons or taken into custody and brought before a magistrate. An arrest report must be completed for each arrestee.
  - a. Misdemeanors Committed in Officer's Presence – When an officer arrests a person for a misdemeanor committed in their presence, Virginia Code § 19.2-74 requires that the accused be released on a summons. In certain circumstances, however, a person must be taken into custody and brought before a magistrate. These circumstances are:
    - (1) For Class 1 or 2 misdemeanors, or any other misdemeanor for which the accused may receive a jail sentence; and
      - (a) The accused refuses to sign the summons, or
      - (b) The accused fails or refuses to discontinue the unlawful act, or
      - (c) The officer believes the accused is likely to disregard the summons, or
      - (d) The officer believes the accused is likely to harm himself or another person.
    - (2) For Class 3 or 4 misdemeanors, or any other misdemeanor for which the accused cannot receive a jail sentence; and

- (a) The accused refuses to sign the summons, or
  - (b) The accused fails or refuses to discontinue the unlawful act.
- (3) An arrest for public intoxication (Virginia Code § 18.2-388, Arlington County Code §17-7)
- (4) An arrest for remaining at a place of riot or unlawful assembly (Virginia Code §18.2-407) may be handled with a summons or custodial arrest, at the officer's discretion.
- b. Misdemeanors Not Committed in Officer's Presence – Arrests for misdemeanor offenses not committed in the officer's presence require that the accused be taken into custody and brought without delay before a magistrate. Under the following circumstances, however, an arrestee may be released on a Virginia Uniform Summons:
  - (1) A misdemeanor shoplifting violation. (VA Code § 19.2- 81.G)
  - (2) An officer may issue a VUS for the following offenses, to a person who has been suspected of driving while intoxicated and who has been taken to a medical facility for treatment or evaluation: (VA Code § 19.2-73)
    - i. [§ 18.2-266. Driving motor vehicle, engine, etc., while intoxicated, etc.](#)
    - ii. [§ 18.2-266.1. Persons under age 21 driving after illegally consuming alcohol; penalty.](#)
    - iii. [§ 18.2-272. Driving after forfeiture of license.](#)
    - iv. [§46.2-341.24. Driving a commercial motor vehicle while intoxicated, etc.](#)
    - v. [§ 18.2-268.3 \(A\) or \(B\). Refusal of tests; penalties; procedures.](#)
    - vi. [§ 46.2-341.26:3 \(A\). Refusal of tests; issuance of out-of-service orders; disqualification.](#)
- 3. Juvenile Violations - Refer to ACPD Manual section *522.05 Juvenile Offenders*, IV.E. Virginia Uniform Summons for detailed procedures regarding juveniles and release on a Virginia Uniform Summons in lieu of filing a petition.
- C. Probable Cause Hearing - If an arresting officer brings the accused before a magistrate, the magistrate must then decide whether probable cause exists that the accused committed the misdemeanor or traffic infraction. If the magistrate does not find probable cause and a warrant or summons is not issued, the person arrested must be released. An officer may not then issue a VUS for the charge for which the magistrate did not find probable cause.
- D. Search Incident to Citation –
  - 1. Traffic Violation Only - Absent justifiable officer safety concerns, probable cause, or consent, an officer may not conduct a search of a person or their

vehicle incident to the issuance of a VUS for a traffic violation only.

2. Misdemeanor Arrests – A search incident to the issue of a summons for a misdemeanor criminal offense is reasonable if it can be articulated that it is related to officer safety or the preservation of evidence.

- E. Prepayable Offenses – A VUS contains a box that an officer may check, when applicable, to advise a defendant that they may avoid coming to court if all the instructions on the defendant's copy of the VUS are followed. The General District Court also provides the department with Virginia Prepayable Offenses Information Sheets that should be offered to a defendant that provides notice that they may plead guilty, waive their right to trial, and pay the applicable fine(s) and fee(s) prior to trial in order to avoid a court appearance. The defendant's copy of the VUS also contains pretrial waiver and prepayment instructions, but requires the offender to call the clerk's office for further instruction.

Fines and processing fees, related to prepayable offenses, are published by the [Supreme Court of Virginia as Uniform Fine Schedules known as Rule 3.B:2. Traffic Infractions and Rule 3.C:2. Non-Traffic Prepayable Offenses.](#)

1. Traffic - The [Code of Virginia §16.1-69.40:1](#) allows a person charged with a traffic offense listed as prepayable in the Uniform Fine Schedule to prepay fines and costs without a court appearance whether or not they were involved in an accident. Exceptions to this rule are as follows:
  - a. Indictable offenses.
  - b. Operation of a motor vehicle while under the influence of intoxicating liquor or a narcotic or habit-producing drug, or permitting another person, who is under the influence of intoxicating liquor or a narcotic or habit-producing drug, to operate a motor vehicle owned by the defendant or in his custody or control.
  - c. Reckless driving.
  - d. Leaving the scene of an accident.
  - e. Driving while under suspension or revocation of driver's license.
  - f. Driving without being licensed to drive.
2. Criminal Offenses – The Code of Virginia [§16.1-69.40:2](#) and [§19.2-254.2](#) allows a person charged with a misdemeanor criminal offense, listed as prepayable in the Uniform Fine Schedule, to prepay fines and costs without a court appearance. Exceptions to this rule are as follows:
  - a. Indictable offenses.
  - b. Class 1 or Class 2 misdemeanors.
  - c. Offenses which involve moral turpitude.
  - d. Any offenses involving injury to persons.
  - e. Any offense punishable by incarceration or by a fine of more than \$500.

3. Prepayable Offenses Involving an Accident - A person charged with a traffic offense that is listed as prepayable in the Uniform Fine Schedule may prepay his fines and costs without court appearance whether or not he was involved in an accident. In order to avoid inconveniencing those who will be subpoenaed as witnesses to an accident, it is important to determine, if possible, prior to the date set for hearing of the offense whether the person charged intends to plead not guilty thereby requiring the presence of witnesses for a trial. To further this goal, the following procedures will be followed to assist the District Court in processing prepayable violations related to traffic accidents:
  - a. Officers must provide a Virginia Prepayable Offenses Information Sheet to any driver who is issued a VUS as a result of an accident and explain the section regarding pleading not guilty to charges stemming from an accident.
  - b. If there are witnesses to the accident, the officer should complete a [DC-325, REQUEST FOR WITNESS SUBPOENA](#) and leave the court date and time and the section entitled, "Requested By" blank. The officer then attaches the form to the Court copy of the defendant's VUS. The court encourages officers to consider their evidence and only subpoena witnesses in those cases where witnesses are essential to the case.
  - c. When the clerk receives the Virginia Prepayable Offenses Information Sheet from the defendant and the block indicates that they intend to plead not guilty, the clerk's office would then:
    - (1) Retrieve the DC-325 form attached to the defendant's Virginia Uniform Summons, enter the court date and sign the DC-325 form for service on the witnesses.
    - (2) If there is not sufficient time to allow for reasonable notice by mail to the witnesses, the clerk would reschedule the defendant's case for the next available date of the charging officer and mail it to the witnesses.
    - (3) The clerk would also generate a Notice of New Trial Date that would advise the defendant and the officer of the new court date.
  - d. If the defendant has not sent in their Virginia Prepayable Offenses Information Sheet by the original court date, indicating their intent to appear and plead not guilty, one of the following outcomes should occur:
    - (1) The defendant has prepaid his charge and the case is completed.
    - (2) The defendant does not appear; the court tries the defendant in his absence based on the law enforcement officer's testimony and evidence.
    - (3) The defendant appears and pleads guilty; the case is tried and concluded.
    - (4) The defendant appears and pleads not guilty and a new trial date

is set.

The court encourages law enforcement officers to set accident cases far enough in the future to allow for the defendant to respond within seven days of receiving the VUS regarding their intent to enter a plea of not guilty and also to provide sufficient time for the clerk to complete and mail the [DC-326, SUBPOENA FOR WITNESSES](#) and give the witnesses adequate notice of the court date. It is suggested that thirty days should be sufficient time to accommodate these actions.

- F. Distribution of Virginia Uniform Summons - Special Services Unit, Customer Service Counter personnel are responsible for supplying Virginia Uniform Summonses to officers. A stockpile of VUS books are maintained at the front counter and available for distribution 24-hours. Officers who take a VUS book must record their Name, DID, and the serial number of the VUS book in the VUS logbook that is maintained by the Customer Service Counter. Customer Service Counter personnel will transfer all VUS logbook information into LERMS in order for the department to keep track of each VUS. The Property Management Unit is responsible for ordering VUS's and for the bulk storage and security of Virginia Uniform Summonses.
- G. Processing Virginia Uniform Summonses – All Court copies of issued VUS's will be forwarded to the Records Management Unit (RMU) for processing. The RMU is responsible for:
  - 1. Entering all issued and voided Virginia Uniform Summonses into LERMS.
  - 2. Destroying all voided Virginia Uniform Summonses.
  - 3. Forwarding copies of any traffic or criminal related VUS, issued to an adult, to the Clerk of the General District Court.
  - 4. Forwarding copies of any traffic or criminal related VUS, issued to a juvenile, to the Clerk of the Juvenile and Domestic Relations (J&DR) Court.
- H. Virginia Uniform Summons Accountability
  - 1. Officers – All issued VUS books are recorded in LERMS by serial number. Employees are responsible for each VUS book they sign out, although they may transfer a VUS issued to them to another officer when necessary. The Court copy of a completed VUS will be turned in at the end of an officer's shift, deposited in the RMU folders located in the Roll Call Room or brought directly to the Records Management Unit.
    - a. Warnings - A VUS which is issued as a warning will have "WARNING" printed across the top of the page.
    - b. Voided - A VUS which is voided will have "VOID" printed across the top of the page. All voided Virginia Uniform Summonses must include the officers DID and be signed by a supervisor. The Court copy of any voided VUS will be delivered to a supervisor or the Customer Service Counter and forwarded to the Records Management Unit. Once a VUS has been issued to an arrestee it can only be voided by authority of the Commonwealth Attorney.
    - c. Audits - The Operations Division Commander will conduct a VUS audit every six months. Any unused or excess Virginia Uniform Summonses

will be returned to the Records Management Unit.