



# GENERAL ORDER

Loudoun County Sheriff's Office

**Chapter:** Operations

**Section:** 402.3

**Subject:** Arrest

**Topic:** Criminal and Traffic Summons

**Accreditation:** OPR.04.02

**Revised:**

**Reaffirmed:**

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## I. CODE REQUIREMENTS

The following Virginia Code Sections shall serve as reference regarding the issuance of criminal and traffic summonses.

§ 19.2-74. Issuance and service of summons in place of warrant in misdemeanor case; issuance of summons by special conservators of the peace.

§ 19.2-81. Arrest without warrant authorized in certain cases.

§ 19.2-390. Reports to be made by local law-enforcement officers, conservators of the peace, clerks of court, Secretary of the Commonwealth and Corrections officials to State Police; material submitted by other agencies.

§ 18.2-119. Trespass after having been forbidden to do so; penalties.

§ 46.2-936. Arrest for misdemeanor; release on summons and promise to appear; right to demand hearing immediately or within twenty-four hours; issuance of warrant on request of officer for violations of §§ 46.2-301 and 46.2-302; refusal to promise to appear; violations.

§ 46.2-937. Traffic infractions treated as misdemeanors for arrest purposes.

§ 46.2-938. Issuance of warrant upon failure to comply with summons; penalties; suspension of licenses for failure to appear.

## II. PROCEDURE

Virginia Uniform Summons.

### A. Deputy Initiated Offenses

#### 1. Criminal/Non-Traffic Misdemeanor Offenses

A summons should be issued to all persons charged with misdemeanor offenses committed in the presence of the arresting deputy, with the exception of misdemeanor shoplifting offenses and assault and battery which allow summons to be issued when such is based on probable cause upon reasonable complaint of the person who observed the alleged offense.

- a. Class 1 or 2 Misdemeanors (Those misdemeanors which are punishable by jail terms.)  
The arrestee shall be released on a summons with the following exceptions:
  - 1. If the arrested subject refuses to give a written promise to appear, he/she should be brought before the magistrate.
  - 2. If the accused subject is believed likely to disregard a summons, the arresting deputy should not prepare a summons, but should arrest the subject and take him/her before the magistrate for bonding and booking determinations. In that instance there will generally be one of four options:
    - a. The magistrate may deny a warrant or summons and order release of the subject
    - b. The magistrate may request that the arresting deputy issue a summons, in which case the deputy should comply, but ask that the magistrate sign the summons to indicate his decision to release
    - c. The magistrate may issue a summons for service by the deputy, in which case the deputy must also complete a Virginia Uniform Summons as per Section II.B. of this procedure
    - d. The magistrate may issue a warrant for execution by the deputy, in which case full booking must follow, including fingerprints and photographs
  - 3. No summons should be issued where the deputy reasonably believes that the subject is likely to cause harm to himself or another. This determination should be arrived at by considering the nature of the offense, the conduct of the suspect, whether or not the suspect is under the influence of alcohol or other intoxicants and previous personal knowledge of the suspect.
- b. Class 3 or 4 Misdemeanors (Those misdemeanors not punishable by a jail term.)

The arrestee must be released on a summons unless:

1. The accused refuses to sign the summons, then the arresting deputy must take the individual before a magistrate for the fixing of bail.
2. The arrestee refuses to identify himself/herself. In this case, the deputy will be unable to issue a summons and may take the arrestee before the magistrate for the setting of bail.
3. The arrestee is charged with a violation § 18.2-388 –Profane swearing or drunkenness, or § 18.2-407 – Remaining at a place of a riot or unlawful assembly. In these cases, the deputy may take the arrestee before the magistrate for the setting of bail.

NOTE: The above procedures do not grant to a deputy the authority to change the terms of a misdemeanor BODY arrest warrant issued by a judge or magistrate for criminal/non-traffic misdemeanors.

2. Traffic Offenses Under Title 46.2

- a. The arrestee must be released on a written summons with the following exceptions:
  1. If the accused subject is believed to have committed a felony
  2. If the accused subject is believed by the arresting deputy to be likely to disregard a summons if issued
  3. If the accused subject refuses to give a written promise to appear
- b. Any pre-existing process for an alleged violation of Title 46.2, regardless of whether the magistrate issued a warrant or summons, shall be served as a summons unless the deputy serving the process has personal knowledge of the circumstances which would lead him to believe the person is likely to disregard the process being served, or the individual fails to give such written promise to appear.

3. Distribution of copies of Virginia Uniform Summons

- a. Traffic offenses under Title 46.2
  1. Arresting deputy issues summons. The DEFENDANT'S COPY – Page 3 (yellow) is given to the defendant. The AGENCY COPY – PAGE 4 (top portion) is to be routed to Central Records. The AGENCY COPY – Page 5 remains in the summons book for the arresting deputy's use and for departmental audit. If a certified

copy of the driver's record is needed, the lower portion of AGENCY COPY – Page 4 shall be completed by the deputy and routed to Central Records.

2. The COURT COPY – Page 1, the DMV COPY – Page 2 is turned in to the deputy's supervisor for review then routed to the Administrative Office.

b. Criminal/Non-traffic Misdemeanor Offenses

1. Arresting deputy issues summons. The DEFENDANT'S COPY – Page 3 (yellow) is given to the defendant. The AGENCY COPY – Page 4 is for the Central Records' use. The AGENCY COPY – Page 4 is for the Central Records use. The AGENCY COPY – Page 5 remains in the summons book for the arresting deputy's use and for departmental audit.
2. The COURT COPY – Page 1 and the DMV COPY – Page 2 are turned in to the Deputy's supervisor for review and forwarding to the Administrative Office.
3. Administrative Office sends COURT COPY – Page 1 and DMV COPY – Page 2 to Court.

B. Magistrate Issued Warrants/Magistrate Issued Summonses

An IBR must be completed upon the execution of all Magistrate issued misdemeanor warrants that are of may be executed as summonses, all Magistrate issued summonses, and all Magistrate issued warrants and summonses for traffic offenses including arrests for Driving While Intoxicated.

1. The following procedure for execution of warrants or summonses must be followed:
  - a. The deputies who execute the court document are responsible for the completion of the IBR
  - b. All information regarding the defendant's name, description, vehicle (if appropriate), and arrest data, must be completed
  - c. Only the charge stated on the Magistrate issued document is to be placed in the section which describes the charge
  - d. The executing deputy will retain the pink copy of the arrest report

- e. The yellow copy of the arrest report will be forwarded to the Commonwealth Attorney's Office with all criminal history information attached;
  - 1. If the defendant is arrested and transported to the Adult Detention Center, the yellow copy of the arrest report and criminal history information (if necessary) will be left at the ADC for the Commonwealth's Attorney Office
  - 2. If the defendant is released on a summons, then the white and yellow copy of the arrest report will be forwarded to Central Records Section

C. Inventory and Control of Virginia Uniform Summons

Personnel assigned to the Property Section will verify that the last page of each of the twenty-five forms is in the book. The front cover of the completed book will be signed by the Property Section personnel and given to the deputy as a receipt. Returned books with unused forms will be given to the Property Section reissue.

D. Voiding or Canceling Virginia Uniform Summons

The occasion may arise when a deputy may have started to complete a summons but, due to another circumstance, is unable to complete it. If the deputy has not issued the summons, it should be voided by writing "VOID" across the entire summons and turned in to his/her supervisor. The supervisor shall sign the voided summons and send AGENCY COPY – Page 4 to Central Records.

Generally, once a deputy has physically brought a subject to the Sheriff's Department under arrest, the deputy has no legal authority to release that person from custody without pursuing the criminal charge.

E. Search of the Arrested Person and Vehicle

If the arrested person is to be taken into custody, a close search of the person is required. If the subject is to be released on a summons without transport by the deputy (non-custodial arrest), a search is generally not warranted even though the arrest is for a criminal act and not a traffic offense. This procedure in no way limits a deputy's right to frisk a subject he/she reasonable believes may be armed or intends to do him/her bodily harm. It is logical that the "stop and frisk" rules apply in these instances.

If the vehicle of an arrested person is to be impounded by the Sheriff's Department, a (routine) inventory search of the vehicle is deemed proper to protect the deputy and the Department from liability for items alleged missing from the vehicle. When practical,

such inventory should be conducted in the presence of the arrested person prior to “hook-up” by a tow truck. As the admissibility of evidence obtained in such searches is frequently challenged in court, the preferred procedure to follow where there is probable cause to believe that the vehicle contains evidence of probative value is to have another deputy stand by with the vehicle until the arresting deputy obtains a search warrant.

F. CCRE Compliance

1. Requirements

As stated above regarding misdemeanors, reports to the Central Criminal Records Exchange are required for any offense punishable as a misdemeanor under Title 54, or Class 1 or 2 misdemeanors under Title 18.2 except Subsections 18.2-266, 18.2-415 and 18.2-119, but such report shall not be necessary until after a disposition of guilt is entered by a competent judicial authority.

III. PROCEDURE

- A. Sworn Courts personnel will escort the defendant and obtain necessary information required for the CCRE.