

THE RALEIGH POLICE DEPARTMENT

1108-02

LEGAL PROCESS

PURPOSE

To provide written guidelines concerning the use of arrest, citations, or warrant and criminal summons service in fulfilling the Department's law enforcement responsibilities.

VALUES REFLECTED

This directive reflects our values of *Service, Fairness, Integrity, and Compassion*. The power vested in our officers to enforce the laws and ordinances of the State of North Carolina and the City of Raleigh demands close observance of the constitutional rights of citizens. We will hold ourselves accountable to citizens and be governed by the highest professional standards in all of our enforcement actions.

UNITS AFFECTED

All Divisions/Sworn Officers

REFERENCES/FORMS

North Carolina G.S. 14-33(c)(1)(2) "Assaults, Battery's, and Affrays"
North Carolina G.S. 14-34 "Assault by Pointing"
North Carolina G.S. 15A-401 "Arrest by Law Enforcement Officer"
North Carolina G.S. 15A-402 "Territorial Jurisdiction"
North Carolina G.S. 15A-301 to 15A-305 "Criminal Processes"
North Carolina G.S. 15A-501 "Police Processing and Duties upon Arrest"
North Carolina G.S. 15A-505 "Notification of Parent and School"
North Carolina G.S. 15A-534 "Conditions of Pretrial Release"
North Carolina G.S. 50B-1 "Domestic Violence"
DOI 1101-3 "Jurisdiction/Mutual Aid"
United States Constitution, Amendment IV

May be Released to Public

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Prepared By: Estella D. Patterson
Chief of Police

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Approved By: M. Adams-David
City Manager

GENERAL POLICIES

It is the duty of the investigating officer to initiate enforcement action where there is an obvious, clear-cut, and substantial violation of the law or ordinance.

Enforcement of misdemeanor violations may take several forms. The option selected should be the one that maintains the safety of the public, discourages a repetition of the violation, and creates the least inconvenience to those involved.

Arrests are not to be made by officers who have a personal interest in the case. In such cases, the arrest should be made by another officer. The original officer may be used to identify the suspect. Exceptions are to be made only in extreme emergencies and with immediate notification to a supervisor.

PREREQUISITES FOR POLICE ACTIONS

Jurisdiction

Raleigh Officers may make arrests or serve legal processes within the City limits or upon any property owned or leased by the City that may be situated outside the City. Raleigh officers may also exercise arrest powers within the one-mile extra-territorial limits of the City or while engaged in hot pursuit.

Officers will return all paper legal process documents which require service outside of Raleigh's jurisdiction to the Police Headquarters Front Desk. Any process located in eWarrants which requires service outside of Raleigh's jurisdiction shall be forwarded to purge in the eWarrants system at which time the process will be forwarded to the appropriate agency or returned to the Clerk of Courts Office.

Officers are authorized to transport a person, in custody, to or from any place within the State for the purpose of criminal court proceedings. Officers may arrest at any place within the State for offenses occurring in connection with and incident to the transportation of persons in their custody.

Proper Identification

Upon making an arrest or serving a legal process, Raleigh officers must identify themselves as police officers unless they are in uniform or their identity is otherwise apparent.

Informing the Arrestee

Officers must inform the arrested person that they are under arrest, and as promptly as is reasonable under the circumstances, inform the arrested person of the charges.

Civil Processes

Generally, civil processes are directed to the Wake County Sheriff's Department for service in the City of Raleigh. Raleigh police officers may serve civil subpoenas and may serve other civil processes which are specifically directed to the Raleigh Police Department and approved by the Chief of Police.

ARREST PURSUANT TO A WARRANT

Raleigh Officers are required to attempt to serve all warrants directed to them. Officers should be reasonable in reference to the time of day or night, place of serving, or the manner of serving the warrant.

eWarrants

The Raleigh Police Department utilizes the electronic warrant system, eWarrants for all warrants. The function of eWarrants is to provide real-time statewide warrant and summons access to all law enforcement and court officials from any location with web access and to provide the ability to print and serve outstanding processes from any participating county in the state. It also allows law enforcement to perform automatic searches for outstanding processes on any person entered on a process. Only copies of NCIC warrants obtained by the Raleigh Police Department are kept in the Warrant Control as required by NCIC regulations.

Officers attempting to serve a warrant or order for arrest shall verify the status of the Process Service in eWarrants for each attempted service. The Officer shall document additional information in the Process Service that shall include but is not limited to:

- Date and time of attempted service,
- Location of attempted service,
- Name and code number of Officer attempting service,
- Any comments regarding the outcome or status of the attempted service.

When encountering subjects and making inquiries for active processes such as; Orders for Arrest, Warrants for Arrest, and Criminal Summons, officers should be aware that out-of-state processes are not included in eWarrants. Therefore, officers should also check NCIC as well for active processes.

NCIC Warrants

If a subject has a confirmed NCIC entry Hit, the following procedures shall be followed:

- The officer shall ensure the warrant is still valid in eWarrants,
- eWarrants special instructions should also be checked prior to service and after service,
- An investigative supplement documenting the details of the arrest shall be completed by the arresting officer,
- Emergency Communications Center personnel who receive a NCIC Hit Request and subsequent Hit Confirmation will ensure that the NCIC Clear is done,
- Emergency Communications Center personnel will forward all NCIC data (Hit Request, Confirmation & Clear) via email to the investigating officer prior to the end of their tour of duty.

The investigating officer, after being notified by Emergency Communications, shall complete an investigative supplement detailing the circumstances which resulted in the removal from NCIC.

Warrant in Possession of the Officer

An officer, who has confirmed the existence of a valid warrant or order for arrest in eWarrants, may arrest the person named or described at any time and at any place within the territorial jurisdiction of Raleigh Officers.

- Force may be used to enter the premises of the person charged if the officer reasonably believes the person is inside, notice of identity and purpose has been made, entry into the premises has been denied or unreasonably delayed, and the officer has the printed copy of the valid warrant from eWarrants in his/her possession. Notice of identity and purpose can be withheld if giving notice would present a clear danger to human life.
- A search warrant, in addition to an arrest warrant, must be obtained for entry into a third party's premises unless consent is given or exigent circumstances exist [G.S. 15A-401(e)].
- Forcible entry may not be used to enter a premise to serve a criminal summons or a citation.
- Any officer who intends to force entry into the premises of the person charged, to serve an arrest warrant, must ensure that a police supervisor is present. The supervisor will notify the Watch Commander prior to making entry.

Paper Warrant Not in eWarrants and Not in Possession of the Officer

An officer, who has knowledge that a warrant or order for arrest has been issued but not executed, may arrest the person named even though the officer does not possess the warrant.

- The officer must inform the person arrested that the warrant has been issued and serve the warrant upon him/her as soon as possible.
- This section applies even though the warrant may have been returned to the Clerk of Court's Office. As a practical concern, officers should confirm access to the warrant prior to affecting an arrest. An officer is not required to have access to a warrant that is in NCIC from another jurisdiction.

ARRESTS BASED ON PROBABLE CAUSE

Offenses Committed in the Presence of Officers

Officers may arrest an individual without a warrant if they have probable cause to believe the person has committed a criminal offense in their presence.

Offenses Out of the Presence of Officers

Officers may arrest without a warrant for an offense that did not occur in their presence, if they have probable cause to believe:

- The offense committed was a felony;
- The offense committed was a misdemeanor, and the officer feels the suspect will not be later apprehended unless arrested immediately, or the officer feels the suspect may cause physical injury or damage to property unless arrested immediately;
- The suspect violated a provision of G.S. 14-72.1 (Unlawful Concealment), G.S. 14-134.3 (Domestic Criminal Trespass), G.S. 20-138.1 (DWI), or G.S. 20-138.2 (Commercial DWI);
- The suspect has committed a misdemeanor under G.S. 14-33(a), G.S. 14-33(c)(1), G.S. 14-33(c)(2), or 14-34 when the offense was committed by a person with whom the alleged victim has a personal relationship as defined in G.S. 50B-1;
- The suspect has violated a 50B Order; or,
- The suspect has violated a pretrial release order entered under G.S. 15A-534 (General Pre-Trial Release) or G.S. 15A-534.1(a)(2) (Pretrial Release for Domestic Case).

Officers may not arrest for violations of an infraction.

Domestic Violence Orders

Officers shall arrest and take a person into custody, if the officer has probable cause to believe that the person has been served and has violated a court order excluding the person from the residence or household occupied by a victim of domestic violence or directing the person to refrain from doing any or all of the following:

- Threatening, abusing or following the other party;
- Harassing the other party, including by telephone, visiting the home or workplace, or other means; and/or,
- Otherwise interfering with the other party.

The officer will need probable cause to believe that a domestic violence order exists and probable cause to believe it has been violated as specified above. If the suspect is not physically present so that a full custody arrest can be made, the officer will apply for an arrest warrant.

DUTIES OF THE OFFICER UPON EFFECTING AN ARREST

Completion of Arrest

An arrest is completed when the person submits to the control of the arresting officer who has indicated an intention to arrest, or the arresting officer takes a person into custody by the use of physical force.

Presentation Before a Judicial Official

Once a subject is taken into custody, the officer must bring the arrestee before a Magistrate without unnecessary delay. The officer must present the arrestee with a copy of the warrant or order from the Magistrate's Office.

Procedure for Immediate Release Following Warrantless Arrest When Probable Cause No Longer Exists

Although North Carolina statutory law requires an officer to bring an arrestee before a Magistrate without unnecessary delay for processing, the Fourth Amendment of the United States Constitution does not allow an officer to keep a person in custody once the officer realizes that there is no longer probable cause to justify the custody.

If an officer makes a full custody, warrantless arrest and then discovers that there is no longer any legal justification for keeping the person in custody the officer should do the following.

- A supervisor should be called to the scene immediately to review the facts which led to arrest and the facts which make the officer believe that continued custody is no longer authorized.
- If the supervisor agrees that there is no longer legal justification for maintaining custody, the person in custody will be informed of the situation and will be informed that they have the option of going before the Magistrate voluntarily for processing or to be immediately released by the officer.
- If the person chooses immediate release, the officer should release the person in a safe place. It is preferable to release persons in a place of their choosing if their request is reasonable.
- The officer is to make an Information Report carefully documenting the facts which originally appeared to justify the arrest and the facts which justify the reason for immediate release. The report should include the name of the supervisor who reviewed the facts.
- The supervisor that oversees this process will make immediate notification to the Watch Commander and the Police Attorney.

Special Considerations with Arrest Warrants

- If an officer takes a person into custody with an arrest warrant which appears to be valid on its face and then determines that the wrong person has been arrested, the procedures for immediate release should be followed.
- If, after an arrest with a warrant has been completed, the officer learns of facts that cause the officer to believe that probable cause has vanished, then the officer should contact the District Attorney's Office immediately so that a review can be made to determine if the charges should be dismissed. In the event the person arrested remains in jail, the officer should waste no time in contacting the District Attorney's Office. During non-business hours, the Magistrate or Police Attorney will be able to provide the officer with an emergency 24 hour contact.
- If an arrest warrant has been issued, but not yet served, and an officer learns that there is no longer probable cause for the arrest, the officer should contact the District Attorney's Office to have the charges dismissed and recalled from eWarrants. During non-business hours, the Magistrate or Police Attorney will be able to provide the officer with an emergency 24 hour contact.

Notification of a Minor's Parents and School (G.S. 15A-505) only applies to criminal charges in the adult system on juveniles who are 16 or 17 years of age.

- Criminal Arrest

An officer who charges a non-emancipated minor (under eighteen years of age) for any criminal offense must, as soon as practicable, notify the minor's parents or guardian in charge either in person or by telephone. If the minor is taken into custody, the officer or their immediate supervisor shall notify a parent or guardian in writing that the minor is in custody within twenty-four (24) hours of the minor's arrest. The written notification may be by mail or delivered in person. If the parent or guardian cannot be found, the officer or their immediate supervisor shall notify the Minor's next-of-kin as soon as practicable.

- Citation Issued

An officer who cites a non-emancipated minor (under eighteen years of age) must notify the minor's parents or guardian as soon as practicable in person or by telephone. Written notification is not required since the minor has not been taken into custody.

- Exceptions

Notification is not required if the minor (under eighteen years of age) is emancipated.

Notification is not required if the minor (under eighteen years of age) is not taken into custody and has been charged with a moving motor vehicle violation for which three or fewer points are assessed under G.S. 20-16(c), except an offense involving impaired driving.

Notification is not required if the minor (under eighteen years of age) has been charged with a motor vehicle offense that is not a moving violation.

- School Notification

An officer who charges a person with a criminal offense that is a felony, except for a criminal offense under Chapter 20 of the General Statutes, shall notify the principal of any school the person attends of the charge as soon as practicable, but at least within five (5) days. The notification may be made in person or by telephone. If the person is taken into custody, the officer or their immediate supervisor shall notify the principal of any school the person attends. This notification shall be made in writing and shall be made within five (5) days of the person's arrest.

Foreign Nationals

United States Treaty Obligations require that foreign nationals may request that their government be notified upon arrest or detention. The arresting officer should in all cases immediately inform the foreign national of this right.

Some countries require such notification regardless of whether the foreign national so requests. Since individual officers may be uncertain of which countries require notification, they should notify a supervisor upon the arrest or detention of any foreign national, and indicate whether the arrestee requested embassy notification. The supervisor is then responsible for taking appropriate action.

CITATIONS

Paper Citations

An officer may issue a citation to any person when the officer has probable cause to believe the person has committed a misdemeanor or an infraction. Paper citations shall only be used in situations when electronic citations are not available.

Electronic Citations

The Raleigh Police Department utilizes the Brazos program for the issuance of any citations that an officer is going to cite and release for. An officer may issue a citation to any person when the officer has probable cause to believe the person has committed a misdemeanor or an infraction. Any electronic citation issued by an officer during their tour of duty shall be transmitted to A.O.C. prior to the end of their scheduled shift.

Appropriate Use of Citations

Whenever possible, an offender should be issued a citation in lieu of a physical arrest for clear-cut misdemeanor violations. Physical arrest may not be used for infraction violations. Situations where use of a citation would be inappropriate include:

- A continued breach of the peace is likely.
- A driving while impaired offense is involved.
- All firearms offenses except violations of N.C. Gen. Stat. § 14-415.11 and §14-415.21(a) (Concealed Carry Permit).
- All sex offenses.
- Any violation of a Domestic Violence Protection Order
- The identity of a misdemeanor offender is uncertain.
- Where misdemeanor suspects give indications they are unlikely to appear in court unless taken into custody.

Delivery of Citations

Violators are not required to sign the original copy of a citation, acknowledging receipt. In order for a citation to be valid, the officer must deliver a copy to the violator, and the violator must accept delivery. The officer must explain the charge, indicate the court date, and explain the violator's options as indicated on the defendant's copy. Officers are not permitted to give legal advice.

A citation can be issued to charge a parking offense if the violation is a misdemeanor or infraction according to state law. Most parking violations are City Ordinances with civil penalties and not chargeable by citation. An officer's discretion in choosing between issuing a parking ticket or a citation for a parking offense will be guided by the policy statement in 1108-2. If a citation is issued for a parking offense, a copy shall be delivered to the operator of a vehicle who is present at the time of service, or shall be delivered to the registered owner of the vehicle if the operator is not present by affixing a copy of the citation to the vehicle in a conspicuous place.

- Non-resident motorists who are licensed by states that subscribe to the “non-resident violator compact” may not be arrested or required to post bond for violation of an infraction to which the compact applies.
- Residents of non-compact states may be required to post bond for violation of an infraction.
- If a resident refuses delivery of a citation for an infraction, the officer may go to the Magistrates’ Office and seek a criminal summons to be served on the violator at a later time.

Voiding Citations

If a paper citation is to be voided, the officer who issued the citation will mark “void” on all copies, and indicate a reason for the void. All copies will be included with the goldenrod copy at the time the officer turns the completed citation book into the Police Desk. If the defendant’s copy is not available, or if the original has already been submitted to the Clerk of Courts Office, a District Attorney must void or amend/dismiss the citation.

An E-Citation can be voided by utilizing the “VOID” procedures outlined in the Brazos Program User Manual which can be found on RPDNet, so long as the citation has not already been transmitted to A.O.C.

Lost or Stolen Citations

Officers are to notify their supervisor immediately upon becoming aware of lost or stolen paper citation books issued to them. The employee’s supervisor will conduct an inquiry and forward a report, through the chain of command, to the Field Operations Administrative Assistant.

Accounting for Citations

The Field Operations Administrative Assistant will maintain logs of issued and returned citation books. Used citation books must be returned to the District Front Desk with all goldenrod copies enclosed. Desk officers will verify the return of all goldenrod copies of issued citations. District desk officers will notify an officer’s supervisor when missing goldenrod copies of citations are noted. The supervisor is then responsible for completing a memo and report.

The Clerk of Courts Office will perform additional audits, as it sees fit, and will report any discrepancies to the Raleigh Police Department. Supervisors in our Department may perform spot checks, as required through the Clerk of Courts Office, to verify appropriate handling or disposition.

CRIMINAL SUMMONS

A criminal summons is similar to a citation in that it is a written notice to appear, and must be served by a law enforcement officer having authority to make an arrest for the offense charged. A criminal summons does not authorize the person charged to be taken into custody.

Forcible Entry

Unlike an order for arrest, a criminal summons cannot be used as justification for forcible entry into the suspect’s residence in order to serve the summons.

Delivery of A Summons

Force cannot be used in the delivery of a summons. If the person summoned refuses to accept delivery of a summons, it should be returned to the Clerk of Courts Office with a notation that delivery was refused. A judicial official then has the option of changing the summons to an order for arrest.

Juvenile Legal Process

- Juvenile petitions, summons and secure custody orders received from the court will be forwarded to the proper District by the Court Liaison Officer.
- The Court Liaison Officer shall stamp all documents with the date and time as they are received.
- The Court Liaison Officer will check the address of the juvenile summons, subpoena or secure custody order and forward it to the appropriate District where the juvenile resides. Processes that require service outside of Raleigh's jurisdiction will be returned to the Clerk of Court for transmission to the proper jurisdiction.
- The documents shall be maintained at the District Front Desk for the District where the juvenile resides. Once a petition or summons is received, the Desk Officer will enter the juveniles name into a "Juvenile Legal Process" database that will be accessible on Polshare in "Main Division Folders, Field Operations." The desk officer will maintain the database, updating and tracking the status of these papers. A tracking sheet will be attached to the process by the Desk Officer. The tracking sheet will be completed and returned to the Desk Officer upon service of the paper. The Desk Officer will then update the database to reflect the new status of the process.
- If a juvenile summons, subpoena or secure custody order is received after normal business hours the paperwork shall be submitted to the North District Desk Officer or the Downtown District Desk Officer for entry into the database. Once entered, the paperwork shall be forwarded to the Desk Officer for the District where the juvenile resides.
- If a juvenile summons, subpoena or secure custody order is recalled by the courts, the appropriate District Desk Officer shall be notified immediately. After business hours the North District Desk Officer or the Downtown District Desk Officer shall be notified. The North District Desk Officer or the Downtown District Desk Officer will prepare a recall log sheet to alert personnel that the process in question has been recalled. The Desk Officer who is notified of the recall notice shall remove the entry in the database.

It is important that these papers be served in a timely manner as to not adversely affect court proceedings as detailed in DOI 1109-13 "Response to Juvenile Incidents."

Once a summons is obtained from the Juvenile Intake Counselor, this process should be personally served upon the parent, the guardian, custodian, or caretaker, and the juvenile or counsel, no less than 5 days prior to the date of the scheduled hearing.

Juveniles Listed in NCIC

When a juvenile petition has been granted and the juvenile has been entered into NCIC as wanted, these legal processes will not be in eWarrants. The process will be maintained at the front desk of the Main Station, so the process is available 24 hours a day as required by NCIC regulations. The front desk officer will follow NCIC/DCI regulations regarding the hit confirmation procedures as detailed in DOI 1106-03 "DCI/NCIC Security and Access."

The desk officer at headquarters will maintain these papers. A tracking sheet will be attached by the desk officer and completed by the officer serving the process. The arresting officer shall contact communications and have the wanted subject removed from NCIC. The desk officer will update the status of the process in the "Juvenile Legal Process" database on Polshare.

OFFICER'S RETURN

Officers shall properly document the service or attempts to serve all legal processes.

Service of a Legal Process

Officers shall indicate the date of return for all legal documents and note the method of service. Officers will provide the Wake County Bureau of Forensic Services processing agent with the location of arrest for the service of warrants.

Attempts at Service

An officer who unsuccessfully attempts the service of a legal process should indicate the time, date, and location of the attempt of the process service.