

YORK-POQUOSON SHERIFF'S OFFICE	GENERAL ORDERS
SUBJECT: Arrests	NUMBER: GO 2-4
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POLICY

Short of the application of force, an arrest is the most serious action a deputy undertakes. An arrest can cause repercussions throughout a person's life, even if he or she is eventually found not guilty or never brought to trial. Deputies shall accordingly exercise critical judgment in making arrests. Such judgment includes consideration for bystanders, the time, place, and location of offenses, and the use of force in making the arrests. Deputies shall further consider alternatives to arrest consistent with carrying out their law enforcement mission.

PURPOSE

To define the authority of deputies to arrest, and the mechanism for making arrests with and without a warrant.

PROCEDURE – GENERAL

- Definition of arrest
 - An arrest constitutes a seizure of the person for Fourth Amendment purposes. Further, the Fourth Amendment requires probable cause to arrest. The test, in interviews or stops of persons, for whether an arrest has occurred or a seizure of the person is whether a reasonable person under the circumstances would have felt free to leave.
- Jurisdiction of arrest

- Section [19.2-249](#), Code of Virginia provides that if an offense occurs within 300 yards of a boundary of two counties or a boundary of a county and a city, deputies/officers in either jurisdiction may take enforcement action.

ARRESTS WITH A WARRANT

- Who may issue
 - An arrest warrant may be issued by any judge, clerk of any circuit court, any general district court, juvenile court and domestic relations court, or any magistrate as provided in Section, [19.2-71](#), Code of Virginia.
- When it may issue; what to recite
 - Section [19.2-72](#), Code of Virginia, provides that the person having authority to issue an arrest warrant shall first examine on oath any complainant or other witnesses and, if probable cause exists, issue the warrant.
- What the warrant contains
 - A warrant commands the accused to appear before a magistrate. The warrant will give the name of the accused, or a description if his name is not known, describe the offense, and be signed by the officer authorized to issue warrants.
 - The warrant should have the criminal complaint, and the criminal complaint shall consist of sworn statements of a person or persons of fact relating to the commission of an alleged offense.
 - The offender description on warrant must not be too general or leave too much discretion to the law enforcement officer to decide which suspect to arrest.
- Issuance of a summons instead of warrant
 - Section [19.2-73](#), Code of Virginia provides for issuance of a summons instead of a warrant "where there is reason to believe that the person charged will appear in the courts having jurisdiction over the trial of the offense charged."
 - Uniform summonses and Magistrate's summonses impose the same requirements to appear at an appointed place and time as with a warrant.
- Notice of issuance of warrants or summonses
 - Section [19.2-73.1](#), Code of Virginia provides that the Sheriff or his deputy may notify citizens of pending warrants (in misdemeanor or class 5 or 6 felonies) or summonses, and direct their appearance to a time and place for execution of such process.
 - However, the issuing judicial officer may direct the execution of such process prior to any such notification.
- Issuance and service of summons in place of warrants in misdemeanor cases
 - Section [19.2-74](#), Code of Virginia provides that whenever any person is detained by, or is in the custody of, an arresting deputy for any violation committed in an deputy's presence which violates any county, city, or town ordinance of any provision of this code punishable as a Class 1 or Class 2 misdemeanor or any other misdemeanor for which he may receive a jail sentence, except as otherwise provided in Title [46.2](#), or

85 [18.2-266](#) of the Code of Virginia, or an arrest on a warrant charging an offense for
86 which a summons may be issued, and when specifically authorized by the judicial
87 officer issuing the warrant, the arresting deputy shall:

- 88 ▪ Take the name and address of such person and issue a summons or otherwise
89 notify him in writing to appear at a time and place to be specified in such
90 summons or notice.
- 91 ▪ Upon the giving by such person of his written promise to appear at such time and
92 place, the deputy shall forthwith release him from custody

93 .

- 94 ○ Whenever any person is detained by or is in the custody of an arresting deputy for a
95 violation of any county, city or town ordinance or of any provision of this code,
96 punishable as a Class 3 or Class 4 misdemeanor or any other misdemeanor in which
97 he cannot receive a jail sentence, except as otherwise provided in Title [46.2](#), or to the
98 offense of public drunkenness as defined in Section [18.2-388](#) of the Code of Virginia,
99 the arresting deputy shall take the name and address of such person and issue a
100 summons or otherwise notify him in writing to appear at a time and place to be
101 specified in such summons or notice.
- 102 ○ Upon the giving such person of his written promise to appear at such time and place,
103 the deputy shall forthwith release him from custody.
- 104 ○ However, if any such person shall refuse to discontinue the unlawful act, the deputy
105 may proceed according to the provisions of Section [19.2-82](#), Code of Virginia.
- 106 ○ Any person so summoned shall not be held in custody after the issuance of such
107 summons for the purpose of complying with the requirements of Chapter 23 ([19.2-](#)
108 [387](#) Code of Virginia).
- 109 ○ Reports to the Central Criminal Records Exchange concerning such persons shall be
110 made after a disposition of guilt is entered as provided for in Section [19.2-390](#) Code
111 of Virginia.
- 112 ○ Any person refusing to give such written promise to appear, for a criminal offense
113 constituting a class 1 or class 2 misdemeanor, under the provisions of this section
114 shall be taken immediately by the arresting deputy or other law enforcement officer
115 before a magistrate or other issuing authority having jurisdiction, who shall proceed
116 according to provisions of Section [19.2-82](#), Code of Virginia.
- 117 ○ Any person refusing to give such written promise to appear, for any traffic infraction,
118 under the provisions of this section shall be given a copy of the summons with the
119 date to appear in court and the deputy shall notate on the summons that the person so
120 summoned refused to sign the summons in accordance with Section [46.2-936](#), Code
121 of Virginia.
- 122 ○ Any person who willfully violates his written promise to appear given in accordance
123 with this section, shall be treated in accordance with the provisions of Section [19.2-](#)
124 [128](#) Code of Virginia, regardless of the disposition of, and in addition to, the charge
125 upon which he was originally arrested.
- 126 ○ Any person charged with committing any violation of Section [18.2-407](#) Code of
127 Virginia may be arrested and forthwith brought before a magistrate who shall proceed
128 as provided in Section [19.2-82](#) Code of Virginia.
- 129 ○ When release on a summons is appropriate, the arrested person shall not be
130 photographed or fingerprinted before release.

- 131 ▪ This processing will be done after appearance in court and only in cases where
- 132 there is a conviction.
- 133 ▪ The Court will make arrangements to have each person processed upon
- 134 conviction.
- 135
- 136 • Copy of Process to be Left with the Accused
- 137 ○ Section [19.2-75](#) Code of Virginia.
- 138 ○ Except as provided in Section [46.2-936](#), Code of Virginia, any process issued against
- 139 a person charged with a criminal offense shall be in duplicate and the deputy serving
- 140 such process shall leave a copy with the person charged.
- 141
- 142 • Execution of Arrest Warrants, Section [19.2-76](#), Code of Virginia
- 143 ○ A law-enforcement officer may execute within his jurisdiction a warrant, capias or
- 144 summons issued anywhere in the Commonwealth.
- 145 ○ A warrant or capias shall be executed by the arrest of the accused, and a summons
- 146 shall be executed by delivering a copy to the accused personally.
- 147 ○ If the accused is a corporation, partnership, unincorporated association or legal entity
- 148 other than an individual, a summons may be executed by service on the entity in the
- 149 same manner as provided in Section [8.01-301](#), Code of Virginia, for service of
- 150 process on that entity in a civil proceeding.
- 151 ○ However, if the summons is served on the entity by delivery to a registered agent or
- 152 to any other agent who is not an officer, director, managing agent or employee of the
- 153 entity, such agent shall not be personally subject to penalty for failure to appear as
- 154 provided in Section [19.2-128](#), Code of Virginia, nor shall the agent be subject to
- 155 punishment for contempt for failure to appear under his summons as provided in S
- 156 [19.2-129](#) Code of Virginia.
- 157 ○ The law-enforcement officer executing a warrant or capias shall endorse the date of
- 158 execution thereon and make return thereof to a judicial officer.
- 159 ○ The law-enforcement officer executing a summons shall endorse the date of
- 160 execution thereon and make return thereof to the court to which the summons is
- 161 returnable.
- 162 ○ Whenever a person is arrested upon a warrant or capias in a county or city other than
- 163 that in which the charge is to be tried, the law-enforcement officer making the arrest
- 164 shall either:
- 165 ▪ Bring the accused forthwith before a judicial officer in the locality where the
- 166 arrest was made or where the charge is to be tried or;
- 167 ▪ Commit the accused to the custody of an officer from the county or city where the
- 168 charge is to be tried; who shall bring the accused forthwith before a judicial
- 169 officer in the county or city in which the charge is to be tried.
- 170 ❖ The judicial officer before whom the accused is brought shall immediately
- 171 conduct a bail hearing and either admit the accused to bail or commit him to
- 172 jail for transfer forthwith to the county or city where the charge is to be tried.
- 173
- 174 • Escape, Flight and Pursuit; Arrest Anywhere in the State
- 175 ○ Section [19.2-77](#), Code of Virginia provides that whenever a person in the custody of a
- 176 law enforcement officer shall escape or;

- Whenever a person shall flee from an officer attempting to arrest him, such officer, with or without a warrant, may pursue such person anywhere in the state and, when actually in close pursuit, may arrest him wherever he is found.
 - If the arrest is made in a county or corporation adjoining that from which the accused fled, or within one mile of the boundary of the county or city which the accused fled, the officer may forthwith return the accused before the proper official of the county or corporation from which he fled.
 - If the arrest is made beyond the foregoing limits, the deputy shall proceed according to the provisions of Section [19.2-76](#), Code of Virginia, and if such arrest is made without a warrant, the deputy shall procure a warrant from the magistrate of the county or corporation wherein the arrest was made, charging the accused with the offense committed in the county or corporation from which he fled.
- Exemption of Such Witnesses from Arrest or Service of Process
 - Section [19.2-280](#) Code of Virginia, states if a person comes into this state in obedience to a summons directing him to attend and testify in this state he shall not while in this state pursuant to such summons be subject to arrest or the service of process, civil or criminal in connection with matters which arose before his entrance into this state under the summons.
 - If a person passes through this state while going to another state in obedience to a summons to attend and testify in that state or while returning therefrom, he shall not while so passing through this state be subject to arrest or the service of process, civil or criminal in connection with matters which arose before his entrance into this state under the summons.
- Arrest of Suspect Inside a Dwelling
 - If a deputy wishes to arrest a suspect inside his residence, he must first obtain an arrest warrant.
 - If the residence belongs to the suspect, only an arrest warrant is required.
 - If the dwelling belongs to someone else, the deputy must obtain a search warrant as well, unless permission from the property owner to search is granted.
 - A search warrant is not required if the deputy is in close pursuit or the owner of a residence consents to the deputy's search for the suspect.
- Return of Warrant
 - Upon executing the warrant, the arresting deputy shall give the date of execution on it then return it to the court, less copies given to the arrested person.
- Juveniles
 - Refer to [GO 2-29, Juvenile Procedures](#) concerning handling of juveniles.

ARREST WITHOUT A WARRANT

- Authority

- As noted earlier, the search and seizure provision of the Fourth Amendment protects citizens from the arbitrary and oppressive interference by law enforcement officials with privacy.
- Further, deputies must have probable cause that a crime has been committed, and that the person to be arrested has committed the crime.
- See [GO 2-1, Constitutional Safeguards](#) and [GO 2-2, Search Warrants](#) for additional information on probable cause.
- The Code of Virginia permits a warrantless arrest of a person, but the person so arrested "shall be brought forthwith before a magistrate or other issuing authority having jurisdiction, who shall proceed to examine the deputy making the arrest under oath."
- When Warrantless Arrests May Be Made
 - A deputy may make a warrantless arrest:
 - When a person commits a crime in the deputy's presence, Section [19.2-81](#), Code of Virginia.
 - When the deputy has "reasonable grounds or probable cause to suspect any person of having committed a felony not in his presence" Section [19.2-81](#), Code of Virginia.
 - At the scene of any motor vehicle accident on any public roadway when, based upon personal investigation, the deputy has reasonable grounds to believe that a crime has been committed by any person and there present.
 - Section [19.2-81](#), Code of Virginia provides that a warrantless arrest may be made at any hospital or medical facility to which any person involved in a motor vehicle accident has been transported, provided the deputy has reasonable grounds to believe, based upon personal investigation, including information obtained from eyewitnesses, that a crime has been committed by that person" Section [19.2-81](#), Code of Virginia.
 - In the apprehension of any person charged with the theft of any motor vehicle on any public roadway when the deputy has reasonable grounds to believe that a crime has been committed by any person then and there present Section [19.2-81](#) Code of Virginia.
 - When any person is charged with a crime in another jurisdiction and the deputy has received:
 - ❖ A photocopy of a warrant
 - ❖ A telegram
 - ❖ A computer printout
 - ❖ A facsimile printout; or
 - ❖ A radio, telephone or teletype message which gives:
 - The name of the wanted person or an accurate description
 - The crime alleged
 - When the deputy receives a radio message from the Sheriff's Office that a warrant for an alleged misdemeanor is on file Section [19.2-81](#), Code of Virginia.
 - When an alleged misdemeanor not committed in the deputy's presence involves:

- ❖ Shoplifting, Section [18.2-96](#), Code of Virginia or Section [18.2-103](#), Code of Virginia.
- ❖ Carrying a weapon on school property, Section [18.2-308.1](#), Code of Virginia
- ❖ Assault Battery.
- ❖ Brandishing a Firearm, Section [18.2-282](#), Code of Virginia.
- ❖ Destruction of Commercial Property, Section [18.2-137](#), Code of Virginia.
- ❖ When such deputy has observed the registration of the speed of a motor vehicle by radar (or other electrical device), or
- ❖ when such deputy has received a radio message from another officer who has observed the registration of speed by radar; provided that the arresting deputy is in uniform and displays his badge of authority, and if the arrest is based on such radio message from another deputy, then:
 - Such radio message must have been dispatched immediately after the speed of the motor vehicle was registered and
 - Such radio message must have furnished the license number or other positive identification of the vehicle.
- Actions upon Arrest
 - Upon arrest on a photocopy of the warrant, telegram, computer printout, facsimile printout or teletype message, the arresting deputy shall serve a copy of the document on the accused.
 - In any case in which a deputy does not issue a summons pursuant to Section [19.2-74](#), Code of Virginia or Section [46.2-936](#), Code of Virginia, the arresting deputy shall bring the accused before the magistrate for bail hearing, Section [19.2-80](#), Code of Virginia.
 - Section [19.2-76](#) Code of Virginia provides that if a person is arrested upon a warrant or capias in a county or city other than that in which the charge is to be tried, the law enforcement officer making the arrest shall either:
 - Bring the accused forthwith before a judicial officer in the locality where the arrest was made or where the charge is to be tried or,
 - Commit the accused to the custody of an officer from the county or city where the charge is to be tried who shall bring the accused forthwith before a judicial officer from the county or city in which the charge is to be tried.
 - A magistrate shall exercise the powers conferred by this title only in the magisterial region or regions for which he is appointed, except that a magistrate may issue search warrants throughout the Commonwealth in accordance with Section [19.2-44](#), Code of Virginia.
 - If the person is arrested based on a fugitive from another state, See the Uniform Extradition Act, Section [19.2-99](#), Code of Virginia.
 - The magistrate should conduct a bail hearing and set bail or secure bond if appropriate just as if the accused had been arrested on the warrant from another jurisdiction.
 - Deputies should not request the issuance of any arrest process such as duplicate warrants or fugitive warrants based on the charge in the other jurisdiction within Virginia.

- The arresting deputy via the 911 Emergency Communications Center will contact the law enforcement officials where the charge(s) was made and inform them that the accused has been arrested on the teletype message (or other arrest document).

- Juveniles

- Refer to [GO 2-29, Juvenile Procedures](#) concerning handling of juveniles.

BOOKING PROCEDURES

- Refer to [GO 2-5, Search Incident to Arrest](#) for a discussion of search guidelines, for searches incident to arrest.
- Refer to [GO 2-1, Constitutional Safeguards](#) for a discussion of advising arrested persons of their rights.

SUMMONES and ARREST

- Releases on summonses and mandatory arrest other than summonses issued in the field.
 - After execution of all summonses and arrest warrants, the original summons or warrant and all accompanying paperwork will be turned-in to the magistrate.
 - A copy of all unserved warrants and warrant tracking sheets if applicable shall be turned in to the 911 Emergency Communications Center as soon as possible but no later than at the end of each shift for entry into the Sheriff's Office records management system.
 - If the arrested person is not released on a summons or is charged with a felony, the following procedures will be followed:
 - The person will be transported to the magistrate's office to be formally charged, if the warrant was not previously obtained.
 - The obtained warrant will be properly served and executed and a copy of the served warrant will be turned over to the 911 Emergency Communications Center after normal business hours or Records Warrant Clerk during normal business hours.
 - If the warrant was obtained before the arrest and is not permitted to be served as a summons, the warrant will be served and the arrestee will be transported to the regional jail.
 - The arrestee shall be taken before the magistrate who will consider a bond.
 - If bond is allowed, the magistrate completes a bond certificate, which is attached to the warrant(s), and the person is allowed to leave after processing is completed.
 - If bond is not allowed or cannot be made, the person is then committed to jail by the magistrate, and a committal form is completed by the magistrate and attached to the warrant and the arrested person is placed in jail.
 - Items seized as evidence will be properly tagged and returned to the Sheriff's Office and placed in an evidence locker. Refer to [GO 2-15, Evidence Procedures](#) for further guidelines.

- Regional jail personnel will handle all processing including fingerprinting, photographing, and automated CCRE form for each adult arrested on a misdemeanor (not summonsed) or felony charge as required by law.

- Close Pursuits

- Section 9.2-77. Code of Virginia requires that an officer making a warrantless arrest following a close pursuit shall obtain charges for violations committed during the pursuit in the city or county where such offenses occurred. Unless:
 - The arrest was made within an adjoining city or county, or
 - Within one (1) mile of an adjoining city or county.

- Injury before or during arrest

- If a person receives an injury before or during an arrest and either requests medical attention, or in the patrol supervisor's judgment such attention is needed, it will be offered or obtained before beginning the booking procedure or transporting the person to the regional jail.

- Processing and forwarding of paperwork

- All paperwork must be filled out, forwarded to either the 911 Emergency Communications Center after normal business hours, or Warrant Records Clerk during normal business hours prior to the end of each shift.
- On certain misdemeanor and all felony arrests, as required by law, the following forms will be completed and maintained by the regional jail or forwarded to the district court:
 - Automated CCRE forms
 - Live Scan fingerprinting information
 - Photographic imaging
 - Served warrant, original copy
 - CCRE form
 - Bond papers
 - Jail committal card
- On a Class I or II misdemeanor arrest if the arrestee is released on a summons or released following court conviction, the forms listed below will be completed and maintained by the Regional jail and submitted to the appropriate Court as required:
 - Automated CCRE forms
 - Live Scan fingerprinting information
 - Photographic imaging
 - Served warrant, original copy
 - CCRE form
 - Bond papers
 - Jail committal card
 - Administrative driving license suspension forms
 - Criminal Complaint forms
 - State impoundment forms (30 day)

- Juvenile Procedures
 - A Juvenile Intake Form will be filled out and submitted to juvenile intake (Court Services Unit) to obtain juvenile petitions.
 - Once a petition is issued, it will be forwarded to the Warrants Clerk for entry into the Sheriff's Records Management System unless the petition is forwarded by the Juvenile and Domestic Relations Court Clerk to another jurisdiction for service.
 - The Merrimac Detention Center or other applicable juvenile detention center shall conduct processing including:
 - All forms,
 - Photos, and
 - Fingerprinting.
 - See [GO 2-29, Juvenile Procedures](#).

RELEASE FROM ARREST

- In some instances, deputies may encounter a circumstance where probable cause develops to arrest a person for an offense only to find out shortly thereafter that the person under arrest did not commit a crime, or that further investigation reveals the event does not constitute a crime.
 - It is imperative, then, that the deputy ends the arrest process immediately to avoid becoming liable for false imprisonment.
 - False imprisonment, as defined in [Montgomery Ward V. Freeman](#), 199 F 2D 720 (1953), "is the restraint of one's liberty without any sufficient legal excuse."
 - The Attorney General of Virginia has issued an opinion - Report of the Attorney General (1971), Page 102, which states the following:
 - "It is my opinion, therefore, that an arresting officer, who may have had probable cause to initially make the arrest without a warrant, may thereafter conclude that further prosecution of the arrestee would be improper or fruitless and may, subsequently, discharge him from custody without the necessity of taking him before a magistrate."
 - As stated by the Attorney General, a deputy is required to formally charge only those persons who have been placed under arrest, if the deputy concludes that further prosecution would be proper and fruitful.
- Procedure for release without charges
 - The arresting deputy shall not formally charge those under arrest when it is proven to his satisfaction that either the person under arrest did not commit a crime or that an event investigated is found not to constitute a crime.
 - When a deputy releases a subject from arrest, he should take care to return the person to the same location occupied before the arrest.
 - For example, a deputy arrests a subject, then transports him to the magistrate when the deputy learns that the probable cause he used to make the arrest no

longer exists. Instead of releasing the subject along the roadside, the deputy should return to the location of arrest and release the person.

- If a vehicle has been towed, the vehicle shall be returned to the operator/registered owner.

- Upon releasing a person in this manner, the deputy shall immediately contact his supervisor and advise him of the incident.
- To protect himself and the Sheriff's Office, deputies shall document in an incident report:
 - Date and time of arrest.
 - Person arrested (name, address, date of birth, race).
 - Location of arrest and probable cause for the arrest.
 - Location and time of release from arrest and whether the person was transported.
 - Reasons or discovery of information which led the officer to release from arrest.
 - Witnesses to the alleged crime, or to the fact the person arrested was allegedly involved.
- If the deputy makes an arrest based on probable cause, the arrest is lawful.
- Probable cause must continue to exist through the appearance of the deputy and arrested person before the magistrate.

IMMUNITY FROM ARREST

- Diplomatic immunity: Refer to [GO 2-40, Diplomatic Immunity](#).
- Legislative immunity:
 - Members of the United States Congress are exempt from arrest when Congress is in session, or when they are traveling to or from congressional business, except for traffic summonses. (Article I, Section 6, U.S. Constitution)
 - Members of the Virginia General Assembly are exempt from arrest during a legislative session (or for fifteen days before the beginning or after the ending of any session, except in cases of treason, a felony, or a breach of the peace. (Article IV Section 9, Constitution of Virginia).
 - No member or clerk of the General Assembly or the lieutenant governor is exempt from arrest or imprisonment for treason, a felony, or a breach of the peace.

RECORDING INCIDENTS INVOLVING ARRESTS, AND CRIMINAL SUMMONS

- Incident Reports
 - In all incidents involving arrests, and issuance of criminal summonses, the arresting deputy shall complete an incident report. See [GO 2-50 Field Reporting](#).
 - The deputy will turn-in all copies of warrants to the 911 center after normal business hours or Warrants Clerk during normal business hours prior to the end of each shift.
 - The 911 Emergency Communications Center will generate an agency case/incident number.

- 493 ▪ The agency case/incident number will serve as a tracking number for the arrest
- 494 and subsequent offense/incident tracking.
- 495
- 496 ○ A supervisor shall review the incident report and arrest report module for correctness.
- 497 ○ The arrest information will capture all data and be identified by the agency
- 498 case/incident number.
- 499 ○ In addition to the agency case/incident number, a CAD incident number will also be
- 500 generated by the Emergency Communication Center.
- 501 ▪ The CAD number can additionally track an incident by:
- 502 ❖ Time,
- 503 ❖ Date,
- 504 ❖ Location,
- 505 ❖ Deputy(s), or deputy(s) on the scene, and
- 506 ❖ Complainant, etc.