



# County of Fairfax, Virginia

## MEMORANDUM

**DATE:** 05/26/2020

**TO:** Colonel Edwin C. Roessler Jr.  
Chief of Police

Major Matt Owens  
Commander - Internal Affairs Bureau

**FROM:** Richard G. Schott  
Independent Police Auditor

**SUBJECT:** Policy Change Recommendations

Unrelated to any individual incident investigation review, I have reviewed General Order 601 ARREST PROCEDURES, and recommend the following policy changes for your consideration:

### G.O. 601 IV. WARRANTS

#### A. Warrant Service

1. Warrants are received by the Department from a variety of sources and for a wide range of offenses. As a general policy, the routine service of outstanding warrants shall be accomplished with minimal disruption to the community at large and particularly to a defendant's home, neighborhood, or place of employment. Misdemeanor warrant service shall be attempted only between the hours of 0800 and 2200. For all misdemeanor arrest warrants, officers shall make a reasonable effort to request by telephone, that the defendant respond to the appropriate

police facility for service of the warrant. An exception to the above policy may be granted by the first-line supervisor in the following circumstances:

- a. There is reason to believe that the defendant may be evading arrest, or may flee or otherwise avoid arrest; or,
- b. Delay of the warrant service may jeopardize public safety; or,
- c. Based on the defendant's record or reputation, notice to the defendant of an outstanding warrant may create a risk for other police officers; or
- d. Other facts are known which justify an exception.

An **exception exemption** may also be made for the service of misdemeanor warrants after hours to those individuals already in custody.

REASON: A change in wording only to make consistent with the remainder of G.O. 601 IV. A.

#### G.O. 601 VI. SEARCH OF PERSONS

In order to ensure the safety of the arresting officer and prevent possible harm to the arrestee or other persons, officers shall search persons in their custody for weapons or other objects which could be used to inflict harm or effect an escape, evidence, and contraband.

- A. Search incident to arrest - in effecting the arrest of a suspect, officers should perform a systematic search of the person at the earliest possible time and, unless conditions dictate otherwise, prior to transporting prisoners in police vehicles. The search is made by sliding the hand over the suspect's body, feeling for weapons, other objects, evidence, and contraband with special attention to the waistband, armpit, collar, and groin areas. If an unusual object is detected, the officer will reach into or under the clothing to remove it.

Search incident to arrest includes a thorough search of the suspect's clothing and pockets, and removal of coats, jackets, or other outer garments. **It also includes a search of the area within the arrestee's immediate control at the time of his arrest, to include any unlocked bags, purses, or containers within that area. This authority does not extend to locked items, as they are not accessible to the arrestee. Search incident to arrest does not extend to digital information on a cell phone or other personal electronic device seized from an arrestee.**

If the arrestee was the driver, passenger, or recent occupant of a vehicle, the interior passenger compartment of the vehicle may be searched incident to the arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense for which the person was arrested. This limitation on the search incident to arrest of the driver, passenger, or recent occupant of a vehicle does not prevent a more complete search of the passenger compartment based on another exception to the warrant requirement, such as a consent search or a search based on the motor vehicle exception.

REASON: To recognize the full extent of and limitations on the lawful search incident to arrest. The United States Supreme Court first put parameters on the scope of the search incident to arrest in Chimel v. California, 395 U.S. 752 (1969); and prohibited the search of an arrestee's personal electronic device (including a cell phone), **pursuant to the search incident to arrest exception**, in Riley v. California, 134 S. Ct. 2473 (2014). The Arizona v. Gant, 556 U.S. 332 (2009) decision prescribes the limits of the search of the passenger compartment of a vehicle based on a recent occupant's arrest.

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I. PURPOSE

As a result of the decentralization of the police function in the County, variations in procedure sometimes occur. This General Order is intended to identify and unify arrest procedures throughout the Department.

II. TERMINOLOGY

- A. Arrest: When a person is taken into custody in order that they may answer for an offense, or when there is a deprivation or restraint of a person's liberty in any significant way.
- B. De-Arrest: The release of an individual from full custodial arrest when the arresting officer determines one of the following:
- that probable cause for the arrest no longer exists;
  - that the person under arrest did not commit a crime; or,
  - that upon further investigation, the event is found not to constitute a crime.
- C. Probable Cause: Facts and circumstances which, taken together with rational inferences therefrom, would lead a prudent person to believe that a crime is being or has been committed and that a particular person committed it.
- D. High Risk Arrest: An arrest or detention that presents an increased risk to the person making the arrest or detention; or that presents a risk to others, including other occupants; or that presents a risk to the community, such that advanced tactics should be considered. Factors that tend to increase risk are articulated in detail in the *Threat Assessment Worksheet*.
- E. Advanced Tactics: Tactics that should be considered when executing a high risk arrest or mental detention. These tactics include:
- dynamic building entry.
  - forced breaching of doors.

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- pre-planned deployment of chemical agents or diversionary devices.
- tactical vehicle intercepts.
- unique tactical deployments requiring specialized training or equipment such as rifle bunkers, armored vehicle, or scoped rifles.

Felony vehicle traffic stops or ruses (e.g., having a person exit a residence under ruse his vehicle was involved in an accident to execute an arrest) are not considered advanced tactical procedures for the purposes of this policy.

- F. Hot Pursuit: A pursuit is “hot” if the circumstances are such that breaking off or delaying the chase for the time required to obtain a warrant is likely to involve significant danger to any person, loss of evidence, or opportunity for the suspect to escape (Commonwealth v. Talbert, 23 Va 552, 557-558, 478 S. E. 2d 331, 334, 1996).

III. CLASSIFICATION OF OFFENSES

Criminal offenses for which an individual can be arrested are divided into felony and misdemeanor categories.

- A. A felony arrest can be effected:

1. If the offense is observed by the arresting officer.
2. If probable cause exists.
3. With a valid arrest warrant.
4. Upon knowledge of the existence of a warrant.

- B. A misdemeanor arrest may be effected:

1. If the offense is observed by the arresting officer.
2. With a valid arrest warrant.
3. Under the provisions of Section 19.2-81 of the *Code of Virginia*:

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- Shoplifting
- Weapon on school property
- Assault and battery
- Brandishing a firearm
- Destruction of property

IV. WARRANTS

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An exception to the above policy may be granted by the first-line supervisor in the following circumstances:

- a. There is reason to believe that the defendant may be evading arrest, or may flee or otherwise avoid arrest; or,
- b. Delay of the warrant service may jeopardize public safety; or,
- c. Based on the defendant's record or reputation, notice to the defendant of an outstanding warrant may create a risk for other police officers; or,
- d. Other facts are known which justify an exception.

An exemption may also be made for the service of misdemeanor warrants after hours to those individuals already in custody.

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The specific exception to the policy, the reasons for the exception, and the name of the approving supervisor shall be entered in the tracking field of the I/LEADS Warrant Module.

2. Sworn personnel executing arrest warrants shall not search a third party residence for a suspect unless there is probable cause to believe the suspect is present on the premises. In addition, one of the following situations **MUST** exist:
  - a. An officer is in hot pursuit of a suspect.
  - b. Consent of the owner or person occupying the premises to be searched.
  - c. There exists a justifiable fear of injury to people or property if the arrest is delayed.
  - d. Other exigent circumstances are present; i.e., those circumstances requiring immediate action.

If one of the aforementioned situations does not exist, a search warrant shall be obtained.

These criteria do not apply to a property wherein the person named in the warrant lives. Reason to believe the person named in the warrant is present on their own premises is sufficient reason to conduct the search.

Reason to believe in this instance would mean articulable facts and circumstances which, taken together with rational inferences therefrom, would cause an officer to reasonably suspect that the person named on the warrant is currently present inside the dwelling in which they live.

3. In the event an officer or detective believes a situation involves a high-risk arrest or that advanced tactical procedures should be used to execute an arrest or detention, a first-line supervisor shall be contacted and the *Threat Assessment Worksheet* completed to evaluate the risk associated with the arrest.

If the first-line supervisor determines the situation to involve a high risk

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arrest, the supervisor shall advise the station or division commander of the recommendation. The duty officer may stand in for the division commander if that commander is not readily available.

The division commander shall evaluate the potential threat by reviewing the completed *Threat Assessment Worksheet*. If the station or division commander determines the situation to involve a high-risk arrest, or perceives the need for advanced tactics, the commander shall advise the Special Operations Division (SOD) commander, or his designee, of the recommendation. The SOD commander shall evaluate the potential threat and make a determination regarding the authorization to use the SWAT Team.

If a request originates from another law enforcement agency to assist with an arrest that involves a high-risk arrest or a plan to use advanced tactics, the request shall be forwarded to the investigations section normally responsible for investigating the crime for which the arrest is sought. If the operation appears to involve a high-risk arrest or to justify the use of advanced tactics, the first-line supervisor of that investigations section is responsible for the threat assessment and communicating with the appropriate commander as previously described.

The *Threat Assessment Worksheet* shall be completed and forwarded to the Inspections Division of the Internal Affairs Bureau at the conclusion of the investigation any time the form is completed, regardless of whether or not advanced tactics were ultimately approved for use.

These procedures are not intended to apply in exigent circumstances, when a delay would create a danger to the officers or would jeopardize the success of an investigation.

## B. Warrant Control Procedures

1. The existence and status of warrants shall be monitored through the Warrant Module in I/LEADS. The Fairfax County Police Department Report Writing Manual contains specific instructions for using the Warrant Module
2. It is the responsibility of the officer to examine the warrant upon issuance by the magistrate to ensure that the proper identifiers and



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the magistrate's signature are included in the warrant (see *Code of Virginia* §19.2-72). Warrants cannot be entered into the VCIN or NCIC without the following mandatory information: name, date of birth, sex, race, height, weight, and hair color. Every effort shall be made to include the full name (last, first, middle initial, Jr., Sr., etc.) of the wanted subject on the warrant.

3. The Virginia eMagistrate system allows the VCIN to monitor a warrant immediately upon issuance by a magistrate. It is the responsibility of the obtaining officer to have the warrant entered into I/LEADS immediately upon issuance. This may be accomplished by either having the station PCA or the Warrant Desk personnel enter the warrant into I/LEADS. Personnel entering a warrant shall attach a copy of the I/LEADS Warrant Worksheet to the warrant, to serve as proof of entry. Officers are encouraged to attempt service on obtained warrants after the warrant has been properly entered into I/LEADS.
4. Once a warrant is received at a station for service, the employee receiving it shall update the tracking record using OTH (other) in the tracking field to indicate the warrant was received. Attempts of service shall be documented in the tracking field, and should include date, location, and method of service. If the officer is unable to serve the warrant, the reason shall be entered in the tracking field, to include any notations indicating that the subject has moved, and any forwarding address, if known. If someone at a station determines that a warrant should be returned to the Warrant Desk, the warrant tracking field should be updated to include that it was returned and the reason for return.
5. Upon service of a warrant, the officer shall immediately contact the Warrant Desk to have the warrant removed from I/LEADS. The officer shall then contact Teletype to have the warrant removed from NCIC/VCIN. The Warrant Worksheet can be discarded at this point, due to the availability of electronic records. The Warrant Desk shall advise the officer who obtained the warrant that it has been served by another officer via automated notification.
6. All unserved warrants will be kept in a file by patrol area and assigned for service at the discretion of the squad supervisor. A log shall be maintained to ensure that the location of the warrant is known in the event an inquiry is received.

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7. A wanted person's check, both local and NCIC/VCIN, shall be completed on all persons who are physically arrested in order to determine the existence of additional warrants.
8. The Fugitive Squad of the Criminal Investigations Bureau shall be advised, for information only, of all out-of-state extraditions. The information provided shall include the name of the defendant, location of extradition, and the charge.
9. Arrest indictments received from the court shall be treated as an arrest warrant for the purposes of warrant control procedures, arrest and reporting procedures as outlined in this General Order.
10. The Fairfax County Sheriff's Office will be responsible for transporting and processing all prisoners detained on Fairfax County criminal warrants throughout the State of Virginia.

All inquiries from other jurisdictions within the State of Virginia, pertaining to the transportation of prisoners needing to be delivered to Fairfax County, shall be directed to the Fairfax County Sheriff's Office.

C. Warrant service for adjoining jurisdictions

After confirming an outstanding warrant from an adjoining jurisdiction, to include Alexandria, Arlington, Fairfax, Falls Church, Herndon, Loudoun County, Prince William County, and Vienna, the officer may relinquish custody of the prisoner to an officer from the county or city where the charge is to be tried, pursuant to *Code of Virginia* §19.2-76.

D. Warrant service for the District of Columbia

1. After confirming an outstanding warrant from the District of Columbia, the officer shall transport the prisoner to the Adult Detention Center.
2. The arresting officer shall request a teletype confirmation from the Teletype Section.
3. Officers shall not obtain a fugitive warrant. The teletype confirmation will serve as a federal detainer. The prisoner is then remanded to the custody of the Fairfax County Sheriff's Office without the Livescan or fingerprint/photograph process.

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4. Information surrounding an arrest of this nature does not need to be forwarded to the Department's Fugitive Section.

V. DE-ARREST

A. Legal Background

In some instances, officers may encounter a circumstance where probable cause develops to arrest an individual 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 that the officer terminate 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 (1971), Page 102, which states the following:

"Although 19.1-100.1 (now Section 19.2-82) was enacted only in 1968, its antecedents in the Code of Virginia predate the case of Mallory v. United States, 254 U.S. 449 (1957). (See Code of 1942, Section 4827(a). Cases interpreting this section have held that the word 'forthwith' is to be construed literally, providing the same effect as the Mallory rule.) Winston v. Commonwealth, 188 Va. 386 (1948); McHone v. Commonwealth, 190 Va. 435 (1950).

These cases, as well as more recent cases, such as Holt v. City of Richmond 204 Va. 364 (1963), arise out of the context where a formal charge is sought to be sustained after the 'forthwith' rule has not been complied with. It is my opinion, however, that the Legislature did not intend for this rule to operate where no formal charge is to be placed, since the purpose of the rule is to protect an arrestee from being held incommunicado by the police without formal charge or access to bail. If no formal charge is ultimately placed, there would be no occasion for the rule to be invoked against the Commonwealth. This does not mean, of course, that the police officer may 'hold for investigation' a person for an unduly long

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time and then release that person, since this might create an action for false imprisonment by the detainee.

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 the person from custody without the necessity of taking the person before a magistrate."

As stated by the Attorney General, an officer is required to formally charge only those persons who have been placed under arrest, if the officer concludes that further prosecution would be proper and fruitful.

## B. De-Arrest Documentation and Reporting

1. The arresting officer shall not formally charge those under arrest when it is proven to the officer's satisfaction that either the person under arrest did not commit a crime or that an event investigated is found not to constitute a crime.
2. When an officer de-arrests a subject, the officer should take care to restore the person to the same location or position occupied before the arrest, or improve upon it. An example of this would be if a subject is arrested and the officer begins to transport the subject when that officer learns that the probable cause utilized to make the arrest no longer exists. Instead of releasing the subject along the roadside, the officer should return to the original contact point and release the subject. If a vehicle has been towed, the vehicle shall be returned to the operator or registered owner.
3. Upon releasing a subject in a de-arrest circumstance, the officer shall immediately contact the first-line supervisor and advise the supervisor of the incident.
4. The officer shall document in a field notebook the following information:
  - a. Date and time of arrest.
  - b. Subject arrested (name, address, date of birth, race).

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- c. Location of arrest.
  - d. Location and time of de-arrest and whether subject was transported.
  - e. Reasons or discovery of information which led the officer to de-arrest.
  - f. Witnesses to the alleged crime, or to the fact the individual arrested was allegedly involved.
5. At the earliest possible time, the officer should have a case number generated for the incident and complete an incident report, which shall include, but is not limited to, the information outlined in 4 a. through f. The officer shall forward a copy of the report to Internal Affairs through the division/station commander.

If an officer is reasonably sure in concluding that an arrestee is guilty of a particular offense based on facts and circumstances which are available and obvious to such an officer, the arrest made is with probable cause and, therefore, lawful. That probable cause must continue to exist through the appearance of the officer and arrestee before the magistrate. If not, the arrest process must terminate at the time when probable cause ceases to exist. In this circumstance, if the officer developed probable cause to arrest the individual and concluded that prosecution would be proper and fruitful, and both elements are maintained through the appearance before the magistrate, but the magistrate denies a warrant or summons, the officer shall de-arrest the subject at the magistrate's office in accordance with B., 2. However, if the officer believes that probable cause for the arrest was valid, the officer, after consulting with his supervisor, may exercise discretion, based upon safety factors, to simply release the subject at the magistrate's office rather than return him to his prior location upon arrest.

In these cases, the officer shall keep his investigation report active, and at a reasonable time after the denial of a warrant, consult with the Commonwealth's Attorney's Office regarding further prosecutorial action. The results of this meeting shall be documented in a supplemental report that shall be completed by the end of that shift.

If the case involved an arrest for Domestic Assault, officers shall

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immediately make all reasonable attempts to notify the complainant, victim, and any other individual to whom the subject was violent with. ALL attempts, whether successful or unsuccessful, shall be documented in the incident report. This will include who was spoken to and/or who was left a message and in what capacity (voice message, message with a family or household member, etc.).

Officers shall accurately indicate in their incident report, the specific times that they originally took the subject into custody, the time that the warrant was denied, and the name of the denying magistrate. A copy of the incident report shall be forwarded to the patrol bureau.

VI. SEARCH OF PERSONS

In order to ensure the safety of the arresting officer and prevent possible harm to the arrestee or other persons, officers shall search persons in their custody for weapons or other objects which could be used to inflict harm or effect an escape, evidence, and contraband.

A. Search incident to arrest - in effecting the arrest of a suspect, officers should perform a systematic search of the person at the earliest possible time and, unless conditions dictate otherwise, prior to transporting prisoners in police vehicles. The search is made by sliding the hand over the suspect's body, feeling for weapons, other objects, evidence, and contraband with special attention to the waistband, armpit, collar, and groin areas. If an unusual object is detected, the officer will reach into or under the clothing to remove it.

Search incident to arrest includes a thorough search of the suspects clothing and pockets, and removal of coats, jackets, or other outer garments.

B. Officers accepting temporary custody of a prisoner for transporting, detention, interview, or interrogation should take it upon themselves to conduct a search of the person with the assumption that the subject has not been searched.

C. Strip searches shall not be permitted except in the following situations:

1. An officer has reasonable cause to believe an arrestee is concealing a weapon in such a manner that it may not be discovered by the above methods.

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2. An officer has reasonable cause to believe an arrestee is concealing evidence or contraband in such a manner that it may not be discovered by the above methods.
3. Upon the authority of a valid search warrant.

Other factors that should be considered in determining the necessity for a strip search include the nature of the crime, arrest circumstances, past history of the subject, acts of violence, and discoveries from the search incident to arrest.

A strip search consists of the removal or rearrangement of any clothing so as to permit a visual inspection of the genitals, buttocks, anus, female breasts, or undergarments of an arrestee.

A strip search shall only be conducted by a member of the same sex as the person arrested, and on premises where the search cannot be observed by persons not physically conducting the search.

Unless exigent circumstances dictate otherwise;

- officers conducting a strip search shall notify a supervisor prior to the search; and
- the search shall be conducted at a detention facility; and
- a second law enforcement officer shall witness the search.

Officers shall document the fact that a strip search was conducted and the results of the search in the incident report.

- D. Body cavity searches other than the mouth shall not be performed except pursuant to a warrant and under the supervision of medically trained personnel.
- E. Prior to incarceration in any detention facility, all valuables and potential weapons shall be removed from prisoners. Officers shall comply with the provisions of General Order 610.1, Section II, Custody of Property to ensure the safeguarding of prisoner property.
- F. Officers delivering person(s) to the Adult Detention Center for incarceration

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shall assist in or visually observe the search of their prisoner(s).

- G. Upon discovery of contraband or weapons, the arresting officer shall take the appropriate action relevant to the seized property and the securing of warrants.

VII. REPORTING PROCEDURES - IDENTIFICATION PROCESSING

- A. All persons taken into custody for the following offenses shall be processed under CCRE reporting procedures:
  - 1. Treason.
  - 2. Any felony.
  - 3. Any Class 1 or 2 misdemeanor under Title 18.2, *Code of Virginia* (except Disorderly Conduct, 18.2-415, and Trespassing, 18.2-119).
  - 4. Any similar ordinance of any city, county, or town (See Attachment).
  - 5. Any misdemeanor under Title 54.1, *Code of Virginia*.

NOTE: Arrests for traffic violations, Class 3 and 4 misdemeanors under Title 18.2 are not reportable to CCRE.

- B. As specified in General Order 601.1, Misdemeanor Arrest/Summons Release, persons arrested for misdemeanors which are reportable to the CCRE and are released on a summons shall not be processed until after a disposition of guilt is entered in court.
- C. LiveScan System – All persons taken into custody for a CCRE reportable offense shall be processed using the LiveScan system whenever possible.
  - 1. The arresting officer shall complete:
    - a. One Arrestee Information Worksheet for each arrestee and
    - b. One IBR Information Sheet for each CCRE charge.
  - 2. The LiveScan process will assign a Fairfax Contributor Number (FCN) to an arrestee by comparing their fingerprints to the NOVARIS



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database. If the arrestee is identified as having an existing FCN, that number will be returned to the LiveScan Unit.

3. The IBR Information Sheet and a copy of the LiveScan disposition sheet shall be attached to the LiveScan FBI card.
  4. Arresting officers shall contact the Warrant Desk at 703-246-4231 to report the arrest and the FCN.
  5. If the LiveScan process is unavailable, the arresting officer shall use the traditional ink process to record the arrest.
- D. When the traditional ink process is used, arresting officers must contact the Records Section to determine if the person has been previously assigned a contributor's number or if a new number must be assigned by NOVARIS.

The following forms must be completed:

- 1 photograph
- 1 set – CCRE form which includes the CCRE Fingerprint Card
- 1 copy – FBI Fingerprint Card
- 1 copy – Palm Print Card (felonies only)

- E. Personnel shall include their Employee Identification Number (EIN) adjacent to their signature on all fingerprint cards and CCRE forms.
- F. Arrests of School Employees

Section 19.2-83.1 of the *Code of Virginia* imposes certain requirements on law enforcement officers for the reporting of crimes against children by school employees:

**Section 19.2-83.1. Report of arrest of school employees for certain offenses.** Every state official or agency and every sheriff, police officer, or other local law-enforcement officer or conservator of the peace having the power to arrest for a felony, upon arresting a person who is known or discovered by the arresting official to be a full-time, part-time, permanent, or temporary teacher or other employee in any public school division in this Commonwealth for a felony or a Class 1 misdemeanor or an equivalent offense in another state shall file a report of such arrest with the division superintendent of the employing division as soon as reasonably practical. The contents of the report required pursuant to this section shall

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be utilized by the local school division solely to implement the provisions of §§ 22.1-296.2 B and 22.1-315.

The school liaison commander shall be responsible for making all such reports to the appropriate school division superintendent. Any officer conducting a preliminary investigation of an incident which involves the circumstances described in Section 19.2-83.1 shall ensure that CIB is notified of the case, regardless of the case status. The school liaison commander shall establish the necessary internal procedures to make notification of the appropriate school division superintendent and document such notification in a supplemental report.

G. NCIC Check and Clearance Requirements

1. In all cases where an arrested person is not released on a summons but is brought before a special magistrate, the arresting officer shall initiate an NCIC wanted check of the arrested individual.
2. If an arrested person is entered as wanted in the NCIC, it shall be the arresting officer's responsibility to contact the DPSC computer room to arrange for NCIC removal of the arrested person's name or notification of the arrest to the jurisdiction that made the NCIC entry.

H. Completion of the Incident Report for Physical Arrests

In all cases where a custodial arrest occurs, the arresting officer shall document the circumstances of the arrest in an incident report or supplemental report.

- I. Anytime an officer is involved in an arrest or reportable event where a record check indicates that the individual involved has a concealed weapons permit (CWP), the officer shall document this finding in an incident report and fax a copy of the report to the Resource Management Bureau (703-352-5642). It is particularly important that any case involving drugs, alcohol-related charges, assault, domestic violence or abuse, stalking, or any felony charges be forwarded immediately to the Resource Management Bureau.

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VIII. SPECIAL INSTANCES

A. Immunity from Arrest

1. Except for treason, felony, or breach of the peace, members of the Virginia General Assembly, clerks and their assistants, are privileged from arrest during the session of the General Assembly, and five days before and after the session.
2. Except for treason, felony, or breach of the peace, members of the Congress of the United States are privileged from arrest during session and in traveling to and from session.

Vehicles belonging to Members of Congress bearing congressional license plates are exempt from State and local vehicle registration requirements. Vehicles not bearing congressional license plates but belonging to Members of Congress, and vehicles belonging to their administrative aides are authorized to obtain from the Division of Motor Vehicles a "Nonresident Permit." This permit allows these vehicles to be exempt from State and local vehicle registration requirements. However, such an exemption is not automatic; application must be made and the resulting permit displayed in the lower left-hand corner of the windshield.

3. Witnesses entering the Commonwealth of Virginia, or traveling through the state en route to another state, in response to a summons directing them to give testimony, are immune from arrest in connection with matters which arise before their entrance into this state under the summons. They are subject to arrest for any violations committed after entry into the state.
4. The service of warrants is prohibited inside any courtroom while court is in session.
5. Diplomatic agents, their household family members, members of their administrative and technical staff, and members of their service staff enjoy various levels of immunity from arrest, detention, or prosecution.
  - a. Diplomats of all levels are subject to the following actions:
    - (1) Diplomats or consular officers, unable to produce satisfactory identification in situations that would

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normally warrant arrest or detention, should be informed that they will be detained until proper identity can be confirmed by the United States Department of State.

- (2) Officers may issue a traffic summons to ANY diplomat or consular officer, when circumstances dictate. Individuals CANNOT be taken into custody for refusing to sign the summons. Copies of the summons should be distributed in the normal manner. Although the charged individual may or may not appear in court, the Department of State monitors individuals' driving behavior and will suspend the operators' licenses of those who demonstrate irresponsible habits.
- (3) Diplomats and consular officers who are driving while intoxicated should not be permitted to continue driving. Sobriety tests may be offered, but may not be required or compelled. Alternate arrangements shall be made for transportation. Officers shall make every effort to have the vehicle removed by making arrangements with the detained person or through the appropriate embassy via the Department of State. If the vehicle presents an immediate hazard or is obstructing traffic, it may be moved off the roadway. Vehicles may be impounded in accordance with established procedures if all other efforts to secure the vehicle fail.
- (4) Criminal offenses involving diplomats must be developed and documented precisely and in detail. Although a physical arrest cannot be made, the Department of State may seek approval for prosecution or termination of immunity for unusual cases which ensure successful prosecution.
- (5) Officers may exercise the option to obtain a warrant of arrest. Although it cannot be served, it can be entered into the records of the U. S. immigration authorities and thus serve to bar the subsequent issuance of a U.S. visa permitting such person to reenter the United States.
- (6) Police authorities may intervene, to the extent

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necessary, to halt such activity in those circumstances where public safety is in imminent danger or a serious crime may otherwise be committed.

(7) In addition to personal immunity, the private residence, automobile or other property is inviolable and cannot be searched or seized. However, in circumstances where public safety is in imminent danger or it is apparent that a serious crime may otherwise be committed, officers may intervene to the extent necessary to halt such activity.

b. In any case in which a question arises concerning a person's diplomatic immunity or what action might be appropriate, the following offices shall be contacted:

Department of State Operations Command Center (24 hours) - 202-647-1512 or Diplomatic Security Command Center at 202-647-7277

Department of State Office of Protocol - Immunity Status during normal business hours, 202-647-1985 or 202-647-1727

Department of State - Status of vehicle registration, license plates, driver licenses, or other motor vehicle information, 202-895-3521 (0800-1700 Monday – Friday)

Reporting of traffic incidents/crashes, issuance of summonses, etc., involving foreign missions personnel 202-895-3538

c. The Department of State is interested in all incidents, including traffic crashes, summonses, and criminal complaints involving a diplomat or consular officer. The Bureau of Diplomatic Security will be notified via NLETS of any incident involving resident foreign officials or diplomats, their families, or their properties. Within 24 hours of such an incident, the officer handling the matter will send a message to the DPSC Service Desk providing them with the information to send an NLETS message to the Department of State. The text of the message should contain only basic information. The DPSC Service Desk will send this message to NLETS terminal #DCDOS0005. The officer's PD 42 shall reflect that an NLETS message was

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forwarded to the Department of State.

B. Arrest and Detention of Foreign Nationals

1. A foreign national is any person who is not a U.S. citizen, including lawful permanent resident aliens. Except for a brief detention such as a routine traffic stop, a foreign national must be advised of the right to have his consular officer notified whenever he is taken into custody or detained. In some cases, the consular officer must be notified regardless of the foreign national's wishes. Notification requirements vary depending on the country of citizenship of the detained person. Notification, when requested or required, shall be made by the arresting officer without delay and as soon as possible after completing the detention or arrest process.
2. Those countries that require notification of arrest or detention regardless of the national's wishes are identified in the Consular Notification and Access Manual, page 47, Table A, Provisions from Bilateral Agreements Requiring Mandatory Notification. The manual can be found on the BLUENet, in the Document Center, Manuals file. Additional guidance can be found on pages 102-107 of the Consular Notification Manual.
3. Notification may be made by personal phone call or fax. Officers do not need to disclose the reason for the detention or arrest unless specifically requested by the consular officer or authorized by the foreign national. Officers should, however, provide the following information:
  - a. Officer's name, agency, address, and telephone number.
  - b. National's name, date of birth, place of birth, passport number, and date and place of passport issuance.
  - c. Current location of national and contact phone number.
4. The fact that an arrested or detained foreign national was advised of his right to have his consular officer notified, as well as whether notification was made, shall be documented in the incident report. Notification regarding the death of any foreign national shall be documented in the incident report or supplemental report.

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5. In addition to the NCIC wanted person checks required for all arrested and detained persons provided for under Section IX, Paragraph F, foreign nationals under physical custody arrest should have a US Immigrations and Custom Enforcement (US-ICE) name check made via teletype through the US-ICE Law Enforcement Support Center (LESC).
6. The US Immigrations and Custom Enforcement (US-ICE) maintains a 24-hour, 7-day-a-week Law Enforcement Support Center (LESC) for law enforcement inquiries and assistance. The LESL telephone number is 802-872-6050.

C. Arrests of Illegal Aliens

1. Officers have limited statutory authority to arrest undocumented aliens for violations of federal immigration laws under the Virginia Code.
2. Whenever an officer runs a wanted check on an individual through NCIC, the Immigration Violators File (IVF) is automatically searched and a "hit" may be received. IVF hits are based on administrative warrants entered by ICE on deported felons and absconders.
3. Section 19.2-81.6 of the *Code of Virginia* establishes the criteria for the arrest of a person for immigration status.

§19.2-81.6. Authority of law-enforcement officers to arrest illegal aliens.

*All law-enforcement officers enumerated in § 19.2-81 shall have the authority to enforce immigration laws of the United States, pursuant to the provisions of this section. Any law-enforcement officer enumerated in § 19.2-81 may, in the course of acting upon reasonable suspicion that an individual has committed or is committing a crime, arrest the individual without a warrant upon receiving confirmation from the Bureau of Immigration and Customs Enforcement of the United States Department of Homeland Security that the individual (i) is an alien illegally present in the United States, and (ii) has previously been convicted of a felony in the United States and deported or left the United States after such conviction. Upon receiving such confirmation, the officer shall take the individual forthwith before a magistrate or other issuing authority and proceed pursuant to § 19.2-81 (SEE ADDITIONAL SECTIONS...REFER TO CODE).*

4. There are situations (e.g., reports of suspicious persons or activity) in which officers may not have reasonable suspicion that an individual has committed or is committing a crime, or probable cause to effect an arrest, but still have cause to check a person's wanted status through

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NCIC. It is the policy of the Department to not knowingly release any person identified and confirmed by ICE as a previously deported felon illegally present in the United States back into the community if probable cause to arrest under the provisions of §19.2-81.6 exists, or a detainer can be obtained.

5. When an officer conducts an NCIC/VCIN inquiry on an individual and receives a “hit” on an IVF entry, the following procedures shall be followed:
  - a. Carefully read the hit received through NCIC. There are two possible responses that will appear: “PREVIOUSLY DEPORTED FELON” or “OUTSTANDING ADMINISTRATIVE WARRANT OF REMOVAL”.
  - b. If the response reads “PREVIOUSLY DEPORTED FELON”, the officer shall request the Teletype Section to confirm the hit through the LESC and request a detainer. Following confirmation of the hit and a detainer issued by the LESC, the officer shall take the individual into custody and transport the individual to the Adult Detention Center or other detention facility.
  - c. If reasonable suspicion exists that the arrested individual has committed or was committing a separate offense, the arresting officer shall proceed under the provisions of §19.2-81.6 and take the person forthwith before a magistrate and obtain the appropriate warrant. The arresting officer may also arrest and charge the person, as appropriate, with any other offenses for which probable cause exists.
  - d. If reasonable suspicion does not exist that the arrested individual has committed or was committing a separate offense, arresting officers may act solely on the confirmation and detainer issued by the LESC for a “PREVIOUSLY DEPORTED FELON” and transfer custody to the Sheriff’s Office, which has established policies and practices in place with ICE. Detention by the arresting officer in these cases is supported, as it is a criminal violation of federal law for any previously deported felon to illegally re-enter the United States.
  - e. If the response reads “OUTSTANDING ADMINISTRATIVE



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WARRANT OF REMOVAL” and the individual is not in custody or being taken into custody for any other violation of law, officers shall not confirm the hit through the LESC and shall not take the individual into custody based solely upon the IVF hit. The majority of such administrative warrants represent civil violations of immigration law.

- f. If the response reads “OUTSTANDING ADMINISTRATIVE WARRANT OF REMOVAL” and the officer has detained or taken the individual into custody for a Class 1 or 2 misdemeanor, or the individual is wanted on a separate criminal arrest warrant for which a summons release is authorized, the officer may take the NCIC response into consideration in determining whether the person is eligible for release on a summons in accordance with the provisions of Virginia Code §19.2-74.
  - g. Persons entered into NCIC with an “OUTSTANDING ADMINISTRATIVE WARRANT OF REMOVAL” are those who have allegedly failed to appear for a hearing or failed to leave the United States after having been ordered to do so. If a person is being charged with a Class 1 or 2 misdemeanor, or is being served with a criminal arrest warrant for which a summons release is generally authorized, the arresting officer may determine that the person is “likely to disregard a summons” and take that person before a magistrate in accordance with Virginia Code §19.2-74.
  - h. The arresting officer shall request the Teletype Section to obtain confirmation of the hit through the LESC. The arrested shall be transported to the ADC or other detention facility and presented before the magistrate on the underlying State or County offense(s). The officer shall also notify the Sheriff’s deputies of the hit confirmation and the location of any detainer, so the Sheriff’s Office can fulfill its obligations, under Virginia Code §53.1-218, and contact ICE.
  - i. Information regarding residency status obtained through the LESC is strictly for criminal justice use only, and shall not be shared with non-criminal justice persons or agencies.
6. In addition to the hits previously described, notification to the LESC

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shall be made under the following circumstances:

- a. The arrest of an alien for involvement in terrorist or subversive activities.
  - b. The arrest of any person involved in fraudulent activity aimed at assisting undocumented aliens to enter the United States.
  - c. The arrest or involvement of an alien in possession of a firearm.
  - d. The arrest or involvement of an alien in organized crime; to include gambling, prostitution, narcotics distribution.
  - e. The arrest of an alien where the arrest is related to membership and participation in a criminal street gang.
  - f. The arrest of an alien for a felony offense.
7. Notification to the LESC shall include the name, address, D.O.B., nationality, charge, court date, subject's present location, and a brief description of the case. Subsequent follow up as to any immigration proceedings is the responsibility of the US-ICE.
  8. While investigating the circumstances around the arrest of an illegal alien, officers shall not question the residency status of a witness or victim of a crime unless they are subject to arrest for a violation of law.

D. Arrests of Military Personnel

1. The arrest of an active duty member of the Armed Forces should be reported as soon as possible to the appropriate liaison officer listed below. This shall be done regardless of the hour of day, and irrespective of the arrestee's rank, residence, or current duty station.

Service/Liaison Office

Telephone

U. S. Army Provost Marshal's Office  
U. S. Marine Corps Provost Marshal  
Joint Base Myer-Henderson Hall

703-696-3525  
or 3526

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U. S. Air Force 301-981-2001  
Chief of Security Police  
Andrews/Bolling Air Force Base

Naval District Washington 202-439-4243  
Regional Duty Officer

U.S. Coast Guard 703-313-5400  
Command Officer of the Day

2. This notification pertains to cases where the person is taken into physical custody and not released on a summons. Military personnel shall be handled the same as any other traffic violator, at the discretion of the officer making the stop, and in accordance with exceptions outlined in *Code of Virginia* §§ 46.2-221.4 and 46.2-600. Notifications are not required in these instances.

E. Off-Duty Incidents

It is the policy of the Department that arrests made by officers while off duty shall be limited to incidents where a felony is involved, a criminal misdemeanor is committed in the officer's presence, or a breach of the peace jeopardizing public safety is imminent.

It is essential for officers to properly identify themselves when taking police action when not in uniform. In order to maintain officer safety and avoid friendly fire situations, officers should verbally identify themselves when taking police action. Officers are also strongly encouraged to utilize visual items to identify themselves, such as displaying their badge of authority or issued police arm band whenever prudent to do so. Such items should be readily accessible within police vehicles, especially those vehicles used while in an off-duty capacity.

If challenged by other law enforcement officials, plainclothes officers shall use the Council of Governments (COG) Policy on "Casual Clothes Officer Interactions" as outlined in SOP 11-040 Stakeout /Surveillance.

1. Any member of the Department who is off duty in another jurisdiction has only that authority granted any other citizen. As a matter of civic responsibility, the Department encourages action which will prevent a felony or cause the apprehension of one who commits a felony in any jurisdiction; however, such action is not taken under authority granted

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as a police officer.

2. Officers shall not use personal vehicles to overtake and stop a motorist under any circumstances. The grant of authority under Section 46.2-920 of the *Code of Virginia* does not extend to privately owned vehicles operated by police officers. In addition, insurance companies may revoke policies as a result of such improper use of privately owned vehicles.
3. Off-duty members of the Department observing a serious traffic violation, which they believe requires enforcement action, should obtain as much information as is prudently possible, without jeopardizing public safety by speeding or engaging in other forms of reckless driving, and relay that information to the Department for appropriate follow-up by on-duty personnel. If the violator can be identified, but not immediately apprehended by on-duty personnel, the proper course of action is to have a warrant issued and served when the officer returns to duty.
4. Arrests
  - a. Any member of the Department who makes an arrest while off duty shall notify the Department of Public Safety Communications as soon as possible. The police liaison commander (PLC) shall contact the on-duty squad supervisor for the district in which the arrest occurred.
  - b. The squad supervisor shall respond and investigate the circumstances of the arrest. The supervisor's findings shall be forwarded to the Chief of Police via memorandum with a copy to the off-duty officer's district station commander.
5. An incident report must be submitted by the off-duty officer under any of the following circumstances:
  - a. An arrest is made or a warrant is obtained;
  - b. Any of the involved individuals may attempt to obtain a warrant;
  - c. The situation involves any use of force;
  - d. The officer exercises police powers, or

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- e. The incident may result in further involvement of the officer and/or Department.

The incident report is needed as official documentation of the crime or incident. It also provides validation of the officer's statement of events in future actions, court cases, and/or complaints against the officer. The report should be submitted as soon as possible after the incident.

F. Arrests during Secondary Law Enforcement Assignments

- 1. Officers who make an arrest during the course of secondary law enforcement employment shall notify the supervisor on-duty in the service area of the assignment.
- 2. Officers making arrests during secondary employment assignments shall ensure that all necessary reports are completed within 24 hours of the arrest.
- 3. All arrests made during the course of secondary law enforcement employment shall be scheduled for the officer's usual court dates and compensated by the County of Fairfax. Under no circumstances shall an employee receive paid compensation for any court appearance from both the County and any non-regular employer.

G. Arrest of Persons on Court Capias who are under Contract for Bail with Bondsmen

- 1. Capias directed to "Any Police Officer"
  - a. Capias directed to any police officer shall be examined for validity in all respects, as any other Capias.
  - b. The affected bondsman shall not be present at the time the Capias is served.
  - c. After service of the Capias, the defendant shall be transported directly to the nearest accessible Magistrate for arraignment.
- 2. Any Capias which is issued as a result of a bondsman's application to a court that is directed only to a bondsman shall not be served by any Department member, nor shall any member assist in such service.

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3. Department members shall recognize that no bondsman is specifically authorized to carry a concealed weapon, unless a permit has been issued by the Chief Judge of the Nineteenth Judicial Circuit. Department members shall also recognize that bondsmen are criminally and civilly liable for the injury of third persons which are harmed as a result of the bondsmen's actions while effecting an arrest.

IX. LEGAL REFERENCES

- A. United States Constitution, Article 1, Section 8.
- B. Code of Virginia
  1. 19.2-72
  2. 19.2-76
  3. 19.2-81
  4. 19.2-83.1
  5. 19.2-390

X. ACCREDITATION STANDARDS REFERENCE

<u>VLEPSC</u>	
ADM.	OPR.
02.02	07.03
02.03	12.04
02.04	12.05
02.05	
25.08	
25.10	

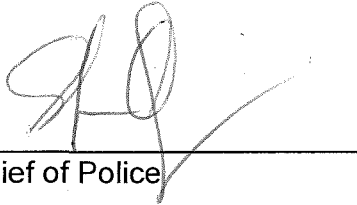
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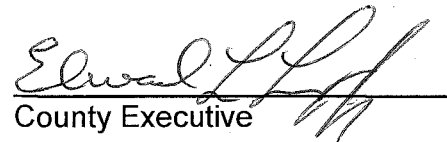
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This General Order becomes effective April 1, 2013, and rescinds all previous rules and regulations pertaining to the subject.

ISSUED BY:

  
\_\_\_\_\_  
Chief of Police

APPROVED BY:

  
\_\_\_\_\_  
County Executive

## ATTACHMENT

The following offenses of the *Code of the County of Fairfax* shall be reported to CCRE under authority of Section 19.2-390, *Code of Virginia*:

Section 5-1-3, Peeping or spying into structure occupied as dwelling

Section 5-1-5, Obstructing free passage of others

Section 5-1-7, Participating in riot

Section 5-1-10, Conspiracy, incitement to riot

Section 5-1-11, Resisting or obstructing execution of legal process

Section 5-1-13, Commission of certain offense in county, city, or town declared by Governor to be in state of riot or insurrection

Section 5-1-14, Injury to property or persons by persons unlawfully or riotously assembled

Section 5-1-18, False report of crime

Section 5-1-19, Calling or summoning ambulance or firefighting apparatus without cause

Section 5-1-20, Obstructing justice by threats or force

Section 5-1-21, Failure to assist law enforcement officers

Section 5-1-22, Illegal use of badges, uniforms and police signals

Section 5-2-3, Production, publication, possession of obscene items

Section 5-2-4, Obscene exhibitions and performances

Section 5-2-5, Advertising obscene items, exhibitions or performances