



<p style="text-align: center;">FAIRFAX COUNTY POLICE DEPARTMENT</p>  <p style="text-align: center;">GENERAL ORDER</p>	SUBJECT: MISDEMEANOR ARRESTS AND SUMMONS RELEASE		NUMBER: 601.1
	EFFECTIVE DATE: January 1, 2021	REVIEW: January, 2025	
	TOPIC: PURPOSE AND POLICY		
RESPONSIBLE ENTITY: Patrol Bureau		<input type="checkbox"/> New Directive <input type="checkbox"/> Replaces: <input checked="" type="checkbox"/> Revised: 07/01/12	
ACCREDITATION STANDARDS:	CALEA 1.2.3 VLEPSC ADM.02.02		

I. PURPOSE

The purpose of this General Order is to establish procedures when conducting a misdemeanor arrest or summons release.

II. POLICY

The policy of the Fairfax County Police Department is to act in accordance with Department training, policies, procedures, and all laws regarding misdemeanor arrests and summons release offenses. When conducting any law enforcement-related encounter or arrests, officers shall abide by [Regulation 201.22](#), which prohibits bias-based policing.

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III. MISDEMEANORS OTHER THAN TRAFFIC OFFENSES

A. Va. Code Ann. §19.2-74

Va. Code Ann. § 19.2-74, Issuance and Service of Summons in Place of Warrant in Misdemeanor Case; Issuance of Summons by Special Conservators of the Peace.

1. Whenever any person is detained by or is in the custody of an arresting officer for any violation committed in such officer's presence which offense is a violation of any county, city or town ordinance or of any provision of this Code punishable as a Class 1 or 2 misdemeanor or any other misdemeanor for which they may receive a jail sentence, except as otherwise provided in Title 46.2, or for offenses listed in subsection D of § [19.2-81](#), or an arrest on a warrant charging an offense for which a summons may be issued, and when specifically authorized by the judicial officer issuing the warrant, the arresting officer shall take the name and address of such person and issue a summons or otherwise notify them in writing to appear at a time and place to be specified in such summons or notice. Upon the giving by such person of their written promise to appear at such time and place, the officer shall forthwith release them from custody. However, if any such person shall fail or refuse to discontinue the unlawful act, the officer may proceed according to the provisions of § [19.2-82](#).

Anything in this section to the contrary notwithstanding, if any person is believed by the arresting officer to be likely to disregard a summons issued under the provisions of this subsection, or if any person is reasonably believed by the arresting officer to be likely to cause harm to themselves or to any other person, a magistrate or other issuing authority having jurisdiction shall proceed according to the provisions of § [19.2-82](#).

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2. Whenever any person is detained by or is in the custody of an arresting officer for a violation of any county, city, or town ordinance or of any provision of this Code, punishable as a Class 3 or Class 4 misdemeanor or any other misdemeanor for which they cannot receive a jail sentence, except as otherwise provided in Title 46.2, or to the offense of public drunkenness as defined in § [18.2-388](#), the arresting officer shall take the name and address of such person and issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice. Upon the giving of such person of their written promise to appear at such time and place, the officer shall forthwith release them from custody. However, if any such person shall fail or refuse to discontinue the unlawful act, the officer may proceed according to the provisions of § [19.2-82](#).


3. Any person so summoned shall not be held in custody after the issuance of such summons for the purpose of complying with the requirements of Chapter 23 (§ [19.2-387](#) et seq.) of this title. Reports to the Central Criminal Records Exchange concerning such persons shall be made after a disposition of guilt is entered as provided for in § [19.2-390](#).

Any person refusing to give such written promise to appear under the provisions of this section shall be taken immediately by the arresting or other police officer before a magistrate or other issuing authority having jurisdiction, who shall proceed according to provisions of § [19.2-82](#).

Any person who willfully violates their written promise to appear, given in accordance with this section, shall be treated in accordance with the provisions of § [19.2-128](#), regardless of the disposition of, and in addition to, the charge upon which he was originally arrested.

Any person charged with committing any violation of § [18.2-407](#) may be arrested and immediately brought before a magistrate who shall proceed as provided in § [19.2-82](#).

Conservators of the peace appointed under Chapter 2 (§ [19.2-12](#) et seq.) may issue summonses pursuant to this section, if such officers are in uniform or displaying a badge of office. On application, the chief law enforcement officer of the county or city shall supply each officer with a

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supply of summons forms, for which such officer shall account pursuant to regulation of such chief law enforcement officer.

The summons used by a law enforcement officer pursuant to this section shall be in form the same as the uniform summons for motor vehicle law violations as prescribed pursuant to § [46.2-388](#).

B. Criteria for Release on Summons

1. Class 1 and 2 misdemeanors

At least one of the following conditions must exist before the arresting officer may bring the arrested person before a magistrate for a class 1 or 2 misdemeanor:


- a. The person fails or refuses to discontinue the unlawful act.
- b. The arresting officer believes that the person is likely to disregard the summons.

This belief should be based on one or more of the following facts:

- 1) The officer is unable to reasonably establish the person's community ties. The lack of proper identification (i.e. driver's license, etc.) does not necessarily mean the person does not have community ties. Officers shall make a reasonable effort to establish the person's ties to the community utilizing their training and experience.

Techniques to establish community ties may include, but are not limited to, the following examples: interviews of others, phone verification, or utility bills.

Note: Military non-residents may not have a local address and/or may be stationed in the metropolitan area on military orders. As such, these individuals shall not be considered to lack community ties.

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Language barriers shall not be a reason for not establishing community ties, as officers shall use appropriate departmental resources to communicate with the person.


When a person is not complying with legal requests for identification and has not stated their refusal to comply with requests for identification, officers are reminded that verbally passive resistance may be due in part to cultural differences/lack of understanding or mental health issues. In these circumstances, officers shall use de-escalation strategies to gain voluntary compliance as outlined in [General Order 540.2](#), De-Escalation.

Officers shall not consider the existence of a civil administrative immigration warrant as the sole basis for deciding not to release an individual on a summons. As stated in [General Order 604](#), Immigration Status, Citizenship, and National Origin, an “Outstanding Administrative Warrant of Removal” and an “Outstanding Administrative Warrant of Arrest for Immigration Violations” are civil administrative warrants. Any form of enforcement of these civil warrants is prohibited.

- 2) The officer is unable to establish or confirm identity because the person has provided multiple names, multiple false identifications, or other types of false information.


Officers shall accept other forms of identification to include a passport, a license, and documents with identifying information. Officers shall make a reasonable effort to verify the identifying information provided.

- 3) The person attempts to escape or resists arrest or makes statements which indicate an intent to disregard the summons or refuses to sign the summons.
- 4) The arresting officer has verified the person has previously failed to appear in court.
- 5) A warrant check discloses the existence of an outstanding criminal warrant on file for the person.


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If the officer believes that the person is likely to harm themselves, or any other person, they shall act in accordance with [General Order 603.3](#).

2. Class 3 and 4 misdemeanors and misdemeanors for which there is no jail sentence:
 - a. An individual may be arrested and taken before a magistrate for these offenses only if one or more of the following conditions exist:
 - 1) Refusal to furnish name and address.
 - 2) Refusal to sign the summons.
 - 3) A violation of Va. Code Ann. § [18.2-407](#), Remain at the Scene of a Riot, After Being Told to Disperse.
 - 4) A violation of Va. Code Ann. § [18.2-388](#), Profane Swearing and Drunkenness in Public.
 - 5) Refusal to discontinue the unlawful act.
 - 6) A violation of Va. Code Ann § [18.2-266.1](#), Operate a Motor Vehicle After Illegally Consuming Alcohol Under Age 21.
 3. Violation of Va. Code Ann. § [18.2-250.1](#), Possession of Marijuana unlawful; per the code section, the issuance of a summons is the only method to charge an individual with a violation of 18.2-250.1. As the violation is no longer a misdemeanor offense, the exceptions contained in Va. Code Ann. [19.2-74](#), which allow the officer to take an offender to the magistrate under certain circumstances do not apply, even if: the person fails to give their name and address, fails to sign the summons, fails to discontinue the illegal act, or the officer believes the person is likely to disregard the summons. When an officer encounters one of these exceptions, including the failure to establish community ties, they shall document the circumstances in the current Records Management System (RMS) and release the individual.
- C. Special Procedures in Warrant Cases (Applicable Only to Misdemeanor Warrants)

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1. In serving an arrest warrant for a misdemeanor offense, the arresting officer may be confronted with a situation in which the person to be arrested should not be taken into custody. Examples of such cases may include circumstances when the person to be arrested has small children that cannot be left unattended or where the person appears to be ill.
 - When detaining a person who has children, barring exigent circumstances, all efforts shall be made to ensure the children are not left unattended and remain safe. These efforts may include but are not limited to: requesting an additional officer, contacting other family members of the detainee, contacting the Victim Services Division, and/or contacting Child Protective Services.
 - a. In such circumstances, the arresting officer's immediate supervisor will contact a special magistrate and request authority to serve the warrant as a summons.
 - b. If possible, the special magistrate who issued the warrant shall be contacted. If that magistrate is not available any special magistrate may be contacted.
 - c. If the special magistrate grants approval to serve the warrant as a summons, the arresting officer shall give the defendant a copy of the warrant and complete the arrest and warrant module in the current RMS. In lieu of the defendant's signature the officer will write in the area below the magistrate's signature on the warrant, "Summons/Warrant, authority (name of special magistrate)."
 - d. As soon as possible after serving the warrant the officer shall return the executed original of the warrant to the special magistrate who authorized its service as a summons.
 - e. The warrant shall be completed and processed in accordance with departmental procedures.
2. Other misdemeanor warrants which are issued for service as a summons shall be handled as follows:
 - a. The serving officer shall give the defendant a copy and execute the original to indicate service.

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- b. A warrant and arrest module shall be completed in the current RMS, the arrest type in the arrest module should be marked indicating "summons/cited".
- c. The original of the warrant and a completed Warrant Control Form, if applicable, shall be forwarded to the Warrant Desk for transmittal to court. The remaining portion of the warrant is processed in accordance with departmental procedures.
- d. If the defendant refuses to sign the warrant/summons, the defendant should be taken before the nearest magistrate for further disposition. In the circumstances of serving a "summons only warrant" on a corporation, the individual accepting service shall not be required to sign the summons.

D. Central Criminal Record Exchange (CCRE) Requirements

- 1. Persons arrested and to be released on a summons shall not be held in custody after the issuance of the summons for the purpose of completing the CCRE reports.
- 2. In cases where a person is arrested for a CCRE reportable offense and is released on a summons, the CCRE processing shall be completed by the Sheriff's Department after the disposition of guilt is entered in court. This applies when a misdemeanor is released in the field on a written summons. It does not apply to felony arrests or arrests on a warrant in which the person is brought before a special magistrate and subsequently released on bond or other form of pretrial release.
- 3. All CCRE forms must be sent to the Central Exchange as a package. This includes occasions when fingerprint cards are left at the jail for a prisoner to be processed prior to release; all other CCRE forms must also be left.
- 4. In all CCRE reportable cases where an arrested person is not released in the field but is taken before a special magistrate, the arresting officer shall be responsible for completion of the CCRE reports after appearing before the special magistrate. Attempts to identify the individual should be accomplished prior to appearing before the special magistrate.

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5. If the charge is amended to an offense which is not CCRE reportable, nolle-prossed, dismissed, or the person is found not guilty, no report to the CCRE shall be made.
6. Porelon pads will not be used for fingerprinting prisoners. Porelon pads may only be used for processing community member walk-in requests, children's fingerprinting programs, and other non-police related uses.


E. Service of Magistrate Summonses

1. Magistrate Summonses will be processed the same as a warrant and according to the provisions set forth in [General Order 601](#), Arrest Procedures.

Note: Magistrate summonses cannot be entered into the Virginia Criminal Information Network (VCIN). Va. Code Ann. § 19.2-76, states that a summons shall be executed by delivering a copy to the accused personally. As magistrate summonses cannot be entered into VCIN, an officer from another agency would not have access to the summons to serve on the subject.

Additionally, there are no provisions in Va. Code Ann. § 19.2-81, for a subject to be detained until a magistrate summons can be retrieved from the entering agency and executed on the subject. (Such detention could result in civil liability for the officer and/or agency.)

2. The officer serving the summons shall deliver a copy to the person named as the defendant and execute the original to indicate service.
3. The officer serving the summons shall at no time take the subject into custody based solely on the Magistrate Summons charge(s) or to effect the summons services.
4. A Virginia Uniform Summons shall be completed when a Magistrate Summons is served for a traffic violation that is not entered into the current RMS. The summons can be completed in one of two ways, and shall be submitted attached to the Magistrate Summons to avoid duplicate charges being placed:
 - A PD60 is completed and the Court copy is submitted along with

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Magistrate Summons. No other copies of the PD60 are needed.

- From the Citation Module, the Summons Report (Court copy) can be printed and submitted along with the Magistrate Summons.

With either method, the Remarks section of the PD60 or Citation Module should have the text of “Magistrate Summons” and the signature line should have the text of “Served True Copy” notated.

NO SIGNATURE IS NECESSARY ON A VIRGINIA UNIFORM
SUMMONS IN THE CASE OF A SERVICE OF A MAGISTRATE
SUMMONS.

5. The officer serving a parking summons from another jurisdiction shall not complete a Virginia Uniform Summons but shall comply with the other provisions of this subsection.

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IV. TRAFFIC OFFENSES

A. Va. Code Ann. §§ [46.2-936](#), [46.2-937](#), [46.2-940](#)

Va. Code Ann. § [46.2-936](#), Arrest for Misdemeanor; Release on Summons and Promise to Appear; Right to Demand Hearing Immediately or Within Twenty-Four Hours; Issuance of Warrant on Request of Officer for Violations of §§ [46.2-301](#) and [46.2-302](#); Refusal to Promise to Appear; Violations.

Whenever any person is detained by or in the custody of an arresting officer, including an arrest on a warrant, for a violation of any provision of this title punishable as a misdemeanor, the arresting officer shall, except as otherwise provided in § [46.2-940](#), take the name and address of such person and the license number of his motor vehicle and issue a summons or otherwise notify them in writing to appear at a time and place to be specified in such summons or notice. Such time shall be at least five days after such arrest unless the person arrested demands an earlier hearing. Such person shall, if they so desire, have a right to an immediate hearing, or a hearing within 24 hours at a convenient hour, before a court having jurisdiction under this title within the county, city, or town wherein such offense was committed. Upon the giving by such person of their written promise to appear at such time and place, the officer shall forthwith release them from custody.

Notwithstanding the foregoing provisions of this section, if prior general approval has been granted by order of the General District Court for the use of this section in cases involving violations of §§ [46.2-301](#) and [46.2-302](#), the arresting officer may take the person before the appropriate judicial officer of the county or city in which the violation occurred and make oath as to the offense and request issuance of a warrant. If a warrant is issued, the judicial

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officer shall proceed in accordance with the provisions of Article 1 (§ [19.2-119](#) et seq.) of Chapter 9 of Title 19.2.


Notwithstanding any other provision of this section, in cases involving a violation of § [46.2-341.24](#) or § [46.2-341.31](#), the arresting officer shall take the person before a magistrate as provided in §§ [46.2-341.26:2](#) and [46.2-341.26:3](#). The magistrate may issue either a summons or a warrant as they shall deem proper.

Any person refusing to give such written promise to appear under the provisions of this section shall be taken immediately by the arresting officer before a magistrate or other issuing officer having jurisdiction who shall proceed according to the provisions of § [46.2-940](#).

Any person who willfully violates their written promise to appear, given in accordance with this section, shall be treated in accordance with the provisions of § [46.2-938](#).

Any officer violating any of the provisions of this section shall be guilty of misconduct in office and subject to removal therefrom upon complaint filed by any person in a court of competent jurisdiction. This section shall not be construed to limit the removal of a law enforcement officer for other misconduct in office.

1. While § [46.2-936](#) permits General District Courts to grant arresting officers prior approval to take persons before a magistrate in cases involving §§ [46.2-301](#) and [46.2-302](#), the Chief Judge of the Nineteenth Judicial General District Court (Fairfax County) does not grant officers this general approval. The Chief Judge does not grant prior approval, unless an officer believes release by summons is not sufficient to insure an individual's appearance in court on the established hearing date.
2. Persons arrested for driving on a suspended license with or without notice (e.g., Suspended or Revoked DWI related) shall be released on a summons if they meet the criteria for release according to § [19.2-74](#). See Section III, Criteria for Release on a Summons of this General Order for additional guidance.
3. A significant number of DUI and traffic-related offenses from Titles 18.2 and 46.2 of the *Code of Virginia* have been adopted "by reference" into the County Code § [82-1-6](#). For prosecution purposes, the State Code section

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and the County Code section adopted under § [82-1-6](#) are identical. It is the Department's policy that officers, when citing one of these offenses, **shall** cite the County Code under § [82-1-6](#).

Va. Code Ann. § [46.2-937](#), Traffic Infractions Treated as Misdemeanors for Arrest Purposes.

For purposes of arrest, traffic infractions shall be treated as misdemeanors. Except as otherwise provided by this title, the authority and duties of arresting officers shall be the same for traffic infractions as for misdemeanors.


Va. Code Ann. § [46.2-940](#), When Arresting Officer Shall Take Person Before Issuing Authority.

If any person is: (i) believed by the arresting officer to have committed a felony; (ii) believed by the arresting officer to be likely to disregard a summons issued under § [46.2-936](#); or (iii) refuses to give a written promise to appear under the provisions of § [46.2-936](#) or § [46.2-945](#); the arresting officer shall promptly take him before a magistrate or other issuing authority having jurisdiction and proceed in accordance with the provisions of § [19.2-82](#). The magistrate or other authority may issue either a summons or warrant as they shall determine proper.

4. Note that persons arrested for a violation of the Motor Vehicle Code, including but not limited to an arrest on a warrant and Speed to Elude, shall be released on a summons except as provided in § [46.2-940](#).
5. Officers who violate this provision shall be guilty of misconduct in office and subject to removal therefrom upon complaint filed by any person in a court of competent jurisdiction.

B. Arrest of Non-Residents for Traffic Offenses

1. Non-resident violator compacts are currently in effect between Virginia and a number of other states. Whenever states are added or deleted from these compacts, the addition or deletion will be announced by memorandum.
2. These compacts are provided for in §§ [46.2-944.1](#) through [46.2-947](#).


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Va. Code Ann. § [46.2-944.1](#), Definitions. - As used in this article:

- (1) "Citation" means any summons, ticket, or other official document issued by a police officer for a traffic violation containing an order which requires the motorist to respond.
- (2) "Collateral" means any cash or other security deposited to secure an appearance for trial, following the issuance by a police officer of a citation for a traffic violation.
- (3) "Compliance"* means the act of answering a citation, summons or subpoena through appearance at court, a tribunal, and/or payment of fines and costs.
- (4) "Court" means a court of law or traffic tribunal.
- (5) "Driver's License" means any license or privilege to operate a motor vehicle issued under the laws of the home jurisdiction.
- (6) "Home Jurisdiction" means the jurisdiction that issued the driver's license of the traffic violator.
- (7) "Issuing Jurisdiction" means the jurisdiction in which the traffic citation was issued to the motorist.
- (8) "Jurisdiction" means a state, territory, or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Provinces of Canada, or other countries.
- (9) "Motorist" means driver of a motor vehicle operating in a party jurisdiction other than the home jurisdiction.
- (10) "Personal Recognizance" means an agreement by a motorist made at the time of issuance of the traffic citation that they will comply with the terms of that traffic citation.
- (11) "Police Officer" means any individual authorized by the party jurisdiction to issue a citation for a traffic violation.
- (12) "Terms of the Citation" means those options expressly stated upon the citation.


Va. Code Ann. § [46.2-945](#), Issuance of Citation to Motorist; Party Jurisdiction; Police Officer to Report Noncompliance with Citation.

- a. When issuing a citation for a traffic violation, a police officer shall issue the citation to a motorist who is a resident of or holds a driver's license

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issued by a party jurisdiction in accordance with Article III of the Non-resident Violator Compact, provided, however, that the motorist shall have the right upon their request to post collateral or bond in a manner provided by law and, in such case, the provisions of this article shall not apply.

- b. In the absence of the motorist's personal recognizance, the officer shall proceed according to the provisions of Va. Code Ann. § [46.2-940](#).
 - c. No motorist shall be entitled to receive a citation under the terms of this article, nor shall any police officer issue such citation under the same, in the event that the offense for which the citation is issued is one of the following: (i) an offense for which the issuance of a citation in lieu of a hearing or the posting of collateral or bond is prohibited by the laws of the Commonwealth or (ii) an offense the conviction of or the forfeiture of collateral for which requires the revocation of the motorist's license.
 - d. The report required by subsection (c) of Article III of the Non-resident Violator Compact shall clearly identify the motorist; describe the violation, specifying the section of the statute, code, or ordinance violated; indicate the location of the offense; give a description of vehicle involved; and show the registration or license number of the vehicle. Such report shall be signed by the police officer or appropriate official.
3. Note that paragraph (c) under Va. Code Ann. § [46.2-945](#) specifies that no person shall be entitled to receive a citation in the event the offense is in one of two categories.
- a. An offense for which the issuance of a citation in lieu of a hearing or the posting of collateral or bond is prohibited by the laws of this State. Per Va. Code Ann. § [46.2-940](#), these circumstances include:
 - 1) the arresting officer believes a felony has been committed;
 - 2) the arresting officer believes the individual is likely to disregard the issued summons; or


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3) the individual refuses to give a written promise to appear.


b. An offense, the conviction of or the forfeiture of collateral for which requires the revocation of the motorist's license. The following offenses fall into this category:

- 1) DWI (refer to § [46.2-389](#)).
- 2) Voluntary or involuntary manslaughter resulting from the driving of a motor vehicle (refer to § [46.2-389](#)).
- 3) Any crime punishable as a felony under the motor vehicle laws of the Commonwealth or any other felony in the commission of which a motor vehicle is used (refer to § [46.2-389](#)).
- 4) Failure to stop and disclose one's identity at the scene of an accident, on the part of a driver or a motor vehicle involved in an accident resulting in the death or injury to another person (refer to §§ [46.2-389](#) and [46.2-894](#)).
- 5) Perjury or the making of a false affidavit to Department of Motor Vehicles of the Commonwealth under Chapter 3 of Title 46.2 or any other law of the Commonwealth requiring the registration of motor vehicles or regulating their operation on the highways (refer to § [46.2-389](#)).
- 6) Racing, upon a fourth conviction (refer to §§ [46.2-394](#) and [46.2-865](#)).
- 7) The making of a false statement to the Department of Motor Vehicles of the Commonwealth on any application for a driver's license (refer to § [46.2-389](#)).
- 8) Driving after forfeiture of a driver's license for DWI and DWI-related offenses under § [18.2-272](#) (refer to §§ [18.2-272](#), [46.2-389](#), and [46.2-391](#)).

Va. Code Ann § [46.2-389](#), Required Revocation for One Year Upon Conviction or Finding of Guilty of Certain Offenses; Exceptions.

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- a. The Commissioner shall forthwith revoke, and not thereafter reissue for a period of time specified in subsection B, except as provided in § [18.2-271](#) or § [18.2-271.1](#), the driver's license of any resident or nonresident on receiving a record of their conviction or a record of his having been found guilty in the case of a juvenile of any of the following crimes, committed in violation of a state law or a valid county, city, or town ordinance or law of the United States, or a law of any other state, substantially paralleling and substantially conforming to a like state law and to all changes and amendments of it:
- 1) Voluntary or involuntary manslaughter resulting from the driving of a motor vehicle;
 - 2) Violation of § [18.2-266](#) or § [18.2-272](#), or subsection A of § [46.2-341.24](#) or violation of a substantially similar local ordinance;
 - 3) Perjury or the making of a false affidavit to the Department under this chapter or any other law of the Commonwealth requiring the registration of motor vehicles or regulating their operation on the highways;
 - 4) The making of a false statement to the Department on any application for a driver's license;
 - 5) Any crime punishable as a felony under the motor vehicle laws of the Commonwealth or any other felony in the commission of which a motor vehicle is used;
 - 6) Failure to stop and disclose his identity at the scene of the accident, on the part of a driver of a motor vehicle involved in an accident resulting in the death of or injury to another person; or
 - 7) Violation of § [18.2-36.1](#) or § [18.2-51.4](#).
- b. Upon conviction of an offense set forth in subsection A, the person's driver's license shall be revoked for one year; however, for a violation of subdivision A 1 or A 7, the driver's license shall be revoked as provided in subsection B of § [46.2-391](#). However, in no such event shall the Commissioner reinstate the driver's license of any person convicted of a violation of § [18.2-266](#), or of a substantially similar valid local ordinance or law of another jurisdiction, until receipt of notification


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that such person has successfully completed an alcohol safety action program, if such person was required by a court to do, so unless the requirement for completion of the program has been waived by the court for good cause shown.

- 1) A traffic violator licensed by a state which does not have a reciprocal agreement with Virginia will be allowed to follow the arresting officer to the nearest special magistrate, except in cases where physical custody is necessary. If physical custody is necessary, the traffic violator's motor vehicle will be towed for safekeeping unless another licensed driver is present and the violator can lawfully, knowingly, and intelligently entrust the motor vehicle to such person who is willing to assume such responsibility.

c. Instructions for Accident Cases Involving Traffic Infraction Charges

- 1) Officers should not issue subpoenas at the scene of an accident to any witnesses if the defendant is being charged with a pre-payable offense.
- 2) Officers should give any driver involved in an accident, where summonses are being issued for pre-payable offenses, a copy of the form provided by the Fairfax County General District Court entitled, "Information on Pre-payable Offenses and Requesting Trials in Accident Cases." This form has been revised to include a statement advising the defendant involved in an accident that, if they plan to appear for trial and plead not guilty, the appropriate block should be checked and the form mailed to the Clerk of the Court's Office within seven days of receiving the summons from the officer. This statement further advises the defendant that if the request for trial is received, the case will be continued, and the officer will subpoena witnesses for the next court date. A continuance notice will be mailed to the defendant at the addresses listed on the summons to notify them of the new court date.
- 3) If the form requesting a trial is received from the defendant prior to the court date, the case will be automatically continued. The continued date will be noted on the court docket for the original date, and this will provide notice to the officer that witnesses will be required for the subsequent date.


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- 4) On the original court date, if the defendant has not sent in the form requesting a trial and does not appear, they may be tried in their absence based on the officer's testimony and evidence.
- 5) The defendant may also appear and plead guilty and the case may be tried and concluded.
- 6) If the defendant appears in person on the original court date and pleads not guilty, the case will be continued so that the officer may subpoena any witnesses that are essential to the prosecution's case.
- 7) Once continued, the officer must complete district court form DC-325, [Request for Witness Subpoena](#), and submit it to the court for issuance of witness subpoenas. The officer should include phone numbers for all witnesses listed on the request.
- 8) The Clerk of the Court's Office will prepare and issue the witness subpoenas.
- 9) After the case is continued, it is still possible for the defendant to prepay the charge and avoid coming to court. While this may be a rare occurrence, officers should be aware that if a payment is received, the Clerk of the Court's Office will attempt to notify either the witness or officer by phone. For this reason, it is important that officers include telephone numbers of witnesses on the [Request for Witness Subpoena](#) form.


V. REQUESTS FOR IMMEDIATE TRIAL

A. Va. Code Ann. § [46.2-936](#) and § [82-1-31](#) of the Fairfax County Code allow a person accused of most traffic infractions or misdemeanors the right to an immediate trial or a trial within 24 hours. This has been interpreted by our District Court to mean that the accused has the right to an immediate trial during the court's regular business hours, if a judge, courtroom, and the officer are available. If not, the trial is set for the next date court is in session. This process is handled by the Clerk of the District Court.

1. Responsibility for dealing with these requests rests with the Clerk of the Court. They are not the responsibility of the officer.

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2. The exercise of this right rests entirely with the accused.
 3. The exercise of this right follows the issuance of the summons or the arrest process. It is not part of that process.
 4. The court date officers set on their summons should not reflect this request.
 5. There is no such right for persons accused of any felony or of any traffic charges under any title or chapter other than 46.2 or 82, respectively. In addition, all DWI charges under the Fairfax County Code are excluded.
- B. When issuing a summons to an accused who requests such a trial, the officer shall advise the accused of their right to such a trial and the process for exercising it. The officer will inform the accused of the requirement to sign the summons and the consequences of refusing. If the accused chooses to sign the summons, the officer must release the subject. The officer should advise the accused to do the following:
1. If court is in session (i.e., regular business hours) report to the Office of the Clerk of the District Court and make a request for trial; or,
 2. If court is not in session, report to the Clerk of the District Court the next day court is in session and make the request.
 3. The issuing officers may, at their discretion, accommodate the request for immediate trial by scheduling the court date for the next available date, provided that the summons is delivered to the Clerk of the General District Court's Traffic Division no later than 9 a.m. of the scheduled date. The court would prefer, if possible, 24 hours advance receipt of the summons.
 - Officers will document the request for immediate trial in their field notes on the back of their copy of the summons, or electronic summons as appropriate.
- C. In either case, the officer will return to service and will take no further action, unless summoned by the court for the trial.
- D. If the accused refuses to sign the summons, or a custodial arrest is effected for other reasons, the officer should treat it the same as any other such arrest.

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This means that the officer will take the accused before the nearest magistrate.


1. If the accused demands immediate trial and if the court is in session (i.e., regular business hours), the accused will be directed to report to the Office of the Clerk of the District Court and make the request for trial upon release from custody or at the arraignment, if not released.

2. If the accused demands immediate trial and if the court is not in session, the accused will be directed to report to the Clerk of the District Court the next day court is in session and make the request.


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	EFFECTIVE DATE: January 1, 2021	REVIEW: January, 2025	
	TOPIC: LEGAL REFERENCES		
RESPONSIBLE ENTITY: Patrol Bureau		<input type="checkbox"/> New Directive <input type="checkbox"/> Replaces: <input checked="" type="checkbox"/> Revised: 07/01/12	
ACCREDITATION STANDARDS:	CALEA N/A VLEPSC N/A		

VI. LEGAL REFERENCES

- A. [Va. Code Ann. § 18.2-250.1](#): Possession of Marijuana unlawful
- B. [Va. Code Ann. § 18.2-266.1](#): Persons Under Age 21 Driving After Illegally Consuming Alcohol; Penalty.
- C. [Va. Code Ann. § 18.2-272](#): Driving After Forfeiture of License.
- D. [Va. Code Ann. § 18.2-388](#): Profane Swearing and Intoxication in Public; Penalty; Transportation of Public Inebriates to Detoxification Center.
- E. [Va. Code Ann. § 18.2-407](#): Remaining at Place of Riot or Unlawful Assembly After Warning to Disperse.
- F. [Va. Code Ann. § 19.2-74](#): Issuance and Service of Summons in Place of Warrant in Misdemeanor Case; Issuance of Summons by Special Conservators of the Peace.
- G. [Va. Code Ann. § 19.2-76](#): Execution and Return of Warrant, Capias or Summons; Arrest Outside County or City Where Charge is to be Tried.
- H. [Va. Code Ann. § 19.2-81](#): Arrest Without Warrant Authorized in Certain Cases.
- I. [Va. Code Ann. § 19.2-82](#): Procedure Upon Arrest Without Warrant.
- J. [Va. Code Ann. § 46.2-301](#): Driving While License, Permit, or Privilege to Drive Suspended or Revoked.
- K. [Va. Code Ann. § 46.2-302](#): Driving While Restoration of License is Contingent on Furnishing Proof of Financial Responsibility.

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- L. [Va. Code Ann. § 46.2-389](#): Required Revocation for One Year Upon Conviction or Finding of Guilty of Certain Offenses; Exceptions.
- M. [Va. Code Ann. § 46.2-391](#): Revocation of License for Multiple Convictions of Driving While Intoxicated; Exception; Petition for Restoration of Privilege.
- N. [Va. Code Ann. § 46.2-394](#): Revocation of License for Fourth Conviction of Certain Offenses.
- O. [Va. Code Ann. § 46.2-865](#): Racing; Penalty.
- P. [Va. Code Ann. § 46.2-894](#): Duty of Driver to Stop, etc., In Event of Accident Involving Injury or Death or Damage to Attended Property; Penalty.
- Q. [Va. Code Ann. § 46.2-936](#): Arrest for Misdemeanor; Release on Summons and Promise to Appear; Right to Demand Hearing Immediately or Within Twenty-Four Hours; Issuance of Warrant on Request of Officer for Violations of §§ 46.2-301 And 46.2-302; Refusal to Promise to Appear; Violations.
- R. [Va. Code Ann. § 46.2-937](#): Traffic Infractions Treated as Misdemeanors for Arrest Purposes.
- S. [Va. Code Ann. § 46.2-940](#): When Arresting Officer Shall Take Person Before Issuing Authority.
- T. [Va. Code Ann. § 46.2-944.1](#): Compact Entered into Law; Terms.
- U. [Va. Code Ann. § 46.2-945](#): Issuance of Citation to Motorist; Party Jurisdiction; Police Officer to Report Noncompliance with Citation.
- V. [Va. Code Ann. § 46.2-946](#): Department to Transmit Officer's Report to Party Jurisdiction; Suspension of Resident's License for Noncompliance with Citation Issued by Party Jurisdiction.
- W. [Fairfax County Code 82-1-6](#): Adoption of State Law.
- X. [Fairfax County Code 82-1-31](#): Arrest for Misdemeanors; Release on Summons and Promise to Appear; Admitting to Bail; Violations.

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This General Order becomes effective January 1, 2021, and rescinds all previous rules and regulations pertaining to the subject.

ISSUED BY:



Chief of Police

APPROVED BY:



County Executive