

I. PURPOSE

To provide procedures to be followed when a deputy sheriff, after developing probable cause to arrest an individual, finds that the person under arrest did not commit a crime, or that the event does not constitute a crime. The arrestee must be released from custody.

II. POLICY

This policy is only applicable prior to a warrant or summons being executed. The intent of this policy is not to address arrest situations after such execution; such matters must be handled through the appropriate court after the warrant or summons is executed.

III. DEFINITION

De-Arrest - The release of an individual from full custodial arrest when the arresting deputy determines one of the following:

- A. That probable cause for the arrest no longer exists;
- B. That the person under arrest did not commit a crime;
- C. That upon further investigation, the event is found not to constitute a crime;
- D. A magistrate has denied issuance of a warrant or summons.

IV. PROCEDURE

- A. When a deputy releases a person from arrest, the following actions shall take place:
 - 1. It is imperative that the deputy 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." Furthermore, a deputy sheriff may not "Hold for investigation" a person for an unduly long time and then release that person, since this might create an action for false imprisonment by the detainee.
 - 2. The arresting deputy shall not formally charge those under arrest when it is proven to the deputy's satisfaction that either the person under arrest did not commit a crime, or that an event investigated is not found to constitute a crime.
 - 3. Advise the arrestee he/she is released from custody. The circumstances of the arrest and release should be explained to the arrestee in a thorough and polite manner.
 - 4. When a deputy de-arrests a subject, the deputy 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 deputy begins to transport him or her, when that deputy learns that the probable cause utilized to make the arrest no longer exists, instead of releasing the subject along the roadside, the deputy should return to the original contact point and release the subject.

**FAIRFAX COUNTY SHERIFF'S OFFICE
STANDARD OPERATING PROCEDURE**

**SOP NUMBER: 033e
SUBJECT: DE-ARREST POLICY**

- a. If the arrestee's vehicle has been towed, the vehicle must be returned to the operator/registered owner. A supervisor shall authorize the tow company to release the vehicle at the expense of the Sheriff's Office.
 - 5. Upon releasing a subject in a de-arrest circumstance, the deputy shall provide his/her agency information, name, and EIN to the arrestee. At the request of the arrestee, the deputy should provide them with their immediate supervisor's contact information. As soon as practical, the deputy shall contact their first-line supervisor and advise them of the incident.
 - a. If the arrestee requests to speak to a supervisor immediately, every effort should be made by the arresting deputy to get in contact with their immediate supervisor or an on-duty supervisor.
 - 6. If a deputy makes an arrest and takes an arrestee before a magistrate who subsequently declines to issue a warrant, the "no warrant" decision by the magistrate will be handled as a de-arrest situation and the deputy is responsible for following the de-arrest procedures outlined in this SOP.
 - a. The deputy, after consulting with his/her supervisor and with the consent of the arrestee, may exercise discretion to release the subject at the magistrate's office rather than return him to his prior location upon arrest.
- B. Reporting Procedures
- 1. The arresting deputy shall complete a sheriff's incident report before the end of the tour of duty containing the following information:
 - a. Date and time of arrest.
 - b. Arrestee's information (name, address, date of birth, race).
 - c. Location of arrest.
 - d. Reasons or discovery of information which led the deputy to de-arrest.
 - e. Location and time of de-arrest and whether subject was transported.
 - f. Witnesses to the alleged crime, or to the fact the individual arrested was allegedly involved.
 - g. Name of the denying magistrate, if applicable.
 - h. Name of the tow company, if the arrestee vehicle was towed, and if the vehicle was returned or not.
 - i. Case/incident number if one was generated by DPSC.
 - 2. If the case involved an arrest for Domestic Assault, deputies shall immediately make all reasonable attempts to notify the complainant, victim, and any other individual with whom the subject was allegedly violent. 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.)

**FAIRFAX COUNTY SHERIFF'S OFFICE
STANDARD OPERATING PROCEDURE**

**SOP NUMBER: 033e
SUBJECT: DE-ARREST POLICY**

C. Supervisor Responsibilities

1. If the arrestee requests to speak with a supervisor immediately, the arresting deputy's supervisor will respond by phone as soon as possible. If the supervisor is available in a timely manner, the supervisor may choose to respond to the scene in person if they deem it necessary. The supervisor will ensure the arrestee has been released from custody and the circumstances have been clearly explained. While the technical aspect of returning the arrestee's liberty is paramount, the supervisor must be cognizant of the human side of this issue and take appropriate and reasonable steps to address personal reactions such as embarrassment, feeling of being disrespected, etc. An example of such steps could include a very thorough and courteous explanation of arrest procedures to the arrestee.
2. The supervisor that responds by phone or in person to the arrestee's request shall write in the supervisor's comments section what occurred during their interaction with the arrestee or convey this information on the outcome of the situation to whichever supervisor clears the incident report.
3. The supervisor that clears the de-arrest report shall forward a copy of the report to their division commander, who will forward the information to Internal Affairs forthwith.



**STACEY A. KINCAID
SHERIFF**

**04/30/19
DATE APPROVED**

**05/31/19
EFFECTIVE DATE**