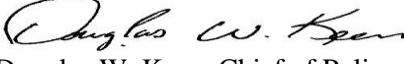




# City of Manassas Police Department General Duty Manual



Effective Date: 02-16-2001	<b>GENERAL ORDER</b>	Number: 06-07
Subject: De-Arrest Procedures		
<input type="checkbox"/> New <input type="checkbox"/> Amends <input checked="" type="checkbox"/> Rescinds <input checked="" type="checkbox"/> Reviewed 03-19-2018 General Order # 6-7 Dated: 2-18-2000		Reevaluation: <input type="checkbox"/> 1 yr. <input type="checkbox"/> 18 months <input checked="" type="checkbox"/> N/A
Accreditation Standards:	By Authority of:  Douglas W. Keen, Chief of Police	Total Pages: 3

**PURPOSE:**

This directive sets forth the procedures to be followed when de-arresting any person who has been arrested by officers of this Department.

**POLICY:**

It is the policy of the Department to de-arrest any person who was lawfully arrested, whenever the probable cause for the arrest no longer exists.

**DISCUSSION:**

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 terminates 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 stated in his opinion the following, which concerns whether a person being released from custody needs to be taken before a magistrate before his discharge to comply with Code of Virginia Section 19.2-82.

- A. "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);
- B. McHone v. Commonwealth, 190 VA 435 (1950).
- C. "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 time and then release him, since this might create an action for false imprisonment by the detainee."
- D. "It is my opinion, therefore, that an arresting officer, who may have held probable cause to initially make the arrest without a warrant, may thereafter conclude that further prosecution of the arrestee would be improper or fruitless and may, subsequently, discharge him from custody without the necessity of taking him before a magistrate."

As stated by the Attorney General of Virginia in "Report of the Attorney" (1971), page 102, an officer is required to formally charge before discharging from custody only those persons who have been placed under arrest, if the officer concludes that further prosecution would be proper and fruitful.

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For the purpose of this General Order, the following definition applies:

DE-ARREST: The release of an individual, forthwith, from full custody arrest, when the arresting officer determines that the person under arrest did not commit a crime, or that upon further investigation, the event under investigation is found not to constitute a crime, or probable cause for the arrest no longer exists.

**PROCEDURE:**

**I. Background for a De-Arrest Action**

- A. The officer makes a lawful arrest of an individual, without a warrant, based on probable cause.
- B. During the course of further investigation, the officer becomes aware of any or all of the following circumstances:
  - 1. The individual under arrest did not commit a crime.
  - 2. The event under investigation is found not to constitute a crime.
  - 3. Probable cause for the arrest no longer exists.

**II. The De-Arrest Process**

- A. The officer decides to release the individual from full custody arrest, forthwith. The officer takes the following actions:
  - 1. Releases the individual from full custody, forthwith.
  - 2. Advises the individual that he is released from custody.
  - 3. Advises the Duty Supervisor of the de-arrest action.
  - 4. In the event that the individual has been moved from his original location, the officer returns the individual to that original location, or improves upon it.
- B. In the event that the individual's vehicle has been towed from the scene, the Duty Supervisor:
  - 1. Authorizes the towing contractor to release the vehicle, and directs any service charges forwarded to the Technical Services Sergeant for payment.
  - 2. Arranges for the return of the vehicle to the owner/operator.
  - 3. Takes any other actions as needed, in an effort to restore the individual to his original condition, prior to the arrest.

**III. De-Arrest Reporting Procedure**

- A. The officer and Duty Supervisor complete the de-arrest process, as noted above.
- B. The Duty Supervisor immediately notifies the Division Commander.
- C. The Division Commander notifies the Chief of Police as soon as practical.
- D. The officer completes a documentation package containing the following reports:
  - 1. Incident Report.
  - 2. Use of Force Report (omit when no force beyond the arrest process is used).
  - 3. Other such reports as required.
  - 4. Date and time of the arrest.
  - 5. The location of the arrest.
  - 6. The assigned report number.
  - 7. Complete and detailed information on the individual arrested.
  - 8. Detailed information concerning the probable cause used initially to effect the arrest.
  - 9. Any use of force whatsoever, used to effect the arrest.
  - 10. Complete and detailed information concerning reasons for utilizing the de-arrest procedure.
  - 11. Detailed information concerning the movement of the individual from his original location, including:
    - a. The individual's original location prior to the arrest.
    - b. The location the individual was moved to following arrest.
    - c. The location the individual was de-arrested.
    - d. The location the individual was returned to following the de-arrest action.

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- 12. All photographs, fingerprints, or other forms concerning the arrest.
- 13. Witnesses to the alleged crime, or to the fact the individual arrested was allegedly involved.
- 14. The disposition of any vehicle operated by the individual arrested, as noted in Section II, above.
- E. The Supervisor shall complete a memo describing the events that took place
- F. The completed reports are forwarded to the Division Commander through the chain of command.
- G. The Commander of Administrative Services and the Chief of Police are forwarded copies of the report package.
  - 1. The Commander of Administrative Services maintains the documentation package.
- H. The Commander of Administrative Services prepares a "Potential Litigation File" and forwards copies to the City Attorney and the Department of Human Resources Risk Manager for informational purposes.

Attachments: N/A.

Index as: De-Arrest.  
Potential Litigation File.

References: U.S. Supreme Court decisions, available at: [www.megalaw.com](http://www.megalaw.com).  
Virginia Supreme Court decisions, available at: [www.courts.state.va.us/opin.htm](http://www.courts.state.va.us/opin.htm).