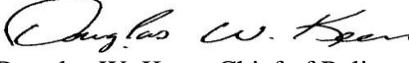




City of Manassas Police Department General Duty Manual



Effective Date: 06-01-2001	GENERAL ORDER	Number: 08-02
Subject: Traffic Summons, Warning, Arrest		
<input type="checkbox"/> New <input type="checkbox"/> Amends <input type="checkbox"/> Rescinds <input checked="" type="checkbox"/> Reviewed: 06-04-2018		Reevaluation: <input type="checkbox"/> 1 yr. <input type="checkbox"/> 18 months <input checked="" type="checkbox"/> N/A
Accreditation Standards: 61.1.3/	By Authority Of:  Douglas W. Keen, Chief of Police	Total Pages: 5

PURPOSE:

To establish procedures for the issuance of traffic summonses, to include e-summonses, and warnings, and for the custodial arrest of traffic violators.

POLICY:

The immediate objective in dealing with the traffic violator is to take the appropriate enforcement action. The ultimate objective is to favorably alter the violator's future driving behavior. Officers should be judicious in their use of the discretionary warning to traffic violators. When deciding whether to issue a summons or arrest a traffic violator, officers must comply with the Code of Virginia Sections 46.2-936, 46.2-937, 46.2-940, 46.2-945 and the provisions of this directive.

DISCUSSION:

Traffic enforcement is one of the many critical tasks performed by police officers, but for violators it frequently is an emotionally traumatic experience. Officers should be aware of this fact and should strive to make each contact educational and to leave the violator with the impression that the officer has performed a necessary task in a professional and civil manner.

PROCEDURE:

I. Release on Warning

- A. With the exception of parking violations, there is no official written warning form for issuance to traffic violators. Such warnings shall be cleared with the CAD disposition codes indicating race and gender.
- B. The decision to cite or warn the traffic violator should be based on:
 1. Consideration of applicable codes and ordinances.
 2. The hazardous or nonhazardous nature of the violation.
 3. The number of violations involved.
 4. The likelihood of the warning having an educational effect and deterrence to future violators.
 5. Any other considerations tending to show judicious use of discretionary powers by the officer. (Also see General Order 1-23).
- C. When the warning has been given and the motorist released, the officer should notify the Public Safety Communications Center (PSCC) that his status is: "Warning Given".

II. Release on Summons

- A. Traffic violators are released on a written summons in accordance with the Code of Virginia Section 46.2-936, 46.2-937, 46.2-940, and 46.2-945.
- B. Note that persons arrested for a violation of the Motor Vehicle Code must be released on a summons, except as provided in Code of Virginia Section 46.2-940.
- C. Officers are subject to Department discipline and / or legal action against them for failing to follow the requirements to "release on a summons" as outlined in Code of Virginia Section 46.2-936.
- D. The Virginia Uniform Summons, to include the e-summons version, is the form used to release a motorist on a promise to appear.

Effective Date: 06-01-2001	GENERAL ORDER	Number: 08-02
Subject: Traffic Summons, Warning, Arrest		Page: 2 of 5

1. The shift supervisor shall ensure that all E-Summons are reviewed for errors prior to the end of shift. This will ensure correct and accurate information is submitted to Records and the Court system.
- E. All summonses are accounted for in the Department forms management system. See General Order 1-14 and the management Report System.

III. Custodial Arrest of Traffic Violators

- A. The decision to affect a full custody arrest of a traffic violator must be made in accordance with the Code of Virginia Section 46.2-940.
- B. Nonresident Violator Compacts are currently in effect between Virginia and numerous other states. The compacts are the basis for releasing out of state residents on a uniform summons. A current list of states in the compact are posted in the Roll Call Room, and is provided for in the Code of Virginia Section 46.2-944 through 46.2-946.
- C. Note that the Code of Virginia Section 46.2-945, C, specifies that no person is entitled to receive a citation (release on uniform summons) in the event that the offense is in one of two categories:
 1. An offense for which the issuance of a uniform summons in lieu of a hearing or the posting of collateral or bond is prohibited by the laws of Virginia.
 2. An offense, the conviction of or the forfeiture of collateral which requires the revocation of the motorist's license. The following offenses require such revocation upon conviction:
 - a. Voluntary or involuntary manslaughter resulting from the operation of a motor vehicle.
 - b. Violation of Code of Virginia Section 18.2-266, 18.2-272, 46.2-341.24 (A), or violation of a valid local ordinance paralleling and substantially conforming to Section 18.2-266 or 18.2-272. These are various sections dealing with driving under the influence of intoxicants.
 - c. Perjury or the making of a false affidavit to DMV under Chapter 3 of the motor vehicle code or any other law of the Commonwealth requiring the registration of motor vehicles or regulating their operation on the highways.
 - d. The making of a false statement to the DMV on any application for a driver's license.
 - e. 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.
 - f. Failure to stop and disclose identity at the scene of an accident, on the part of a driver of a motor vehicle involved in an accident resulting in the death or injury to another person (hit and run).
- D. A traffic violator licensed by a state which does not have a reciprocal agreement with Virginia may be allowed to follow the arresting officer in his own vehicle to the nearest magistrate, except in cases where a full custody arrest is a requirement. If the operator is taken into full custody by the officer, the motor vehicle should be lawfully parked or removed from the scene in accordance with the Code of Virginia Section 19.2-80.1.

IV. Requests for Immediate Trial

- A. The Code of Virginia Section 46.2-936 allows a person accused of most traffic infractions or misdemeanors the right to an immediate trial within 24 hours. This has been interpreted by the 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. Otherwise, the trial is set for the next date court is in session.
 1. Responsibility for dealing with these requests rests with the Clerk of the Court or the magistrate. They are not the responsibility of the officer.
 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 the officer sets on his summons should not be changed to reflect a request for immediate trial.
 5. There is no right to trial within 24 hours for persons accused of any felony or of any traffic charges under any title or chapter other than the Code of Virginia Chapter 46.2. In addition any DWI charges under the City Code are excluded.

Effective Date: 06-01-2001	GENERAL ORDER	Number: 08-02
Subject: Traffic Summons, Warning, Arrest		Page: 3 of 5

- B. When issuing a summons to an accused who requests such a trial, the officer shall advise the accused of his right to such a trial and the process for exercising it. If the accused refuses to sign the summons, the officer shall inform the accused of the requirement that he sign the summons and the consequences of refusing. If the accused chooses to sign the summons, the officer must release him. The officer should advise the accused to do the following:
 - 1. If court offices are open (i.e., regular business hours), report to the Office of the Clerk of the District Court and make a request for trial.
 - 2. If court offices are not open:
 - a. Report to the nearest magistrate and make the request.
 - b. Report to the Clerk of the District Court the next day court offices are open and make the request.
- C. In either case, the officer should return to service and take no further action, unless summoned by the court for the trial.
- D. If the accused refuses to sign the summons, or a full custody arrest is effected for other reasons, the officer should treat it the same as any other such arrest and take the accused before the nearest magistrate.
 - 1. If the accused demands immediate trial, the magistrate is responsible for any arrangements.
 - 2. If court is in session and a trial is arranged, the officer may be required to transport the accused to court, if the magistrate so directs.
 - 3. If court is not in session, the magistrate may hold the accused or tell the accused to report for trial on the next date court is in session. If so, the officer must respond to court that day. Otherwise, this process should be the same as for summons release.

V. Physical Arrest for Operating With Suspended Virginia License

- A. Virginia Resident.
 - 1. A Virginia resident should be released on summons unless the violator refuses to sign the summons or there are articulated facts that indicate the violator will disregard the summons, or is likely to continue the violation.
 - 2. The following factors may be used to support the decision to arrest in lieu of release on summons:
 - a. A past history of failure to appear.
 - b. Knowledge of the operator and his suspension status.
 - c. Failing to notify DMV of address changes.
 - d. Length and nature of driver's record.
 - e. Verbal explanations of the violator.
 - f. Whether the violator has any type of identification.
- B. Reciprocal state resident.
 - 1. The decision to arrest a reciprocal state resident for the violation of driving while his Virginia privilege to operate a motor vehicle is suspended is made after consideration of the likelihood of the violator's appearance in court. In some circumstances, a District of Columbia or Maryland resident may be as able and likely as a Virginia resident to appear in court.
 - 2. Criteria set forth in Section V, A, 2 of this General Order should be used to support the decision to arrest.
- C. Nonreciprocal resident.
 - 1. Residents of nonreciprocal states operating on a suspended Virginia license should be arrested and brought before a magistrate.
 - 2. Ensure that the magistrate is made aware early that the violator is a resident of a nonreciprocal state and is suspended from operating a vehicle in Virginia.
- D. Arrest procedure.
 - 1. Once a traffic violator is arrested for driving on a suspended license, all procedures concerning the towing of the violator's vehicle, prisoner transport and prisoner custody are applicable.

Effective Date: 06-01-2001	GENERAL ORDER	Number: 08-02
Subject: Traffic Summons, Warning, Arrest		Page: 4 of 5

2. When testifying before the magistrate concerning the full custody arrest of a suspended operator, two important elements should be included in that testimony:
 - a. The facts and circumstances that constituted the probable cause to make the traffic stop.
 - b. Articulated facts that led to the decision to make a full custody arrest rather than release on a summons.

VI. Foreign Diplomats / Consular Officials

- A. When a driver believed to have diplomatic immunity is stopped for a moving traffic violation and has proper and valid identification indicating immunity; officers may issue an appropriate traffic citation or warning. Issuance of a traffic citation does not constitute an arrest or detention. **If a person with diplomatic immunity refuses to sign the summons they should not be arrested.** "Refused / Diplomat" should be written on the signature line and the summons should be processed as if signed (with a copy sent to the U.S. State Department).
- B. Whenever the following occurs, officers should, in addition to normal procedures, send a copy of citations for moving violations and accident reports to:
 1. U.S. Department of State.
Diplomatic Motor Vehicle Office.
International Center.
3507 International Place, N.W.
Washington, D.C. 20008.
FAX (202) 895-3646.
 2. A citation is issued to the driver of a vehicle (or the accident involves a vehicle) with U.S. Department of State diplomatic license plates.
 3. A citation is issued to (or the accident involves) a driver whose identity has been confirmed by the U.S. Department of State, Office of Protocol, as a member of a foreign mission entitled to immunity.
- C. Upon receipt of each citation or accident report, it is the responsibility of the U.S. Department of State, Diplomatic Motor Vehicle Office to notify the cited individual's embassy of the citation and obligation to pay any fines, and assign points to the individual's driver record after disposition of the citation. This can only be done, however, if copies of the citations and accident reports are sent to the Driver Records Unit at the Office of Foreign Missions.
- D. DWI incidents involving persons with Diplomatic Immunity;
 1. Of primary consideration in a DWI incident is assurance that the driver does not endanger himself or the public. Preventative steps may include taking the subject to another location to permit sufficient recovery to drive safely, providing transportation or taking other appropriate corrective action while respecting any immunity that may apply. Access to a telephone must be provided.
 2. The official, if entitled to immunity, should not be subjected to any sobriety or other mandatory test, and, except in extreme cases, should not be restrained.
 3. Persons with Diplomatic Immunity may be released to embassy, consular or U.S. Department of State officials who present proper credentials.
 4. Papers, documents or archives of a person entitled to immunity or in a vehicle bearing federal diplomatic plates are not to be searched, examined or seized, even if the driver is restrained or the vehicle removed or immobilized.

VII. Military Personnel

- A. Military personnel, their spouse and certain dependents are exempt from Virginia licensing requirements. See the Code of Virginia Section 46.2-306 in Attachment "A," as long as they are properly licensed in their home state or country.
- B. Military personnel and dependents as described in 46.2-306 are considered Virginia residents for the purpose of release on a summons, if they can provide a valid Virginia address, including military posts within Virginia.

Effective Date: 06-01-2001	GENERAL ORDER	Number: 08-02
Subject: Traffic Summons, Warning, Arrest		Page: 5 of 5

- C. Military personnel or dependents unable to provide a Virginia address are treated the same as civilians under the terms of nonresident violation compacts.

VIII. Juveniles

- A. Citations issued to juveniles are returnable to the Juvenile and Domestic Relations Court.
- B. For other related information, see General Order 7-16.

IX. Legislators

- A. Except for criminal offenses, either felonies or misdemeanors, members of the Virginia General Assembly, their clerks and assistants, the Lieutenant Governor or the sergeant-at-arms of the Senate or the House are temporarily privileged from being taken into custody or imprisoned under any process, including traffic infractions, during the session of the General Assembly and five days before and after the session. (Code of Virginia Section 30-6).
- B. 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. For the purpose of this section, a breach of the peace includes all criminal misdemeanors. This immunity does not apply to traffic charges.
- C. Any officer citing a local, State or Federal legislator should notify their supervisor. The Duty Supervisor should include such information on the daily activity report (DAR).

Attachments: "A" VA Code 46.2-306

Index as: Traffic Summons, Warning, Arrest.
Uniform Summons.
E-Summons.
Virginia Uniform Summons.
Warnings.
Traffic Arrest.
Diplomats.
Immediate Trial.
Military Personnel – Traffic Summons and Arrest.
Reciprocal States – Traffic Summons and Arrest.

References: Code of Virginia Sections 46.2-936, 46.2-937, 46.2-938, 46.2-940, 19.2-80.1, 46.2-945, 46.2-306, available at: www.leg1.state.va.us