

Summons Release/Misdemeanor Arrest

406.1 VERSION

Review Date	Effective Date	Approving Authority
06/29/2022	07/09/18	Kelley Warner, Chief of Police

406.2 POLICY AND PURPOSE

The purpose of this policy is to provide employees of the Harrisonburg Police Department with guidance on when to release adults who are suspected offenders on a summons for a criminal offense, rather than having the person held in custody for a court appearance or released on bail.

The purpose of this order is to specify those times when a misdemeanor arrest must occur or when the court requires or allows a summons to be issued instead.

Additional release restrictions may apply to those detained for domestic violence, as outlined in the Domestic or Family Violence Policy.

It is the policy of the Harrisonburg Police Department to follow Virginia State Code guidelines while handling misdemeanor arrests. Further information to include arrest authority, legal process, and classification of offenses can be referred to in the Law Enforcement Authority Policy. The Harrisonburg Police Department will consider its resources and its mission of protecting the community when exercising any discretion to release suspected offenders on a summons, when authorized to do so.

406.3 ACCOUNTABILITY STATEMENT

All employees are expected to fully comply with the guidelines and timelines set forth in this policy. Responsibility rests with the supervisor to ensure that any violations of policy are investigated and appropriate training, counseling and/or disciplinary action is initiated. This directive is for internal use only, and does not enlarge an employee's civil liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violation of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

406.4 CONSIDERATIONS

In determining whether to release a person on a promise to appear in court and when discretion is permitted, officers should consider:

- (a) The type of offense committed.
- (b) The known criminal history of the suspected offender.
- (c) The ability to identify the suspected offender with reasonable certainty.
- (d) Whether there is any record of the individual failing to appear in previous cases or other articulable indications that the individual may not appear in court for this offense.

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- (e) The individual's ties to the area, such as residence, employment or family.
- (f) Whether there is reasonable likelihood that criminal conduct by the individual will continue.

406.5 NON-TRAFFIC OFFENSES

Code of Virginia 19.2-74; Issuance and service of summons in place of warrant in misdemeanor case; issuance of summons by special policemen and conservators of the peace -

- (a) 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 provision of 19.2-82.

Any person who willfully violates his 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.

- (b) Special policemen of the counties as provided in 15.2-1737 and special policemen or conservators of the peace appointed under Chapter 2 (19.2-12 et seq.) of this title and special policemen appointed by authority of a city's charter 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 supply of summons forms, for which such officer shall account pursuant to regulations of such chief law-enforcement officer.
- (c) 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.

406.5.1 CRITERIA FOR RELEASE ON SUMMONS

Class 1 and 2 Misdemeanors

Legally, one of two conditions must exist before the arresting officer may bring the person arrested before a magistrate:

- (a) 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 person has no community ties; such as transient, unemployed, etc.
 2. Inability to furnish proper identification.
 3. The person attempts to escape or resists arrest.

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4. The person cannot understand the conditions of the summons requiring his future appearance in court.
 5. The person makes a statement which indicates intent to disregard the summons or refuses to sign the summons.
 6. The arresting officer has knowledge of the person's prior history of failing to appear in court.
 7. A warrant check disclosed the existence of an outstanding warrant on file for the arrestee.
- (b) The arresting officer believes that the person is likely to harm himself or another person if released on a summons. This belief should be based on one or more of the following facts:
1. The person is apparently under the influence of a drug, including alcohol.
 2. The person exhibits violent or irrational behavior before, during, or after the arrest.
 3. The person's statements or behavior indicate likelihood that they will continue the offense or commit another offense if released immediately on a summons. Taking the person before the magistrate will allow a "cooling off" period for all parties involved.

Class 3 and 4 Misdemeanors (and misdemeanors for which there is no jail sentence)

An individual may be arrested and taken before a magistrate for these offenses only if one or more of the following conditions exist:

- (a) Refusal to furnish name and address.
- (b) Refusal to sign the summons.
- (c) A violation of 18.2-407 of the Virginia Code- Remain at the Scene of a Riot after Being Told to Disperse.
- (d) A violation of 18.2-388 of the Virginia Code, Profane Swearing and Drunkenness in Public.
- (e) Refusal to discontinue the unlawful act.

406.5.2 SPECIAL PROCEDURES IN MISDEMEANOR WARRANT CASES

- (a) In serving an arrest warrant for a misdemeanor 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 are those in which the person to be arrested has small children which cannot be left unattended or where the person appears to the officer to be ill.
- (b) In such circumstances the arresting officer's supervisor will contact a magistrate and request authority to serve the warrant using the summons procedure on the warrant.
- (c) If possible, the magistrate who issued the warrant shall be contacted. If he is not available any magistrate may be contacted.

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- (d) If the 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 summons portion requiring the defendant's signature.
- (e) A uniform summons shall be completed and processed.
- (f) Other misdemeanor warrants which are issued for service as a summons shall be handled as follows:
 1. The serving officer shall give the defendant a copy and execute the original to indicate service.
 2. A uniform summons shall be completed if the warrant involves a traffic related charge (all pertinent vehicle information shall be completed on the uniform summons). In addition to the offense charged, the officer shall write on the offense portion of the summons form, "Warrant."
 3. The original copy of the warrant and all copies of the uniform summons, except the officer's copy, and a completed Warrant Control Form, if applicable, shall be forwarded to the Records Unit for distribution.
 4. If the defendant refuses to sign the summons, he should be taken before the 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.

406.5.3 SERVICE OF MISDEMEANOR SUMMONS

Misdemeanor summonses will be processed the same as a warrant.

The officer serving the summons shall deliver a copy to the person named as the defendant and execute the original to indicate service.

If the charge is traffic related, a Virginia Uniform Summons will be completed and attached to the misdemeanor summons. When completing the summons, the officer shall write in "misdemeanor summons" along with the charge, in the offense charged area, and forward everything to the Records Unit.

The officer serving a parking summons from another jurisdiction shall not complete a Virginia Uniform Summons; only the Warrant Activity Card must be completed to document the service.

406.5.4 CCRE REQUIREMENTS

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. (Refer to 19.2-74 of the Code of Virginia)

In cases where a person is arrested for a CCRE reportable offense and is released on a summons, the CCRE processing shall be completed after the disposition of guilt is entered in court. This applies when a misdemeanant 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 magistrate and subsequently released on bond or other form of pre-trial release.

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In all CCRE-reportable cases where an arrested person is not released in the field but is taken before a magistrate, the arresting officer shall be responsible for completion of the CCRE reports.

406.5.5 ARREST PAPERWORK

For Arrest Paperwork procedures, see supplement 802.

406.6 TRAFFIC OFFENSES

406.6.1 CODE OF VIRGINIA 46.2-936, 46.2-937, 46.2-940

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 violation of 46.2-301 and 46.2-302; refusal to promise to appear; violations.

- (a) 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 him 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 he so desires, have a right to an immediate hearing or a hearing within twenty four 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 his written promise to appear at such time and place, the officer shall forthwith release him from custody.
- (b) 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 magistrate shall proceed in accordance with the provisions of 19.2-123.
- (c) 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 a summons or a warrant as he shall deem proper.
- (d) If any person refuses to give such written promise to appear under the provisions of this section, the arresting officer shall give such person notice of the time and place of the hearing, note such person's refusal to give his written promise to appear on the summons, and forthwith release him from custody.
- (e) Any person who willfully violates his written promise to appear, given in accordance with this section, shall be treated in accordance with the provisions of 46.2-938.

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- (f) 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, our local judge has ordered that person(s) violating these code sections only be arrested if they have been convicted of a previous violation of either code. The Judge does not grant prior approval without a first conviction, unless an officer feels release by summons is not sufficient to insure an individual's appearance in court on the established hearing date.
- (g) Persons arrested for driving on a suspended license with or without notice (i.e. Suspended or Revoked DUI related) shall be released on a summons if they meet the criteria for release according to 19.2-74. See Section I, Subsection B (Criteria for Release on a Summons) of this General Order for additional guidance.
- (h) 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 City Code section 13-1-3. For prosecution purposes, the State Code section and the City Code section adopted under 13-1-3 are identical. It is the Department's policy that officers, when citing one of these offenses, shall cite the City Code under section 13-1-3.

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.

46.2-940. When arresting officer shall take person before issuing authority. If any person is:

- (a) Believed by the arresting officer to have committed a felony;
- (b) Believed by the arresting officer to be likely to disregard a summons issued under 46.2-936 or refusing to give a written promise to appear under the provisions of 46.2-936; or
- (c) 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 he shall determine proper.
- (d) Note that persons arrested for a violation of the Motor Vehicle Code, including but not limited to an arrest on a warrant for speed to elude, shall be released on a summons except as provided in 46.2-940.
- (e) Officers who violate this provision shall be guilty of misconduct in office and subject to removal there from upon complaint filed by any person in a court of competent jurisdiction.

406.6.2 ARREST OF NON-RESIDENTS

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. These compacts are provided for in 46.2-944 through 46.2-946.

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46.2-944. Definitions as used in this article:

- "Jurisdiction" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.
- "Home jurisdiction" means the jurisdiction that issued the driver's license of the traffic violator.
- "Issuing jurisdiction" means the jurisdiction in which the traffic citation was issued to the motorist.
- "Party jurisdiction" means any jurisdiction which by its laws or by written agreement with the Commonwealth extends to residents of Virginia substantially the rights and privileges provided by this article.
- "Court" means a court of law or traffic tribunal.
- "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.
- "Terms of the citation" means those options expressly stated upon the citation.
- "Compliance" means the motorist must appear for a hearing and/or pay court fines and costs.
- "Driver's license" means any license or privilege to operate a motor vehicle issued under the laws of the home jurisdiction.
- "Collateral" or "bond" 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.
- "Personal recognizance" means a signed agreement by a motorist made at the time of issuance of the traffic citation that he will comply with the terms of that traffic citation.
- "Motorist" means a driver of a motor vehicle operating in a party jurisdiction other than the home jurisdiction.
- "Police officer" means any individual authorized by the party jurisdiction to issue a citation for a traffic violation.

46.2-945, Issuance of citation to motorist; 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 issued by a party jurisdiction and shall not, subject to the exceptions noted in subsection C of this section, require such motorist to post collateral or bond to secure appearance for trial, but shall accept such motorist's written promise that he will comply with the terms of such citation; provided, however, the motorist shall have the right upon his 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 written promise, the officer shall proceed according to the provision of 46.2-940.

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- (c) No motorist shall be entitled to receive a citation under the terms of subsection A of this section nor shall any police officer issue such citation under the same in the event the offense for which the citation is issued shall be 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 this Commonwealth; or (ii) an offense, the conviction of or the forfeiture of collateral for which requires the revocation of the motorist's license.
- (d) Upon the failure of any motorist to comply with the terms of a traffic citation, the police officer or the appropriate official shall report this fact to the Department of Motor Vehicles. Such report shall clearly identify the motorist; describe the violation, specifying the section of the statute, code or ordinance violated; shall indicate the location of the offense, give 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.

Note that paragraph (c) under 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. Refer to 46.2-940.
- (b) An offense, the conviction of or the forfeiture of collateral for which requires the revocation of the motorist's license. The following offenses are those which require revocation upon conviction:
 - 1. DUI.
 - 2. Voluntary or Involuntary Manslaughter.
 - 3. Conviction of a felony involving the motor vehicle laws or involving the use of a motor vehicle.
 - 4. Failure to stop at the scene of a traffic crash involving death or injury.
 - 5. Intentionally and willfully stopping, blocking, or damaging any vehicle upon the highways.
 - 6. Racing on highway.
 - 7. Perjury or make false affidavit to the Division of Motor Vehicles concerning registration of motor vehicles or their operation on the highways, or make false statement to the Division of Motor Vehicles on any applications for an operator's or chauffeur's license.
 - 8. Driving while license, permit, or privilege to drive is suspended or revoked.

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 magistrate, except in cases where physical custody is necessary. The 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.

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406.7 PRIVATE PERSON'S ARREST

It is the policy of the Harrisonburg Police Department to accept a private person's arrest only when legal and appropriate. This includes assisting city merchants when confronted with someone who is stealing from their business (Shoplifting). This includes misdemeanor or felony offenses and also both juveniles and adults.

406.7.1 ARRESTS BY PRIVATE PERSON

A private person may arrest another under the following circumstances:

- (a) Without a warrant when the person arrested has committed a breach of the peace in his/her presence.
- (b) Without a warrant when a felony has actually been committed and there is reasonable grounds for believing the person arrested has committed the crime.
- (c) Without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year (Va. Code § 19.2-100).

406.7.2 AUTHORITY

- (a) Merchants, or Their Employees or Agents
 1. Under Section 8.01-226.9, Code of Virginia, merchants, or their agents or employees who cause the arrest of any person for shoplifting are provided an exemption from civil liability. Virginia Code Section 18.2-105.1, authorizes merchants or their agents or employees to detain a person suspected of shoplifting for a period not to exceed one hour based upon probable cause that the person committed larceny, or concealed merchandise. The purpose of the detention is to hold the person until the arrival of a police officer.
- (b) Registered Employee of a Private Security Services Business
 1. The powers of arrest for a registered employee of a private security services business is controlled by Section 9.1-146, Code of Virginia. Such employees may arrest for offenses committed in their presence or in the presence of a merchant, their agent or employee, if probable cause exists to believe that the person arrested had shoplifted or committed willful concealment of goods. This arrest is valid only on the premises at a location, which the private security services firm, have contracted to protect.
- (c) Special Conservators
 1. Special conservators are appointed by the Circuit Court of Rockingham County. Special conservators are given full arrest power within the geographical location set forth by the court.
- (d) Electronic Article Surveillance Devices
 1. The activation of an electronic article surveillance device as a result of a person exiting the premises or an area within the premises of a merchant where an electronic article surveillance device is located, shall constitute probable cause for the detention of such person by such merchants, their agents or employees,

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provided such person is detained only in a reasonable manner and only for such time as is necessary for an inquiry into the circumstances surrounding the activation of the device, and provided that clear and visible notice is posted at each exit and location within the premises where such a device is located indicating the presence of an anti-shoplifting or inventory control device. For purposes of this section, "electronic article surveillance device" means an electronic device designed and operated for the purpose of detecting the removal from the premises, or a protected area within such premises, of specially marked or tagged merchandise.

406.7.3 CUSTODY OF EVIDENCE AND COURT APPEARANCE

- (a) The custody of evidence relating to shoplifting offenses shall remain the responsibility of the special conservator, store employee, or registered security employee, regardless of whether a police officer makes an arrest. The police officer should explain the responsibility and custody of evidence to the complainant.
- (b) Police officers assigned to shoplifting complaints shall not appear in court for the prosecution of such offenses unless:
 - 1. The officer observed the offense, or has other information essential to the prosecution; or,
 - 2. The Office of the Commonwealth's Attorney requests the officer's presence in court.
- (c) The police officer should advise the complainant of their responsibility for appearing in court.

406.8 REQUESTS FOR IMMEDIATE TRIAL

- (a) Section 46.2-936 of the Code of Virginia and 13-1-3 of the Harrisonburg City Code allows 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 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 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 13, respectively.
- (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

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officer will inform the accused of the requirement that they 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 their 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.
- (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 affected for other reasons, the officer should treat it the same as any other such arrest. 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 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.