

SUMMONSES, ARRESTS, & WARRANTS

Directive: 6.11

A. Authority

All enforcement efforts undertaken by members of this department will be consistent with all applicable Federal, State and Local laws and ordinances. Members must remain current as to those portions of law authorizing the exercise of police powers and will receive additional training as these laws are amended.

B. Uniform Criminal Complaint and Summonses

A summons may, but need not, be issued for any misdemeanor or violation of City Code. Officers must carefully consider the nature of the violation, the character of the offender, and other relevant circumstances in determining whether to issue a summons or physically effect an arrest.

1. Prohibitions to issuance

A summons will not be issued in lieu of arrest if any of the following conditions exist:

- a. The offense is of such a nature that a threat to the public peace or public safety may continue after the summons is issued.
- b. The subject is a juvenile (under 18 years). Refer to the Directive entitled "**Procedures for Dealing With Juveniles**" for instruction regarding juvenile arrests.
- c. The subject refuses to supply information necessary to complete the summons.
- d. The subject refuses or is unable to identify himself to the satisfaction of the officer. Some type of positive identification (driver's license, military ID card, etc.) should be obtained and noted in the report.
- e. The subject cannot prove that he is a resident of Delaware.
- f. The subject refuses to sign the summons containing the promise to appear in court.

- g. The subject is apparently under the influence of alcohol, drugs or other impairment which renders him incapable of comprehending the terms and conditions of the summons.

2. Reporting Procedures

- a. Each incident in which a summons is issued will be recorded in the appropriate departmental report.
- b. The summons will bear the same complaint number as the report.
- c. The victim's name and relationship to the offender will be printed along the left edge of the front of the Court Copy of the summons (white copy).
- d. All witnesses to the incident will be listed on the reverse side of the white copy of the summons, in addition to the incident report and subpoena request form (when appropriate). This list must include the subject's name, home address (including city and state), home telephone number and date of birth. In instances where a business is the victim ensure to include the reporting person.
- e. If the defendant is not taken before a Magistrate immediately a mandatory appearance date will be set by the issuing officer. This date must be more than 14 days from the date of arrest, and will coincide with the officers scheduled day work.
- f. Every block on the criminal summons must be completed (including date of birth, height, weight, eye color, hair color, etc.).
- g. All summonses will be notarized by the House Sergeant and the copies distributed as follows:

White copy	J.P. 20 Court basket
Green copy	J.P. 20 Court basket
Canary copy	Offender
Goldenrod copy	Support Services Division (C.L.U.E.S. Operator)
Pink copy	Officer's records

- h. Issuing officers must inform the defendant that any communications with the Court regarding a change of plea or a request for a continuance must be made no sooner than five days from the date of issuance and not less than six days prior to the appearance date.

3. Special Circumstances

a. Shoplifting

(1) The store employee who witnesses the offense must be listed on all appropriate forms.

b. Marijuana Possession

A criminal summons for possession of five grams or less of marijuana may be issued with the approval of a supervisor. (Five grams are equal to two nickel bags or six joints).

5. Maintenance and Inspection

a. **Summons books are supplied by and accounted for by the Records Division, Property Technician. Log books identifying the receiving officer will be maintained and made available for inspection as required.**

b. The House Sergeant will maintain a summons log book and will enter the required information for each summons.

c. **Corrections/Voidance**

(1) **Correction**

When an error is made a single line will be drawn through the erroneous material, the correct entry inserted, and the correction initialed by the officer.

(2) **Voidance**

If the entire summons needs to be voided, it will be:

- (a) marked "VOID" across the face;
- (b) attached to a departmental information report detailing the circumstances; and,
- (c) submitted to the Chief of Police for approval. Once approved, the departmental information report, and the summons will be forwarded to **the Records Division Property Technician** for disposition.

d. Whenever a member separates from the department, the summons book is forwarded to the **Records**

Division Property Technician who will ensure all summons are accounted for.

C. Arrests

1. Arrests Without Warrant - Observed Incidents

All arrests initiated as a result of witnessed behavior will be based on the exercise of good judgement by the officer. Officers may seek out alternative methods of resolution when possible. The exceptions to this procedure are those misdemeanors specifically addressed by statute. Witnessed felony behavior will in all cases result in arrest.

In all arrests officers will complete an incident report detailing the arrest. An arrest report will be submitted as a supplemental report. The subpoena request form will be completed, as necessary and submitted to the appropriate Court. (For further information regarding completion of these reports refer to Chapter 4.)

2. Arrests Without Warrant - Reported Incidents

a. Misdemeanors

When investigating complaints of civil disagreements which do not possess the potential for escalation, officers are to advise the complainant to respond to the appropriate Court and seek a warrant. Officers investigating incidents of this type are to submit a police report documenting the incident and may include a recommendation as to the issuance of a warrant or a summons.

b. Felonies

All felonies regardless of the victim's desire for prosecution will be recorded by use of a crime report at a minimum. Officers are responsible for the creation of a warrant when the identity of the offending party is known with no discretion on the part of the officer. These procedures apply to all felonies and the specified misdemeanors.

3. Arrest of Subjects on Probation

In all adult arrest situations, the arresting officer is to ask the arrestee if he is presently on probation. If the arrestee is on probation, the officer is to attempt

to determine the arrestee's probation officer, to make contact with the officer and provide the details regarding the arrest. This is to be done regardless of the time of arrest.

If the arrestee acknowledges he is on probation but refuses to identify his probation officer, the arresting officer is to note on the arrest report the probation status. It will be the responsibility of the House Sergeant to compile a list of all arrestee's who are on probation.

The second-shift House Sergeant, will call the Counselor Supervisor of Probation and Parole for Superior Court and inform him of the names and charges of subjects arrested. This office can be contacted Monday through Friday, 0900 to 1630 hours, by calling [REDACTED].

a. Assisting Probation or Parole Officers

1). Normal Arrest Procedures:

All officers will assist properly identified parole or probation officers in affecting the arrest of violators within City limits when requested.

Under all circumstances, this arrest will be with either a warrant or a written statement from the probation or parole officer. If a written statement is used, a carbon or machine copy should be attached to the original report. A written report will be made in all instances, even if no arrest is made. The original copy of the statement is to be used as the detainer.

It is not required that those people so arrested appear in court; consequently, they may be transported to the Delaware Correctional Institution by the first available transportation.

2). Parolees/Probationers With Weapons:

- (a) When a probation and parole officer encounters a client who is either armed or has a weapon within his **control** (residence) they will **notify** this department and request assistance.

Personnel will be dispatched to assist in taking the client into custody, seize the weapon(s) in question and secure it, in accordance with prevailing procedures. Officers will comply with all mandated court procedures.

The probation and parole officer in this instance will continue to follow up with the felony screening unit, as well as the Deputy Attorney General who originally prosecuted the client, for further review. The weapon(s) will either be returned or forfeited, at which point, this Department will receive official notification of the facts and how to dispose of the weapon(s).

4. Photograph and Fingerprint Updating

a. Photographs and Remugs:

In order to preserve the continuity of, and ensure that current photographs are maintained in our photo file the following guidelines must be followed.

(1) Photographs

When an arrestee is initially processed he/she will be photographed.

- (a) The only identification article permitted in the photo will be the WPD Ident display showing the proper identification number and the date the photo was taken.

The arrestee will remove any hats, glasses, or other articles which could readily identify them.

Should the arresting officer require a photo with a hat, or other identifiable article depicted, then an additional series of photos is permitted.

- (b) All photographs will depict the arrestee looking forward (one frame) and to the left (one frame).

(2) Remugs

Officers will re-photograph all persons arrested for a Class A Misdemeanor or more serious offense.

Additionally, arrestees will be re-photographed, at a minimum:

adults - every four years
juveniles - every year

The following guidelines will be followed when re-photographing any arrestee:

- (a) the arresting officer will follow the guidelines in (B-4-a-1).
- (b) The arresting officer will then note on the appropriate section of the arrest report the date the photo was taken.
- (c) The arresting officer will complete the information required on the remug clipboard.

b. Fingerprinting:

- (1) Any person who is arrested by this department for the first time will be processed by Identification/ EDU personnel. The only exception would be a person booked on a capias.
- (2) Any person arrested a second or subsequent time will be processed by the arresting officer(s). This processing will consist of (2) two sets of fully rolled Federal Identification Cards. The only exception would be a person booked on a capias, for which right hand pat prints will suffice.
 - (a) After completing the needed information the officer will ink the arrestee's four (4) right fingers and thumb. The arresting officer will press down the inked fingers and thumb onto the lower portion of the card marked right thumb and fingers. The arresting officer will insure the prints are legible. Both arresting officer and arrestee will sign the card in the appropriate blocks.

In cases where the right hand cannot be taken (e.g. amputation, deformity, broken finger), the arresting officer will follow the same procedures using the left hand. In this case, the arresting officer will note in the right hand block the reason for taking the left hand prints.

The card will then be given to the Turnkey with the arrest report. Identification Unit personnel will retrieve the cards from the recid basket in the House Sergeant's Office on a daily basis. The cards will then be compared with the arrestee's original prints. The arrestee's file will be updated and the recid card will then be forwarded to the State Bureau of Identification (S.B.I.).

5. Criminal Impersonation

Should identification personnel determine that an arrestee has provided false information the arresting officer will be notified via departmental mail. It will be the responsibility of the arresting officer to sign warrants for the arrestee under his true identity based on the identification unit's information.

D. Warrants

1. Execution of Warrants

All arrest warrants will be executed by sworn law enforcement officers only. In dealing with persons believed to be wanted the officer will confirm the existence of the document through the Data Center. In cases where absolute confirmation is not possible, officers will act on the best information available which could include receipts or other official documents that indicate resolution.

2. Rule 9 Warrants

The following guidelines are put into effect:

- a. When an officer seeks to indict a person who has not been arrested on the charge(s), that officer will ensure that the Deputy Attorney General at the intake proceedings is advised of:

- (1) the charge(s)
 - (2) the appropriate case number(s)
- b. When a person is arrested on a Rule 9 warrant, (see section 2 relative to Rule 9 procedure) he shall be booked under the original case number(s) and charge(s). He shall be booked at Magistrate Court.
- (1) If there are multiple charges, there are multiple case numbers; each respective charge and case number will be booked on a separate arrest report.
 - (2) Also, each officer shall write in the body of the arrest report, "subject arrested pursuant to Rule 9 warrant issued on (date).
- c. When an officer arrests a person on authority of a Rule 9 warrant, the original charges of which stem from another jurisdiction (i.e., Delaware State Police, New Castle County Police, etc.) The officer shall transport the individual to Central, where he will be held for the proper authorities to respond and take custody. A miscellaneous report of the incident shall be submitted and the House sergeant shall enter such prisoner in the House Sergeant's book along with a disposition.
- Except in the case of a Rule 9 warrant, where original charges stem from the Office of the Attorney General, the prisoner will be processed by this Department as a normal arrest, indicating the specific charge of the warrant, and in the body of the report, "for further information, see investigative report of the Department of Justice," and that the arresting officer is not needed in court. The defendant shall then be taken before a judge or court commissioner of the Municipal Court or the nearest available Justice of the Peace for bail hearing. On the Rule 9 warrant, there shall appear a Department of Justice complaint number and said number will be placed in the body of the report. The booking officer shall draw a new complaint number for the arrest.
- d. When an officer arrests a person on authority of a Rule 9 warrant for failure to appear in answer to a summons, the officer shall book the arrestee on the charge of a "capias - Rule 9", and hold the individual for Superior Court. A new case number will be drawn from the Communications Division in

this event. In accordance with Superior Court rules of criminal procedure, the arrestee can be brought before Municipal Court for bail.

3. Rule 9 Warrant Procedure (General)

The Rule 9 Warrant is, in effect, the same as any other warrant processed by the Department of Police. The major difference found in a Rule 9 warrant, as opposed to others, is that it issues from action initiated by the grand jury, rather than **Magistrate Court**.

Under Rule 9, a warrant will be issued for two reasons only:

- a. The individual is charged and indicted for a crime for which he has not been arrested.
- b. The individual, having been summoned to appear after indictment, failed to do so and warrant for his arrest is issued.

Example A: John Doe has a warrant issued against him, on a charge of theft, from the **Magistrate's Court**. When picked up, John Doe is booked on a charge of theft, not on a charge of **Magistra+ Court** warrant.

Example B: John Doe is indicted by the grand jury on a charge of theft, and a Rule 9 warrant is issued for his arrest. When he is apprehended, he is booked on a charge of theft, not a charge of Rule 9 warrant.

Example C: If John Doe was arrested for theft by **a member of this** department and at the preliminary hearing the charges were dismissed or nolle prossed, but the arresting officer pursues the charge to the grand jury and obtains a true bill indictment, a Rule 9 summons will be issued for John Doe.

If John Doe does not appear in answer to the summons, then a Rule 9 warrant for failure to appear will be issued for his arrest. This person when arrested would be booked on a charge of **capias**, not a charge of Rule 9 warrant.

All personnel are reminded that whenever a person is booked pursuant to a Rule 9 warrant, the original charge will be entered in Block 15 of the arrest report.

Additionally, an indication of a Rule 9 warrant will be entered in that block or in the continuation of the information for Block 15 in the body of the report. (Example: burglary 1st (Rule 9)).

4. Warrant Service for Outside Agencies:

- a. Whenever an outside police agency requests assistance in serving a warrant in the City of Wilmington, we will dispatch a unit to assist, but the outside agency will make the actual arrest.
- b. If an outside agency requests that we serve a warrant, we will comply under the following conditions:
 - (1) the name and position of the requesting officer will be recorded on the complaint; and
 - (2) the Communications Unit will verify that the officer is a member of the requesting agency. This verification will be obtained either by calling the agency or other method that will provide reasonable cause to believe that such warrant does exist. This verification should include calling the Data Center of the requesting agency to verify that they have a warrant.
- c. Should an apprehension be made on a subject wanted by any outside agency, other than New Castle County Police, the prisoner will be transported to Central and held for that agency. The apprehension and transport of the prisoner will be recorded on a crime report classified as "Assist Other Authority."
- d. Whenever a member has occasion to exercise an arrest stemming from the New Castle County Police, that officer will immediately transport the prisoner to New Castle County Police headquarters on Route 13, and turned the prisoner over to them.
- e. In all such circumstances, an incident report will be submitted stating; the name of the arrestee, the time and place of arrest, the time that the prisoner was turned over to the County Police, and the name of the county officer receiving custody.
- f. Whenever New Castle County Police arrest an individual stemming from the Wilmington Police, that County

officer will transport his prisoner to Central, where he will be turned over to the Turnkey. It shall be the responsibility of the Turnkey to write the necessary arrest report noting the name of the County officer who made the apprehension or delivered the prisoner.

6. Affidavit of Probable Cause

The Delaware Supreme Court has mandated that an affidavit of probable cause be submitted in all arrest or warrant situations. The affidavit must contain information sufficient to establish that a crime was committed, and how the named suspect was identified as the alleged perpetrator of the crime. All personnel are reminded that the affidavit is to be submitted in all arrest situations including in-presence felony and misdemeanor arrests, out-of-presence A.O. felony arrests and warrant requests. One affidavit of probable cause can be used to support several charges arising out of the same incident.

7. Arrest for Family Court Capias and Warrant

- a. Whenever a subject is arrested for a Family Court capias or Family Court warrant, the subject will be transported to Central and booked on this charge. If this arrest takes place during court hours, the subject will be **transported** and released to the court immediately following the booking procedures.
- b. During those times when the Family Court is closed, a bail hearing will be held in Magistrate Court either in person or via the video-phone.

8. Arrest for Superior Court Capias

All Superior Court capiases, regardless of the original arresting agency, will be processed and maintained **electronically**. The following guidelines will be utilized by members of the Department:

- a. All subjects taken into custody on a Superior Court capias for the Delaware State Police and **other** local departments will be transported to our headquarters, **and held for** the appropriate agency. Those for the New Castle County Police Department will be transported to County headquarters.
- b. Subjects taken into custody on Superior Court capiases, wherein our Department is the originating agency, will be brought to headquarters. The Data Clerk will confirm the existence of the capias a

will make a printout of the computer entry for the arresting officers.

- c. The subject will be booked accordingly. If no other charges are being placed, then the defendant will be either turned over to the Sheriff's office when Superior Court is in session, or **bail will be set through the appropriate Magistrate Court, either in person or by video-phone.**
- d. If the defendant is transported to **any Magistrate Court**, the officers will maintain custody of the defendant at **that Court** during the arraignment, setting of bail, and commitment to the department of Corrections if bail cannot be obtained by the defendant. At no time will custody be transferred to a constable.
- e. All of the action taken by the arresting officers, including; where the defendant was transported, **whether they were committed in default of bail, and if so the correctional facility turned over to, will be listed on the report.**

9. J.P. Court #18 (MPCJF) Guidelines

- a. The following guidelines have been established by J.P. Court #18 located at the Gander Hill Multi-Purpose Criminal Justice Facility. These procedures are to be followed when transporting subjects to Gander Hill due to felony arrests, and when custody is being transferred to the Department of Corrections.
- b. In an attempt to return police officers to active duty, it is **not** mandatory that they appear in court for bail setting and initial appearance. However, the court must have the following documents relevant to each case:
 - (1) - Arrest Report
 - (2) - Probable Cause sheet
 - (3) - Affidavit
 - (4) - Complaint or Warrant for each offense
 - (5) - Charge Summary sheet (see example)
 - (6) - Bail Hearing form (**Officers are encouraged to make recommendations regarding the amount of bail requested.**)
- c. For W.P.D. on-site arrests (A.O.) the complaint/warrant signed by the officer, which accompanies the arrest report, is sufficient. After turning the defendant over to the custody of the Department of

Corrections, officers will leave the sally port a park their vehicles in the general parking area and proceed to court through the public entrance. At this point, the officers will deliver the appropriate reports to the Clerk of J.P. Court #18.

10. Automated Warrant/Capias Procedures

The "automated warrant/capias system" is to be used to complete all AO arrests and warrants through the CJIS System.

It is important that set procedures are followed when generating warrants/AO's. Following the below steps in their proper sequence will enhance arrest procedures and therefore expedite the entire arrest process.

a. SECURING THE PRISONER

- 1) Search and secure prisoner's property.
- 2) Fill out a recidivist card and take the prisoner's fingerprints.
- 3) List all charges and get necessary information for the arrest procedure.
- 4) Make sure the turnkey **accepts custody of the prisoner** before leaving the cellblock area.

b. NOTIFYING THE HOUSE SGT.

- 1) Before responding to the "warrant room", notify the House Sgt. that you have an arrestee giving the proper number of charges.
- 2) **Obtain** an arrest number from the House Sgt.
- 3) Check for outstanding warrants through the [REDACTED] Data Center.

c. AO/Warrant Procedures

- 1) Follow steps [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] and complete all inquiry screens prompted by the system.
- 2) The system will then print the appropriate documents both in the Warrant Room and the Court.

d. POST WARRANT/ARREST PROCEDURES

- 1) **With** your copy of the warrant/AO **respond** to the court for signature.
- 2) In the event that the court's copy of the warrant was lost through the phone line, an extra copy can be made of the warrant.
- 3) **Deliver** the signed copy of the warrant to the House Sgt. which shall be attached to the computer generated arrest report.

e. COMPUTER GENERATED ARREST REPORTS

The computer generated arrest report contains **all required information** with two exceptions;

- 1) Officers are to place the case number in the top right hand corner of the arrest report.
- 2) Officers are to place the prisoner's right thumb print on the bottom right hand corner of the reverse side of the report. The officer taking the print shall place his initials next to the print.

There are several blocks that need to be filled out in long hand as they are not addressed by computer information.

f. DOWN TIME/SLOW RESPONSE/ASSISTANCE

Should an officer attempt to use the [REDACTED] computer is down, or if the system goes down during operation, the following steps shall be adhered to;

- 1) Contact the Deljis Help Desk [REDACTED], use this number for assistance on automated warrant/arrest problems, **and** error messages with instruction to call Deljis.
- 2) Contact the DSP Message Switcher [REDACTED], use this number for assistance **when** there is a slow/no response time.

NOTE - both of these numbers are located on the computer monitors.

If Deljis or the Message Switcher advises that the system will be down longer than 15 minutes, or if the

problem is not corrected within 15 minutes, the officer will **escape** from the system and proceed in the previous manner of writing out the arrest in longhand.

NOTE - Should an officer not be able to use the system due to the system **problems** the officer will fill out the CJIS Log Book located in the House Sgt.'s Office. The officer will note the reason the warrant was not completed by use of the CJIS System. It will be the House Sgt.'s responsibility to **ensure** that the aforementioned procedures are complied with.

All officers are responsible for scheduling their our intakes using the CJIS System. When the systems is down, the officers will be responsible in contacting the Felony Intake Unit and scheduling his/her intake by telephone.

11. For additional information regarding the completion of arrest reports refer to Directive 4.2.

E. Interaction with the Criminal Justice System

1. Magistrate Court

In all circumstances where an individual is charged with a misdemeanor or violation, either by physical arrest or the issuance of a summons, the arresting officer may during normal court hours, transport the subject directly to Magistrate Court 20 for arraignment. At that time the defendant will enter a plea. Should the individual plead guilty, appropriate sentencing will occur. The defendant may elect to plead not guilty and will be advised of their right to a jury trial in the Court of Common Pleas or continued action in the Magistrate Court. If the defendant decides to remain in the Magistrate system, a trial date will be set and the arresting officer will be responsible for prosecuting the case to its resolution.

During those times when Magistrate Court 20 is closed, bail hearings for all in-custody defendants will be when approved by the judge, conducted by video-phone with the appropriate Magistrate Court.

2. Court of Common Pleas

The Court of Common Pleas has jurisdiction over those misdemeanors which the defendant requests be so transferred, as well as preliminary hearings for all felo

charges. Prosecution of cases is coordinated with a Deputy from the Attorney General's Office.

- (a) A defendant who requests misdemeanor charges be heard in the Court of Common Pleas will reach resolution in this court.
- (b) When a defendant appears for a preliminary hearing of felony charges the case will either; be forwarded to the Superior Court, be concluded by a plea agreement, or the charges may be dismissed.

3. Superior Court

The prosecution of all cases forwarded to the Superior Court for adjudication will be directed by a member of the Attorney General's Office.

All personnel receiving a subpoena from any court will adhere to the established policy detailed in the directive entitled "Procedures for Appearing in Court and Felony Intake."