

		DIRECTIVE 6.14
SUBJECT Procedures For Appearing In Court And Felony Intake		NO. PAGES 10
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Procedures for Appearing in Court

Directive: 6.14

A. Distribution of Subpoenas

All subpoenas for members of the Department of Police will initially be received by the **Court Liaison Officer who will in turn date stamp each subpoena and forward same to the Support Services Division.** An individual assigned to that Division will be designated to log each subpoena received on the "Subpoenas for Court Appearance" Report. This individual will also be responsible for the distribution of said subpoenas to the various officers via the Subpoena Email System.

Officers must check their emails at least once daily during normal working hours. If a subpoena email is declined, the officer declining the subpoena must carbon copy (cc) the Court Liaison Officer. **Declining a subpoena will not substitute a court continuance request.**

When an email subpoena is received by an officer, he/she must maintain that email subpoena for 30 days past the court date. At the end of the 30-day period, the email subpoena has to be deleted from the email system.

Once an officer opens his email for a court subpoena, they must check the acceptance box to indicate they received the email and intend on responding to court. Officers may also check the denied box if they are going to be on vacation or for any other acceptable reason. If an officer does check the denied box, they must write a note in the message box explaining his reason for not accepting the subpoena. Example "receiving another officer's subpoena", you must indicate that in the message box as the reason for the rejection. **IT WILL BE THE OFFICER'S RESPONSIBILITY TO NOTIFY THE APPROPRIATE COURT AND REQUEST CONTINUANCE.**

There may be occasions where officers receive a paper subpoena for appearance in court.

B. Responsibility of Officers Being Subpoenaed

1. If an officer is scheduled for vacation or any other excused time off on the date of court appearance, it will be the officer's responsibility to notify the proper court as soon as he becomes aware of the conflict. This notification must be made prior to 10 days before the court appearance to ensure that all parties involved are notified. If the notification is not made within 10 days, then the officer may be expected to appear in court as scheduled. For any reason that an excuse is not granted, the officer will be expected to appear in court. If obtaining a written excuse is not practical, the officer will get the name of the person giving the permission, the date and time, and report this in a Departmental Information report to the Chief of Police.
2. If an officer reports off sick on the date of a court appearance, it will be his responsibility to notify the court of this fact, and to submit a Departmental Information Report to the Office of Professional Standards listing the details upon his return to duty.

Officers should note that the court has the final say as to whether or not you are excused from court; do not assume you are exempt from your court appearance because you are off sick unless approval has been granted by court personnel.

3. Any officer who experiences problems with their email subpoena should contact the Court Liaison Officer at [REDACTED].
4. When officers receive subpoenas, they are being ordered to appear by the court, and not by the Department of Police. It is the responsibility of each subpoenaed officer to make note of the date(s) they are needed in court to testify. Failure to comply with any subpoena for court appearance may result in a possible citation for contempt of court as well as departmental discipline.
5. On-Call Status
 - a. Any officer who elects to be on the on-call status will elect to do so voluntarily and will not receive compensation for this status. This is done as a benefit for officers who do not wish to appear in court unless they are needed.
 - b. Officers who are on the on call status must be able to respond to court within a [REDACTED] response time. **Officers are on call until [REDACTED] for all courts with the exception of JP Court 20.**
 - c. It is the officer's responsibility to keep the Court Liaison Officer up to date with their current contact information. Failure to be available by either a home/cell phone contact will be the same as not appearing in court.

- d. Officers are reminded that all Superior Court Trials, CCP DUI Trials, **JP Court 13**, and JP Court 11 DUI Trials are mandatory appearances. All officers must be present for these hearings by the specified time of the subpoena on the date of court.

C. Court Continuance

Officers can complete a court continuance form and submit it to the Court Liaison. **See attached Form for Trial Continuance Request.**

D. Intake Interviews - Warrant/Capias System

The Felony Intake Unit and the Rape Response Unit of the Department of Justice have been established to fulfill the following objectives:

1. To screen cases prior to presentation before the Grand Jury.
2. To coordinate efforts between the police and prosecutors involved in each case.
3. To quickly prepare indictments, while at the same time identifying problems with the case which need remedial action prior to trial.
4. To assist the prosecutor in his preparation for trial;
5. To assist the police concerning the investigation and prosecution of sexual offenses.
6. To insure compliance with U.S. Supreme Court dictates relative to a defendant's right to a speedy trial.
7. The New Castle County Felony Screening Unit requires a Felony or Pre-Arrest Intake, (with or without arrest) when a person is not arrested for all serious and violent charges as soon as possible, including:
 - a. Assault
 - b. Burglary
 - c. Carjacking
 - d. Domestic Violence
 - e. Robbery
 - f. Guns/Weapons
 - g. Rape and Sexual Offenses

The New Castle County Screening Unit does not require an intake for the following charges unless at least one defendant in the case has been arrested:

- a. All Thefts (including auto theft, identity theft, or rental property theft)
- b. Receiving Stolen Property
- c. Issuing Bad Checks
- d. Forgeries
- e. Shoplifting
- f. Resisting Arrest (Felony)
- g. Home Improvement Fraud
- h. Insurance Fraud

i. All Title 16 Offenses

There may be cases in which an officer thinks an exception to this policy should apply. If so, the officer should contact the DAG to get approval for a Pre-Arrest Intake.

As to what officers are needed for the various intake interviews, the following guidelines are established:

- a. Arresting officer of A.O. arrests.
- b. Chief investigating officer who has signed the warrants or has gained the probable cause or personal knowledge of the facts of the case. The arresting officer is to insure that the chief investigator is promptly advised that the arrest has been affected.
- c. Issuing officer of summons for specified offenses.
- d. Arresting officer of subjects for which warrants have been signed by civilians and none of the above situations apply.

8. Sex Crimes

- a. All Felony level sex crime investigators must complete an intake with a Deputy Attorney General in the Sex Crimes Unit pre-arrest, absent exigent circumstances.
- b. Exigent circumstances exist when:
 1. There is sufficient reason to believe the safety of the victim, their families or witnesses are at risk;
 2. If there is significant reason to believe the suspect is a flight risk if not apprehended; or
 3. If the suspect is apprehended during the commission of or fleeing from the scene of another felony.
 - a. Intakes mentioned above, as well as misdemeanor sex charges, must be completed in person at the Carvel State Building with a member of the Attorney General's Office Sex Crime Unit. This includes any and all crimes for which Sex Offender Registration would be required, as well as Sexual Harassment.
 - b. All other policies relating to intakes of sex crimes, both felony and misdemeanor, remain in effect.

9. Child Abuse Cases

Any case involving an allegation of child abuse shall be intaked if the allegation involves:

- a. Any felony;
- b. Any sex offense;
- c. The death of a child if a police investigation is involved, or if the death is suspicious or appears to have been caused by S.I.D.S. or suffocation;
- d. Any misdemeanor involving a child age 12 or younger if the child suffered any kind of physical injury that required any kind of medical treatment, and if the injury was allegedly caused by an act of abuse or neglect committed by a parent, relative or any temporary or permanent caregiver or custodian; or
- e. Endangering the Welfare pursuant to 11 Del. C. (section) 1102 (a) (1) involving a child age **18** or younger, regardless of whether the child was injured, if the child was exposed to a risk of injury or death.

Cases that meet one or more of the criteria outlined above should be intaked within five (5) days of any arrest, or before the case is cleared without an arrest. Each of our three county offices will designate contact persons for child abuse case intakes.

- f. All personnel, regardless of their assignment, will be responsible for scheduling their own felony intake interviews through the warrant/capias system or the Felony Intake/Rape Crisis Unit at [REDACTED]. These interviews must be scheduled while the officer is signed onto the warrant/capias system, as soon as possible after the arrest (if the system is down), but no later than forty-eight (48) hours, and shall be completed within ten (10) days from the date of the arrest. This includes officers assigned to specialized units who work special assignments (e.g., Weed & Seed) that make an arrest that requires an intake interview.
- g. Should circumstances arise preventing an officer's appearance, it is that officer's responsibility to reschedule the intake. This intake must be completed within ten (10) days of the original **schedule** date.

Whenever an officer fails to appear for a scheduled felony intake, that officer will submit a departmental information report prior to the end of that day's tour of duty and for off-duty officers, immediately upon returning to work. The report will state the reasons why and the steps taken to correct the situation.

Whenever a subordinate fails to keep a scheduled felony intake, the immediate supervisor will also submit a department information report, prior to the end of that day's tour of duty, stating the reasons why.

Whenever the Communications Center denies permission to an on-duty officer to attend a scheduled felony intake, the Communication's Supervisor will submit a departmental information report, prior to the end of that day's tour of duty, stating the reasons for such refusal.

- h. The Department of Justice will still require that officers involved in felony intakes, provide copies of all reports **along with any pertinent information regarding the case**. This information will be used to facilitate a more objective approach to prosecution, to include recommendations for setting of bail, possible plea bargaining, as well as a better prepared case for prosecution.
- i. In circumstances where a warrant is issued for one of the above listed offenses and the arrest is not immediately affected, then it will be the responsibility of the officer signing the warrant to follow the same procedure and schedule a felony intake interview, as if the arrest had been made. This will allow for the indictment of the defendant and the issuance of a Rule 9 warrant and further enhance the arrest procedures once they are completed.

10. Whenever an officer schedules an intake interview, he shall provide the following information:

- a. Copies of all reports, statements and diagrams, including those documents submitted by other officers relative to the investigation at hand (**i.e supplemental reports, photos, videos and any other pertinent information regarding the case**)
- b. A list of all police officers involved in the investigation.
- c. A list of all civilian witnesses, including their names, home & work addresses, home and work telephone numbers and work telephone numbers.
- d. Photographs or photocopies of the scene, victim, etc.
- e. In virtually all criminal cases, police officers involved in the arrest and/or investigation make handwritten notes. From these notes, police reports are prepared. It is absolutely essential that a copy of every officer's notes be made and attached to the police report. Under Delaware law, the contents of an officer's notes may be discoverable before trial and are subject to disclosure to defense counsel if an officer testifies. So as to avoid future problems with the Supreme Court and the prosecution of individual cases, it will be the policy of this department that all handwritten

notes be made a part of any police report prepared within this department.

- f. If the defendant attends any elementary or secondary school in the State of Delaware, the name of that school must be provided to the Attorney General's Office during the intake interview.
- g. A Grand Jury Synopsis form will be completed at the time of the intake by the officer completing the intake, and turning same over to the AG or representative conducting the interview. Information required in the Grand Jury synopsis form will be not limited too:
 1. All defendants names.
 2. All charges.
 3. A short synopsis of the incident that reflects the probable cause for each charge on the warrant **detailed in the case summary portion of the form.**

Due to a recent change, you may write a confession on the synopsis form, but the statement made by the defendant must be included, along with whether the confession was after Miranda or made spontaneously. If more than one defendant is arrested, and all did not confess, this section does not apply. Failure to comply with this section will result in disciplinary action.

E. Felony Arrests

1. All felony arrests will continue to be processed in the following manner. After booking, the defendant(s) will be arraigned at Court #20 **and JP Court 11 video phone** and bail will be set.
2. All prisoners who are arrested for felonies and have an outstanding capias/warrant for another court, i.e., Superior or Family, and the time of the arrest is consistent with the court being open for business (0930-1400), will be transported to the Sheriff's Office and turned over to their staff.
3. All juveniles arrested for outstanding capiases, regardless of time of day, will be transported to the Wilmington Police Station and turned over to the Turnkey for video processing at the appropriate court.

F. Scheduling Preliminary Hearings

Superior Court Criminal Rule No. 5 was amended on 01 May 1974, to read, in part, as follows:

A preliminary hearing shall be held within a reasonable time, but in any event, not later than ten (10) days following the initial appearance if the defendant is in custody and no later than twenty (20) days if he is not in custody.

All officers should be aware of this procedure and it is suggested that it be kept in mind so that cases are not dismissed due to failure of arresting officers to appear for preliminary hearings.

It is further suggested that if an arresting officer is not subpoenaed for a preliminary hearing within the previously stated time periods, he should check Deljis in an effort to determine the status of the case.

G. Subpoenas for D.U.I. Hearing

Effective immediately, notices of Implied Consent Hearings will be handled as court subpoenas.

The Delaware Division of Motor Vehicles will mail all Implied Consent Hearing subpoenas to the Commanding Officer of the Support Services Division.

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H. Family Court

The procedures for Family Court will follow the same policy outlined for Superior and Court of Common Pleas. Officers will be allowed to be on call for Family Court and must be available by phone.

I. Grand Jury Presentations

Grand Jury presentations will be done by the Court Liaison Officer. Officer(s) are reminded that Grand Jury Synopsis Report(s) will be turned in during intakes and a copy forwarded to the Court Liaison Officer as outlined in section (D. 10. g. of this Directive).

J. Superior Court

1. Superior Court Subpoena Procedures

- a. Whenever an officer receives a subpoena from the Superior Court of the State of Delaware, the officer will be required to respond to that Court on the date and time specified on the subpoena.

Officers may be on call for Superior Court at the discretion of the Attorney General.

- b. If an officer is excused from appearing for a case any time before the date on

the subpoena by a Deputy Attorney General or other authority, then he will be required to submit a Departmental Information Report listing the name of the person they were excused by, as well as the date and time they were excused.

- c. If an officer is unable to appear due to illness or any other circumstances, the guidelines as outlined in (C) of this Directive should be followed.

K. Court #20

1. Officers are reminded that Court #20 is the primary JP Court for the Wilmington Department of Police. As such, officers shall respond to subpoenas received in the same manner as any other court.
2. There is no on call status for JP Court 20 trials. It is the officer's responsibility to check in with JP Court 20, in person ~~or by phone~~ at their prescribed time, to determine if the defendant arrived at court. The defendant has 30 minutes to show up for his trial. It is incumbent that the officer be available or continue to check in person during those 30 minutes, and available to respond within that same time period. When an officer does not check in for court and the defendant arrives, JP Court 20 will dismiss the case for failure to prosecute.
3. State of Delaware Police Directive 10-235, established the authority and procedure for the operation and management of the Police Prosecution process in the Justice of the Peace Court.
 - a. A Police Prosecutor can be any Law Enforcement representative of his agency, and only for his agency. Meaning, a representative from WPD can not process a case from Delaware State Police.
 - b. The Police Prosecutor's primary responsibility is to review WPD cases at time of arraignment or trial, to determine if the case can be resolved prior to trial. This can be done with a plea agreement or dismissed if the case merits such a dismissal. A Police Prosecutor can not testify for another officer at trial.
4. Arraignments for JP Court 20 shall be scheduled on Mondays or Thursdays only. Officers should check with court personnel regarding holiday schedules and not submit tickets or summons for arraignment on a court holiday.
5. When using the automated criminal summons through the LEISS system, it will be the officer's responsibility to print a court copy and respond to JP Court 20, to turn in and swear to the summons. JP Court 20 personnel do not have access to LEISS and cannot print a copy of the criminal summons. JP Court 20 personnel do have access to E-Ticket for purposes of printing.

6. E-tickets are automated and they are not considered sworn to when submitted to the court. If your defendant does not appear for his arraignment, a file is prepared by the court with a copy of the E-Ticket. A capias can not be entered until the officer swears to the E-Ticket. If an officer receives notice to respond to JP Court 20 to swear to an E-ticket, he must do so in a timely manor.
7. Officers may contact JP Court 20 at 577-7234 for questions concerning a case.