



<b>WRITTEN DIRECTIVE</b>	No. PD16-0502	Page: 1 of 12
Subject:  CRIMINAL AND CIVIL PROCESS	Effective Date:	10-24-16
	Supersedes/ Amends:	PD15-0502
	Reference:	1.2.4, 1.2.5, 2.1.1, 61.1.3, 74.2.1-2, 74.3.1-2



## I. Purpose

The purpose of this directive is to establish guidelines for officers of this department regarding the execution of criminal and civil process.

## II. Policy

It shall be the policy of the Lynchburg Police Department for officers to serve criminal and civil process expeditiously and on a priority basis, while adhering to the statutory requirements regarding the particular process being served.

## III. Procedure

1.2.5, 2.1.1

### A. ARREST JURISDICTION

1. Officers of the Lynchburg Police Department shall have arrest jurisdiction as follows:
  - a. criminal law jurisdiction over offenses committed within the corporate limits of the City of Lynchburg, and
  - b. criminal law jurisdiction extending from the Lynchburg city limits, one mile into the counties of Amherst, Bedford, and Campbell.
  - c. when *beyond* the one mile limit in another jurisdiction, have no police jurisdiction and may act only as private citizens, *except* as provided in the following:
    - 1) Code of Virginia, Section 15.2-1724 (reciprocal agreements with other jurisdictions)
    - 2) Code of Virginia, Section 15.2-1725 and 15.2-1124 (City-owned property within another jurisdiction)
    - 3) Code of Virginia, Section 19.2-77 (hot pursuit)

2. Criminal charges initiated by Lynchburg Police Officers within the one mile limit in Bedford and Campbell Counties (except for the Lynchburg Regional Airport) will be tried in the appropriate court within the City of Lynchburg.
3. Criminal charges initiated by Lynchburg Police Officers at the Lynchburg Regional Airport will be tried in the appropriate court within Campbell County.
4. All criminal charges initiated by Lynchburg Police Officers within the one mile limit in Amherst County will be tried in the appropriate Amherst County Court.
5. Agencies with contiguous or concurrent jurisdiction may request assistance from Lynchburg Police Officers in serving criminal and civil process within the City of Lynchburg.
  - a. Officers of this department will, when requested, accompany and assist officials of *contiguous* agencies by serving all criminal process executed within this jurisdiction.
    - 1) In these cases it is the Lynchburg officer's arrest authority which will be exercised.
    - 2) Consequently, the Lynchburg officer will have the final responsibility to ensure that the process is properly served.
  - b. Officers of this department may accompany and assist officials of *concurrent* agencies in serving certain criminal and civil process, when criminal acts might potentially occur during such service.
6. In the event that *immediate* service of a legal process within a contiguous jurisdiction is necessary, officers will:
  - a. advise their Division or unit Supervisor of the situation
  - b. notify the appropriate jurisdiction and request their assistance in serving the legal process.

**1.2.5****B. WARRANTLESS ARREST**

1. Officers who are in uniform or displaying a badge of office are authorized to make an arrest without a warrant in accordance with Code of Virginia, Section 19.2-81.

2. It should be noted that an arrest warrant is normally required when, in the absence of exigent circumstances, the arrest of a person must be effected by entering that person's residence (and inclusive curtilage).
3. Procedures detailed in the Code of Virginia, Section 19.2-82, are to be followed upon the warrantless arrest of a subject who is not released on a summons.
4. The Information Desk will maintain the original copies of both criminal and civil process documents that are obtained by officers of the Lynchburg Police Department. Copies of these documents will be sent to the appropriate jurisdiction based on the address listed on the document for service.
  - a. When a person is arrested based upon a photocopy of a warrant, teletype/telegram message, computer printout, or facsimile printout, as result of charges filed *within* the Commonwealth, the following guidelines will be followed.
    - 1) A copy of the message will be served on the accused and the accused shall be brought before a magistrate for bond to be set.
    - 2) If the accused is released on bond, the original message and other appropriate release forms will be mailed to the court of jurisdiction.
  - b. Electronic means may be used in lieu of personal appearance to communicate the facts of an arrest to a magistrate or other issuing authority having jurisdiction.
5. Should an arrest warrant be denied when the accused is brought before the magistrate as required by Code of Virginia, Section 19.2-74, the officer will reduce the testimony supporting probable cause to writing on a Criminal Complaint form. This completed form will be presented to the magistrate for their signature.
6. Should the magistrate still deny issuing a warrant, the accused will be released from custody immediately, the officer may not issue a summons for the offense once a warrant has been denied in accordance with Code of Virginia.
7. The foregoing guidelines regarding warrantless arrest apply to adult subjects: the circumstances under which juvenile subjects may be taken into immediate custody without judicial order are set forth in the written directive entitled Juvenile Operations (*PD-2006*).

### C. CHARGES FROM OUT-OF-STATE JURISDICTIONS

1. The Code of Virginia, Section 19.2-100, authorizes the warrantless arrest in Virginia of a person who is charged with a crime in an out-of-state jurisdiction which is punishable by death or imprisonment for a term exceeding one year.
  - a. This situation is commonly initiated when an NCIC "hit" is obtained concerning a subject: if the subject is not in custody for other reasons, an NCIC "hit" is reasonable grounds for commencing investigative detention of the subject.
  - b. Officers detaining a subject based on a "hit" message *must* ensure that a confirmation teletype message is received which verifies:
    - 1) the wanted person's name
    - 2) the alleged crime
    - 3) that the other jurisdiction holds the warrant involved
    - 4) that the other jurisdiction will extradite the subject from Lynchburg.
  - c. As with any investigative detention situation, officers must act with *due diligence* to confirm the "hit" message: courts will apply a standard of reasonableness under the circumstances with regard to the period of time the subject was detained prior to arrest.
2. When satisfactory confirmation has been received, the subject shall be placed under arrest and taken before a magistrate *with all practicable speed* for the purpose of obtaining a fugitive warrant (Code of Virginia, Section 19.2-99).

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### D. SEARCH INCIDENT TO ARREST

1. Officers effecting a lawful arrest have the authority to:
  - a. make a contemporaneous, warrantless search of the person arrested for weapons, for the fruits of a crime, or for implements used to commit a crime;
  - b. search areas **immediately adjoining** the location of the arrest to look for persons or items that may pose a potential threat,
  - c. search the passenger compartment of a vehicle incident to a recent occupant's arrest only if it is reasonable to believe that the arrestee

might access the vehicle at the time of search or that the vehicle contains evidence of the offense of arrest (Arizona v. Gant).

- c. to seize any such items located either on the person or within his control during the course of a contemporaneous search incident to arrest.
2. The U.S. Supreme Court has authorized conducting contemporaneous, warrantless searches incident to arrest:
    - a. due to the need for officers to seize weapons which might be used to either assault the officers or to effect an escape
    - b. due to the need for officers to prevent the destruction of the evidence of a crime
    - c. for officer protection and safety.
  3. Such justifications for a warrantless search incident to arrest are absent in cases where the search is remote in time and/or place from the arrest.

74.3.1

E. CRIMINAL PROCESS

1. *Criminal process* to be served by Lynchburg Police Officers may be issued by:
  - a. judges and clerks of the Circuit, General District, or Juvenile and Domestic Relations Courts
  - b. magistrates
  - c. probation/parole officers, in specific instances.
2. *Criminal process* to be served by Lynchburg Police Officers will include the following:
  - a. Warrants (arrest and search)
  - b. Indictments
  - c. Capias
  - d. Failure to Appear Warrants
  - e. Juvenile Detention Orders

1.2.5

- f. Violation of Probation/Parole Warrants
- g. Criminal Summonses.

F. SEARCH WARRANTS

1. *Search warrants* may be issued for the search of or for specified places, things or persons, and for seizure therefrom of the following things as specified in the warrant (Code of Virginia, 19.2-53):
  - a. weapons or other objects used in the commission of a crime
  - b. articles or things the sale or possession of which is unlawful (contraband)
  - c. stolen property or the fruits of any crime
  - d. any object, thing or person (including without limitation documents, books, papers, records or body fluids) constituting evidence of the commission of a crime.
2. A *search warrant* is normally required when, in the absence of exigent circumstances or consent to search, the arrest of a person must be effected by entering a third party's residence (and inclusive curtilage).

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- a. Exigent circumstances will include, but not be limited to, hot pursuit of the person named on the warrant, or an officer's articulable belief that the safety of persons inside a residence necessitates immediate, warrantless entry.

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- b. An officer may make a warrantless search for the wanted person within a third party's residence on the verbal or written consent of a resident: when practical, an officer should document such consent by means of a *Permission to Search Waiver*.

3. A *search warrant* may not be issued as a substitute for a witness subpoena.

74.2.1

G. CIVIL PROCESS

1. *Civil process* to be served by Lynchburg Police Officers may be issued by:
  - a. judges, clerks and authorized court officials of the Circuit, General District, or Juvenile and Domestic Relations Courts
  - b. magistrates

- b. designated special justices
2. *Civil process* to be served by Lynchburg Police Officers will include:
  - a. Protective Orders
  - b. Temporary Mental Detention Orders
  - c. Emergency Care Orders.

1.2.5, 74.3.1,74.3.2

H. EXECUTION/SERVICE OF CRIMINAL AND CIVIL PROCESS

74.2.2

1. Only sworn police personnel will serve or attempt to serve criminal or civil process.
  - a. The Code of Virginia, Section 19.2-76 states that “A law enforcement officer may execute within his jurisdiction a warrant, *capias* or summons issued anywhere in the Commonwealth.”
  - b. Officers assigned to warrant service duty will have the primary responsibility for serving arrest documents and court orders.
2. When the Warrant Officer is not available, the investigating officer or other assigned officer(s) will have the responsibility of serving the related arrest document or court order.
3. All legal process handled by Lynchburg Police Officers will be executed by personal service.
4. The arresting officer should plan the time and location for making an arrest in advance if possible.
  - a. Pre-planning an arrest should give the officer greater control over the scene during the arrest.
  - b. Officers will always use only that force necessary to effect an arrest.
5. Officers will document proper service of criminal and civil process according to the following guidelines:
  - a. *Date and time of service* will be noted on the document (using military time).
  - b. *Name and badge number* of the serving officer will be noted on the document.

- c. The *location of service* (City of Lynchburg, VA/jurisdiction code 114) will be noted on the document.
  - d. The serving officer will verify that the person named on the document is in fact the person being served, through ascertaining the person's full name, date of birth, address, social security number and other appropriate factual information.
  - e. The personnel assigned to the Information Desk will be responsible for verifying that an original warrant is on file and active at the time of inquiry. This is not limited to but, could include contacting the originating agency and verifying that the warrant is active.
  - f. Under no circumstances will officers or personnel assigned to the Information Desk provide a copy of a criminal or civil document to the arresting officer for service without first verifying the existence of an original document.
  - g. The Officer, attempting to serve a document, will ensure that all attempts at document service are recorded on the insert within the document envelope.
  - h. Upon execution/service of a legal document, the serving officer will notify the Information Desk to have it removed from the computerized (PISTOL system) file.
  - i. When required by law, all persons arrested for any criminal or civil offense will be transported to the Blue Ridge Regional Jail Authority (BRRJA) for proper processing to include fingerprinting and photographing of the individual.
    - 1) Any person arrested for a felony or a misdemeanor reportable to the Central Criminal Records Exchange (CCRE) will be fingerprinted and photographed by the BRRJA.
    - 2) Fingerprint and photograph records will be maintained by the BRRJA.
  - h. Any juvenile arrested under Virginia State Code 16.1-299 will be transported to the Lynchburg Police Department to be photographed and fingerprinted using the *Crossmatch System* before being released.
6. Specialized service requirements:
- a. Criminal warrants will be:

- 1) assigned a warrant number
  - 2) be entered in the computerized (Pistol system) file.
- b. Protective Orders will be:
- 1) assigned a warrant number
  - 2) entered in the computerized (PISTOL system) file.
  - 3) Summonses attached to the Protective Order will be:
    - a) assigned the same number as the Protective Order
    - b) served by personal service.
  - 4) An *Incident Report* will be completed when the responding officer or their supervisor believes that information in addition to that already captured on either the dispatch record or issued process must be documented to properly complete the investigation.
- c. Temporary Mental Detention Orders:
- 1) The officer should have the Temporary Mental Detention Order (TDO) in possession or have verified that it has been issued prior to taking the specified person into custody.
  - 2) After serving the document and taking the person named into custody, the officer will transport the person to that medical facility named in the document.
  - 3) If the medical facility assumes custody of the person, the officer will not return for the purpose of transporting the person to another location, unless directed by court order.
    - a) It will be the responsibility of the person's family, the medical facility staff, or other appropriate agency to arrange for any additional transportation.
    - b) Any official from the medical facility requesting such service should be advised to contact the appropriate agency.
  - 4) An *Incident Report* will be completed when the responding officer or their supervisor believes that information in addition to that

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already captured on either the dispatch record or issued process must be documented to properly complete the investigation.

- 5) The court copy of the Temporary Mental Detention Order will be delivered to the appropriate court during normal business hours, or to the Magistrate's Office after normal business hours.
- d. Emergency Care Orders
- 1) Officers may take persons into ECO custody based upon either:
    - a) service of an Emergency Care Order issued by a Magistrate, or
    - b) in the absence of any issued ECO, probable cause to believe that a person meets the criteria for emergency custody as set forth in Code of Virginia, section 37.1-67.01.
  - 2) Officers will transport persons taken into ECO custody to the location indicated by the on-call Horizon Behavioral Health employee or the magistrate.
  - 3) Officers will release persons from ECO custody:
    - a) If no TDO has been issued within 6 hours of taking the person into ECO custody (the mental health evaluator can extend this timeframe to 8 hours).
    - b) At any time that the mental health evaluator advises that no TDO will be issued.
    - c) Officers will notify Horizon Behavioral Health staff prior to release of persons from ECO custody.
  - 4) Documentation
    - a) Officers will complete an *Incident Report* to document the circumstances under which any person is taken into ECO custody based upon probable cause.
    - b) In cases where officers serve ECOs issued by a Magistrate, an *Incident Report* will be completed when the officer or their supervisor believes that information in addition to that already captured on the dispatch record or issued process must be documented to properly complete the investigation.

- 5) After service of any Emergency Care Order issued by a Magistrate, the original copy will be delivered to the appropriate court during normal business hours, or to the Magistrate's Office after normal business hours.

#### I. PRIORITIES IN SERVICE OF CRIMINAL AND CIVIL PROCESS

1. Warrants issued by a magistrate or judge that are believed to need immediate service will be assigned to the Warrant Officer for immediate attention.
2. Primary consideration will be given to serving process involving:
  - a. crimes of violence
  - b. protective orders
  - c. temporary mental detention orders
  - d. persons who it is believed may flee the Commonwealth of Virginia
  - e. violations of probation/parole
  - f. failures to appear in court.
3. Notifications by mail:
  - a. A letter may be mailed to any person charged with a minor misdemeanor, notifying them of the issuance of the warrant (Code of Virginia, 19.2-73.1).
    - 1) The letter will allow a reasonable time period for the person to surrender himself.
    - 2) Should the person fail to comply with the letter, the warrant will be forwarded to the Warrant Officer for service.
  - b. The sending of such notification letter does not exempt the person notified from arrest at any time he or she comes into contact with a police officer.

#### J. UNEXECUTED CRIMINAL AND CIVIL PROCESS

1. Protective Orders (and attached summonses) not served by the date of court appearance will be returned to the appropriate court clerk with an explanation for non-service.

2. Temporary Mental Detention Orders not served within the time period specified on the document will be returned to the issuing authority.
3. Defendant summonses not served by the date of court appearance will be returned to the appropriate court clerk.
4. All non-executed criminal arrest documents will be returned to the Information Desk for inclusion in the warrant files.
5. It will be the responsibility of the Chief of Police to submit quarterly reports to the Commonwealth's Attorney of all unexecuted warrants, summonses, capias, or other arrest documents (Code of Virginia, 19.2-76.1).
6. The Commonwealth's Attorney may petition the Circuit Court to destroy any arrest document deemed unprosecutable, with the exception of capital murder warrants.

L. EXEMPTION OF CERTAIN WITNESSES

1. A person who enters the Commonwealth of Virginia in compliance with a summons directing him to attend and testify in a court session in this state shall not be subject to arrest or to service of criminal or civil process regarding matters existing prior to their entry into the state (Code of Virginia, 19.2-280).
2. A person traveling through the Commonwealth of Virginia either for the purpose of complying with a summons from another state or returning from such state shall not, while in Virginia, be subject to arrest or to service of criminal or civil process regarding matters existing prior to their entry into this state (Code of Virginia, 19.2-280).

*Original Signed*

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Raul M. Diaz  
Chief of Police

October 24, 2016

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Date