

| | |
|---|---|
| YORK-POQUOSON SHERIFF'S OFFICE | GENERAL ORDERS |
| SUBJECT: Constitutional Safeguards | NUMBER: GO 2-1 |
| EFFECTIVE DATE: October 22, 2018 | REVIEW DATE: October 22, 2018 |
| AMENDS/SUPERSEDES: GO 2-1, August 1, 2002 | APPROVED:  Sheriff |
| VLEPSC: ADM.02.01, ADM.02.02, ADM.02.03, OPR.12.04 | |

1 **INDEX WORDS**

- 2
3 Abandoned property
4 Authority; limitations
5 Confessions
6 Consent to search
7 Constitutional safeguards
8 Curtilage
9 Discretion
10 Eyewitnesses
11 Exigent circumstances searches
12 Hearsay
13 Interrogations
14 Interviews
15 Lineups
16 Miranda rights
17 Plain view search
18 Probable cause
19 Reasonable suspicion
20 Search and seizure;
21 Limitations

22

23 **POLICY**

24

25 The U. S. Constitution guarantees every citizen certain safeguards from government intrusion
26 into their lives. These safeguards have become the cornerstone for the application of criminal
27 justice in America. Consequently, these safeguards have placed limitations on the authority of
28 law enforcement to enforce federal, state, and local laws. The Sheriff expects deputies to act
29 with due regard for citizens' civil liberties. All parties that are hearing impaired or who do not
30 understand English will be afforded interpreters should a constitutional issue become apparent.

31

32 **PURPOSE**

33

34 The purpose of this general order is to define the legally mandated authority for the enforcement
35 of laws, to establish procedures for assuring compliance with constitutional requirements during
36 criminal investigations, to set forth guidelines concerning the use of discretion by deputies, and
37 to define the authority, guidelines and circumstances when deputies should exercise alternatives
38 to arrests and pre-trial confinement.

39

40 **PROCEDURES – GENERAL**

- 41
- 42 • Law enforcement authority to enforce laws:
 - 43 ○ Sections [15.2-1603](#), Code of Virginia and Section [15.2-1609](#), Code of Virginia give
 - 44 the Sheriff and deputies of counties and cities the authority to enforce the criminal
 - 45 laws of the Commonwealth and local ordinances.
 - 46 ○ Section [49-1](#) of the Code of Virginia requires that all deputies, upon entering their
 - 47 office, take an oath whereby they swear to support the Constitution of the United
 - 48 States and the Commonwealth of Virginia.
 - 49 ○ Limitations on law enforcement authority:
 - 50 ▪ Limitations on law enforcement authority are derived from federal, state, and
 - 51 local statutes. Limitations are further derived from judicial interpretation of laws,
 - 52 opinions of the Attorney General, and the Commonwealth's Attorney. Additional
 - 53 limitations are identified by Sheriff's Office policies/rules and regulations.
 - 54
 - 55 ○ Statutory Limitations: These limitations include, but are not limited to:
 - 56 ▪ Enforcement of laws outside of the county limits. Section [19.2-249](#), Code of
 - 57 Virginia grants authority to enforce offenses 300 yards beyond county to county
 - 58 or county to city boundaries.
 - 59
 - 60 ○ Judicial Limitations:
 - 61 ▪ Courts constantly interpret laws that place limitations on the authority of law
 - 62 enforcement officers. The more common include: Miranda rights/warnings,
 - 63 rulings on search and seizure, eyewitness identification, and lineups.
 - 64

65 **MIRANDA RIGHTS**

- 66
- 67 • The [Fifth Amendment](#) right against self-incrimination:
 - 68 ○ The voluminous case law covering Miranda ([Miranda v. Arizona, 384 U.S. 436,](#)
 - 69 [1966](#)) warnings has established several guidelines for deputies to help decide when
 - 70 warnings must be administered. Miranda applies only to custodial interrogation.
 - 71 Interrogation is defined below. As to what constitutes custody, if a reasonable person
 - 72 in the suspect's position believes that he or she is not free to leave, then Miranda
 - 73 applies. Note that the deputy's view of what constitutes custody and that of the
 - 74 suspect may differ. Deputies must remember that the reasonable belief of the suspect
 - 75 is what counts.
 - 76 ○ In determining whether a suspect is free to leave, a court will look at the
 - 77 circumstances of the interrogation:
 - 78 ▪ The location of interrogation
 - 79 ▪ The suspect's residence or place of employment.
 - 80 ▪ Law enforcement vehicle and whether the person being questioned is able to open
 - 81 the door and exit the vehicle.
 - 82 ▪ Sheriff's Office, jail or detention facility.
 - 83 ▪ The number of deputies present during questioning.
 - 84 ▪ The court will examine whether the environment may have been construed as
 - 85 coercive during its determination on whether or not the interview was custodial.

- 86
- 87
- 88
- 89
- 90
- 91
- 92
- 93
- 94
- 95
- 96
- 97
- 98
- 99
- 100
- 101
- 102
- 103
- 104
- 105
- 106
- 107
- 108
- 109
- 110
- 111
- 112
- 113
- 114
- 115
- 116
- 117
- 118
- 119
- 120
- 121
- 122
- 123
- 124
- 125
- 126
- 127
- 128
- 129
- 130
- Practically speaking, an arrest or physical restraint of a suspect places him or her in custody, and Miranda warnings must be administered before the deputy asks questions about the offense. In short, Miranda warnings must be given when:
 - The suspect reasonably believes that he/she is in custody and not free to leave, and
 - The suspect is questioned about the offense for which they are in custody or some other closely related offense.
 - Definitions:
 - An interview, as opposed to an interrogation, may be construed as any conversation with a suspect, witness, victim, or other citizen.
 - An interrogation, according to the Supreme Court, includes the following, per [Rhode Island v. Innis, 446 U.S. 291](#) (1980): ". . . express questioning or its functional equivalent, any words or conduct on the part of a law enforcement officer (other than those normally attendant to arrest and custody) that the law enforcement officer should know are reasonably likely to elicit an incriminating response from the suspect."
 - Deputies are reminded that an interrogation does not rely solely or exclusively on words: conduct can be the "functional equivalent" of asking questions.
 - Rights Admonition:
 - In order to achieve uniformity in administering Miranda warnings, deputies will be issued cards with the Miranda warnings and waiver on them. Deputies will advise suspects:
 - "You have the right to remain silent."
 - "Anything you say, can and will be used against you in a court of law."
 - "You have the right to talk to a lawyer and have him present with you while you are being questioned."
 - "If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish one."
 - "You can decide at any time to exercise these rights and not answer any questions or make any statements."
 - After advisement of Miranda warnings, in order to secure a waiver, deputies shall determine by asking the suspect if the above rights are understood and if he or she is willing to answer questions or make a statement.
 - Non English speaking suspects shall be afforded the right to have an interpreter present during rights admonitions and questioning.
 - If otherwise unavailable, interpreter services may be obtained through the language line via the 911 Emergency Communications Center.
 - Hearing impaired suspects shall be afforded the right to have a sign language interpreter present during rights admonitions and questioning, or
 - Be questioned using written questions and answers.

- 131 ▪ If otherwise unavailable, sign language services may be requested through the 911
132 Emergency Communications Center.
133
- 134 ○ Miranda warnings are provided on the back of the Virginia State Sheriff's
135 Association Membership Card.
136 ○ After the rights have been read, understood, and the person wishes to waive them, the
137 deputy may have the suspect sign the waiver of rights form.
138 ○ Deputies must cease questioning whenever the suspect unequivocally invokes their
139 right to an attorney or their right to silence.
140 ○ After the suspect has been arrested, deputies may not try to elicit incriminating
141 statements unless the suspect waives the right to counsel.
142 ▪ If the suspect has been arrested and has requested counsel, deputies shall not try
143 to obtain incriminating statements, or make any statements intended to illicit an
144 incriminating response, unless:
145 ❖ The suspect re-initiates conversation with them, or
146 ❖ The suspect has had the opportunity to speak with their attorney.
147 ➤ If the suspect's attorney is present during the interrogation, the attorney
148 shall be permitted to be present during any questioning and advise the
149 suspect accordingly.
150
- 151 ▪ Deputies will take care when advising juveniles of their rights to ensure that the
152 rights are understood before securing a waiver. Deputies shall honor a juvenile's
153 request to speak to a parent or guardian before waiving his or her rights.
154
- 155 ● Exemptions/Special cases:
156 ○ Miranda warnings are not required in the following situations:
157 ▪ Brief non-custodial investigative questioning/detention (suspect is free to leave).
158 ▪ Telephone interviews with a suspect.
159 ▪ Interviews at a suspect's residence or place of employment or other location as
160 long as the suspect is not in custody and no arrest warrant for the offense, suspect
161 is being questioned about, exists.
162 ▪ Suspect is being interviewed at the Sheriff's Office under the following
163 conditions:
164 ❖ Suspect comes to the Sheriff's Office voluntarily and,
165 ❖ No arrest warrant for the offense, the suspect is being questioned about, exists
166 and;
167 ❖ No other arrest warrant, for any other offense, is known to exist.
168 ❖ The suspect is permitted to leave after the interrogation has ended.
169 ➤ If at any time during the interrogation the suspect being questioned makes
170 incriminating statements and a decision is made to arrest, Miranda
171 warnings would be required at that time; However, deputies need not stop
172 or interrupt the suspect from making any further incriminating statements
173 to advise Miranda warnings but shall advise Miranda warning before
174 asking any further questions or making any statements intended to elicit an
175 incriminating response.
176

- 177 ❖ Roadside questioning during routine traffic stops;
178 ❖ Questions asked to obtain identifying information during booking,
179 fingerprinting, conducting a line-up, sobriety tests;
180 ❖ Volunteered, spontaneous statements.
181 ➤ Once the deputy has heard the suspect, who is in custody, express
182 spontaneous incriminating statements, the deputy need not interrupt the
183 suspect or stop the suspect from making additional incriminating
184 statements, but shall advise the suspect of their Miranda rights and obtain
185 a waiver before asking any additional questions or making any statements
186 intended to illicit an incriminating response.
187
188 ○ During investigative detentions, when handcuffs are utilized for officer safety,
189 Miranda warnings shall be given before any questioning, since a reasonable person
190 would believe that he/she was in custody.
191
192 ○ Public safety exception:
193 ■ When a deputy urgently needs information from a suspect because lives are in
194 imminent danger, deputies may delay giving Miranda warnings until the deputies
195 have received information sufficient to dispel the emergency. In [New York v.](#)
196 [Quarles, 104 S. Ct. 2626](#) (1984), police frisked a felony suspect who was thought
197 to be armed. Finding no weapon and worried about its location because of nearby
198 children and without administering Miranda, the deputies asked where the gun
199 was and the suspect replied, giving the location. The presence of the gun
200 constituted a public safety hazard, justifying the question in the absence of
201 Miranda.
202 ■ No firm guidelines exist governing when fresh warnings must be given. In
203 considering whether previously-administered Miranda rights have become legally
204 stale, investigators must consider:
205 ❖ The length of time between first warnings and later interrogation;
206 ❖ The location where later interrogations are taking place.
207 ❖ Whether later interrogations are by the same or different deputies;
208 ❖ Whether later interrogations are about the same or a different crime;
209 ❖ The apparent psychological state of the suspect at the time of subsequent
210 interrogations.

211 SEARCH AND SEIZURE

- 212
- 213 • Definition: Law enforcement action is termed a search where (1) there is a "prying into
214 hidden places by the deputy" in which (2) the person whose premises or person is being
215 searched has a reasonable expectation of privacy.
 - 216 • The Fourth Amendment guarantees the right for people to be free from unreasonable
217 searches and seizures of their homes, persons, and things. The Supreme Court is
218 constantly interpreting the Fourth Amendment as it applies to law enforcement conduct.
219 Illegally seized items of evidence will not be admitted in court and may be cause for a
220 lost criminal case. Additionally, an illegally conducted search invites civil suits under the
221 Civil Rights Act. In order to ensure that Fourth Amendment rights are protected,
222

- 223 deputies shall obtain a search warrants upon probable cause in all appropriate criminal
224 cases except the following:
- 225 ○ Consent searches
 - 226 ○ Exigent circumstances searches
 - 227 ○ Plain view
 - 228 ○ Abandoned property
 - 229 ○ Inventory searches of vehicles
 - 230 ○ Pat-downs (frisk) of suspicious persons (See [GO 2-3, Field Interview/Stop/Frisk](#))
 - 231 ○ Incident to arrest (See [GO 2-4, Arrests](#))
- 232
- 233 ● Consent:
 - 234 ○ A search warrant is not necessary where a person who has authority or control over
 - 235 the thing or place searched consents to the search.
 - 236 ○ Generally, such authority extends to a person who shares use, access, or control of
 - 237 property.
 - 238 ■ If two people have joint ownership of property, either may give consent.
 - 239 ❖ A deputy may not remove a person with authority to deny consent to search
 - 240 from the property to prevent that person from prohibiting the search.
 - 241
 - 242 ■ A landlord, including a hotel or motel manager, cannot consent to a search of a
 - 243 tenant's premises, unless the tenant has been evicted or has abandoned the
 - 244 property.
 - 245 ■ A husband or wife, or one member of a cohabiting unmarried couple, may
 - 246 consent to a search of areas in common ownership or use.
 - 247 ■ A parent may consent to a search of premises occupied by a dependent child.
 - 248 ■ An employee cannot give valid consent to a search of his employer's premises
 - 249 unless he has been left in custody of the premises.
 - 250 ■ An employer may generally consent to a search of premises used by employees,
 - 251 except premises used solely by an employee (e.g., a locker).
 - 252
 - 253 ○ Consent must be voluntarily given. If a deputy requests consent from a citizen under
 - 254 circumstances, which a reasonable person would consider coercive, then deputies
 - 255 must seek a warrant. The deputy may have the burden of proving voluntariness
 - 256 ([Schneckloth v. Bustamonte, 412 U.S. 218](#), 1973).
 - 257 ○ A person who initially gives consent may withdraw it at any time. Deputies shall
 - 258 then secure the premises and seek a warrant.
- 259
- 260 ● Exigent circumstances searches:
 - 261 ○ A search warrant is not necessary when exigent circumstances exist.
 - 262 ○ The Virginia Supreme Court, in [Verez v. Commonwealth, 337 S.E. 2d 749](#), 1985,
 - 263 gave ten factors to be considered in evaluating whether Exigent circumstances exists:
 - 264 ■ The degree of urgency involved and the time required to obtain a warrant.
 - 265 ■ The deputy's reasonable belief that contraband is about to be removed or
 - 266 destroyed.
 - 267 ■ The possibility of danger to others including deputies, left to guard the site.

- 268 ▪ Information that the possessors of contraband are aware that police are on their
- 269 trail.
- 270 ▪ Whether deputies reasonably believe, the suspects are armed.
- 271 ▪ Whether the deputies have probable cause.
- 272 ▪ Whether the deputies have strong reason to believe the suspects are present on the
- 273 premises.
- 274 ▪ The likelihood that the suspects will escape.
- 275 ▪ The suspect's entry onto premises after hot pursuit.
- 276 ▪ Whether the offense is serious, or involves violence.

- 277
- 278 • Plain view:
 - 279 ○ A plain view seizure is, technically, not a search. To make a plain view seizure of
 - 280 property (contraband, fruits or instrumentalities of the crime), the deputy must
 - 281 observe the property in open view in a place where he has a legal right to be.
 - 282 ○ It must be immediately apparent to the deputy that the items he or she observes may
 - 283 be evidence of a crime, contraband, or otherwise subject to seizure.
 - 284 ▪ The deputy may not move items, look inside or underneath or behind them for
 - 285 serial numbers or other identifying marks. If such movement is necessary,
 - 286 deputies shall obtain a warrant.
 - 287 ▪ During the execution of a search warrant property believed to be contraband or
 - 288 evidence in crime, found while looking for evidence within the scope of the
 - 289 search warrant, may be seized.

- 290
- 291 • Abandoned property:
 - 292 ○ A search warrant is not required to search or seize property that has been abandoned.
 - 293 ○ To constitute abandoned property, two conditions must apply:
 - 294 ▪ Property was voluntarily abandoned.
 - 295 ▪ Property was discarded outside the area in which someone has a reasonable
 - 296 expectation of privacy.

- 297
- 298 • Inventory searches of vehicles:
 - 299 ○ A lawfully impounded vehicle, or a vehicle removed from the street and placed in law
 - 300 enforcement custody may have its' contents inventoried for purposes of law
 - 301 enforcement management. Any evidence or contraband found during the inventory
 - 302 may be used to formulate probable cause for a subsequent search or arrest.
 - 303 ○ It shall be the policy of the York-Poquoson Sheriff's Office that all vehicles
 - 304 impounded shall have an inventory search completed prior to towing, unless a search
 - 305 warrant already exists for the vehicle in question or the vehicle in question is being
 - 306 towed to the Sheriff's Office impound lot for a search warrant to be obtained at a later
 - 307 time.

308

309 **PROBABLE CAUSE AND REASONABLE SUSPICION**

310

- 311 • Probable cause:
 - 312 ○ Most searches and all arrests are based on the deputy's perception of probable cause.
 - 313 According to the Supreme Court, probable cause exists where the facts and

- 314 circumstances are such that it would cause a reasonable law enforcement officer to
315 believe that a crime has been or is being committed. The probable cause should be
316 based on personal knowledge or trustworthy information.
- 317 ▪ A deputy must have probable cause to undertake a search or make an arrest.
 - 318 ▪ The aim of probable cause is to make a formal charge.
- 319
- 320 ○ Elements of Probable Cause:
 - 321 ▪ Probable cause may be established through investigation that includes:
 - 322 ❖ Gathered evidence.
 - 323 ❖ Observations.
 - 324 ❖ Witnesses interviews.
 - 325 ❖ Confidential informant provided information.
 - 326 ❖ Anonymous sources provided that the information is corroborated by personal
327 observations and/or further investigation.
 - 328
 - 329 ▪ Unnamed informants may be used in an affidavit for a search warrant if
330 information is included about why the informant is credible (reliability) and he
331 has information of specific use in the investigation (knowledge). See [GO 2-11,](#)
332 [Informants](#) for further information on informants.
 - 333
 - 334 ● Reasonable suspicion:
 - 335 ○ Reasonable suspicion involves a standard less than probable cause, generally defined
336 by the courts as a circumstance or a totality of circumstances that would lead a
337 trained, experienced deputy to believe that criminal activity may be afoot.
 - 338 ▪ A deputy must have reasonable suspicion to temporarily detain a citizen.
 - 339 ▪ When a deputy has reasonable suspicion a person may be armed, he or she may
340 undertake a pat down of a suspect's outer clothing for weapons.

341 EYEWITNESSES

- 342 ● The Supreme Court has addressed eyewitness identifications in numerous cases and The
343 Virginia Department of Criminal Justice Services has set forth guidelines to be followed
344 when eyewitness identifications are solicited by deputies.
- 345 ● See [GO 2-14, Criminal Investigations](#) for procedures regarding:
 - 346 ○ Photo Line Ups.
 - 347 ○ Live Line Ups.
 - 348 ○ On Scene Show ups.
- 349 ● Hearsay:
 - 350 ○ Deputies must understand the rules by which hearsay can be considered evidence and
351 therefore of use in an investigation.
 - 352 ○ According to the Virginia Supreme Court, hearsay is "evidence not proceeding from
353 the personal knowledge of the witness, but from the mere repetition of what he has
354 heard others say."
 - 355 ▪ Hearsay is generally inadmissible in court.

- 359 ▪ Some hearsay is useful as evidence. Exceptions to the Hearsay Rule, and
360 therefore admissible, include:
361 ❖ A dying declaration, or a statement, oral or written, made by a mortally
362 wounded person who knows that he is about to die and has abandoned hope of
363 recovery.
364 ❖ Spontaneous declarations, or exclamations of a participant or bystander
365 concerning an incident, made without time for reflection.
366 ❖ Public records, or reports prepared by public officials under a duty imposed
367 by law or regulation.
368 ❖ Spontaneous admission or admission following admonition of Miranda
369 warnings.
370

371 **VEHICLES**

- 372
- 373 • Preferably, deputies shall search vehicles under authority of a warrant whenever there is
374 sufficient time to obtain one.
 - 375 ○ If a vehicle has broken down, or is parked on private property and there is little
376 likelihood that the vehicle will be driven away or that evidence within it will be
377 destroyed, deputies shall obtain a warrant to search it.
 - 378
 - 379 • Custodial arrests:
 - 380 ○ Deputies may only search that area of a vehicle immediately accessible to a person
381 arrested who was an occupant of the vehicle without first obtaining a warrant if:
 - 382 ▪ The search is made pursuant to a full custodial arrest of a person who is inside of
383 or beside a vehicle at the time of arrest, and
 - 384 ▪ The search is based upon probable cause (See [GO 2-4, Arrests](#) for additional
385 discussion of searches incident to arrests).
 - 386 ❖ A "full custodial arrest" means an arrest where the suspect is taken into
387 custody for the purpose of transporting him to a holding facility or jail.
 - 388

389 **LIMITATIONS ON SEARCHES**

- 390
- 391 • Deputies searching vehicles under the above circumstances must limit their search as
392 follows:
 - 393 ○ To the entirety of the person arrested.
 - 394 ▪ To the passenger compartment of the auto and the area in the immediate control
395 of the person being arrested from which he could reach for a weapon or for
396 evidence of a crime.
 - 397 ❖ The search may not extend to the trunk or closed containers in the passenger
398 compartment unless probable cause has been established that contraband,
399 weapons, fruits or instrumentalities of the crime are located there and;
 - 400 ➤ The vehicle is capable of being moved or the evidence removed or
401 destroyed while taking the time to obtain a search warrant.
 - 402
 - 403 ○ The search incident to custodial arrests legally can be undertaken to protect the
404 deputy, prevent the suspect from escape, and to prevent destruction of evidence.

- 405
- 406
- Probable cause only
 - Apart from custodial arrests, deputies may search a vehicle without a warrant if:
 - Probable cause exists that the vehicle contains evidence of an illegal act, and
 - ❖ The vehicle is moving or capable of being moved quickly so that if the deputy does not search immediately, evidence could be destroyed or lost.
 - ❖ When deputies have probable cause to believe that contraband is concealed somewhere within a vehicle, they may conduct a warrantless search of the entire vehicle, including all containers and packages that may conceal the object of the search. If, however, probable cause is directed at a specific container within the vehicle, a deputy may seize the container and must obtain a warrant before searching it.
- 410
- 411
- 412
- 413
- 414
- 415
- 416
- 417

LIMITATIONS ON AUTHORITY

418

419

- Limitations on law enforcement authority by local courts:
 - Occasionally, the local courts may limit law enforcement authority to enforce state statutes and local ordinances. These limitations include, but are not limited to:
 - The enforcement of certain parking ordinances.
 - The handling of juvenile offenders.
 - The issuance of summonses as opposed to arrests/incarceration.
 - Restrictions relating to the animal control ordinance.
 - Limitations on law enforcement authority by Commonwealth's Attorney:
 - Occasionally, the Commonwealth's Attorney may issue opinions to the Sheriff's Office, which may impose limitations on deputies. These areas include, but are not limited to:
 - Prosecution of certain cases.
 - Extradition of wanted subjects.
 - Enforcement of certain statutes pending opinions from the Attorney General's Office.
 - Limitations on enforcement actions by the Board of Supervisors, Constitutional Officers, nor the Sheriff include, but are not limited to:
 - County Code violations.
 - Parking violations.
 - Policy/rules and regulations/general orders, e.g. the use of force.
 - Changes in laws/interpretational limitations:
 - Periodically, changes take place that may impose new limitations on the Sheriff and his deputy's authority or remove or alter existing limitations. Normally, annual updates on such changes are provided to all personnel by the Commonwealth's Attorney. In case immediate changes in Sheriff's operations are required, the Commonwealth's Attorney's Office may provide information orally and confirm it in writing.
- 420
- 421
- 422
- 423
- 424
- 425
- 426
- 427
- 428
- 429
- 430
- 431
- 432
- 433
- 434
- 435
- 436
- 437
- 438
- 439
- 440
- 441
- 442
- 443
- 444
- 445
- 446
- 447
- 448
- 449
- 450

451 **CONSTITUTIONAL REQUIREMENTS**

452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496

- Compliance with constitutional requirements during criminal investigations:
 - All deputies when conducting criminal investigations will take all precautions necessary to ensure that all persons involved are afforded their constitutional safeguards. Deputies will ensure that:
 - All statements or confessions are voluntary and non-coercive.
 - All persons are advised of their rights in accordance with this general order.
 - All arrested persons are taken promptly before a magistrate for formal charging.
 - All persons accused or suspected of a criminal violation for which they are being interrogated are afforded an opportunity to consult with an attorney.
 - Prejudicial pre-trial publicity of the accused is avoided so as not to interfere with a defendant's right to a fair and impartial trial. See [RR 1-13, Media Relations](#).
 - The use of discretion by deputies:
 - Deputies, by the nature of their job, are required to exercise discretion in the performance of their duties.
 - The Sheriff's Office provides deputies with written policy and procedures, Sheriff's Office orders, directed patrol assignments, and training in order to aid them in making decisions which govern discretion in performing their duties.
 - With the exception of Sheriff's Office Rules and Regulations, Sheriff's Office General Orders generally give deputies some latitude to consider in exercising their discretion.
 - It is up to the individual deputy to consider the:
 - ❖ Relevant facts,
 - ❖ The situation, and then:
 - Using knowledge,
 - Training, and
 - Good judgment to make appropriate decisions.
 - Supervisors must closely observe the use of discretion by their subordinates and point out factual errors or alternatives that may be more appropriate.
 - Alternatives to arrest/pre-arraignment confinement:
 - Under certain circumstances, deputies are faced with situations where an arrest and pre-arraignment confinement will not be possible.
 - In this case, deputies may elect to exercise certain alternatives such as the issuance of:
 - Summonses, referral to a social service agency, or
 - Simply a warning.
 - Examples of when to use alternatives to arrest may include:
 - Mentally or emotionally disturbed persons.
 - Juvenile offenders.
 - Transient persons who need shelter and food.
 - Certain misdemeanor cases.

- 497
- 498
- 499
- 500
- 501
- 502
- 503
- 504
- 505
- 506
- 507
- 508
- 509
- 510
- 511
- 512
- 513
- 514
- 515
- 516
- 517
- 518
- 519
- 520
- 521
- 522
- 523
- 524
- 525
- 526
- 527
- 528
- 529
- 530
- 531
- 532
- 533
- 534
- 535
- 536
- 537
- 538
- 539
- Authority to issue summonses in lieu of arrest/confinement:
 - Section [19.2-74](#) of the Code of Virginia authorizes deputies to issue a summons in lieu of arrest for persons charged with a misdemeanor criminal offense except DUI and drunk in public. Additionally, Section [19.2-74](#), Code of Virginia, authorizes the use of summonses when enforcing county ordinances.
 - The use of summonses by deputies:
 - In determining whether a summons should be used, the deputy should:
 - ❖ Decide whether the offense committed is serious.
 - ❖ Make a judgment as to whether the accused poses a danger to the public or himself/herself.
 - ❖ Decide, based on circumstances, whether the person may disregard a summons.
 - ❖ Determine will the criminal activity continue.
 - Informal handling of criminal matters:
 - Deputies often deal with situations where the public interest would be better served by social service agencies or crisis and professional organizations.
 - When in the judgment of the deputy a better solution to the problem will be achieved by use of alternatives to enforcement, the deputy should refer the citizen to a social services agency.
 - Use of warnings as an alternative to arrest:
 - The use of warnings may sometimes provide a satisfactory solution to a problem and may enhance the public perception of the Sheriff's Office.
 - Normally, the use of a warning occurs in traffic offenses, but occasionally may be applied to criminal offenses. In determining if a warning should be issued, the deputy should consider:
 - ❖ The seriousness of the offense.
 - ❖ The likelihood that the violator will heed the warning.
 - ❖ The reputation of the violator, i.e., known repeat offender, has received previous warnings, etc.
 - ❖ The wishes of the victim, if applicable.
 - Limitations on intelligence activity:
 - Sheriff's Office intelligence gathering activities will be limited to that information concerning criminal conduct that presents a threat to the community.
 - Sheriff's Office personnel and equipment will only be used in conjunction with intelligence gathering activities, as defined above, in full compliance with all law, and only with the approval of the Sheriff or his designee.
 - Intelligence information will be collected, used and processed in full compliance with all laws.