



CHEVY CHASE
VILLAGE
POLICE
DEPARTMENT

Police Chief: John M. Fitzgerald

GENERAL ORDER: 5-29.2 ALTERNATIVES TO ARREST—
ISSUANCE OF CITATIONS

DATE: 11/18/2014 Pages: 7 ◇ New ◇ Amended ◆ Revised 5-29.2

CALEA: 1.1.3, 1.2.4, 1.2.6, 44.2.1-c, 55.1.1, 55.1.3-a, 55.2.3-a-c-d,
82.2.1-e, 82.2.3, 82.3.1, 82.3.5

I. POLICY

- A. There are a variety of situations which could be resolved without resorting to making a physical arrest. The Department authorizes and encourages its officers to make referrals to various public and private agencies as necessary and appropriate, since often-times an arrest may not solve or address an underlying problem. (CALEA 1.1.3, 1.2.6)
- B. An officer making a referral is not relieved from his/her duties regarding the completion and submission of required reports, keeping the victim informed of the status of the case, and any follow-up investigation. (CALEA 55.1.3-a, 55.2.3-d)
- C. The 2012 Maryland General Assembly passed legislation mandating the issuance of a criminal citation (in lieu of a statement of charges and an appearance before a commissioner) for certain misdemeanor criminal offenses if the defendant meets certain criteria (see Section II.A., below). It is the policy of the Chevy Chase Village Police Department that, **if these criteria are met, officers shall place charges via a criminal citation per the procedures in this general order.** It is also our policy that, if an officer determines that the defendant does not meet one or more of the criteria and a physical arrest is required, the officer shall document the basis for making the decision to arrest in the statement of charges as well as in the incident report. (CALEA 1.2.6)
- D. Effective October 1, 2014, the possession of less than 10 grams of marijuana is a civil violation which is punishable by a fine. Although the possession of 10 grams or more of marijuana remains a criminal offense punishable by 1 year in jail and/or \$1,000 fine, the Montgomery County State's Attorney's Office (SAO) will not prosecute the simple possession of marijuana (regardless of the amount) or the possession of marijuana paraphernalia as criminal matters. Therefore, all charges related to the simple possession of marijuana—regardless of the quantity of marijuana—shall be made by civil citation, with certain exceptions, as described in this general order. Further, officers shall not charge

paraphernalia criminally when the paraphernalia is related to the possession of marijuana.

- E. **Nondiscrimination:** Officers are prohibited from unlawfully detaining any person or placing charges (criminal or civil) against any person based solely on race, color, ethnicity, national origin, gender, age, sexual orientation, disability or genetic information, or participate in the use of any unlawful discriminatory characteristic as a cause for taking law enforcement action against any individual or group of individuals.

II. DEFINITIONS

A. Citation-Eligible Adult

Within the context of this directive, the term “citation-eligible adult” refers to a person who is 18 years of age or older, is being charged with a citation-eligible offense, and the arrest/charging situation meets all of the following criteria:

1. The officer is satisfied with the defendant's evidence of **identity**;
2. The officer reasonably believes that the defendant will **comply with the citation**;
3. The officer reasonably believes that the failure to charge on a statement of charges will **not pose a threat** to public safety;
4. The defendant is **not subject to arrest** for another criminal charge (that is not citation-eligible) arising out of the same incident; **and**
5. The defendant **complies with all lawful orders** given by the officer.

B. Citation-Eligible Offense

Within the context of this directive, the term “citation-eligible offense” refers to the following:

1. Any misdemeanor or local ordinance violation that **does not carry a penalty of imprisonment**;
2. Any misdemeanor or local ordinance violation

for which the maximum penalty of imprisonment is **90 days or less**;

3. **Possession of marijuana** under § 5-601 of the Criminal Law Article; and
4. Is **NOT one of the following exceptions**:
 - a) Failure to comply with a **peace order**, under § 3-1508 of the Courts Article;
 - b) Failure to comply with a **protective order**, under § 4-509 of the Family Law Article;
 - c) Violation of a **condition of pre-trial or post-trial release** while charged with a **sexual crime against a minor**, under § 5-213.1 of the Criminal Procedure Article;
 - d) Possession of an **electronic control device** after conviction of a drug felony or crime of violence, under § 4-109(b) of the Criminal Law Article;
 - e) Violation of an **out of state domestic violence order**, under § 4-508.1 of the Family Law Article; and
 - f) **Abuse or neglect of an animal**, under § 10-604 of the Criminal Law Article.

III. DISCRETION: ISSUANCE OF WARNINGS VERSUS PLACING CHARGES FOR MINOR OFFENSES

Officers must be cognizant of the fact that frequently, a verbal or written warning issued to violators committing very minor offenses would be sufficient and that formal charges either by way of citation or arrest (when applicable) in such cases should not be placed unless the violation is deliberate and/or repeated.

IV. PROCEDURES FOR MAKING REFERRALS TO APPROPRIATE AGENCIES

- A. Some minor offenses can be resolved by a referral to an appropriate social service agency, such as the Montgomery County Department of Social Services or other applicable agencies. The role of the Village Police in these programs is one of appropriate referral. Telephone numbers are available via the MCP CAD system.
- B. Criteria for Referrals
 1. In instances in which misdemeanor criminal charges would be appropriate (e.g. second degree assault), but a lawful arrest cannot be made and a criminal citation cannot be issued, a citizen may be referred to the nearest Court Commissioner's Office or the State's Attorney's Of-

fice for Montgomery County.
(CALEA 55.2.3-a)

2. An officer referring a citizen to the Commissioner to apply for a charging document for a crime committed in Chevy Chase Village must write an appropriate report and provide it to the victim/citizen so that the citizen can take the report number to the Commissioner.
(CALEA 55.2.3-c, 82.2.3)
3. If an officer makes an arrest of an adult, the defendant is essentially referred to the judicial system. In the case of a juvenile, the arrest is referred to the Maryland Department of Juvenile Services for disposition. However, there are times when officers will encounter individuals (both adults and juveniles) who are in need of, or better served by another agency, and in these cases, a *timely* referral may solve an underlying problem.
4. If the person to be referred has committed a crime for which a victim has been identified and located, the victim must be consulted regarding the officer's decision to refer the individual to an appropriate program prior to the referral being made to ensure that the victim agrees with the officer's decision to refer. (CALEA 55.1.1)
 - In juvenile matters, it may be more appropriate for an officer to "close the case by exception" on an incident report and forward it to MCP Family Services Division.
(CALEA 44.2.1-c)
5. Officers must be extremely sensitive to the needs of victims and/or to those people that would benefit from crisis intervention programs.
(CALEA 55.1.1, 55.1.3-a, 55.2.3-a)

C. Services Available

1. Services available to juveniles which may be of assistance include:
 - a) Maryland Department of Juvenile Services – [REDACTED]
 - b) MCP Family Crimes Division – [REDACTED];
 - c) Child Welfare Services (County HHS) — [REDACTED]
 - d) Guide Youth Services – [REDACTED];
 - e) Potomac Ridge Behavioral Health Center, Operation Runaway – [REDACTED]

2. The following programs may be of assistance for adults and families:
 - a) Montgomery County Crisis Center – [REDACTED];
 - b) Alcoholics Anonymous – [REDACTED]
 - c) Legal Aid Bureau – [REDACTED]
 - d) Lawyer Referral Service – [REDACTED];
 - e) Public Defender's Office – [REDACTED] or [REDACTED]; and
 - f) Wells-Robertson House – [REDACTED]0.
3. Officers must be sensitive to the needs of victims and/or to those who would benefit from crisis intervention programs. Listed below are some programs that may be of assistance:
 - a) Abused Persons Program – [REDACTED];
 - b) Adult Protective Services – [REDACTED];
 - c) Shelter Hotline – [REDACTED]
 - d) Lawyer Referral Service – [REDACTED];
 - e) Human Relations Commission – [REDACTED];
 - f) Jewish Social Service Agency – [REDACTED];
 - g) Sexual Assault Service – [REDACTED]
 - h) Suicide Hotline – [REDACTED]
 - i) Widowed Persons Services – [REDACTED].
 - j) In some cases, the MCP Victim Advocate is available via PSCC.

V. ISSUANCE OF CIVIL CITATIONS FOR POSSESSION OF MARIJUANA

A. Charges for the possession of 10 grams or more of marijuana shall be made using a civil citation unless one of the following exceptions applies:

1. The defendant is charged with other criminal offenses in conjunction with the possession of 10 grams or more of marijuana.

a. If the other charges result in a physical

arrest, the marijuana charge will be made via statement of charges;

b. If the other criminal charges are made via criminal citation, then the marijuana charge will be made via criminal citation; or

2. The possession of 10 grams or more of marijuana was committed on school grounds (charge via criminal citation); or

3. The charging officer is aware of specific circumstances/information to justify a criminal charge of 10 grams or more of marijuana. If this exception applies, the officer:

a. will charge via criminal citation; and

b. must articulate the circumstances/reasons in the narrative of the incident report; and

c. must make contact with the State's Attorney's Office in advance of the court date to justify the prosecution as a criminal offense.

B. The method of charging is via civil citation for both adults and juveniles; there is no authority to arrest, and officers must not issue a criminal citation. (IMPORTANT NOTE: For charging purposes on the civil citation, 3rd or subsequent offenses are MUST APPEAR for persons 21 or older. For persons under 21, ALL offenses are MUST APPEAR.)

C. For persons at least 21 years old use an Adult Civil Citation

1. For the 1st offense, check the block that reads, "You may pay a fine..." and write in the amount of \$50 (this is the prepayment amount that has been set by the District Court).

2. For the 2nd offense, check the block that reads, "You may pay a fine..." and write in the amount of \$125 (the prepayment amount).

3. For a 3rd or subsequent offense, check the block that reads, "You must appear in court." (The court is required to see these offenders in person, and the court is required to send them to substance abuse treatment and education).

D. For persons under 21 years old

1. use an Adult Civil Citation for persons at least 18 years old;

2. use a Juvenile Civil Citation for persons under

18.

3. All offenses are MUST APPEAR (the court is required to see these offenders in person, and the court is required to send them to substance abuse treatment and education).

E. Search and seizure procedures related to the law decriminalizing marijuana

According to the Montgomery County State's Attorney as well as attorneys providing instruction on behalf of the Governor's Office of Crime Control and Prevention (GOCCP), the law decriminalizing marijuana has not changed search and seizure law at all. Searches of motor vehicles and persons must be done in accord with existing 4th Amendment principles. The basics are covered below:

1. **Vehicles:** Motor vehicles may be searched under the Carroll doctrine when probable cause exists to believe that they contain evidence or contraband. The odor of marijuana coming from a vehicle is probable cause to believe that the vehicle contains marijuana, and it allows an officer to search the entire vehicle to look for marijuana. This principle will not change on October 1, 2014 when the marijuana decriminalization law takes effect; **the odor of marijuana coming from a vehicle is probable cause to search the vehicle.** Remember, consent—given knowingly and voluntarily—always works, as well.

2. **Persons:** A person may be searched incident to their custodial arrest, pursuant to their consent to a search, or based on reasonable articulable suspicion that the person is armed and dangerous (frisk). The simple possession of marijuana is not, by itself, an arrestable offense since all such offenses will be charged via civil citation regardless of the amount of marijuana. Thus, **officers are prohibited from searching a person related to the possession of marijuana (or the odor of marijuana) unless:**

a. **The person consents to the search, or**

b. **The officer has probable cause to make a physical arrest for another crime.**

- F. Currently, there is no central way to determine how many times a person has been charged civilly since the law prohibits the offense from being available on the publicly accessible Case Search database. In the near future, however, this information will be available through the Secure Case Search (SCS) portal. We are exploring this avenue, and we will be work-

ing toward getting our dispatchers access to this portal. **In the meantime, assume that each offense is the offender's first unless the officer has specific information to the contrary.**

G. Seizure and handling of contraband marijuana

1. As always, officers have discretion whether or not to charge individuals for minor infractions of the law, and the simple possession of small amounts of marijuana is a minor infraction of the law where discretion may be exercised reasonably. This discretion must be based on the totality of the circumstances, and such discretion must be exercised objectively without bias or prejudice of any kind.
2. Regardless of whether or not an officer charges a person civilly with possession of marijuana, all contraband (marijuana and paraphernalia) must be seized, packaged for destruction, submitted with the proper chain of custody form, and documented in an incident report as per our general orders and related directives. This has always been our policy, and it will remain so. Any deviation from this long-standing policy is strictly prohibited and will be deemed a serious policy violation.

VI. ISSUANCE OF CRIMINAL AND CIVIL CITATIONS GENERALLY

- A. As an alternative to a physical arrest, a criminal or civil citation may be issued under certain circumstances and for specific offenses.

B. Juveniles:

1. Pursuant to §3-835 of the Courts and Judicial Proceedings Article, a civil citation is the appropriate charging document for juveniles who violate CR §§10-113 through 125 (offenses related to alcohol possession/consumption) and CR §5-601 (the civil offense of simple possession of marijuana).
2. Criminal citations will not be issued to juveniles.

C. Civil Citations for Civil/Municipal Infractions

1. It is important for officers to realize that an arrest **cannot be made** (and a criminal citation cannot be written) for any civil infraction. The possession of less than 10 grams of marijuana pursuant to CR §5-601 is now a civil offense, and some portions of the Montgomery County code (Chapter 5-Animal Control, Chapter 31B-

Noise Control, and Chapter 47-Vendors) and all of the Chevy Chase Village municipal infractions are civil offenses and are **non-criminal in nature**; a Uniform Civil Citation (DC 28) will be issued whenever an officer intends to charge someone with such an offense.

2. Prior to issuing a civil citation, officers must develop probable cause that the civil offense occurred and that a particular person has committed it.

D. Issuance of a criminal citation is authorized by Criminal Procedure §4-101. Officers will follow the procedure outlined below:

1. Before a criminal citation can be issued, officers must develop probable cause that the offense occurred and that a particular person has committed it.
2. If a citation-eligible offense meets the criteria for a warrantless misdemeanor arrest (committed within or PC to believe it was committed within the presence or view of the officer) and it was committed by a citation-eligible adult, the offender shall be charged by means of a criminal citation.
3. If a citation-eligible offense meets the criteria for a warrantless misdemeanor arrest and the offender is NOT a citation-eligible adult, the offender must be physically arrested and charged by means of a statement of charges. When this occurs, the arresting officer shall articulate, at both the end of the statement of probable cause and within the associated event report narrative, the reason(s) why the defendant was not a citation-eligible adult (why the adult was arrested rather than given a citation; **in other words, which conditions were not met from section II.A. above**).
4. If a citation-eligible offense does not meet the criteria for a warrantless misdemeanor arrest, and the offender is a citation-eligible adult, the officer must charge via criminal citation and the officer will not make an arrest (the arrest would be unlawful).
5. If the citation-eligible offense does not meet the criteria for a warrantless misdemeanor arrest, and the offender is not a citation-eligible adult, the officer will not issue a criminal citation and the officer will not make an arrest (the arrest would be unlawful). Either the complainant or the officer must apply to a District Court Commissioner for a statement of charges in order to place charges in this situation.

6. Unless reasons of public safety would justify transporting the offender to another location to issue the citation (e.g. preventing further risk of harm to persons or property), the criminal citation will be issued to the citation-eligible adult at the location where the officer made contact with the offender (in lieu of an arrest).

The below graphic illustrates the above scenarios:

Does the offense meet the criteria for a warrantless misdemeanor arrest?

	<u>YES</u>	<u>NO</u>
<u>YES</u>	<u>Criminal citation must be issued (no arrest)</u>	<u>Criminal citation must be issued (no arrest)</u>
<u>NO</u>	<u>Physical arrest (no criminal citation)</u>	<u>See the commissioner (no arrest; no citation)</u>

Is the Offender a citation-eligible adult?

- E. If an individual has been arrested and must be seen by a District Court Commissioner, a citation will not be issued; a statement of charges will be completed, and all related charges will be incorporated on the statement of charges.

F. An officer issuing a criminal/civil citation will:

1. Legibly complete both sides of the citation in detail.
2. Complete an incident report containing a statement of probable cause within the report narrative.
3. Indicate the maximum penalty the Court can impose for the offense.
4. Complete a "State's Attorney's Witness Information Form," for criminal violations cited in order to have witnesses issued summonses.
5. Notify the parent/guardian of a juvenile charged (civil citation) and either hand-deliver or mail a copy of the citation to the parent/guardian.

6. Ensure the citation indicates that the defendant will be notified of the court date, unless the officer decides to set a court date (no Wednesdays).

G. Once the citation is issued, whether at the scene or elsewhere, the defendant shall be released immediately and without unnecessary delay.

H. Taking photographs of the suspect is permissible and in fact encouraged, because it documents the defendant being at the scene, any injuries received as a result of an altercation, the physical appearance of the defendant at the time of the encounter, and may be useful in a subsequent photo-array.

I. Defendant's signature on citations:

1. **Civil citations/municipal infractions:** The defendant does not have to sign the citation. If a defendant refuses to sign, the issuing officer will indicate so on the line provided for the defendant's signature and give the defendant's copy to the defendant.
2. **Criminal citations:** The **defendant must sign** which is their promise to appear in court. A refusal to sign is a refusal to appear in court.
 - a. Before asking for a defendant's signature, officers shall inform the defendant that their signature is not an admission of guilt, but merely a promise to appear in court at a later date; that their signature is required, and a failure to sign will result in their physical arrest.
 - b. If a defendant initially refuses to sign (or hesitates), officers should be patient and should help defendant's understand the wisdom of signing.
 - c. If, after an officer has attempted to persuade a defendant to sign a criminal citation, the defendant still refuses to sign the citation, the officer will do one of the following:
 - If the offense meets the criteria for a warrantless arrest, the officer is authorized to physically arrest the individual and charge via a statement of charges.
 - If the offense does NOT meet the legal criteria for a warrantless arrest, the officer will not issue the citation; the officer must apply for a statement of charges through a District Court Commissioner.

J. The issuing officer will tear all copies from the citation book except the issuing officer's copy, and will forward them for supervisory approval. (CALEA 82.2.1-e)

K. After supervisory approval, the citation will be forwarded to the Lead Communications Clerk for entry into the Master Name Index, copying and filing, and appropriate distribution. (CALEA 82.2.1-e, 82.3.1, 82.3.5)

L. An officer who issues a citation in a way that is not authorized by this directive could be deemed in violation of this general order and may be subject to disciplinary action. Such action may also result in the State's Attorney's Office electing not to pursue the case.

VII. SEARCH LIMITATIONS (CALEA 1.2.4)

- A. The law is very clear that police officers do not have the right to search an individual pursuant to the issuance of any citation (criminal, civil or traffic). Subject to paragraph B (below), **if an officer issues a citation to an offender in lieu of an arrest, a full search of the person is prohibited unless the officer obtains voluntary consent from the offender.**
 - Officers are strongly encouraged to request consent to search the suspect's person when the crime is one that often involves physical evidence such as Theft Under \$100 or Possession of Marijuana.
- B. Nothing in this general order changes existing search and seizure law. The following exceptions to the search warrant requirement—among others—continue to be valid, and a police officer may utilize the below theories to conduct a search of an individual's person when the officer has satisfied the legal requirements for each type of search.
 1. **Consent** (search based on voluntary consent given by a person with the authority to grant it).
 2. **Frisk** (pat down of outer clothing surfaces to detect the presence of a weapon when an officer has reasonable, articulable suspicion—RAS—that the individual is armed and dangerous); this exception may be used whenever the described RAS arises—whether or not the individual is under arrest.
 3. **Search incident to a custodial arrest** (officers may do a full search of the person for evidence, contraband, etc. whenever they make a physical arrest); this exception is NOT available to an of-

ficer when a person is given a citation instead of being arrested.

4. **Search warrant** (an order issued by a judicial officer commanding a law enforcement officer to search a particular person or place for particular items that are evidence of crime).

VIII. LAW ENFORCEMENT REPORTING - STATISTICAL DATA COLLECTION

On or before December 31, 2012, Maryland Police and Correctional Training Commissions and Maryland Statistical Analysis Center (MSAC), in consultation with the Administrative Office of the Courts (AOC), will develop a format and procedures for the collection of certain criminal citations data. Beginning January 1, 2013 law enforcement agencies are required to collect the following data on all criminal citations issued:

1. The date, location, and time of the issuance of the citation;
2. The offense charged;
3. The gender of the offender;
4. The date of birth of the offender;
5. The state and, if available, the county of residence of the offender; and
6. The race or ethnicity of the offender as:
 - a) Asian;
 - b) Black;
 - c) Hispanic;
 - d) White; or
 - e) Other.

The GOCCP in partnership with the Maryland State Police is pursuing an automated solution to law enforcement data collection via Delta+, the application that runs e-Tix. Beginning January 1, 2013, Delta+ is expected to include a race-based reporting module for criminal citations. Law enforcement will enter all citation data electronically via Delta+. This data will be stored by MSP which will submit citation data for all law enforcement agencies in the state to MSAC by March 1 each subsequent year (the first reporting deadline under this statute is March 1, 2014). GOCCP and MSP are discussing the feasibility of updating Delta+ to include functionality similar to e-citations for criminal citations in late 2013. Updates to Delta+ will give officers the capability to scan MVA licenses, enter data, and print criminal citations in cars. officers will print out electronic criminal citations and follow current hardcopy procedures with the Courts.

This directive voids the previous version dated 1/22/2013.