

NOPD CONSENT DECREE MONITOR
NEW ORLEANS, LOUISIANA



202.747.1904 direct
ddouglass@sheppardmullin.com

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File Number: 37PA-191555

Deputy Superintendent Danny Murphy
Compliance Bureau, New Orleans Police Department
714 Broad Street
New Orleans. LA 70119

Dear Superintendent Murphy:

This letter constitutes confirmation that the Office of Consent Decree Monitor (“OCDM”) has reviewed and provided comments on the amended Chapter 41.8 – Affidavit and Summons (Non-Traffic). The OCDM has no objection to the policy as amended.

We believe that the amended Chapter 41.8 – Affidavit and Summons (Non-Traffic), incorporates all requirements of the Consent Decree and sets forth clear and appropriate rules to guide officer conduct. We will continue to assess the adequacy of this policy following its implementation. If we identify any concerns following implementation, we will present those concerns to you and the Department of Justice. Additionally, we note that, pursuant to the Consent Decree, NOPD has agreed to review and revise policies and procedures as necessary upon notice of a significant policy deficiency. We also note NOPD’s obligation to review this policy after a year of implementation to ensure it “provides effective direction to NOPD personnel and remains consistent with the Agreement, best practices, and current law.” Consent Decree at ¶ 8.

We appreciate your team’s effort, cooperation, and responsiveness throughout this process.
Very truly

Very truly yours,

David L. Douglass
For SHEPPARD MULLIN RICHTER & HAMPTON LLP*
2099 PENNSYLVANIA AVE., N.W., SUITE 100
WASHINGTON, DC 20006

CC: HONORABLE SUSIE MORGAN (VIA ELECTRONIC MAIL)
EMILY GUNSTON, DEPARTMENT OF JUSTICE (VIA ELECTRONIC MAIL)



NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

CHAPTER: 41.8

TITLE: AFFIDAVIT AND SUMMONS (NON-TRAFFIC)

EFFECTIVE:

REVISED:

PURPOSE

This Chapter governs the release of arrested persons upon the issuance of a non-traffic summons.

POLICY STATEMENT

1. The New Orleans Police Department (NOPD) encourages the use of summons in lieu of custodial arrest when appropriate and when the safety of the public is not threatened.
2. NOPD will release an arrested person on a non-traffic summons as provided in the Louisiana Code of Criminal Procedure and the Municipal Code of the City of New Orleans.
3. In those cases when a summons cannot be issued for a misdemeanor offense under the ordinances of the City of New Orleans, a municipal affidavit shall be issued and the arrested person shall be booked and incarcerated.

DEFINITIONS:

Definitions relevant to this Chapter include:

Affidavit (Municipal)—A sworn statement of the complainant, or the law enforcement officer, filed with the Municipal Court of the City of New Orleans on a form approved by the court concerning the commission of a misdemeanor offense and covered under the ordinances of the City of New Orleans. The City Council of the City of New Orleans has designated, by ordinance, certain police officials who have the power to take oaths and verify affidavits filed by other members of the New Orleans police department.

Arrest—Is the taking of one person into custody by another. To constitute arrest there must be an actual restraint of the person. The restraint may be imposed by force or may result from the submission of the person arrested to the custody of the one arresting him.

Attachment—The act or process of taking, apprehending, or seizing persons, by virtue of a writ, summons, or other judicial order, and bringing the same into the custody of the law; used for the purpose of bringing a person before the court, to compel an appearance or to furnish security for costs. Also the writ or other process for the accomplishment of the purposes above

enumerated, this being the more common use of the word. Also, a writ issued by a court of record, commanding the sheriff to bring before it a person who has been guilty of contempt of court, either in neglect or abuse of its process or of subordinate powers.

Custodial Arrest—Synonymous with “**Arrest**” but usually referring to maintaining physical custody and control of the arrested person and booking at a jail facility rather than any form of release by the officer such as a summons or traffic citation.

Citation—Issued to a person to notify him/her that he/she is required to appear at a specific time and place. Officers issue citations for minor offenses, especially for traffic violations. The citation that an officer gives to a violator states the charge and requires an appearance before a judge on a specified date, subject to punishment for failure to appear. **For purposes of the NOPD regulations, the term “citation” refers to traffic citations only.**

Felony—In Louisiana, any crime for which an offender may be sentenced to death or imprisonment at hard labor. It is the possible punishment that makes a crime a felony, NOT the actual sentence served or imposed. (La. Rev. Stat. § 14:2.)

Habitual Offender—Any person with a criminal history of two or more felony convictions or five or more felony or misdemeanor arrests for any offense.

Misdemeanor—In Louisiana, any crime other than a felony. (La. Rev. Stat. § 14:2.)

Summons—A written notification to an arrested person to appear in the indicated court at the specified date and time to answer to the charges stated under penalty of law (contempt or warrant of arrest) for failure to appear. A summons is issued by an officer for a minor (misdemeanor) offense rather than a custodial arrest and booking, but only on a written promise to appear by the arrested person.

SUMMONS AND RELEASE

4. Unless one of the prohibitions outlined in this Chapter are present, an officer **shall** issue a summons instead of effectuating a custodial arrest when the offense suspected is:
 - (a) A misdemeanor, including:
 - Issuing worthless checks, theft, and illegal possession of stolen things when the thing of value is less than \$1,000, **and**
 - The officer has ascertained that the person has no prior criminal convictions.
 - (b) **All** of the following exist:
 - The officer has reasonable grounds to believe that the person will appear upon the summons. **Note:** In making such a determination, the arresting officer should look for those community ties the arrested party has that would substantiate a belief that he or she was reasonably likely to appear for court. Such ties would include those individuals who are residents of the state of Louisiana and those who reside out of state but who are either employed within the state or attend school within the state. Under these circumstances, the issuance of a misdemeanor summons would be proper;
 - The officer has no reasonable grounds to believe the person will cause injury to him/herself or another, cause damage to property or continue in the same or a similar offense unless immediately arrested and booked;
 - There is no necessity to book the person to comply with routine identification procedures. **Note:** An officer shall make all reasonable efforts to verify the person’s identity. If the person does not produce identification but is able to provide his/her name and date of birth, and the provided information or physical identification can be verified by the officer (e.g. distinctive physical characteristics, scars, marks or tattoos, etc.), this information is satisfactory

evidence of identification.

5. When an officer detains or stops a person who is discovered to have an outstanding warrant for a misdemeanor or an attachment for failing to comply with a summons to appear in court on a municipal misdemeanor in Orleans Parish, the officer **shall** issue a summons and release the person, unless the offender also has an outstanding felony warrant or the warrant or attachment involved one of the following, in which case the officer must make a custodial arrest (see C.C.R. P. 211.1):
 - (a) The operation of a vehicle while intoxicated.
 - (b) The illegal use or possession of a weapon.
 - (c) The use of force or violence, except the crime of simple battery, unless the warrant or attachment indicates that the battery was prosecuted as a domestic abuse battery as defined in La. R.S. 14:35.3.
 - (d) Any offense or bench warrant issued involving the failure to pay a legal child support obligation.
 - (e) All domestic violence related crimes.
6. When an order of contempt or an attachment of arrest for **failing to appear** has been issued by an Orleans Parish Court, the officer shall follow the guidelines of **Chapter 74.3.1 – Failure to Appear**.

PROHIBITIONS

7. An officer **shall not** issue a summons in lieu of arrest if **any** of the following factors are present:
 - (a) The officer is unable to verify the person's identity, despite having made all reasonable efforts to do so;
 - (b) The person makes a statement or exhibits actions indicating an intent to disregard the summons;
 - (c) The person or, in the case of a juvenile, the parent, caretaker, or guardian refuses to sign the summons;
 - (d) The person acts in a violent or destructive manner;
 - (e) The person makes a statement indicating that he/she intends to inflict injury to themselves or another;
 - (f) The person makes a statement indicating that he/she intends to damage property of another; or
 - (g) Based on the circumstances, an officer determines that it is absolutely necessary to make an arrest. Officers must be prepared to substantiate their reasons for making an arrest.

SUPERVISORY APPROVAL REQUIRED

8. Supervisors shall respond to the scene and must approve any custodial arrest (not summons) issued for the following offenses occurring **outside the 8th District**:

(a) Disturbing the Peace	(City Code 54-103;	LSA-R.S. 14:103)
(b) Criminal Trespass	(City Code 54-153;	LSA-R.S. 14:63)
(c) Obstructing Public Passages	(City Code 54-40;	LSA-R.S. 14:100.1)
(d) Begging/Vagrancy	(City Code 54-411;	LSA-RS. 14:107)
(e) Aggressive panhandling	(City Code 54-412)	Only in DDD
(f) Aggressive solicitation	(City Code 54-419)	Only in Vieux Carre'
(g) Simple possession of marijuana	(City Code 54-505;	LSA-RS 40:966)

SUMMONS REQUIREMENTS

9. Any summons issued **shall** (see: C. Cr. P. 208; C. Cr. P. 211.1):

- (a) Be in writing.
 - (b) Be signed by the officer.
 - (c) State the offense charged (correct title and corresponding number).
 - (d) Include the name of the alleged offender (name shall be verified).
 - (e) Instruct the alleged offender to appear before the designated court at the time and place stated on the summons.
 - (f) Be signed by the alleged offender (the signature of the offender is his/her promise to appear at the date and time specified in lieu of being physically arrested) or, in the case of a juvenile, the parent, caretaker, or guardian.
10. After determining that a summons may be issued in lieu of custodial arrest, officers shall ensure that the person or, in the case of a juvenile, the parent, caretaker, or guardian acknowledges and understands that his/her signature is his/her written promise to appear on the date, time and place specified for appearance.
 11. Cases involving felony and misdemeanor charges will not be separated. If a misdemeanor charge is part of a felony arrest, it will be charged as a state law violation. (Example: If a suspect is arrested for armed robbery (a felony) and is in possession of a small amount of marijuana (misdemeanor), the officer shall book with RS14:64 and RS40:966.)
 12. All summonses that are issued as a “stand alone” **municipal charge** (no felony charges or state misdemeanor charges) shall be documented in an electronic Field Interview Card (FIC). (Refer to **Chapter 1.2.4.1 – Terry Stops Investigatory Stops** for completion of documentation.)
 13. All summonses that are issued as a **state misdemeanor** charge with no additional or related felony or municipal charges shall be documented in an EPR.

MUNICIPAL SUMMONS CASES

14. Summons (summons and release) cases shall be set **ten (10) days** from the date of issuance, excluding Saturdays, Sundays, and holidays. Officers shall refer to the “**Traffic and Municipal Court Schedule**” for the current year in the Resource folder of NOPD.org for all court holidays. If the calculated date is on a date the court is “closed,” it shall be set for the next available court date.
15. Officers shall set the appearance as 11:00 am in Room 100. In the area of the form for Court Appearance information, the officer shall write or type “**REPORT ON MM/DD/YYYY TO ROOM 100 AT 11:00 AM.**”
16. All information shall be printed and signed in a black or blue ink ballpoint pen.
17. Only one officer's name shall appear on the front of the form. Additional officers involved in the arrest shall be recorded on the back of the Court and Record Room copies under "City Witnesses."
18. Every space requesting information shall be completed.

MUNICIPAL ARREST CASES

19. Officers shall print “**ARRESTED**” in the area of the affidavit form (printed or electronic) for the court appearance date/time if the suspect was arrested and booked.
20. All information shall be printed and signed in a black ink ballpoint pen.

21. Only one officer's name shall appear on the front of the form. Additional officers involved in the arrest shall be recorded on the back of the Court and Record Room copies under "City Witnesses."
22. Every space requesting information shall be completed.

OFFICER'S RESPONSIBILITIES

23. The issuing officer is required to:
 - (a) List the name, address, and telephone number of complainant(s) and/or witness(es) on the back of the Court and Record Room copies;
 - (b) Inform the parties involved of the correct time, date, and court section if an arrest is made;
 - (c) List the appropriate information about injuries and/or the value of property involved (necessary for the courts to set an appropriate bond); and
 - (d) Complete the "officer's incident summary" on the rear of page one (original) and a concise gist/probable cause statement for each charge.

SUPERVISOR'S RESPONSIBILITIES

24. The issuing officer's supervisor shall review the completed summons form to ensure the information contained is complete and correct.
25. After the supervisor completes the review, he/she shall administer an oath as ex-officio notary, print his/her name clearly as the person administering the oath, and sign in the space provided.

DISTRIBUTION OF SUMMONS FORMS

26. All summonses shall be distributed as follows:
 - (a) Hard White Copy – given to violator cited or, in the case of a juvenile, the parent, caretaker, or guardian.
 - (b) Yellow Copy – remains in the officer's book.
 - (c) Pink Copy – given to unit desk officer prior to end of issuing officer's duty.
 - (d) Two White Copies – given to unit desk officer prior to end of issuing officer's duty.
27. All non-traffic summonses shall be listed on the Daily Receipt of Summons Form (Form #170). Commanders of a division/district/unit shall establish a procedure for delivering the summons to the Citation Processing Section prior to 7:00am daily when not picked up by the Ticket Processing Officer.

DISTRIBUTION OF AFFIDAVIT FORMS

28. All municipal arrest (affidavit)s shall be distributed as follows:
 - (a) Hard White Copy – given to violator cited.
 - (b) Yellow Copy – remains in the officer's book.
 - (c) Pink Copy – complete arrest information on back, leave at Central Lock Up.
 - (d) Two White Copies – complete witness information on back, leave at Central Lock Up.

CARE FOR DEPENDENTS OR ANIMALS

29. In the event an arrested person is determined to be a caretaker for any child (age 17 and under) or dependent adult, refer to **Chapter 44.9 - Child and Dependent Adult Safety**.
30. If the arrestee is a caretaker for any animal or pet, the arresting officer should take reasonable steps to ensure the animal or pet will have adequate care in the event the arrestee will be detained longer than would reasonably allow him/her to properly provide care.
31. With the owner's consent, relatives or neighbors may be contacted to care for the animals.
32. If no persons can be found or the owner does not consent, the appropriate animal control authority shall be notified through Communication Services. This information shall be documented in any report (EPR) or on the electronic FIC.

REPORTING

33. The New Orleans Police Department will prepare quarterly reports indicating the number and reasons for custodial arrests made and the number and reasons for summonses issued for violations of the Municipal Code of the City of New Orleans.