

# EXECUTIVE ORDER



DISTRICT OF COLUMBIA

<b>Subject:</b> <b>Coronavirus 2019 Modification to Citation Release Criteria</b>
<b>Number</b> <b>EO-20-011</b>
<b>Effective Date</b> <b>March 17, 2020</b>
<b>Related to:</b> GO-PER-308.02 [Nuisances, Incidentals, Defects and PD-Form 61-D (Violation Citation)] GO-PCA-502.06 (Citation Release Program) GO-PCA-503.03 (List of Bonds and Collateral Applicable in the Superior Court of the District of Columbia) SOP-05-02 [PD-Form 61-D (Violation Citation)]
<b>Rescinds:</b> TT-05-011-15 (Post-Arrest Clarification Act of 2014), Issued May 4, 2015

## I. PURPOSE

The United States Attorney's Office for the District of Columbia (USAO) and the Office of the Attorney General for the District of Columbia (OAG) have each reviewed the Orders of the Chief Judge of the Superior Court issued on March 15 and 16, 2020, restricting operations in light of the Coronavirus 2019 (COVID-19) pandemic and declaring pursuant to DC Code § 23-584(c)(1) that "this condition significantly impairs the functioning of the Superior Court of the District of Columbia." Recognizing the extraordinary and unusual circumstances described in those orders, in the President's declaration of a National Emergency, and in the Mayor's declaration of a Public Health Emergency, the USAO and OAG have exercised their authority under DC Code § 23-584(c) to categorically approve the citation release of arrestees consistent with the following updated criteria during the COVID-19 emergency. The purpose of this order is to issue the updated criteria for citation release and to remind members of the criteria for post-arrest release options including "post and forfeit" (also referred to as "elect-to-forfeit").

## II. PROCEDURES

A. Members **shall not** charge arrestees bond or collateral in any amount in order to ensure their appearance in court. Bonds may only be issued by a judge as part of a warrant or court order.

B. Arrest Release Options

The three potential outcomes of an arrest, whether a custodial arrest or non-custodial arrest (i.e., 61-D), are lock-up, citation release, or post and forfeit. For an arrestee to be eligible for either citation release or for post and forfeit:

1. The **arrestee** must meet certain, specified criteria; **and**
2. The **arrest charge** must meet certain, specified criteria.

Attachment A provides the updated eligibility criteria for citation release.  
Attachment B provides the existing criteria for post and forfeit.

### C. Arrest Release Procedures

1. When a booking member determines that an arrestee is eligible for either: citation release, post and forfeit, or to be released on a bond set by the court, the booking member shall:
  - a. Complete the top portion of the "Notice to Appear in Court or Post and Forfeit" (hereafter called the Form) for the correct police district. Forms are available on the DC Superior Court website
  - b. Review with the arrestee the "Notice to Arrested Persons" (available on the second page of the Form) and advise the arrestee of the following:

<b>Citation Release Arrestees</b>
(1) Signing the Form is not an admission of guilt, only a promise to appear in court.
(2) The arrestee should bring the Form to court.
(3) Failure to appear in court may result in a bench warrant being issued for his or her arrest and a new criminal charge for failure to appear.

<b>Post and Forfeit Arrestees</b>
(1) Advise the arrestee of the amount of money that the arrestee must post and forfeit in order to terminate the criminal case.
(2) The arrestee has the right to choose whether to accept the post and forfeit offer and terminate the criminal case <b>or</b> proceed with the criminal case and a potential adjudication on the merits of the criminal charge.
(3) If the arrestee elects to proceed with the criminal case, he or she will be eligible for a release on citation.
(4) The agreement to resolve the criminal charge using the post and forfeit procedure will be final 90 days after the date the written notice is signed unless, within the 90 day period, the arrestee or the OAG files a motion with the Superior Court to set aside the forfeiture and proceed with the criminal case.
(5) If the arrestee or the OAG does not file a motion to set aside the forfeiture, the resolution of the criminal charge using the post and forfeit will preclude the arrestee from obtaining an adjudication on the merits of the criminal charge.
(6) The resolution of the criminal charge using the post and forfeit procedure is not a conviction of a crime and may not be equated to a criminal conviction, and may not result in the imposition of a sanction, penalty, enhanced sentence, or civil disability by any DC court or agency in a subsequent criminal, civil, or administrative proceeding or administrative action.
(7) Following the resolution of the charge using the post and forfeit procedure, the arrestee will continue to have an arrest record for the charge at issue, unless the arrestee successfully moves in the Superior Court to seal his or her arrest record.

<b>Bench Warrant Arrestees, Bond Set by Judge</b>
(1) The arrestee may pay a bond amount set by a judge in order to be released.
(2) The arrestee will be required to appear in Court on the date and time indicated on the Form.
(3) Failure to appear in court will result in a new bench warrant, and may result in a new criminal charge for Failure to Appear and forfeiture of the bond amount.

<b>Bench Warrant Arrestees for Failing to Appear for DC Superior Court Jury Service, Bond Set by Judge</b>
(1) The arrestee will be released at this time to report to the Court at the day and time on page 1 of the Form.
(2) Failure to appear in court may result in a bench warrant being issued for his or her arrest and a new criminal charge for failure to appear.

- c. Have the arrestee sign the “Acknowledgement of Receipt of Notice to Arrested Person” on page 1 of the Form and give the arrestee the “Notice to Arrested Person” handout.
  - d. Complete the appropriate section on page one of the Form for citation release, post and forfeit, or court ordered bond and have the arrestee sign as appropriate.
  - e. Make three copies of page one of the Form: the original goes with the arrest package; copies shall be given to the defendant as a receipt; forwarded to the Superior Court if submitting money; and retained in the station for three years.
2. Consistent with current procedures, the Pretrial Services Agency (PSA) shall still be contacted via telephone to obtain information regarding eligibility for citation release. Watch commanders or their designee, the rank of lieutenant or above, shall make the determination whether arrestees are eligible for citation release, and **after** the watch commander authorizes citation release, the processing member shall notify station personnel to enter the citation arraignment date in the records management system (RMS).
  3. Special Circumstances
    - a. Juveniles aged 16 and 17 with a valid driver’s license who are arrested for an eligible traffic offense with no other juvenile charges arising out of the same incident shall be treated as adults for the purpose of determining release eligibility.
    - b. An arrestee for an OAG offense who is currently on probation, parole, or supervised release may be given citation release if he or she has been admitted to a hospital pending initial court appearance, and can appear in court the next court day.

**III. PROVISION**

To the extent the procedures in this executive order conflict with procedures previously issued, the procedures in this executive order shall prevail.

**IV. ATTACHMENTS**

Attachment A: Updated Citation Release Criteria

Attachment B: Post and Forfeit Release Criteria

A handwritten signature in black ink, appearing to read 'Peter Newsham', with a long horizontal flourish extending to the right.

Peter Newsham  
Chief of Police

PN:KDO:MOC

**District of Columbia Superior Court Expansion of Citation Release**  
**Last Updated: March 17, 2020**

The following criteria apply regardless of whether the person was arrested pursuant to an arrest warrant or on probable cause (a “warrantless arrest”). In the event a person was arrested pursuant to an arrest warrant, a law enforcement officer is permitted to perform preliminary police duties, without exercising unreasonable delay, before taking the person before a judicial officer, pursuant to District of Columbia (DC) Code § 23-562(c) and DC Superior Court Criminal Rule 5(a). In light of the Chief Judge’s declaration that during the public health emergency a “high number of custodial arrests” would “significantly impair the functioning of the Superior Court,” the United States Attorney’s Office for the District of Columbia (USAO) and the Office of the Attorney General for the District of Columbia (OAG) believe that making a decision of whether to citation release an arrestee is fully consistent with the law, and in the interest of justice.

The following are changes to citation release criteria to expand eligibility for citation release:

<b>Current Criteria</b>	<b>Modified Criteria</b>
<p>In order to be eligible for citation release, the arrestee:</p> <ol style="list-style-type: none"> <li>1. <del><b>Must</b> be arrested with one or more non-violent misdemeanor charges.</del></li> <li>2. <b>Must not</b> be charged with any of the following:               <ol style="list-style-type: none"> <li>a. A dangerous crime (DC Code § 23-1331(3)) or crime of violence (DC Code § 23-1331(4)).</li> <li>b. Intra-family offenses as defined in DC Code §16-1001 (Domestic Violence).</li> <li>c. Indecent exposure/proposal to a minor.</li> <li>d. Unlawful entry (DC Code § 22-3302) at the White House complex or an embassy.</li> <li>e. <b>Any violation related to firearms or ammunition.</b></li> <li>f. Possession of a destructive device unless the device is a self-defense spray that complies with DC Code §§ 7-2502.12 and 7-2502.13 whether or not the device is registered.</li> </ol> </li> </ol>	<p>In order to be eligible for citation release, the arrestee, whether arrested on a probable cause or warrant arrest:</p> <ol style="list-style-type: none"> <li>1. <b>Must not</b> be charged with any of the following:               <ol style="list-style-type: none"> <li>a. A dangerous crime (DC Code § 23-1331(3)), <b>excluding DC Code § 48-904 except as specified in 1(b)</b>, or a crime of violence (DC Code § 23-1331(4)).</li> <li>b. <b>Distribution (DC Code § 48-904.01 et seq.)</b></li> <li>c. Intra-family offenses as defined in DC Code §16-1001 (Domestic Violence).</li> <li>d. Indecent exposure/proposal to a minor.</li> <li>e. Unlawful entry (DC Code § 22-3302) at the White House complex or an embassy.</li> <li>f. <b>Any firearms violation under Title 22, Chapter 45, felony violations of Title 7, chapter 25, or a violation of an Extreme Risk Protection Order (DC Code §7-2510.11).</b></li> <li>g. Possession of a destructive device unless the device is a self-defense spray that complies with DC Code §§ 7-2502.12 and 7-2502.13 whether or not the device is registered.</li> </ol> </li> </ol>
<p>Arrestees may be eligible for citation release when they have been arrested previously multiple times on the same or different charges.</p> <p>In order to be eligible for citation release, the arrestee must meet the following criteria:</p> <ol style="list-style-type: none"> <li>1. <b>Must</b> be 18 years of age or older.</li> <li>2. <b>Must not</b> be arrested on White House Grounds.</li> </ol>	<p>No change.</p>

Current Criteria	Modified Criteria
<p>An arrestee is <b>not eligible</b> for citation release if he or she:</p> <p>1. Cannot reasonably be identified by MPD by name, to include police department identification (PDID) number (required by Pretrial Services Agency for criminal history determination), or place of residence.  <b>NOTE:</b> Arrestees who are homeless, who reside in homeless shelters or group homes, or who do not reside in the District of Columbia are eligible for citation release.</p>	No change.
<p>2. Cannot conduct a coherent interview (e.g., due to intoxication from alcohol or drugs.)  <b>NOTE:</b> These arrestees shall be transported for medical evaluation and reconsidered for citation release after being medically released by a hospital or after they are considered sober.</p>	No change.
<p><del>3. Inaccurately reports information concerning his or her name.</del></p>	Eligible for citation release.
<p>4. Indicates an intention to flee, or cause harm to any person or property, or otherwise poses a serious risk of flight.  <b>NOTE:</b> This includes defendants charged with offenses related to gang or crew involvement who may seek retaliation.</p>	No change.
<p>5. May be held pursuant to DC Code §23-1322 for one of the following reasons:</p>	
<p>a. Is currently on probation, parole, or supervised release.</p>	Is currently on probation, parole, or supervised release <b>for a felony</b> .
<p>b. Is currently on release in a pending <del>misdemeanor or felony case.</del></p>	Is currently on release in a pending felony case.
<p>c. Is currently on release in a <del>simple assault, domestic violence, or misdemeanor weapons offense.</del></p>	Is currently on release in a domestic violence case.
<p>d. Is currently on release in a misdemeanor case <b>and</b> the defendant's behavior suggests that he or she may be a danger to others.</p>	No change.
<p>e. Is arrested for a traffic offense and is on probation for or has a pending DWI, DUI, OWI, fleeing, reckless driving, or leaving after colliding (with property damage or personal injury) charge.</p>	Is arrested for a traffic offense <b>that has caused significant bodily injury</b> and is on probation for or has a pending DWI, DUI, OWI, fleeing, reckless driving, or leaving after colliding (with property damage or personal injury) charge.
<p><del>f. Has a criminal history that includes a BRA, FTA, or escape conviction within the past two years.</del></p>	Eligible for citation release.
<p>g. Has an outstanding, extraditable warrant from another jurisdiction.</p>	No change.

Current Criteria	Modified Criteria
h. Has a current active warrant in the District of Columbia.	Has an <b>additional</b> current active warrant in the District of Columbia, <b>other than for the offense of the current arrest.</b>
<del>i. Has made a statement that he or she may not appear in response to the citation.</del>	Eligible for citation release.
<del>j. It was determined the arrestee has failed to appear as required on a previous citation or other release mechanism.</del>	Eligible for citation release.
k. Is in violation of a court order (e.g., stay away order).	No change.
<del>6. Is a current GunStat candidate [a current list of active GunStat candidates are searchable in the Washington Area Law Enforcement System (WALES)].</del>	Eligible for citation release.

## POST AND FORFEIT RELEASE CRITERIA

### GENERAL CRITERIA

1. Post and forfeit is available 24 hours a day including when court is in session.
2. Members shall only charge arrestees the authorized forfeit amount that appears on the bond and collateral list [i.e., GO-PCA-503.03 (List of Bonds and Collateral in the Superior Court of the District of Columbia) and relevant teletypes].
3. Arrestees may not be offered post and forfeit unless all of their charges are post and forfeit eligible and the arrestee elects to dispose of all charges through post and forfeit.
4. Arrestees who elect to post and forfeit and who have multiple charges that are eligible for post and forfeit must forfeit the assigned collateral amount for **each** charge.
5. Any offer to permit an arrestee to use post and forfeit expires when the arrestee declines the offer and is given a court appearance date.
6. Non-custodial arrestees (i.e., 61D arrestees) **shall not** be allowed to post and forfeit if they fail to abide by the requirement that they report to the district within 15 calendar days from the date that the field arrest took place to complete the booking process. However, they may still be eligible for citation release if no arrest warrant has been issued pursuant to the 61D.

### CHARGE CRITERIA

In order to be eligible for post and forfeit:

1. The charge **must** be on the approved bond and collateral list. [See GO-PCA-503.03 (List of Bonds and Collateral Applicable in the Superior Court of the District of Columbia.)]
2. The arrestee **must not** be charged with any of the following:
  - a. Impaired driving or boating
  - b. False report to a police officer
  - c. Leaving after colliding
  - d. Object falling or flying from a vehicle
  - e. Misrepresentation of age to purchase alcohol or enter into an Alcoholic Beverage Control (ABC) licensed establishment
  - f. Selling or giving alcohol to a minor or an intoxicated person
  - g. Tax fraud or welfare fraud

### ARRESTEE CRITERIA

Arrestees may be eligible for post and forfeit when they have been arrested previously multiple times on the same or different charges. However, per the Office of the Attorney General, arrestees **shall not** be allowed to post and forfeit if they have elected to forfeit collateral on three previous occasions within the previous 12 months.

In order to be eligible for post and forfeit, the arrestee must meet the following criteria:

1. **Must** be 18 years of age or older.
2. **Must** meet the eligibility criteria for citation release as outlined in this order.
3. **Must not** have an open criminal or delinquency case, including probation.