

# EXECUTIVE ORDER



DISTRICT OF COLUMBIA

<b>Subject:</b> <b>Updates to Non-Custodial Arrest and Post-Arrest Release Procedures</b>
<b>Number</b> <b>EO-22-006</b>
<b>Effective Date</b> <b>May 6, 2022</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) SOP-05-02 [PD-Form 61-D (Violation Citation)]
<b>Rescinds:</b> SO-10-10 ( Processing Arrestees Eligible for Bond, Citation Release and "Elect to Forfeit"), Effective Date August 23, 2010 EO-17-017 (Scheduling Court Dates for Citation Release), Effective June 13, 2017 EO-20-011 (Coronavirus 2019 Modification to Citation Release Criteria), Effective Date March 17, 2020 EO-20-022 [Coronavirus 2019: PD Form 61D (Violation Citation) Extension, Effective Date April 10, 2020

## I. PURPOSE

The Chief Judge of the Superior Court issued an order to terminate the March 16, 2020, order expanding the criteria for citation release. Effective May 10, 2022, the Metropolitan Police Department (MPD) will revert to the criteria used for citation release that were in place prior to the COVID-19 public health emergency. The department is also reverting back to the pre-COVID response timeframe of 15 days for individuals who receive PD Forms 61D (Field Arrest Citations) to appear at a district station to complete the arrest process. This executive order re-issues the criteria for citation release, reminds members of the criteria for "post and forfeit" (also referred to as "elect-to-forfeit"), and provides members with updated instructions for ensuring they schedule the correct court date for arrestees who are released on citation. To the extent the provisions in this order conflict with existing directives, the provisions set forth in this executive order shall prevail.

## II. PROCEDURES

- A. **Effective May 10, 2022, MPD will revert to the citation release criteria that were in place prior to the COVID-19 public health emergency (Attachment A) and will revert to the pre-COVID response timeframe of 15 days for individuals who receive PD Forms 61D (Field Arrest Citations) to appear at a district station to complete the arrest process after a non-custodial arrest.**
- B. Members are reminded they **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.

C. 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 eligibility criteria for citation release and post and forfeit.

D. Arrest Release Procedures

1. When a booking member determines that an arrestee is eligible for 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 <https://www.dccourts.gov/services/criminal-matters/criminal-forms-and-lists>.
  - 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. The Pretrial Services Agency (PSA) shall 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.
- E. Members shall use the "Master Citation Calendar Dates" specific to the police district **where the arrest occurred** when scheduling citation dates. The "Master Citation Calendar Dates" are available on the District of Columbia Superior Court website <https://www.dccourts.gov/services/criminal-matters/criminal-forms-and-lists>.

**III. ATTACHMENT**

Attachment A: Post-Arrest Release Options Criteria



Robert J. Contee III  
Chief of Police

RJC:KDO:MOC:KDB

**POST-ARREST RELEASE OPTIONS CRITERIA**

<b>CITATION RELEASE</b>		<b>POST AND FORFEIT</b>	
<b>GENERAL CRITERIA</b>			
<ul style="list-style-type: none"> <li>Citation release is available 24 hours a day including when court is in session.</li> </ul>		<ul style="list-style-type: none"> <li>Post and forfeit is available 24 hours a day including when court is in session.</li> <li>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 Applicable in the Superior Court of the District of Columbia) and relevant teletypes].</li> <li>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.</li> <li>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 <b>each</b> charge.</li> <li>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.</li> <li>Non-custodial arrestees (i.e., 61D arrestees) <b>shall not</b> 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.</li> </ul>	
<b>CHARGE CRITERIA</b>			
<p>In order to be eligible for citation release, the arrestee:</p> <ul style="list-style-type: none"> <li><b>Must</b> be arrested with one or more non-violent misdemeanor charges.</li> <li><b>Must not</b> be charged with any of the following:                             <ul style="list-style-type: none"> <li>A dangerous crime (D.C. Code § 23-1331(3)) or crime of violence (D.C. Code § 23-1331(4)).</li> <li>Intra-family offenses as defined in D.C. Code §16-1001 (Domestic Violence).</li> <li>Indecent exposure/proposal to a minor.</li> <li>Unlawful entry (D.C. Code § 22-3302) at the White House complex or an embassy.</li> <li><b>Any violation related to firearms or ammunition.</b></li> <li>Possession of a destructive device unless the device is a self-defense spray that complies with D.C. Code §§ 7-2502.12 and 7-2502.13 whether or not the device is registered.</li> </ul> </li> </ul>		<p>In order to be eligible for post and forfeit:</p> <ul style="list-style-type: none"> <li>The charge <b>must</b> 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.)]</li> <li>The arrestee <b>must not</b> be charged with any of the following:                             <ul style="list-style-type: none"> <li>Impaired driving or boating</li> <li>False report to a police officer</li> <li>Leaving after colliding</li> <li>Object falling or flying from a vehicle</li> <li>Misrepresentation of age to purchase alcohol or enter into an ABC licensed establishment</li> <li>Selling or giving alcohol to a minor or an intoxicated person</li> <li>Tax fraud or welfare fraud</li> </ul> </li> </ul>	
<b>ARRESTEE CRITERIA</b>			
<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> <ul style="list-style-type: none"> <li><b>Must</b> be 18 years of age or older.</li> <li><b>Must not</b> be arrested on White House Grounds.</li> </ul>		<p>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 <b>shall not</b> be allowed to post and forfeit if they have elected to forfeit collateral on three previous occasions within the previous 12 months.</p>	

**CITATION RELEASE**

An arrestee is **not eligible** for citation release if he or she:

- Cannot reasonably be identified by MPD by name, to include PDID number (required by Pretrial Services Agency for criminal history determination), or place of residence).  
NOTE: 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.
- Cannot conduct a coherent interview (e.g., due to intoxication from alcohol or drugs).  
NOTE: 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.
- Inaccurately reports information concerning his or her name.
- Indicates an intention to flee, or cause harm to any person or property, or otherwise poses a serious risk of flight.  
NOTE: This includes defendants charged with offenses related to gang or crew involvement who may seek retaliation.
- May be held pursuant to D.C. Code §23-1322 for one of the following reasons:
  - Is currently on probation, parole, or supervised release.
  - Is currently on release in a pending misdemeanor or felony case.
  - Is currently on release in a simple assault, domestic violence, or misdemeanor weapons offense.
  - Is currently on release in a misdemeanor case and the defendant's behavior suggests that he or she may be a danger to others.
  - 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.
  - Has a criminal history that includes a BRA, FTA, or escape conviction within the past two years.
  - Has an outstanding extraditable warrant from another jurisdiction.
  - Has a current active warrant in the District of Columbia.
  - Has made a statement that he or she may not appear in response to the citation.
  - It was determined the arrestee has failed to appear as required on a previous citation or other release mechanism.
  - Is in violation of a court order (e.g., stay away order).
- Is a current GunStat candidate.

**POST AND FORFEIT**

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

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