

TAKOMA PARK POLICE DEPARTMENT - GENERAL ORDERS



TITLE: CRIMINAL & CIVIL CITATIONS	NUMBER: 656
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New X Amends Rescinds	General Order 656, dated December 12, 2012
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01 Purpose: To establish a guidelines and procedures for issuance of Maryland Uniform Criminal Citation (DC/CR 45), Maryland Uniform Civil Citation (DC 28), Maryland Uniform Juvenile Civil Citation for Alcohol and Tobacco Offenses (DC 31), and the department’s Warning and Field Investigative Report Form or FIR (TPPD 700-009).

02 Policy: It is departmental policy that an officer, who has grounds to make an arrest for an offense that does not carry a penalty of imprisonment and who determines the defendant meets certain specified criteria, shall issue a Uniform Criminal Citation in lieu of arrest and the defendant shall be released upon his/her signature on the citation. Officers will exercise reasoned judgment in using the civil citations and warnings, and will issue them only when in accord with the criteria noted herein.

03 Procedures for Use of Uniform Criminal Citation (DC/CR 45):

A. The laws of arrest outlined in Maryland Code, Criminal Procedure Article, §§2-202 and 2-203 are fully applicable to the issuance of criminal citations.

B. Only adults will be charged on a criminal citation.

C. Pursuant to Chapter 504, 2012 Laws of Maryland, officers are required to issue a criminal citation for any misdemeanor or local ordinance violation that does not carry a penalty of imprisonment or for which the maximum penalty of imprisonment is 90 days or less.

D. Although the law mandates the issuance of a citation for qualifying offenses, it also requires the defendant to meet certain criteria in order to be released without approval by a court commissioner. Thus, an officer will charge a defendant by citation only if the following criteria are met:

- 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;

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4. The defendant is not subject to arrest for another criminal charge arising out of the same incident; and

5. The defendant complies with all lawful orders by the officer.

E. Qualifying Offenses - The following offenses qualify for charge by criminal citation:

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. Note the following misdemeanor violations of the City Code qualify for charge by citation:

* Section 13.32.010 Bridge weight limits - exceeding maximum safe weight on Maple Avenue and Flower Avenue bridges over Sligo Creek - Class B Offense.

* Section 14.24.010 Panhandling - when and where prohibited - Class C Offense.

* Section 14.24.020 Aggressive panhandling - Class B offense.

3. Possession of marijuana under § 5-601 of the Criminal Law Article, Maryland Code. For possession of marijuana of 10 grams or more. Under 10 grams is currently a civil citation. See section 4, paragraph C. A criminal offense still allows for search incident to arrest.

- Smoking/Consuming Marijuana in Public or in a vehicle is a civil offense.
- No criminal penalties for possession of marijuana paraphernalia when related to use or possession of marijuana.
- Possession of marijuana paraphernalia is now legal, effective February 20, 2016.

G. Exceptions - The following offenses may not be charged by criminal citation:

1. Failure to comply with a peace order under § 3-1508 of the Courts Article.

2. Failure to comply with a protective order under § 4-509 of the Family Law Article.

3. A violation of a condition of pretrial or post-trial release while charged with a sexual crime against a minor under § 5-213.1 of the Criminal Procedure Article.

4. 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.

5. Violation of an out-of-state domestic violence order under § 4-508.1 of the Family Law Article.

6. Abuse or neglect of an animal under § 10-604 of the Criminal Law Article.

H. Forms and Reports:

- 1. Uniform Criminal Citation Form DC/CR 45** - Officers will use the Uniform Criminal Citation form to charge a defendant by citation and will use either:
 - a.** the pre-printed/pre-numbered book provided by the District Court; or
 - b.** in the case of an electronic format, the assigned electronic citation number provided by the District Court.

- 2. Probable Cause Continuation Sheet Form DC/CR 4** - Officers will use the statement of probable cause continuation sheet to complete the probable cause narrative outlining the facts and circumstances substantiating the charge. The Uniform Criminal Citation number will be recorded in the case number block on the continuation sheet.

- 3. Statement of Charges Form DC/CR 2** - A Statement of Charges is used if the defendant does not comply with the “Criteria” specified in Section 03 D of this General Order. If the defendant is charged on a Statement of Charges for an offense that otherwise qualifies for charge by citation, a note should be placed at the end of the statement of probable cause as to why the defendant went before the commissioner instead of being released on citation.

- 4. Criminal Investigation/Incident Report** - In addition to the Uniform Criminal Citation and the probable cause continuation sheet(s), an officer will complete an Incident Report detailing the circumstances of the incident as required by departmental policy. A copy of the report will be forwarded to the State’s Attorney’s office with a copy of the citation.

- 5.** If a defendant to be charged by citation is brought to the station (e.g., to facilitate identity check), a custody log shall be maintained and turned in with the Incident Report.

- 6.** The names and addresses of Victims and Witnesses will be listed on the Incident Report and not on the citation.

- 7.** In every case, copies of the Uniform Criminal Citation and continuation sheet(s) will be given to the defendant upon his/her release.

I. Law Enforcement Reporting - Statistical Data Collection:

- 1.** Beginning January 1, 2013 law enforcement agencies are required to collect the following data on all criminal citations issued:
 - The date, location, and time of citation issuance;
 - The offense charged;
 - The gender of the offender;
 - The date of birth of the offender;
 - The state and, if available, county of residence of the offender;
 - The race or ethnicity (one or the other, but not both) of the offender as (a) Asian, (b) Black, (c) Hispanic, (d) White, or (e) Other.

2. The Governor's Office of Crime Control and Prevention (GOCCP) in partnership with the Maryland State Police is pursuing an automated solution to law enforcement data collection via Delta+, the application that runs RTIX. Beginning January 1, 2013, Delta+ will include a race-based reporting module for criminal citations.

J. Statutory References:

Maryland Code, § 3-1508 of the Courts Article

Maryland Code, § 4-508.1 of the Family Law Article

Maryland Code, § 4-509 of the Family Law Article

Maryland Code, § 4-109(b) of the Criminal Law Article

Maryland Code, § 10-604 of the Criminal Law Article

Maryland Code, § 5-213.1 of the Criminal Procedure Article

04 Procedures for Use of Uniform Civil Citation (DC 28):

A. The Uniform Civil Citation provides a single format on which officers can charge an adult defendant with civil alcohol violations of the Annotated Code of Maryland, Criminal Law Article §§ 10-113 through 10-115 and 10-118, and Education Article 26-103(a)1&2; civil violations of the Montgomery County Code; and municipal infractions of the Takoma Park City Code. It will only be issued to adults (18 years or older).

B. Maryland Code, Criminal Law Article, §§ 10-119 and 10-126 permit a police officer to utilize a civil citation in lieu of making a physical arrest for the foregoing violations. An officer who witnesses an adult violating one of the specified laws may issue the violator a civil citation, and then release the violator. If the officer does not witness the offense, but is given information by a witness or affiant, which would justify the placing of charges, the officer may issue the violator a civil citation and summons the witness or affiant via existing witness summons procedures. (**Note:** If an affidavit is to be used to establish probable cause, the affiant will be instructed to complete TPPD Form # 600-042, Affidavit in Support of Uniform Civil Citation.)

C. Possession of Marijuana Maryland Code, Criminal Law Article, §5-601,

1. A police officer shall issue a civil citation to a person who the police officer has probable cause to believe has committed a violation of § 5-601 of this part involving the use or possession of less than 10 grams of marijuana.

2. (1) A violation of § 5-601 of this part involving the use or possession of less than 10 grams of marijuana is a civil offense.

Note: In Montgomery County the State's Attorney has elected not to prosecute possession of Marijuana **over 10 grams** and prefers officers to write a civil citation. Simple possession of marijuana charges or related paraphernalia charges will not be prosecuted as criminal matters.

However, possession of 10 grams or more is still a criminal offense,

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The policy may not apply when;

- a Before the court date an officer provides SAO with special circumstances why the policy should not be followed, or
 - b.The defendant is charged with other criminal offenses in conjunction with possession of marijuana, or
 - c. The offense is committed on school grounds.
3. Smoking/Consuming Marijuana is Public or in a vehicle is a civil offense.
 4. There is no authority to conduct a search to the issuance of a civil citation.

Note: No criminal penalties for possession of marijuana paraphernalia, when related to use or possession. Possession of marijuana paraphernalia is now legal. Does not give Probable Cause for search.

D. The Uniform Civil Citation will not be issued in any of the following situations:

1. Civil violations which carry a punishment in excess of 3 months imprisonment and/or a fine in excess of \$500.
2. Any juvenile civil or criminal violation.
3. Violations of the Maryland Transportation Article.
4. Parking violations.
5. When a defendant cannot or will not provide satisfactory identification.
6. When an officer has reason to believe that the adult recipient of a civil citation will not appear in court as required.
7. Failure to furnish proof of identification and/or age upon request for an alcohol violation (Maryland Code, Criminal Law Article, § 10-120). This charge is appropriate only when an adult defendant has violated one of the alcohol offenses specified in Section 04B herein and then refuses to provide identification. The offense warrants a criminal citation or physical arrest. In such circumstances, the following procedures will be adhered to:
 - a. The original alcohol offense will be charged on a civil citation.
 - b. The “Must Appear in Court” section of the civil citation will be checked.
 - c. The charge for CR § 10-120 will be placed on a criminal citation (DC/CR45) or, if the issuing officer feels that it is warranted, the officer may elect to arrest the defendant and place the charge on a Statement of Charges.

E. The alcohol violations of the Maryland Code Criminal Law and Education Articles for which a civil citation may be issued are:

* 10-113 (Misrepresentation of age to obtain alcoholic beverage from a licensed seller)

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- * 10-114 (Underage possession of alcoholic beverage)
- * 10-115 (Possession of card or document that falsely identifies age)
- * 10-116 (Obtaining alcoholic beverage for underage consumption)
- * 10-117 (Furnishing alcoholic beverage for or allowing underage consumption)
- * 10-118 (Possession of unregistered keg ; removal or obliteration of keg registration; allowing underage person to consume contents of keg)
- * 26-103 (Drinking or possession of intoxicating beverage on school premises)

F. Municipal Infractions: Article 23 A, § 3 of the Maryland Code empowers a municipality to pass ordinances deemed necessary to protect the health, safety, and welfare of citizens. (For the purposes of this section of the General Order, the word “Officer” shall apply to any designated enforcement officer, including sworn police officers and Nuisance Abatement Officers.) The department’s Nuisance Abatement Officer may issue civil citations for violations of the City’s noise control ordinance and/or animal control regulations. Other City code violations for which civil citations may be issued include Refuse (Chapter 10), Trees and Vegetation (Chapter 12), and Prohibited Panhandling (Chapter 14.24.040). The Takoma Park City Code Section 1.04.120, Municipal Infractions, notes:

1. Issuing Citations.: “The City Manager shall designate enforcement officers who shall have primary responsibility for issuing municipal infraction citations. An enforcement officer may issue a citation for a municipal infraction if the officer:

- a.** Observes a violation of the Takoma Park Code; or
- b.** Receives an affidavit citing the facts of the alleged infraction.”

2. Contents of Citations. “The citation must contain:

- a.** A certification by the officer that the information in the citation is true or that the citation is based on an affidavit.
- b.** The name and address of the person charged.
- c.** A description of the nature of the infraction.
- d.** The location and time that the infraction occurred.
- e.** The amount of the infraction fine assessed.
- f.** The manner, location and time in which the fine may be paid to the City.

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- g.** Notice of the person's right to elect to stand trial for the infraction.
- h.** Notice of the effect of failing to pay the assessed fine or demand a trial within the prescribed time."
- 3.** Serving citations. "The citation shall be served on the person charged by:
 - a.** Personal delivery;
 - b.** Certified mail addressed to the last known address of the person served if the return receipt is returned indicating that the certified mail was received by the recipient;
 - c.** Leaving the citation at the person's residence with a person of suitable age and discretion if the person to be served is an individual; or
 - d.** For real property-related violations, sent by regular first-class mail to the last known address of the person to be served and posted in a conspicuous location on the real property where the infraction occurred or is occurring and, if located in the City, posted at or delivered to the residence or place of business of the person to be notified."
- 4.** Paying a fine: "Within 20 days of service of the citation, a person charged in a citation may pay the fine to the City Finance Office."
- 5.** Election to stand trial: "Instead of paying the fine, a person charged in a citation may notify the City in writing of the person's intent to stand trial for the infraction. The written notice of election to stand trial must be given within 15 days after service of the citation."
- 6.** Completion of civil citations for municipal infractions:
 - a.** Complete all appropriate sections, making sure that the Takoma Park case number is indicated at the top of the citation.
 - b.** There can be only one charge per infraction. Officers should cross reference infractions, in the area marked Related Citations, when more than one infraction is written to the same defendant or incident.
 - c.** The infraction shall contain the wording for the charge and include all the elements of the violation.
 - d.** Officers shall place "Takoma Park Code" in the area marked Document/Article and shall fill in the Section, Subsection, and Paragraph areas with the specific infraction.
 - e.** Officers shall fill out the Municipal Infractions box and cross out the Civil/Code Violations box at the bottom of the form.
 - f.** Officers shall fill in the amount of the fine and shall set the payment date at least 20 days after the infraction is served. Officers shall allow additional time if the infraction is mailed.

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g. The location for payment shall be “Finance, 7500 Maple Avenue, Takoma Park, Maryland.”

h. Officers shall place “Takoma Park Police 7500 Maple Avenue, Takoma Park, Maryland 20912”, in the area marked “If you elect to stand trial...” The election to stand trial date is 5 days prior to the payment date set forth in the infraction.

i. If Officers are seeking abatement, they shall place an **X** in the box marked “In addition...”, and shall fill in “The City of Takoma Park” on the line provided.

j. The defendants signature shall be requested on the line provided but is not necessary. Officers shall write “Refused” if the defendant refuses to sign.

k. Officers shall sign and date the infraction and complete the blocks for Agency, Subagency, ID number and Phone number. The officer shall give the defendant their copy of the infraction and advise them that instructions and directions for paying the fine or requesting a court date are on the back of their copy.

l. If there are witnesses to the incident, they must be summonsed on the back of the court copy of the infraction.

7. Officers shall complete a Crime Report when they charge someone via a Municipal Infraction. The report shall detail all the facts and circumstances surrounding the incident. Officers shall complete the synopsis section on the reverse of the “Prosecutor’s Copy.” The infraction, minus the officer and defendant copies, shall be forwarded to Administrative services.

G. Civil Citation Distribution:

- * White = District Court
- *Green = State’s Attorney
- *Yellow = Defendant
- * Pink = Municipality (City Attorney)
- * Gold = Administrative Services

H. Administrative Services Responsibilities: Administrative Services shall ensure that all court and Prosecutor’s copies of citations and witness summons requests are forwarded to the City Attorney in cases of municipal infractions.

05 Procedures for Use of Juvenile Civil Citation for Alcohol and Tobacco Offenses (DC 31):

A. Civil alcohol and tobacco violations of the Criminal Law and the Education Article are the only charges that may be placed against a juvenile via a citation, i.e., violations of annotated Code of Maryland CR §§ 10-108 (Possession of Tobacco Product), 10-113 to 115, and Education Article § 26-103 (alcohol violations - refer to Section 04 D herein).

B. Completion of Juvenile Civil Citation (Refer to General Order 801, Juvenile Civil Citation - Alcohol and Tobacco).

06 Procedures for Use of Warning and Field Investigative Report, or FIR (TPPD Form 700-009):

A. The FIR may be used for documenting traffic warnings, parking warnings, and field interviews, including posting subjects for trespassing. The form itself is, for the most part, self-explanatory and descriptive codes to be used therein are denoted on the inside cover of the form booklet. Any additional subject descriptive information and/or cautionary statements will be recorded on the reverse side of the white and pink copies (but not the yellow subject's copy) of the TPPD Form 700-009.

B. There is a space provided for companion citation #s (either companion traffic citations, parking violations, or additional companion FIRs). There also are check-off boxes to record if adequate identification was displayed and to indicate if a photograph was taken.

C. If photographs are taken, they should include full facial, tattoos, groups and/or vehicles, if possible. If a photograph is refused, the word "Refused" should be written under "Photograph" on the front side of the form.

D. It is the responsibility of the Sergeant to ensure his/her squad members complete and turn in all FIRs before the end of their tour of duty. When turning them in, the FIRs will be placed in the box marked "FI" in the administrative hallway. All photographs will be entered into the computer on the "P" drive under the folder marked "FI Upload Photo." There is a cord marked "Do Not Remove" near the computer in the administrative hallway for uploading photographs from an officer's camera. The file name of the photograph shall be the FIR number in the top right hand corner of the form. The photographs will be uploaded regularly by the Crime Analyst to correspond with each FIR turned in.

E. The purpose of FIRs is to accumulate tangible and valuable intelligence in a single database. The database is law enforcement sensitive. It is not to be shared with any non-law enforcement personnel and is not to be used as probable cause nor referred to in any judicial proceeding.

F. Hard copies of FIRs will be maintained in the CID and can be obtained and photocopied, as needed, to aid in the investigative process. The hard copies may be shared with other law enforcement personnel and/or the State's Attorney's Office.

07. This General Order cancels the previous General Order 656 dated December 12, 2012 and Special Order 2012-003, dated effective January 01, 2012, Criminal citations for Qualifying Offenses.