



Lexington Police Department

Lexington, Kentucky

GENERAL ORDER

BY THE AUTHORITY OF THE CHIEF OF POLICE

G.O. 1978-01F Legal Process

Rescinds: GO 1978-01E

References: CALEA Chapter(s)

Effective Date: 03/24/16

Distribution Code: B | All Department Employees

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I. PURPOSE

The purpose of this policy is to establish the procedure for the procurement and service of process issued by the courts.

II. POLICY

It shall be the policy of the Lexington Police Department to obtain and serve process issued by the courts in a professional manner.

III. PROCEDURE FOR OBTAINING AND HANDLING LEGAL PROCESS AND CONTACT WITH JUDGES

A. Application by Officers for Warrants and Court Orders

1. Application by officers for warrants and/or court orders shall be initiated by filing a sworn complaint/affidavit with the District Court Clerk's office for the issuance of process in person or electronically. The office is in operation on a twenty-four hour basis for this purpose.

a. Any officer who prepares a search warrant affidavit may contact the offices for the District Court judges at District Court on Monday through Friday between 9:00 a.m. and 5:00 p.m. to request the issuance of a search warrant.

b. Unless an emergency exists, the process and complaint will be placed in the computer on a deactivated basis until such time as the complaint is reviewed by a District Judge and the decision is made to issue process. Information and computer record entry of information pertaining to legal process shall be maintained by the District Court Clerk. Once process has been issued, it shall be made available to the officer for service, twenty-four hours a day. Verification of the existence of a warrant shall also be available twenty-four hours a day.

c. Officers needing to obtain emergency legal process shall obtain supervisory approval prior to contacting the court. Supervisors shall review all affidavits for arrest or search warrants prior to contacting a court clerk. If an emergency exists as defined by this order- or if after 4:30 p.m. or on a Saturday, Sunday or holiday- then the clerk shall contact the duty judge for purposes of issuing process on the emergency situation. In all other instances, the judge shall not be contacted until the following business day at which time the review and determination on the issuance of process is made. Should

the officer desire only the issuance of a summons and a summons appears authorized by the clerk on duty, the clerk shall proceed to then issue appropriate summons for service.

2. The term “emergency” as used in this order is defined as follows:

- a. The crime alleged is serious in nature and there is a serious physical injury involved, or there is a substantial risk of serious physical injury; or
- b. There is a substantial reason to believe the defendant will leave Fayette County and/or the Commonwealth of Kentucky to avoid prosecution; or
- c. In vehicular assault and vehicular manslaughter cases where a serious physical injury or death is involved, alcohol or drug impairment is suspected, and a physician has refused to draw a blood sample for evidence due to the defendant’s resistance; or
- d. If the person is currently hospitalized under emergency detention.

3. In the event the officer and the clerk on duty disagree as to whether or not the process falls within the emergency category, the clerk shall contact the duty judge by phone and afford the officer the opportunity to discuss the case with the judge by phone. The decision reached by the judge contacted shall be final, and no officer shall contact any other District Judge regarding that application.

4. If any officer is denied a warrant or summons by a judge of the District Court, the decision of the judge by whom the matter has been considered is final, and under no circumstances whatsoever shall the same case be presented to any other District Judge, unless it is a new or different case than the one originally presented to the first District Judge. Officers who violate this section may be held in contempt of court.

5. No officer shall go to the judge’s home or location without first contacting the court clerk’s office for instructions; and no citizen shall be given the home address, location or phone number of any duty judge without permission of the judge.

6. When officers call Pretrial Services to obtain the name and address of the on-call duty judge for the review of warrants or search warrants, the officer will be required to give his or her name and employee number.

7. If an officer obtains permission to go to the duty judge’s home to have legal process signed, the officer shall notify E911 when the officer has arrived at the judge’s residence. E911 will notify the court clerk’s office. The court clerk’s office will contact the judge and advise him or her of the officer’s arrival. Officers may contact the clerk’s office directly, but only after arriving at the judge’s residence.

8. Under no circumstances will “John Doe” warrants be issued. The following information must be provided by the officer seeking the warrant:

- a. Name

- b. Sex
- c. Race
- d. Age (approximate)

9. Although not a prerequisite, the following information shall also be provided if known by the applicant:

- a. Defendant's address
- b. Date of Birth
- c. Height (approximate)
- d. Weight (approximate)
- e. Place of Employment

f. No officer shall take any person into custody with the intention of obtaining a warrant, or prior to confirming the existence of a warrant on file. The duty judge may refuse to issue a warrant when the matter is presented for consideration.

10. Warrants shall not be issued based on information obtained solely on license plate registration.

NOTE: Refer to G.O. series 2016-02 Search Warrants for additional information regarding search warrants.

B. Circuit Court Warrants

1. The need to obtain a warrant from the Circuit Court after normal business hours shall be based upon the exigency of the circumstances. The decision to attempt to obtain this process shall be made by the Duty Commander. In most instances, the process sought will be for probation or parole violation since the substantive offense itself results from an indictment and subsequent warrant from the Grand Jury.

2. If time permits, the Assistant Commonwealth's Attorney on call shall be notified and his or her assistance sought in obtaining the process. If time is of the essence, the Duty Commander or his or her designee shall comply with the following:

- a. Contact the suspect's probation or parole officer and ask that a request be made, in writing, for the Circuit Judge that sentenced the suspect to revoke the probation or parole and enter such an order along with issuing the necessary warrant.
- b. Contact the appropriate Circuit Judge and explain the need for the process. If the judge concurs, he or she will be able to supply the requesting commander with a criminal clerk's name who will issue the requested warrant.

- c. The probation or parole officer must present the prepared request to the criminal clerk in person. Furthermore, the request must be signed in the presence of the clerk by the probation or parole officer.
- d. After the request is signed and warrant completed, both must be taken to the Circuit Judge. If both are in proper order, the Circuit Judge, upon signing each, will give proper authority for the suspect to be arrested.
- e. If the warrant cannot be immediately served, it shall be placed on file at the court clerk's office at District Court.

C. Holiday Schedule

- 1. The Fayette District Court will observe the official state holiday schedule and no court sessions will be held on these days, but the clerk's office will be open and a duty judge will be available 24 hours for obtaining process. The Fayette District Court will send notice of impending holidays to the department.

IV. SERVING OF SUBPOENAS

Note: Service of subpoenas to the public for criminal and civil process matters is a function of the Fayette County Sheriff's Office.

Note: The use of the term employee, in section IV below, refers to any department sworn officer, safety officer or other civilian employee who is subpoenaed in connection with their official duties.

A. Recording Subpoenas

- 1. The department is responsible for serving subpoenas to employees who are subpoenaed in connection with their official duties.
- 2. When receiving subpoenas directing employees to appear in court, Central Records shall divide, log, and distribute subpoenas according to bureau, sector, unit or other duty assignment.
- 3. Central Records shall issue signature sheets along with the subpoenas which indicate the name of the employee, date of court, and allow for a check-off when returned. Signature records shall be filed in Central Records upon return.

B. Responsibility for Serving Subpoenas

- 1. The shift or unit lieutenant, or his or her designee, shall be responsible for serving subpoenas to employees under their command and making sure the subpoena is signed for and promptly returned to Central Records. The execution section of the front copy (court copy) of the subpoena shall be signed by the officer executing it, as subpoenas shall only be served by sworn officers.
- 2. The court copy of each subpoena shall be returned to Central Records for prompt

forwarding to the proper court clerk. The control sheet shall be maintained until all the attached subpoenas are served and then returned to Central Records. Lieutenants shall appoint a designee to be responsible for serving subpoenas in his or her absence.

C. Subpoenas Received During RDO's and Vacation

1. In the event a subpoena cannot be served at least 24 hours prior to the scheduled court appearance, the unit or shift lieutenant or designee shall note on the subpoena the employee's duty status, whether the employee is due back by the court date, and then return the subpoena to Central Records.

D. Conflicting Subpoenas

1. When an employee receives subpoenas for two separate courts that conflict as to the time and date of court appearance, then the employee shall comply with the following procedure:

- a. The employee shall contact the Court Liaison, in the Public Integrity Unit office, notifying the Court Liaison of the conflicting court appearances.
- b. The employee shall notify the prosecutors involved in both cases and inform them of the conflict.
- c. The involved Commonwealth's and County Attorneys shall resolve the conflict, notify the employee immediately of which court the employee is to appear, and make the appropriate motion in the involved court.
- d. If the employee does not receive a response from the involved attorneys within 12 hours of the court appearance, he or she will notify the Court Liaison that he or she will not be in District Court, and he or she shall appear in Circuit Court in response to the subpoena. The employee shall inform the Court Liaison in which courtroom of Circuit Court he or she will be located. The Court Liaison shall appear in the District Court and advise the County Attorney where the employee is, and that the conflict was not resolved by the attorneys.
- e. If the conflict is in District Court, the same procedure shall apply unless the employee can notify the County Attorney involved and appear in both courts.
- f. If a subpoena is served at a time that is less than 24 hours from the time of the hearings, the employee shall call the Commonwealth's Attorney and/or the County Attorneys involved, who shall attempt to resolve the conflict. The Court Liaison shall also be notified. The Court Liaison shall appear in District Court and advise the County Attorney where the employee is, and that the conflict was not resolved by the attorneys.
- g. As a rule, Circuit Court takes precedence over District Court, and Federal Court takes precedence over Circuit Court.

V. SERVING ARREST WARRANTS AND OTHER PROCESS

A. The service of outstanding arrest warrants, summons, subpoenas and civil process for civilians is the primary responsibility of the Office of the Fayette County Sheriff. The department does not receive, control or dispose of any property acquired through a civil process function. The Sheriff's Office maintains records on the service, or attempted service, and the deputy serving legal process under their purview.

B. Only a sworn officer may make an arrest in obedience to a warrant issued by a court of competent jurisdiction within the Commonwealth of Kentucky.

C. When making an arrest in obedience to a valid warrant, the officer shall list, at a minimum, the issuing court, the warrant number, and the offenses(s) as listed on the warrant in the narrative section of the Uniform Citation.

D. Officers shall follow the listed procedures when confirming warrants:

1. When advised by E911 or MDC of a warrant "hit" (that a subject has a warrant), the officer shall ensure that the person's information is identical to that provided with the hit.

2. If so, the officer shall request a confirmation of the warrant from E911.

3. No enforcement action will occur solely as the result of an MDC hit, with the exception of an eWarrant hit.

4. All warrant confirmations are performed by E911. If the warrant was issued outside of this jurisdiction, E911 confirms the warrant and, if applicable, any extradition order via a teletype confirmation.

5. Upon confirmation, the arresting officer shall request that the warrant, (if it is a paper copy), be faxed to the detention facility.

6. Warrants Held by Sheriff's Deputies:

- a. Fayette County sheriff's deputies sign out warrants for service. These warrants are returned to the Sheriff's Office prior to the end of the deputy's shift.

- b. When department officers apprehend a subject that has an outstanding warrant, they may be informed that the Sheriff's Office is in possession of the warrant. The procedure for this circumstance is:

1. Request that E911 contact the Sheriff's Office so they can contact the deputy and confirm the deputy has physical possession of the warrant.

2. If confirmed, the deputy will be instructed where to meet the arresting officer to deliver the warrant. This meeting will typically occur at the detention facility.

- a. The officer must advise his or her location preference so that it can be relayed to the sheriff's deputy.

3. If an officer must release a detainee due to the inability to confirm a warrant held by a deputy, these circumstances shall be documented and forwarded through the chain of command.

E. Procedures for service of arrest warrants on persons believed to be outside of Fayette County:

1. Officers may request that authorized Central Records personnel send a teletype message to the sheriff of the county in which the subject is located, requesting that an attempt to pick up be made. The teletype shall list the confirmed warrants on file in Fayette County, identify the officer to contact, safety information, and any other data beneficial to assist the sheriff's office.

2. Officers may go out of county to assist the agency attempting to serve the warrant only with the permission of their bureau commander or designee. Officers shall participate in the attempt to pick up only with the permission of the agency they are assisting.

a. KRS 431.007 requires that a law enforcement agency in another county in Kentucky officially request this department's assistance in order for a department officer to have the same powers of arrest in the requesting county as the officer possesses in the officer's own jurisdiction while responding to and for the duration of the matter for which the request was made.

b. A certified peace officer directly employed as a police officer by a Kentucky city, county, or urban-county government and a certified sheriff or deputy sheriff who is officially requested by the department or the Office of the Fayette County Sheriff to assist in any matter within Fayette County shall possess, while responding to and for the duration of the matter for which the request was made, the same powers of arrest in the arresting county as the officer possesses in the county in which he or she is a police officer.

c. Detectives assigned to a federal task force, via their assignments, are granted permission to go out of county.

3. If a law enforcement agency in another county has a person in custody on a Fayette County warrant and requests to transfer the prisoner to the department at the county line, the acceptance of the prisoner must be approved by a supervisor. Requests of this type should be declined under most circumstances. Factors to consider before accepting another county's prisoner are whether the prisoner has a medical condition requiring immediate medical care or has been refused by another county's jail. If the warrant has already been served by the requesting agency, then no transfer can occur.

F. Criminal Summons

1. When an officer determines that an individual has an outstanding summons, the officer is not required to have the summons in the officer's possession in order to serve it (Kentucky Rules of Criminal Procedure [(RCr) 2.10]). In such cases, the officer may serve the summons by issuing a uniform citation containing the following information:

- a. The charges, as listed on the summons
 - b. The assigned court case number
 - c. The date, time and location where the subject has been ordered to appear
2. The officer serving the summons shall check eWarrants to enter the summons as served, if appropriate.
 3. If using an MDC or desktop computer, the officer shall enter the service in eWarrants and print, sign and turn in the summons with the citation. If an MDC or computer is unavailable, the officer shall simply use a paper uniform citation. eWarrants shall be updated as soon as possible, but no later than the end of the officer's tour of duty.

VI. GENERAL PRINCIPLES OF SEARCHES SUBSEQUENT TO ARREST

A. Search and Seizure

1. Searches without a Warrant

a. Exigent Circumstance Searches

1. Frisk during a temporary detention
2. Search incident to a lawful arrest (see c. below)
3. Search of movable vehicles on probable cause
4. "Hot Pursuit" search
5. Search to protect life or health
6. Search to prevent destruction of evidence

b. Special Circumstance Searches

1. Consent search
2. Impoundment- inventory search of vehicles

Note: Interior vehicle inventory not currently performed by department officers.

c. Search Incident to a Lawful Arrest

1. The officer may search the entire person of the subject and the nearby area from which the subject might be able to obtain a weapon or destructible evidence.
2. If the officer arrests an occupant of a vehicle the officer may search anywhere

in the passenger compartment, including in containers and in the glove compartment, only if one of three possible situations exists:

- a. It is reasonable to believe the vehicle contains evidence of the offense of arrest
- b. With a search warrant
- c. Another exception exists to the warrant requirement. Examples include:
 1. A “Terry Frisk” of a vehicle passenger compartment when an officer has reasonable belief that a weapon might be within.
 2. When the officer has probable cause that evidence of any crime is within.
 3. Any other exception to the warrant requirement for vehicles.

VII. WARRANTS OBTAINED BY CITIZENS

A. When an officer refers a complainant to District Court to obtain a warrant, the following information shall be provided:

1. Criminal complaints will be taken by Fayette County Attorney caseworkers. Citizens wanting to file criminal complaints between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday must call (859) 226-1834, or go to 163 West Short Street to contact a Fayette County caseworker.
2. For after-hours emergencies, citizens may file a criminal complaint with the assistance of a police officer. Emergencies include, but are not limited to, life-threatening situations, domestic violence and/or violent crimes that need immediate attention. Contact should be made with District Court Clerk’s Office, located at 150 North Limestone (859) 246-2228, to make arrangements.
3. To obtain a felony warrant, a police report or a completed copy of “Lexington Police Department Report Information” Form #156 must be presented by the complainant to the Fayette County Attorney caseworker at the time the criminal complaint is filed.
4. To obtain a misdemeanor warrant, the County Attorney’s Office prefers that the complainant obtains a police report and provides a copy of it, or provides a completed copy of a “Lexington Police Department Report Information” Form #156, at the time the complaint is filed.

B. Emergency criminal complaints may be obtained outside the specified times from District Court, but only with the assistance of an officer accompanying the complainant to the District Court building. Officers shall assist citizens in the proper completion of the criminal complaint as needed.