

Arizona Peace Officer Standards and Training

Basic Curriculum Model Lesson Plan

LESSON TITLE: SUMMONSES, SUBPOENAS AND WARRANTS 2.5

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| SUBJECT: | Summons, Subpoenas and Warrants |
| AZ POST DESIGNATION: | 2.5 |
| HOURS: | 4 |
| COURSE CONTENT: | An overview of Arizona laws that pertain to the service and execution of summonses, subpoenas and warrants. |
| PERFORMANCE OBJECTIVES: | Upon completion of this course of instruction, students using notes, handouts and other support materials as references, within the allotted time, will: |
| 2.5.1 | Identify the definitions of the following terms: |
| A. | Complaint. |
| B. | Arrest warrant. |
| C. | Summons. |
| D. | Subpoena. |

DATE FIRST PREPARED: February 2001

PREPARED BY: SME Committee

REVIEWED – **REVISED**: Lt. Harold Brady, SME Co-Chair DATE: July 2002
REVIEWED – **REVISED**: SME Committee DATE: April 2006
REVIEWED – REVISED: Lt. Dave Kelly, ALEA DATE: August 2009
REVIEWED – REVISED: SME Committee DATE: November 2011
REVIEWED – REVISED: SME Committee DATE: August 2019
REVIEWED – **REVISED**: SME Committee DATE: October 2020
REVIEWED – **REVISED**: AZPOST (DocX) DATE: January 2022
REVIEWED – REVISED: DATE:
REVIEWED – REVISED: DATE:
REVIEWED – REVISED: DATE:
AZ POST – APPROVAL: Steve Enteman DATE: August 2019
AZ POST – APPROVAL: Mandy Faust DATE: February 2021
AZ POST – APPROVAL: Lori Wait DATE: January 2022

INSTRUCTOR REFERENCES: Rules of criminal and civil procedure.

CLASS LEVEL: Student

TRAINING AIDS: Instructors should have copies of interim complaints, complaints, summonses, warrants and subpoenas from the teaching jurisdiction for use as overheads during discussion.

<http://www.azleg.gov/ArizonaRevisedStatutes.asp>

INSTRUCTIONAL STRATEGY: Interactive lecture and practical exercises. Instructor should spend some time on the actual completion of appropriate paperwork.

SUCCESS CRITERIA: 70% or higher on a written, multiple-choice examination.

COMPUTER FILE NAME: 2.5 Summonses, Subpoenas and Warrants

DATE RELEASED TO THE SHARE FILE: May 27, 2022

I. INTRODUCTION

- A. Instructor – (self) introduction.
- B. Preview of performance objectives.

II. COMPLAINT**P. O. 2.5.1A**

- A. Definition: A written statement of the essential facts constituting a public offense, made upon oath before a magistrate. A complaint may be either criminal or civil. (Arizona Rules of Criminal Procedure (ARCrP), R 2.3)
 - 1. Filing a complaint is one (1) way to initiate a criminal case against a person.
 - 2. The Arizona Traffic Ticket and Complaint form may serve as the complaint for misdemeanor offenses, including criminal traffic charges. (ARCrP R21b) (ARS 13-3903D)
 - 3. In both felonies and misdemeanors going to the prosecutor for review, the prosecutor will review the facts of the investigation, decide whether to file a complaint and prepare the complaint.
 - 4. All complaints must be based on probable cause. (ARCrP R 2.4)
 - 5. A complaint may be filed whether or not the person is in custody.
- B. Purpose of complaint: To inform the defendant of the specific crime(s) the defendant is charged with committing.
- C. A complaint is filed before a magistrate (judge). (ARCrP R 2.4)
 - 1. It is the duty of the magistrate before issuing a complaint, to find probable cause that the offense was committed by the defendant.
 - 2. The magistrate has the authority to call any witnesses deemed necessary to establish probable cause.
 - 3. In most circumstances, the only testimony taken will be that of a police officer who recites the facts underlying the complaint.
 - 4. If there is no probable cause, the complaint is dismissed.
- D. If the complaint is issued, the magistrate will issue an arrest warrant or a summons. (ARCrP R 3.1a)

III. ARREST WARRANT**P. O. 2.5.1B**

- A. Definition: An order signed by a magistrate, identifying the defendant and commanding the

arrest of the defendant. (ARCrP R3.2)

- B. Purpose: To bring the accused before the court to answer to criminal charges.
- C. When issued: A warrant should be issued when the defendant fails to appear on a summons, if there is reasonable cause to believe that the defendant will fail to appear or if a summons cannot readily be served or delivered. If a warrant is requested or issued, the prosecutor or court shall state the factual basis for the issuance of the warrant. (ARCrP R3.1c, R3.1b)
- D. Requirements: (ARCrP R 3.2a)
 - 1. The warrant shall state the defendant's name or, if unknown, any name or description by which the defendant can be identified with reasonable certainty.
 - 2. The warrant shall be signed by the issuing magistrate.
 - 3. The warrant shall state the offense for which the defendant is being charged and whether the offense is one to which victims' rights provisions apply.
 - 4. The warrant shall command that the accused be brought to the issuing magistrate's court or the nearest or most accessible court in the same county; or the county of arrest if the accused was arrested outside the county where the warrant was issued. (See also ARS 13-3897)
 - 5. If the warrant is bailable, the amount of secured appearance bond shall be stated.
- E. Execution and return of the warrant. (ARCrP, R 3.3)
 - 1. The warrant shall be directed to, and may be executed by, all peace officers in the state. (ARCrP, R3.3a)
 - 2. Executed by the arrest of the defendant. (ARCrP, R 3.3b, ARS 13-3887)
 - a. Officer does not need to have the arrest warrant in hand.
 - b. If the officer does not have the warrant, the officer must inform the defendant of the arrest warrant charges.
 - c. If the defendant requests to see the warrant, the officer must show the warrant to the defendant as soon as practicable.
 - 3. Return of the warrant shall be made to the issuing magistrate or to the magistrate before whom the defendant makes his/her initial appearance. (ARCrP, R 3.3c)

IV. SUMMONS (CRIMINAL)

P. O. 2.5.1C

- A. Definition: An order from the court commanding the named defendant to appear in a court of

law to answer to a criminal charge. (ARCrP, R 3.2b)

B. Preference for Summons: (ARCrP, R 3.1b)

1. A summons is issued when the defendant is not in custody and when the offense charged is bailable.
2. A summons is generally used unless there is a reason to believe that the defendant will not respond to it. If the defendant does not respond, an arrest warrant will be issued.

C. Form.

1. A summons is drafted in the same form as an arrest warrant, except it shall summon the defendant to appear at a stated time and place within thirty (30) days of the filing (rather than arrested and taken to that magistrate). (ARCrP, R 3.2b)
2. At the request of the prosecutor or by court order, the summons shall command the defendant to report to a designated place to be photographed and fingerprinted prior to the defendant's appearance in response to the summons.
3. Failure to report shall result in the defendant's arrest at the time of the defendant's appearance in response to the summons, unless good cause for the failure is shown. In such situations, the magistrate shall direct the defendant to report immediately for such photographing and fingerprinting.
4. On the issuance and service of a summons for a defendant who is charged with a felony offense, a violation of Title 13, Chapter 14, or Title 28, Chapter 4, or a domestic violence offense as defined in A.R.S. §13-3601, the court shall order the defendant to be fingerprinted by the appropriate law enforcement agency. (ARS 41-1750A)

D. Service of summons.

1. May be served personally. It is good practice to ask the person for his/her name and confirm the physical description contained in the attached criminal complaint.
2. Written return of service should be made to the court as quickly as possible.
3. May also be served in the same manner as the summons in a civil action: (ARCrP, R 3.4)
 - a. By leaving a copy at the person's usual place of abode.
 - b. By delivery to an agent authorized to receive service of process.
 - c. By mail (return receipt requested). This is only done in extraordinary circumstances or as authorized by statute.
 - d. When serving a minor under 16, a parent or the person having care and custody

of the minor should also be served. (ARCP, R4) (Arizona Rules of CIVIL Procedure)

V. SUBPOENA**P. O. 2.5.1D**

- A. Definition: An order requiring a person to appear at a designated time and place, usually at a court or attorney's office, to give testimony (at a hearing, trial or deposition) or to provide documents. (ARS 13-4071)
- B. Subpoenas may be signed and issued by:
 - 1. A magistrate, on behalf of the state or the defense.
 - 2. The county attorney, attorney general and municipal prosecutor for witnesses to appear before a grand jury or for witnesses on a complaint, indictment or information that is to be heard or tried.
 - 3. By the clerk of the court in limited circumstances for witnesses for a grand jury.
 - 4. By the clerk for the defendant's witnesses to appear at trial.
- C. Service of a subpoena may be done by any person by any of the following methods: (ARS 13-4072)
 - 1. Personal service – showing the original to the witness personally, informing him/her of its contents and delivering a copy to such witness. Written return of service must be made without delay to the court, stating time and place of service. (ARS 13-4072C)
 - 2. Certified mail – for delivery to the addressee only. Sent registered, return receipt requested. (ARS 13-4072D)
 - 3. First-class mail – if the address is supplied with a certificate of service and a return card. The return card signifies that the addressee received notice to appear in court. (ARS 13-4072E)
 - 4. Law enforcement personnel may receive subpoenas through department channels, in cooperation with the courts.
 - 5. Law enforcement officers are required to serve subpoenas delivered to them for service in their county. Officers should become aware of their individual agency's policy on how such service is done. (ARS 13-4072F)
- D. Refusal to attend, be sworn or testify in a court hearing or trial after being subpoenaed as a witness, can be punished with a criminal charge of contempt of court. Witnesses may also be liable for costs to the court and damages to the party who called the witness to testify.
- E. Objection to a subpoena is usually done through a "Motion to Quash." This is done after good faith efforts to resolve the issue with the party requesting the information proves fruitless.

- F. A subpoena duces tecum (subpoena to “bring with you”) is issued to obtain documentary evidence. Police reports are property belonging to your employer, not you, and so you should report the receipt of the subpoena to your legal advisor or to the prosecuting attorney so that proper objection may be made, if necessary. (ARS 13-4073, 13-2810,13-4074)

VI. CONCLUSION

- A. Review of performance objectives.
- B. Final questions and answers.
- C. Instructor closing comment(s).