



Virginia Department of Corrections

Legal

Operating Procedure 040.1

Litigation

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REVIEW

The Content Owner will review this operating procedure annually and re-write it no later than three years after the effective date.

COMPLIANCE

This operating procedure applies to all units operated by the Virginia Department of Corrections (DOC). Practices and procedures must comply with applicable State and Federal laws and regulations, American Correctional Association (ACA) standards, Prison Rape Elimination Act (PREA) standards, and DOC directives and operating procedures.

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DEFINITIONS

Criminal Conviction - A finding of guilt for a formal criminal charge adjudicated in a Circuit Court, Juvenile and Domestic Relations Court, or General District Court (or equivalent in another state or federal jurisdiction), except for those traffic infractions defined as violations of public order and classified as neither a felony nor a misdemeanor.

Criminal Offense Charge - A formal allegation that a specific person committed an offense defined as either felony or misdemeanor under Code of Virginia Title 18.2 or statutes applicable to the charging jurisdiction.

Moving Traffic Violation - A citation received for any violation of driving laws that occurs while a vehicle is in motion.

Organizational Unit - A DOC unit, such as a correctional facility, Regional Office, Probation and Parole Office, Virginia Correctional Enterprises, Academy for Staff Development, Infrastructure and Environmental Management Unit, Agribusiness Unit, and individual Headquarters units, e.g., Human Resources, Offender Management, Internal Audit.

Organizational Unit Head - The person occupying the highest position in a DOC organizational unit, such as a correctional facility, Regional Office, Probation and Parole Office, Virginia Correctional Enterprises, Academy for Staff Development, Infrastructure and Environmental Management Unit, Agribusiness Unit, and individual Headquarters units, e.g., Human Resources, Offender Management, Internal Audit.

Subpoena - A written order issued by a judicial officer requiring a specified person to appear in a designated Court as a witness or to bring material or documents to the Court or to provide the material or documents to a designated person.

Suit - A civil action or process in a Court for the recovery of a right or claim. This may be in the form of a complaint, motion (such as a motion for judgment), petition (such as a petition for a writ of habeas corpus, mandamus, or petition for an injunction), etc., and may be filed in either a state or federal Court.

Summons - A warning or citation to appear in Court; a written notification signed by the proper officer, to be served on a person, ordering that person to appear on a day specified, to answer to charges, testify as a witness, or other proceeding.

Tort - A negligent or intentional civil wrong other than a breach of contract.

Working Day - Weekdays, Monday through Friday, not counting official state holidays.

Writ - An order issued by a Court for the purpose of compelling a person to do or stop doing something mentioned therein, such as an order of protection.



PURPOSE

This operating procedure establishes actions to be taken by employees and Supervisors when an event occurs that could result in liability to the Department of Corrections (DOC); or when a writ, summons, subpoena, criminal charge, or criminal conviction is received by an agent of the DOC.

PROCEDURE

I. Notifications

A. Employees must notify their Organizational Unit Head immediately upon any of the following:

1. Receipt of a judicial writ, summons, or subpoena related to actions against the DOC or against the employee in matters connected to their official duties. See the *Summons, Subpoenas, Notice of Suit, or Criminal Charges related to Official Duties* section of the operating procedure for additional requirements.
2. Receipt of a charge or conviction of a criminal offense or a moving traffic violation. Notification must be documented using the *Criminal Offense/Moving Traffic Violation Notification 040_F1*.
3. Receipt of charges or the employee is found liable in a civil or disciplinary proceeding to have engaged or attempted to engage in sexual activity by force (overt or implied threats of force, coercion, or if the victim did not consent or was unable to consent). Notification must be documented using the *Criminal Offense/Moving Traffic Violation Notification 040_F1*.
4. Any technical or administrative suspension, censure, or failure to renew any license, certification, or professional membership required as a part of an employee's position.

B. If any of the above are received during non-working hours, employees must notify their Organizational Unit Head the next working day regardless of the employee's leave status.

C. If the affected employee is the Organizational Unit Head, they must immediately notify their Supervisor.

D. Failure to comply with any notifications as required in this operating procedure may be handled as a disciplinary issue under Operating Procedure 135.1, *Standards of Conduct*.

II. DUI-Related Charge or Conviction

A. Pending disposition of the case, employees charged with the following violations under the Code of Virginia (COV) or equivalent charges imposed by other states, are prohibited from operating a state vehicle or state-paid rental vehicle:

1. COV §18.2-266, *Driving motor vehicle, engine, etc., while intoxicated, etc.*
2. COV §18.2-266.1, *Persons under age 21 driving after illegally consuming alcohol; penalty.*
3. COV §18.2-268.3, *Refusal of tests; penalties; procedures.*
4. COV §46.2-341.24, *Driving a commercial motor vehicle while intoxicated, etc.*
5. COV §46.2-341.26:3, *Refusal of tests; issuance of out-of-service orders; disqualification.*
6. COV §46.2-341.31, *Driving commercial motor vehicle with any alcohol in blood.*

B. If no Court ordered or administrative driving restrictions exist, employees charged with violating any of the above code sections will be considered for mileage reimbursement when driving a personal vehicle pending disposition of their case and at the discretion of the Director or designee.

C. Upon conviction of any of the above charges, the employee is prohibited from operating a state vehicle or state-paid rental vehicle until authorized by the Director or designee.



III. Summons, Subpoenas, Notice of Suit, or Criminal Charges Related to Official Duties

- A. When an employee receives a summons or documents related to a suit against the DOC, or against the employee as an agent of the DOC, the employee must immediately notify the Organizational Unit Head who will send (fax, scan and email, hand deliver, etc.) the documents to the Office of the Attorney General (OAG) and the Administrative Compliance Unit on the day of receipt.
- B. When an employee receives a subpoena for records or to appear in Court, the employee must immediately notify the Organizational Unit Head who will send the document to the Administrative Compliance Unit.
- C. Pursuant to COV §2.2-507, *Legal service in civil matters*, the OAG will provide legal services in all civil matters against the DOC and members, agents, and employees thereof in matters connected with their official duties. (5-ACI-1A-23; 4-ACRS-7E-07; 4-APPFS-3D-20; 2-CO-1A-28; 1-CTA-1A-16)
1. If, in the opinion of the OAG, it is impracticable for such legal service to be rendered by that office, a special counsel may be employed for this purpose.
 2. The compensation for such special counsel will be fixed by the OAG and paid from funds appropriated to the DOC.
- D. Pursuant to COV §2.2-2817, *Defense of employees*, defense counsel will be provided to DOC employees for any criminal action taken against DOC employees related to discharge of the employee's official duties. Upon a preliminary finding by the DOC that the employee did not violate any law, ordinance, or regulation, and the employee will not be terminated as a result of such act, defense counsel may be retained. Such counsel must be approved by the OAG and paid by the DOC. This Operating Procedure requires consultation with the Director of Administrative Compliance prior to invocation and application of this statute. (5-ACI-1A-23 4-ACRS-7E-07; 4-APPFS-3D-20; 2-CO-1A-28; 1-CTA-1A-16)
- E. COV §53.1-17, *Defense of Department of Corrections employees*, permits the Director to, in certain cases and with the Governor's approval, pay for an employee's representation in matters connected to the discharge of their official duties, provided the employee is neither convicted nor terminated from employment as a result. This Operating Procedure requires consultation with the Director of Administrative Compliance prior to invocation and application of this statute.

IV. Torts Against the Commonwealth - COV §8.01-195.1 et seq., *Virginia Tort Claims Act***A. Notice of an Event and Investigation of Potential Torts**

1. The DOC must investigate the occurrence of any event for which it may be liable.
2. All information collected during the investigation, including *Incident Reports*, is confidential and must not be disclosed to potential claimants or their attorneys absent a subpoena.
3. Supervisors must make appropriate notifications in accordance with Operating Procedure 038.1, *Reporting Serious or Unusual Incidents*.
4. Notice of the event must be forwarded to the Virginia Department of Treasury, Division of Risk Management (TRS/DRM) within 72 hours of the event.
5. Copies of the notice must also be forwarded to the OAG and to the DOC Office of Risk Management.
6. TRS/DRM and the OAG must be notified whenever an event occurs that results in a serious injury such as the following:
 - a. Fatality
 - b. Paraplegia
 - c. Amputations
 - d. Multiple fractures
 - e. Severe internal injuries
 - f. Severe burns



- g. Severe lacerations
- h. Serious back injury
- i. Brain injury or brain damage prognosis

B. Notice of Claim for Damage

1. Employees of the DOC must not accept notices of claims for damage.
2. All claims must be made by the claimant or claimant's representative must be directed to the Director of TRS/DRM or the OAG in accordance with the Virginia Tort Claims Act; see COV §8.01-195.6, *Notice of claim*.

C. Notice of Litigation Reporting Process for Claims Brought under the Virginia Tort Claims Act

1. When notice of litigation is filed with any DOC organizational unit, the Organizational Unit Head must immediately send the notice to the Administrative Compliance Unit.

V. Confidentiality

- A. Employees must not discuss or disclose confidential information to potential claimants or their attorneys.
- B. Example - John Doe employee seriously injured his back at work. Jane Smith employee witnessed the accident and created an *Incident Report* as a result. A few weeks later, John Doe's attorney submitted a request to both Jane Smith and John Doe for a copy of their *Incident Reports*. Pursuant to this section, both are prohibited from providing their reports and must forward the request to the Director of Administrative Compliance.
- C. Any requests for such information must be referred to the Director of Administrative Compliance.

VI. Liability Protections (5-ACI-1B-17; 4-ACRS-7D-28; 4-APPFS-1C-08; 2-CO-1B-11; 1-CTA-1B-09)

- A. The TRS/DRM administers a risk management plan for public liability that protects the Commonwealth's departments, agencies, institutions, boards, commissions, officers, agents, and employees against liability imposed by law for damages.
- B. The plan provides protection against tort liability, public official's liability, law enforcement liability, medical malpractice, automobile liability, aviation liability, and watercraft liability.

REFERENCES

- COV §2.2-507, *Legal service in civil matters*.
- COV §2.2-2817, *Defense of employees*.
- COV §8.01-195.1 et seq., *Virginia Tort Claims Act*.
- COV §8.01-195.6, *Notice of claim*.
- COV §18.2-266, *Driving motor vehicle, engine, etc., while intoxicated, etc*.
- COV §18.2-266.1, *Persons under age 21 driving after illegally consuming alcohol; penalty*.
- COV §18.2-268.3, *Refusal of tests; penalties; procedures*.
- COV §46.2-341.24, *Driving a commercial motor vehicle while intoxicated, etc*.
- COV §46.2-341.26:3, *Refusal of tests; issuance of out-of-service orders; disqualification*.
- COV §46.2-341.31, *Driving commercial motor vehicle with any alcohol in blood*.
- COV §53.1-17, *Defense of Department of Corrections employees*.
- Operating Procedure 038.1, *Reporting Serious or Unusual Incidents*
- Operating Procedure 135.1, *Standards of Conduct*



ATTACHMENTS

None

FORM CITATIONS

Criminal Offense/Moving Traffic Violation Notification 040_F1

