

## **Magistrate's Basic Duties**

To appreciate the role of a magistrate in the judicial process, it is necessary to understand how magistrates perform their basic duties.

### **To Issue Arrest Warrants**

Before magistrates can issue an arrest warrant in a criminal case, they must use their discretion to decide if there is "probable cause" to issue a process. Probable cause is a reasonable belief, based on facts that would cause a prudent person to feel that the accused committed the offense. To determine probable cause, magistrates must decide that there are facts logically indicating that the accused committed an offense and there must be some basis for determining that the facts are reliable. The facts are obtained from the complaint which consists of sworn statements of a citizen or a law enforcement officer relating to the commission of an alleged offense. These statements are made under oath before a magistrate and the magistrate may require the sworn statements to be reduced to writing and signed. If the magistrate decides that probable cause exists, an arrest warrant will be issued so that the accused may be brought to trial.

### **To Issue Search Warrants**

When magistrates issue a search warrant, they are giving a law enforcement officer authority to conduct a search to aid an official investigation. The officer seeking the search warrant must make a complaint, under oath, stating the purpose of the search to the magistrate. The complaint must be supported by a written affidavit from the officer. In issuing the search warrant, the magistrate must describe the place to be searched, the property or person to be searched, and state that the magistrate has found probable cause to believe that the property or person constitutes evidence of a crime or tends to show that a person has committed a crime.

### **To Admit to Bail or Commit to Jail**

Bail procedures exist to enable an accused to stay out of jail and to insure that the accused will appear for trial. Magistrates decide the terms of bail by examining certain facts about the accused such as the nature and circumstances of the offense charged, whether a firearm is alleged to have been used in the offense, weight of the evidence, character of the accused, the accused's family ties, employment, financial resources, length of residence in the community, involvement in education, and past record. If possible, the magistrate will release the accused on a written promise to appear in court with or without an unsecured bail bond. If, after examination of these facts, magistrates are not reasonably sure that the accused will appear for trial, the magistrates, in their discretion, will require the execution of a bail bond with surety in a reasonable amount and may impose such other conditions deemed reasonably necessary to insure appearance at trial. The monetary sum of the bail bond can be forfeited as a penalty if the accused fails to appear in court or violates any condition of bail.

### **To Issue Warrants and Subpoenas**

In addition to arrest warrants, magistrates also have authority to issue summonses. A summons notifies a person that an action has been brought against him or her and that he or she is required to answer to it at a time and place named in the summons. A summons is normally issued when the individual is charged with a misdemeanor and the magistrate believes that the individual will appear in court on the basis of the written promise to appear on the summons. A subpoena is issued by a magistrate to notify witnesses that they must appear in court and give testimony at a time and court named in the subpoena. Failure to appear may be considered as contempt of court which is punishable by a fine or imprisonment.

### **To Issue Civil Warrants**

Civil cases involve disputes among individuals, corporations, or groups of individuals. The remedy sought normally is to recover money damages or to require a person to complete an agreement or refrain from some activity. Magistrates are authorized by statute to issue civil processes such as civil warrants to collect money owed on unpaid rent; however, most of these matters are handled through the General District Court clerk's office. For further information regarding the issuance of these processes, please

contact that court.

### **To Accept Prepayment for Certain Offenses**

Magistrates are given the authority to accept prepayments for certain traffic and minor misdemeanor violations such as speeding and unlawful swearing and cursing. When prepayment is allowed, the accused may plead guilty, give up the right to a court hearing, and pay an established fine and court cost through the magistrate. Prepayments made to magistrates must be made in person before the magistrates; however, the individual may call the magistrate in advance to determine the exact amount of the prepayment. Prepayments to the magistrate are not accepted in Loudoun County.

### **To Issue Emergency Custody Orders**

Magistrates have the authority to issue emergency custody orders upon a finding of probable cause that a person is mentally ill and in need of hospitalization. This order authorizes law enforcement to take custody of such a person and transport him or her to a mental health worker who then evaluates the mental status of the person. The emergency custody order is valid only for four hours from the time of service.

### **To Issue Civil or Criminal Temporary Mental Detention Orders**

Magistrates, along with other judicial officers, have the authority to issue this type of order upon a finding of probable cause that a person is mentally ill and in need of hospitalization. The criteria for issuance of a mental detention order are stricter for a magistrate than for a judge or special justice. Magistrates must receive information and clinical advice from a person skilled in the diagnosis or treatment of mental illness. The mental health worker often obtains this information through an evaluation conducted pursuant to an emergency custody order. Temporary mental detention orders normally allow the detention of a mentally ill person in a mental facility for a period of forty-eight hours pending a commitment hearing. The forty-eight hour period may be extended for longer periods of time under special situations.

### **To Issue Medical Emergency Temporary Detention Orders**

Persons who refuse medical assistance for serious illnesses or injuries may be required to undergo such assistance upon issuance of this order. Magistrates, as well as judges, may issue these orders after having received testimony from a licensed physician who has attempted to obtain consent from the patient needing medical attention. The magistrate may issue this order upon a probable cause finding that the person needing medical assistance is an adult and is incapable of making an informed decision regarding treatment of a physical or mental disorder. The magistrate also must find that the medical standard of care calls for testing, observation, or treatment of the injury or illness within the next twenty-four hours to prevent death, disability, or a serious irreversible condition. This order allows detention of and medical assistance to, the person for a period of twenty-four hours after service of the order.

### **To Issue Emergency Protective Orders**

A law enforcement officer may request this type of order in domestic violence cases. Magistrates or judges may issue this order if they find reasonable grounds to believe that a person has committed an assault and battery against a family or household member, and that there is probable danger of a further offense. In this order, the magistrate may: prohibit the abuser from committing further acts of assault and battery; grant possession of the residence to the victim to the exclusion of the abuser; and prohibit all contact between the abuser and the victim.

### **To Issue Out of Service Orders**

Magistrates must issue out of service orders upon a finding that a person has operated a commercial motor vehicle while having any measurable amount of alcohol in his or her blood. By issuing this order, the magistrate prohibits the operator from driving a commercial motor vehicle for a period of twenty-four hours