

## **CHAPTER 4 - TRAFFIC CASE PROCEDURES**

### **I. INTRODUCTION**

In Virginia, most traffic offenses are classified as “traffic infractions” rather than as criminal offenses because of the relatively minor nature of most traffic violations. This classification simplifies processing minor offenses and allows the court to focus on the more serious traffic offenses. Many traffic infractions can be prepaid. For those cases, the court appearance can be waived; that is, the defendant may choose to pay his fine and court costs in person or by mail prior to the court date and does not need to appear in court. For more serious traffic offenses, the court appearance may not be waived and prepayment of a fine is not an option.

This section of the manual presents a narrative description of the basic traffic case process. The sections following the narrative description present, in more detail, the major steps in processing a traffic case such as case initiation, pre-trial procedures, court processing, disposition, case closure, and disposition reporting.

Because many of the provisions of Virginia criminal procedure apply to traffic cases as well as other cases, only those provisions unique to traffic cases are contained here. *See* “Criminal Case Procedures” in this manual for criminal procedures applicable to traffic cases.

### **II. NARRATIVE DESCRIPTION**

The traffic case process is initiated when an officer cites a motorist for a traffic violation. For traffic infractions or misdemeanors, the officer will either issue a summons or, if the officer believes the defendant will not appear for trial or if the defendant is arrested for a serious offense, he will take the defendant before a magistrate to obtain an arrest warrant and for bail. If the officer seeks a warrant, the magistrate conducts a probable cause hearing and, if probable cause is found, issues a warrant or summons. If a summons is issued, the defendant is released on his written promise to appear. If a warrant is issued, the defendant can be released on personal recognizance, or is admitted to bail and required to post a bond (secured or unsecured), a cash deposit in lieu of bond with surety, or a guaranteed arrest bond certificate in order to assure his appearance in court; otherwise, he is committed to jail. The court appearance date is usually determined simply by the officer’s next scheduled court day.

After these initial case actions have been completed, the summons or warrant is forwarded to the appropriate district court clerk’s office for case processing. A clerk assigns a case number, indexes the case, and files the case papers by court date.

For prepayable traffic infractions, the defendant may choose to waive trial, enter a guilty plea and pay the fine and court costs prior to his scheduled court date. *See GENERAL DISTRICT COURT MANUAL*, “Fees And Prepayments”. To waive the court appearance and prepay the fine, the defendant may prepay over the Internet, call the clerk or appear in

person in the clerk's office or before a magistrate and request information on the amount of fines and costs to be paid. The clerk or magistrate verifies that the offense allows waiver of court appearance and determines the appropriate fines and costs. The defendant, if present, signs a waiver of court appearance and guilty plea and pays the fines and costs. The clerk or magistrate collects the fines and costs and issues a receipt. If the transaction is handled by mail, the defendant must send the appropriate amount for fines and costs; adult defendants also should include a properly executed waiver of court appearance and guilty plea.

Prior to a court date, the clerk retrieves all of the cases from the file for that court date and prepares the docket. Prepaid cases are entered on the docket with the disposition and fines and costs paid. On the trial day, the case files and the docket are sent to court.

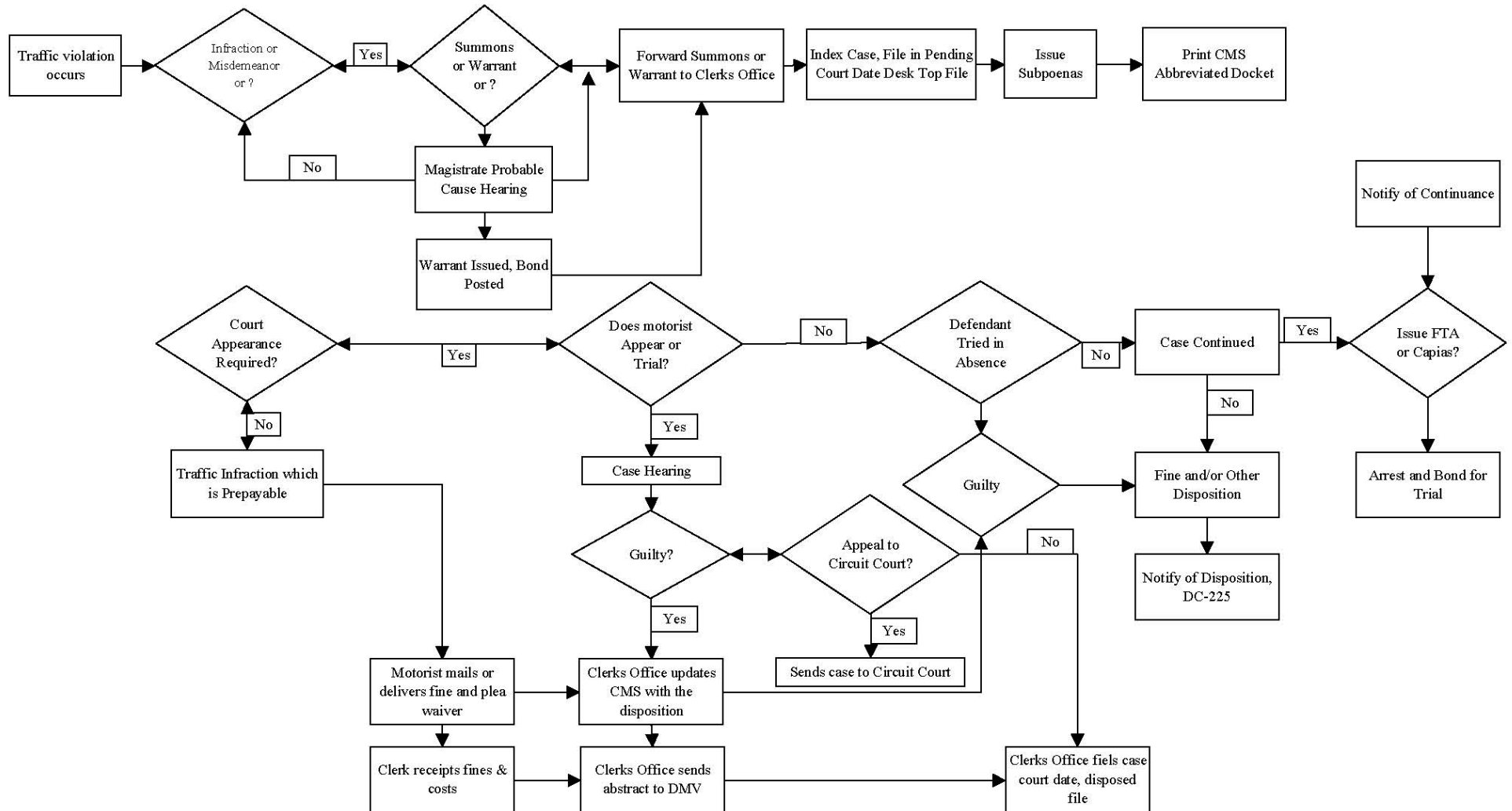
In court, all court actions are recorded in CMS and on the summons or warrant. Those defendants charged with traffic infractions that do not prepay and who fail to appear for court are tried in their absence and a notice of the verdict and the fine and costs imposed is sent to their residence. Those charged with traffic misdemeanors may be tried in their absence at the judge's discretion and the notice is sent to them as above; if there is no trial in absentia, a "failure to appear" warrant, bench warrant, or rule to show cause may be issued. These may also be issued when the defendant is tried *in absentia*.

The obligation for payment of fines and costs to the court accrues upon conviction and is normally due within thirty days of trial, but deferred or the court shall establish installment payment agreements for those unable to make immediate payment. Each district court must accept payment by personal checks, credit cards, debit cards, cash, money orders, or cashier's checks. If a defendant who has posted bond for a prepayable traffic infraction later pays the fine and costs with cash, certified check or money order before trial, the bond is returned; if paid by personal check, the bond is held until trial or until the check clears, whichever occurs first.

The defendant is allowed ten days from the conviction date in which to file an appeal to the circuit court. Upon appeal, the clerk refunds any fines or costs paid to the court, requires the defendant to post bail as set by the court, if any, and transfers the case papers to the circuit court. The case papers may not be transferred to circuit court until the expiration of the ten-day appeal period. If there is no appeal, the record of conviction is transmitted electronically to the [Department of Motor Vehicles](#).

At the end of the month, data concerning the types of cases and dispositions are compiled and a caseload report of monthly court statistics is electronically transmitted to the Office of the Executive Secretary.

III. TRAFFIC CASE PROCESS FLOW CHART



#### **IV. PRE-TRIAL PROCESSING**

##### **A. General Provisions**

Upon receipt of the summons or warrant from the officer or magistrate, the clerk in the traffic court must perform several functions prior to the court date to prepare the case for court. To complete the case indexing and filing functions, the clerk's office will:

- Assign a sequential case number and enter the number and the court date on the summons or warrant (court date usually determined by the arresting officer's next scheduled court date).
- Enter case in the automated system.
- File the case by court date prior to the court date. Staple to the case papers any driver's license seized by the arresting officer and surrendered to the court pursuant to [Va. Code § 46.2-346](#).
- Issue DC-326, [SUBPOENA FOR WITNESSES](#) in cases where an accident occurred and the defendant has returned the DC-217, VIRGINIA PREPAYMENT INFORMATION SHEET, informing the court of his or her intent to plead not guilty.
- Include witness subpoena returns of service, if any. *See, e.g.,* [Va. Code § 19.2-73.2](#).

The clerk's office will normally prepare the docket as follows:

- Retrieve all cases from the files for a given court date.
- Arrange the cases in the order preferred by the court, *e.g.*, by arresting officer, by case number or alphabetically by defendant's name.
- Print docket via CMS.
- Add additional cases to the docket as they come to the clerk's office.
- Distribute and post copies of the docket.

##### **B. Prepayable Offenses That Involve an Accident**

In order to avoid inconveniencing those who will be subpoenaed as witnesses to an accident, it is important to determine, if possible, prior to the date set for hearing the offense whether the person charged intends to plead not guilty thereby requiring the presence of witnesses for a trial. To further this goal, the following procedures are recommended for use when a district court processes prepayable violations that result in accidents.

- Local law enforcement and state police should give any driver involved in an accident, where a summons is being issued for prepayable offenses, a copy of the DC-217, VIRGINIA PREPAYABLE OFFENSES INFORMATION SHEET that includes a check box for the defendant to indicate that he or she intends to plead guilty.
- If there are witnesses to the accident, the law enforcement officers should complete but not issue, a DC-326, [SUBPOENA FOR WITNESSES](#) in triplicate for each witness leaving the court date and signature line blank. The officer should retain one copy of the partially completed subpoenas and attach the original and one copy to the court's copy of the defendant's VIRGINIA UNIFORM SUMMONS. The court should encourage law enforcement officers to consider their evidence and only utilize DC-326, [SUBPOENA FOR WITNESSES](#) in those cases where witnesses are essential to the case.
- When the clerk receives the DC-217, VIRGINIA PREPAYABLE OFFENSES INFORMATION SHEET from the defendant with the block marked indicating that he or she intends to plead not guilty, the clerk's office would then:
  - Retrieve the DC-326, [SUBPOENA FOR WITNESSES](#) form which the officer had attached to the defendant's Virginia Uniform Summons, enter the court date and sign the DC-326, [SUBPOENA FOR WITNESSES](#) form and forward to law enforcement for service on the witnesses; or
  - If there is not sufficient time to allow for reasonable notice by mail to the witnesses, the clerk would reschedule the defendant's case for the next available date of the charging officer, enter the new date on the DC-326, [SUBPOENA FOR WITNESSES](#) and mail it to the witnesses. The clerk would also generate from the Case Management System (CMS) a DC-346, Notice of New Trial Date that would advise the defendant of the new court date. The clerk would also notify the charging law enforcement officer of the new court date when a continuance is required.
  - On the original court date, if the defendant has not sent in the DC-217, VIRGINIA PREPAYABLE OFFENSES INFORMATION SHEET indicating his intent to appear and plead not guilty, one of the following courses should occur:
    - The defendant has prepaid his charge and the case is completed.
    - The defendant does not appear; the court tries the defendant in his absence based on the law enforcement officer's testimony and evidence.
    - The defendant appears and pleads guilty; the case is tried and concluded.
    - The defendant appears and pleads not guilty.
  - The court should encourage law enforcement officers to set accident cases far enough in the future to allow for the defendant to respond within seven days of receiving the VIRGINIA UNIFORM SUMMONS regarding his intent to enter a plea of not guilty and also to provide sufficient time for the clerk to complete and mail the DC-326, [SUBPOENA FOR WITNESSES](#) and give the witnesses

adequate notice of the court date. It is suggested that thirty days should be sufficient time to accommodate these actions.

**C. Dismissal by Compliance with Law Prior To Trial**

1. General

A defendant may avoid being convicted of failing to carry a vehicle registration card, an operator's license, a chauffeur's license, or a learner's permit by presenting a proper license or permit or registration card duly issued to him to the court prior to the time of demand.

Having satisfied this condition, the motorist then will be deemed to have complied with the law and the case should be dismissed upon its appearance on the docket and upon payment of court costs. [Va. Code § 46.2-104](#)

Also, if a defendant is charged with a violation of [§ 46.2-1158](#), he/she may avoid being convicted by presenting proper documentation to the court prior to the court date and paying applicable court costs. [Va. Code § 46.2-1158.02](#).

Further, if a defendant is charged with a violation for failure to notify DMV of change of address, [Va. Code §46.324](#); to register title, [Va. Code §46.2-613](#); to pay local licensing fees or taxes, [Va. Code §46.2-752](#); to have certain safety equipment or having unsafe or defective equipment, [Va. Code §§ 46.2-1000, 46.2-1003](#); for improper tinting, [Va. Code §§ 46.2-1052, 46.2-1053](#); and for improper display of license plates, [Va. Code §§ 46.2-711, 46.2-715, 46.2-716](#), the court may, in its discretion, dismiss the violation, if the person can prove compliance with the law *after the traffic summons was issued* and payment of court costs.

**COMMENT:** Proof of compliance can be complicated; the court may decide to have cases for these violations appear on the docket for trial.

2. Procedure

The presentation of the license, permit, registration card, or documentation relating to inspection violations to the clerk should be recorded in writing for verification by the court; also the required court costs must be received. While no statutory procedure has been specified, it is recommended that:

- The clerk have the defendant hand the defendant's copy of the VIRGINIA UNIFORM SUMMONS together with the license, permit or registration card to minimize the amount of forms preparation needed. If the defendant does not have his copy of the summons *and* appears before the clerk, the clerk should locate the court's copy in the case files.

- Either the district court form DC-216, COMPLIANCE WITH LAW CERTIFICATE or a photocopy of the permit is attached to the case papers.
- If payment for court costs is tendered, collect and record the costs and issue a receipt. *See the DISTRICT COURT FINANCIAL MANAGEMENT SYSTEM USER'S GUIDE* for financial procedures.
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Do not use this procedure if a copy of the summons (either the defendant's or court) is not available for verification purposes.

**D. Administrative Impoundment of a Motor Vehicle When Charged With Second/Subsequent Offense of § 46.2-300**

Information regarding impoundments when a person whose driver's license has been suspended for an alcohol-related conviction can be found in the chapter titled DUI Case Processing and Restricted Driver's Licenses.

A motor vehicle being driven by any person charged with a second or subsequent offense of driving without an operator's license in violation of [Va. Code § 46.2-300](#) shall be impounded or immobilized upon the driver's arrest. The impoundment or immobilization for a violation of the offense described above shall be until the offender obtains a valid operator's license pursuant to [Va. Code § 46.2-300](#) or three days, whichever is less. The provisions of this section as to the offense described in clause (iv) of subsection A shall not apply to a person who drives a motor vehicle with no operator's license (i) whose license has been expired for less than one year prior to the offense or (ii) who is under 18 years of age at the time of the offense. [Va. Code § 46.2-301.1](#).

The arresting officer shall serve a NOTICE OF VEHICLE IMPOUNDMENT/IMMOBILIZATION upon the driver. A copy of this notice shall be delivered to the magistrate and forwarded promptly by the magistrate to the clerk of the general district court in the locality where the arrest was made. Unlike an administrative license suspension, administrative impoundments are always processed through the general district court. Administrative impoundments are processed as civil proceedings. Normally, the clerk provides the offender with information on the location of the motor vehicle and when the vehicle will be released; however, for a violation of clause (iv), such information shall be provided at the time of arrest.

The following procedures are recommended when processing an administrative impoundment:

**Step 1** The clerk receives the NOTICE OF VEHICLE IMPOUNDMENT, which may be attached to the VIRGINIA UNIFORM SUMMONS, WARRANT OF ARREST or SUMMONS for the arresting charge.

Care must be given when receiving traffic charges, as this notice may be attached to arresting case(s). This should be separated from the traffic cases and processed as a civil case. It is suggested that a *copy* of the NOTICE OF VEHICLE IMPOUNDMENT be attached to the underlying charge.

**Step 2** The case is numbered and entered into the CIVIL division, **V**, for civil case, case type **IM** for impoundment.

Plaintiff: Commonwealth/Locality

Defendant: Driver

Vehicles are impounded/immobilized for three days or until the offender obtains a valid operator's license, whichever is less. Prior to release of the vehicle, the offender/driver shall pay all costs of the impoundment.

**Step 3** Hearing date and time: same as filing date.  
Finalize case immediately using code **O** for disposition.

**Step 4** Any driver owner may file a DC-499, MOTION AND ORDER FOR RELEASE OF VEHICLE. An owner or co-owner, who was not the driver at the time, may also file. This asks the court to review the impoundment.

There are no fees for filing this motion. By statute, the court must review the motion within the same time period as the court hears a bond appeal or bond hearing, and must give precedence over all other matters on the docket.

This is entered as a subsequent action using the original impoundment number. It will need to be manually entered on the Civil Case Entry Screen with the appropriate subsequent number.

Case type: **OT**

Plaintiff: Commonwealth

Defendant: Name of offender

Hearing type: **MO**

Once the Court has signed order, close the case with an **O** for both hearing and case disposition.

Remarks-outcome of hearing: motion granted, vehicle released and notice of release given to petitioner; or motion denied.

If motion granted, the vehicle shall be immediately released.



**Step 4 (cont'd)** If motion granted, the petitioner should be given a copy of the completed DC-499, MOTION AND ORDER FOR RELEASE OF VEHICLE to take to the garage/storage facility.

The clerk will submit a DC-40 to OES for reimbursement of expenses incurred only if the Court makes a no probable cause finding at the hearing. The following documentation **MUST** accompany the DC-40, LIST OF ALLOWANCES: a bill from the storage company OR a receipt from the person who incurred the costs of the impoundment AND a copy of the DC-499, MOTION AND ORDER FOR RELEASE OF VEHICLE with the “no probable cause for arrest or warrant” checked.

If the person requesting the motion to review fails to appear, his right of review shall be waived.

**Step 5 IF THE CHARGE IS DISMISSED OR ACCUSED IS ACQUITTED:**

The vehicle shall be immediately released and Commonwealth shall pay/or reimburse the individual for all reasonable costs of impoundment, including removal or storage costs.

The clerk will submit a DC-40, LIST OF ALLOWANCES to OES for reimbursement of expenses incurred. The following documentation **MUST** accompany the DC-40, LIST OF ALLOWANCES: a bill from the storage company OR a receipt from the person who incurred the costs of the impoundment AND a copy of the underlying charge reflecting dismissal or acquittal.

**NOTE:** Under this code section, steps 5 and 6 are the only situations in which there is statutory authorization for reimbursement by the Commonwealth.

**Step 6** To **appeal** the decision of the court on a motion for release of vehicle, the petitioner should fill out DC-475, NOTICE OF APPEAL - CIVIL. A DC-460, CIVIL APPEAL BOND is required within thirty days of judgment, and circuit court appellate costs required to perfect the appeal.

**NOTE:** Once perfected, no statutory authority for withdrawal in district Court.

For further information on processing the appeal, *see* “Appeals” appendix.

## **V. PREPAYMENT OF FINES AND COURT COSTS**

A major function performed by clerks or magistrates prior to trial of a case is the collection and recording of prepayments. The Supreme Court designates by rule the traffic infractions

for which a pre-trial waiver of appearance, plea of guilty, and fine/costs payment can be accepted. The prepayable offenses are listed in the [Rules of Supreme Court](#), Rule 3B:2, the UNIFORM FINE SCHEDULE.

**A. In Person or By Telephone**

Upon receiving an inquiry about the waiver of trial and prepayment or receipt of a completed waiver and prepayment either in person or by telephone, the clerk or magistrate will:

- Determine the proper jurisdiction (court type and locality where case will be tried) from the warrant or summons.
- Determine whether the defendant is an adult or a juvenile. Adults may prepay any traffic infraction listed in Rule 3B:2 of the [Rules of Supreme Court](#).
- Determine whether the fine may be prepaid for the offense charged. *See* “Fees And Prepayments” in this manual for a link to prepayable offenses and amounts.
- If the defendant is inquiring in person in the clerk’s office, examine the charge described in defendant’s copy of warrant or summons; if defendant’s copy is not available, examine court copy in case files.
- If the defendant is inquiring by telephone, have defendant read charges on the warrant or summons verbatim, including statutory citations.
- Do not proceed with inquiry if exact description of offense on the warrant or summons is not available.
- If any of the following offenses are charged, the violation is not prepayable and a court appearance is required. Indictable offenses include:
  - Driving while intoxicated
  - Reckless driving
  - Leaving the scene of an accident
  - Driving while driver’s licenses are suspended or revoked
  - Driving without being licensed to drive
- Determine if the case has been tried by ascertaining the return date. If so, advise the defendant of the judgment of the court. If not, continue with this process.
- Instruct the defendant to read the “Waiver of Trial” on the front and the “Notice” section on the back of the defendant’s copy of the VIRGINIA UNIFORM SUMMONS. Then the defendant, if he wishes to plead guilty and prepay, should sign the “Waiver of Trial” section.

- If the defendant's copy is not available, use district court form DC-324, [NOTICE - APPEARANCE, WAIVER AND PLEA](#).
- Written waiver of trial and plea of guilty is not mandatory when payment is tendered ([Va. Code § 19.2-254.1](#)).
- Advise the defendant that payment by personal checks or charge cards is acceptable.
  - The clerk may refuse acceptance of checks or charge cards of individuals (i) convicted of a violation of Chapter 6 ([§ 18.2-168 et seq.](#)) of Title 18.2 in which a check, charge card, or charge card information was used to commit the offense, (ii) who previously tendered to the court a check which was not ultimately honored or a credit card, debit card or charge card.
  - Information which did not ultimately result in payment by the charge card issuer, (iii) if authorization of payment is not given by the bank or credit or debit card issuer, (iv) if the validity of the check or credit or debit card cannot be verified, or (v) if the payee of the check is other than the court.
  - If a personal check or a charge card is not to be accepted, require payment by cash, U.S. Postal Service money order, or cashier's check.

**NOTE:** Court personnel are not liable for any sums that are uncollected due to a returned check or an invalid credit card or debit card payment.

- Determine prepayment deadline.
  - Persons planning to prepay by mail should be told that the prepayment is effective only on the date of receipt by the clerk's office, not the date of mailing by the defendant, and that the defendant assumes the risk in using the mail for delivery.
  - Determine the amount of prepayable fine and costs from the Uniform Fine Schedule (Rule 3B:2 of the Rules of Supreme Court). Advise the defendant that this amount will constitute full payment only if received in the clerk's office prior to trial (to encourage timely prepayment).
- If prepayment is tendered, collect and record the fines and costs and issue a receipt. *See the DISTRICT COURT FINANCIAL MANAGEMENT SYSTEM USER'S GUIDE* for financial procedures. Mail the receipt if the defendant requests mailing.
  - Overpayments (in person)
    - Certified check or money order - Refund by court check is permitted where an overpayment is made by certified check or money order.

- Personal check - Immediate refund not permitted. Refund may be sent only after defendant's personal check clears the bank. However, the defendant should be required to write a check for the correct amount. Third-party checks should not be accepted.
- Underpayment (in person)
  - Partial prepayments should not be accepted. Instead, the defendant should be requested to mail or deliver the proper amount together with the signed guilty plea and waiver of trial before the cut-off date for accepting prepayments.
  - Make credit card or debit card payments only for the correct fine and costs.

**B. By Mail**

- Inquiries concerning prepayments.
  - If prepayable (use same steps for this determination as described above), provide the appropriate information (including cut-off dates) by letter or note.
  - If *not* prepayable, send inquiry back with a pre-printed letter that the offense is not prepayable and that the defendant must appear in court.
- Prepayment by mail - Upon receipt by mail of a prepayment,
  - Determine if prepayment has been sent to the right court. If not, return to sender.
  - Determine if the case has been tried. If so, apply payment to fine and costs imposed by the court (see below). If not, continue to the next step.
  - Apply payment to the prepayable fine and costs.
  - Apply payment to the fine and costs indicated by Rule 3B:2 of the [Rules of Supreme Court](#), UNIFORM FINE SCHEDULE. If there is an overpayment after paying the fine and costs, issue the receipt, and then issue a refund only if the amount paid exceeds the amount due by \$5. Receipt amounts under \$5 to Revenue Code 442. Refunds under \$5 should be issued upon the defendant's request. If payment by the defendant is by personal check, hold the court's refund check until the defendant's payment check clears the bank.
  - All prepayments should pay the account in full. If a partial prepayment is received by the court and time permits, send a notice to the defendant stating the additional amount due and a notation that it must be received by the court date. If time does not permit, attach payment to the summons for trial in absentia. After trial receipt the payment and send a DC-225, NOTICE TO PAY

AND NOTICE OF SUSPENSION FOR FAILURE TO PAY for the balance due. Please ensure that any pre-payments not receipted immediately are kept secure.

- If payment is correct, issue receipt.
- Non-standard prepayments:
  - Guilty plea is not signed but payment is tendered and a copy of the arrest document is included accept as valid prepayment. Tender of prepayment without execution of waiver and plea is deemed by [Va. Code § 19.2-254.1](#) to be an appearance, waiver and plea.
  - Payment is sent, but no arrest document and no guilty plea is signed match payment to summons, allowing a few days to see if the summons is received. If not, return the payment to the sender with a note or letter.
  - Signed guilty plea but no payment is sent return to the sender with a note that prepayment is required to accompany a written plea.
  - Unsigned guilty plea without payment is sent return to the sender with an explanation that the form was returned for lack of payment.

**C. By VIPNET**

Prepayments will be accepted for certain traffic offenses online via the court’s website at [www.courts.state.va.us](http://www.courts.state.va.us). Payments are accepted until 3:30 p.m. (Eastern Time) on the last business day before the court date. **NOTE:** Pre-court payments are deemed a waiver of a court hearing and entry of a guilty plea.

**D. Overweight Vehicles**

The table of liquidated damages in the chapter on “Fees and Prepayments” provides a schedule for determining the amount to be assessed. Liquidated damages may be prepaid along with the fine for an overweight traffic infraction. Almost all overweight violations are charged on a VIRGINIA OVERWEIGHT CITATION, which is processed through the [Virginia Department of Motor Vehicles](#), rather than on a VIRGINIA UNIFORM SUMMONS, which is processed through a general district court.

Contested cases originating on a VIRGINIA OVERWEIGHT CITATION are sent by the [Virginia Department of Motor Vehicles](#) to the general district court for trial as a civil case. See “Civil Case Procedures”.

**E. Bond Return Requests**

A defendant released on bail when charged with having committed a traffic violation may later desire to plead guilty and pay the fine and costs prior to trial. In such

instances, the defendant may wish to obtain cancellation of his bond and a return of the cash or other collateral posted to secure the bond. Magistrates cannot make bond refunds once the bond is accepted. The clerk's office can handle bond refunds in the following manner:

- Determine that the offense is a prepayable traffic infraction.
- Follow prepayment of fine and costs procedures for collection of payment described earlier in this section.
- Return to the defendant the bond posted (hold refunds for prepayments made by personal check until the check has cleared the bank).
- Note guilty plea and prepayment on the summons.

Clerks must not return security for bail when the bond was used to secure the release of the defendant on additional charges that are either not prepaid or are not prepayable.

Refund of bail security upon prepayment of fine and costs with a written or deemed plea is permitted on the theory that the defendant has entered a written appearance through this written or deemed guilty plea (the bond having been given to secure the appearance of the defendant) and the defendant has prepaid the fine, fees and costs established by the Rules of Court.

#### **F. Withdrawal of Guilty Plea**

Three basic situations permit a defendant to withdraw a guilty plea entered prior to trial. Procedures for withdrawal vary with each situation:

1. Procedures for a defendant arrested on a summons and released on a written promise to appear who has prepaid the fine and costs; the clerk's office will:
  - Require the defendant to provide the court with a written statement withdrawing the guilty plea;
  - Refund the fine and costs (hold refunds on personal checks until the check clears);
  - Inform the defendant to appear on his original trial date.
2. For a defendant arrested on a warrant and released on bail who prepaid the fine and costs, the clerk's office will:
  - Require the defendant to provide the court with a written statement withdrawing the guilty plea.

- Require the defendant to post a new bail if the original cash deposit was refunded.
  - Refund the fine and costs. (If prepayment made by personal check, hold refunds until the check clears.)
  - Inform the defendant that he must appear on his original trial date.
3. For a defendant arrested on a summons who did not or was not entitled to sign the promise to appear to secure his release, but was released by executing a written guilty plea and prepaying the fine and costs, the clerk's office will:
- Require the defendant to post bail to ensure his appearance at trial.
  - Follow the procedures listed above for a motorist arrested on a summons.

In all cases, advise the defendant withdrawing a guilty plea that he must appear at trial as originally scheduled. Note that magistrates cannot accept a withdrawal of a guilty plea, but must refer all withdrawal of guilty pleas to the clerk's office of the court where the case is scheduled for trial.

#### **G. Case Disposition**

If prepayment is made, then the disposition section should be marked to show that the case was handled as a prepayment with a guilty plea and finding of guilt. If the summons or warrant charges the defendant with driving a "commercial motor vehicle" as defined in [Va. Code § 46.2-341.4](#) or a "commercial motor vehicle" hauling hazardous materials, then such information should also be noted in the disposition section of the warrant or summons and in the appropriate field in CMS.

#### **H. Bankruptcy**

The court clerk may receive a notice of filing Bankruptcy petition. Notice may also be in the form of a bankruptcy court form notice or the petitioner or the petitioner's counsel may tell the Clerk verbally about the filing. If verbal notice is received, the clerk should require the petitioner to provide a copy of the bankruptcy.

For step-by-step procedures on how Bankruptcy is to be handled, *see* the chapter on "Civil Procedures".

### **VI. TRIAL PROCEDURES**

The discussion of trial procedures to follow includes traffic infractions and some misdemeanors, but does not cover all procedures for traffic cases. To the extent that they do not conflict with traffic procedures, the procedures used in criminal cases are also used in traffic cases. *See* the chapter on "Criminal Case Procedures" in this manual for additional trial procedures.

Traffic offenses are classified generally as either traffic infractions (which are treated as misdemeanors for arrest purposes and most trial procedural purposes, but not for punishment purposes) or as criminal violations (which are tried in the same manner generally as other criminal cases). A defendant charged with a traffic infraction may plead guilty, not guilty, or *nolo contendere* (no contest). In all cases, the burden of proof is beyond a reasonable doubt.

The following additional information about the trial should be noted on the warrant or summons so that the abstract of conviction may be completed properly as required by [Va. Code § 46.2-386](#):

- Was the defendant present or absent at trial?
- What was the defendant’s “right to counsel” status?
  - Waived counsel (includes “certificate of refusal” cases)
  - Represented by privately-retained counsel
  - Represented by public defender
  - Represented by other court-appointed lawyer
  - Not represented and did not waive counsel

**A. Trial in Defendant’s Absence**

**NOTE:** The DC-360, SHOW CAUSE SUMMONS (CRIMINAL), or DC-361, CAPIAS – ATTACHMENT OF THE BODY may not be used to charge offenses of failure to appear for a traffic infraction pursuant to [Va. Code § 19.2-128](#).

1. Traffic Infractions:

A defendant, arrested or summoned for a traffic infraction, may be tried in his/her absence and notified by first class mail of the fine and costs to be paid. An additional fee of \$35 is charged when the defendant is tried *in absentia* for a traffic or criminal offense, unless the trial *in absentia* was by request of the defendant. This fee is not assessed against a defendant who requests trial *in absentia* in writing prior to his court date. A warrant of arrest cannot be issued for the defendant’s failure to appear for trial on a traffic infraction.

2. Traffic Misdemeanors:

For traffic violations punishable as misdemeanors, the judge may choose to try the defendant in his/her absence if there is no potential for a jail sentence, or if the court determines that a jail sentence will not be imposed. Otherwise, either district court DC-312, WARRANT OF ARREST – FELONY or district court form DC-314, WARRANT OF ARREST – MISDEMEANOR (STATE) charging the defendant with failure to appear pursuant to [Va. Code § 19.2-128](#) or a DC-360, SHOW CAUSE SUMMONS (CRIMINAL) or district court form DC-361, CAPIAS charging contempt



for failure to appear may be issued. If a warrant is issued, the arresting officer shall complete DMV's form DI-19, sending a copy to DMV and giving one copy to the clerk. If the defendant cannot be served or fails to appear after this warrant is served, the clerk then completes the court copy of form DI-19 and sends it to DMV, which suspends the defendant's license. If an out-of-state motorist fails to appear, then the arresting officer or the clerk prepares and sends DMV Form DI-437, NOTICE OF FAILURE TO COMPLY WITH CITATION, to DMV. No warrant or show cause summons needs to be issued with this document. If the defendant later appears in court, the clerk notifies DMV of the defendant's appearance in court.

Whenever the defendant is convicted in his absence, the clerk shall mail district court form DC-225, NOTICE TO PAY AND OF SUSPENSION FOR FAILURE TO PAY to the defendant within five business days. Certification of the mailing is required. District court form DC-225 informs the defendant that he was found guilty, indicates the fine and costs, provides information for payment of the fine and costs by check, credit card or debit card and notifies the defendant that his license will be suspended if the fine and costs are not paid within thirty days.

### 3. Parking Violations

Two methods are available for the issuance of a district court form DC-319, SUMMONS for parking violations pursuant to [Va. Code §§ 19.2-76.2](#) and [19.2-76.3](#). One method is to give district court form DC-319, SUMMONS to the local law-enforcement agency for personal service of process; upon service of process, the defendant may be tried whether or not he or she appears at trial. The second method may require multiple issuance of the summons:

- The summons is prepared and a copy is mailed to the defendant.
- If the defendant fails to appear at the trial, another summons is prepared with the new trial date and is served by the sheriff or other authorized process server as set out in [Va. Code § 8.01-296](#) for service of process in civil cases.
- If the defendant fails to appear at trial after service by the sheriff or other authorized process server, another summons may be prepared with a new trial date and served in the manner set out in [Va. Code § 19.2-76](#).

If the case is processed by way of this method, the defendant cannot be charged with contempt unless the defendant was personally served with a summons and failed to appear on the return date contained therein.

## **B. Commercial Motor Vehicles Violations**

If the warrant or summons charges the defendant with driving a "commercial motor vehicle" as defined in [Va. Code § 46.2-341.4](#) or a "commercial motor vehicle" hauling hazardous materials, and the judge finds that such allegations are true, then

such findings are noted on the conviction record as provided in [Va. Code § 46.2-382.1](#) and electronically forwarded to the Department of Motor Vehicles.

**C. Order to Complete Traffic School, Driver Improvement Clinic, or Mature Driver Motor Vehicle Crash Prevention Course**

If the judge orders the defendant to successfully complete a traffic school, a driver improvement clinic, or a mature driver motor vehicle crash prevention course in lieu of a finding of guilt, no fine is imposed but all other costs are charged even though the case will be dismissed without adjudication of guilt. [Va. Code § 16.1-69.48:1](#). If this procedure is used, the warrant or summons should be marked either “Dismissed--traffic school--§ 16.1-69.48:1” or “Dismissed--driver improvement clinic-- § 16.1-69.48:1.” All applicable costs should be assessed at time of deferral.

Commercial driver’s license holders cannot have a charge dismissed by attending a driver improvement clinic, even if the offense is committed while operating a noncommercial motor vehicle.

**D. Suspension of License**

**1. Misdemeanors and Failure to Pay Fine and Costs**

The court may suspend the defendant’s operator’s or commercial driver’s license for misdemeanors where suspension is part of the sentence as permitted by statute. The court may also suspend the license solely for failure to pay fine and costs for traffic or criminal convictions entered. *See* also “Payment Procedures” below.

When the judge suspends or revokes a defendant's operator’s or chauffeur’s license, steps should be taken to ensure that the defendant has adequate legal notice of the suspension or revocation, which is a required element to be proven if the defendant is later prosecuted for driving on a suspended or revoked license. To avoid duplicate suspension by the courts and DMV and to provide adequate documentation of the fact that the defendant received actual notice of the suspension, the following procedures should be followed:

- If the defendant appears at trial and is convicted, the judge should require the defendant to execute district court form DC-210, ACKNOWLEDGMENT OF SUSPENSION OR REVOCATION OF DRIVER’S LICENSE with the judge or clerk and return a copy to the defendant;
- If the defendant is tried *in absentia*, then the clerk must mail a district court form DC-225, NOTICE TO PAY AND NOTICE OF SUSPENSION FOR FAILURE TO PAY to the defendant within five business days of the conviction. This constitutes effective legal notice pursuant to [Va. Code § 46.2-395](#).

- If fines and costs are not paid in full on or before the due date, the operator's license is suspended by court order pursuant to [Va. Code § 46.2-395](#).
    - If the suspension is for thirty days or less, the clerk will hold the license in the file, and return to the defendant once the suspension ends. If the revocation or suspension period exceeds thirty days, the clerk will mark surrendered in Case Management System, and will hold the license for the ten-day appeal period. If no appeal is noted, the clerk will send license to DMV in an envelope marked for destruction. If suspension of any length is appealed within the ten-day time period, the clerk will return the license to the defendant.
    - To suspend the license of a defendant from a reciprocal state in his/her home state for failing to appear at trial, the arresting officer should execute form DI-437, NOTICE OF FAILURE TO COMPLY WITH CITATION (RECIPROCAL STATE MOTORIST), and forward it to DMV.
    - If the defendant comes to the court and enters into an installment plan to pay the outstanding fines and costs, the driver's license must be restored. Procedures for this process are contained in the DUI Case Processing/Restricted Driver's License chapter.
  - In some cases, the court is informed that the driver's license of the defendant has been suspended or revoked in connection with some other case in the trial court or some other court or by DMV administrative action, but that notice of the suspension or revocation has not been properly served on the defendant. In such situations, the Court may require the defendant to execute district court form DC-210, ACKNOWLEDGMENT OF SUSPENSION OR REVOCATION OF DRIVER'S LICENSE with an authenticated copy being sent to DMV.
  - If a defendant is otherwise eligible for a restricted license, he may petition each court that suspended his license for failure to pay fine(s) and costs, for authorization for a restricted license. Upon written verification of employment and for good cause shown, the court may authorize DMV to issue a restricted license for any of the purposes set forth in [Va. Code § 18.2-271.1 \(E\)](#). No restricted license may be issued unless each court, which suspended the defendant's license pursuant to [Va. Code § 46.2-395](#), provides authorization for a restricted license. The restricted license shall not be issued for more than a six-month period, or permit a person to operate a commercial motor vehicle as defined in the Commercial Driver's License Act. ([Va. Code § 46.2-341.1](#) et seq.)
  - Clerk's Procedures for Restricted License under § 46.2-395. *See* Chapter on DUI Case Processing/Restricted Driver's License
2. Suspension of Driver's License for Failure to Pay Child Support

*See* Chapter on DUI Case Processing/Restricted Driver's License.

3. Restricted Driver's License (RDL) Upon a Conviction of Reckless Driving or Aggressive Driving

*See* Chapter on DUI Case Processing/Restricted Driver's License.

#### **E. Overweight Vehicles**

*See* "Miscellaneous Civil Case Processing" for overweight cases originating on a Virginia Overweight Citation.

Upon conviction for an overweight vehicle violation, liquidated damages are assessed for violations of the statutory weight limits except on a first offense involving less than 2500 pounds overweight. The table of liquidated damages, found in the chapter on "Fees and Prepayments," and provides a schedule for determining the amount to be assessed.

If the driver was convicted of refusing to drive the truck either to a permanent weighing station or upon the scales or the wheel load weighers, [Va. Code § 46.2-1137](#), the court may also tax as costs the expenses incurred in getting the truck weighed, including reloading expenses if the load is intentionally dumped.

#### **F. Dismissal by Compliance with Law at Trial**

If the defendant is charged with failing to have a driver's license or vehicle registration card with him/her while driving, the judge may dismiss the case by entering on the summons "complied with law" *if* the defendant produces at trial the missing operator's or chauffeur's license or vehicle registration card, such document bearing an issuance date prior to the arrest.

Also, if a defendant is charged with a violation of § [46.2-1158](#), the judge may dismiss the case by entering on the summons "complied with law" if the defendant produces proof that the correction of vehicle or safety equipment defects or proof of compliance with § [46.2-1158](#) is provided to the court.

- provides proof of compliance with law prior to trial
- pays all required court costs.

#### **G. Local License Violations**

If the defendant is convicted of violating a local license tag ordinance and, by its own terms, the local ordinance requires proof of obtaining a local tag before discharging the violation the defendant should be so notified in court at the time of conviction. *See* "Payment Procedures" above.

## H. Photo Red Light

Summonses issued for photo red light violations may be served by mail pursuant to the [Va. Code § 19.2-76.2](#). However, if the defendant does not appear for trial, the summons must be served by the sheriff or other authorized process server. [Va. Code § 19.2-76.3](#).

No monetary penalty imposed under this section shall exceed \$50. Court costs are not assessed. Any conviction under this section does not become part of the violator's driving record.

The following procedures are recommended when processing a photo enforcement of red light summons:

- Step 1** The clerk receives the paper summons.
- Step 2** Clerk will manually enter case in CMS using "local code cite" and **L** in the bypass field.
- Step 3** If the case has not been prepaid at docket preparation, the clerk prints DC-286, Disposition Order from the addendum docket for all outstanding summonses.
- Step 4** After the hearing, the disposition will be recorded on the DC-286, Disposition Order. The clerk will update CMS as appropriate.  
**NOTE:** If the court enters judgment, update CMS with F and G; however, do not enter the fine. Place the fine in the remarks section. The fine is paid directly to the vendor.
- Step 5** Any finding that an operator has violated an ordinance shall be appealable to the circuit court in a civil proceeding. **NOTE:** Complete the DC370, Notice of Appeal – Criminal. Do not collect writ tax or costs.

[Va. Code § 15.2-968.1](#)

## I. Right to Counsel

See "Criminal Case Procedures – Right to Representation by a Lawyer"

## J. Return of Vehicle - Parking in a Space Reserved for Persons with Disabilities

The owner or agent of a parking space designated as reserved for the use of persons with *disabilities* may have towed any unauthorized vehicle which parks in the space. [Va. Code § 46.2-1246 \(A\)](#). The owner of the vehicle, on notice, may petition the

general district court in the jurisdiction where the parking occurred for the return of the vehicle, and for an immediate determination as to whether the removal of the vehicle was lawful. If the court finds that the towing was unlawful, it may award the costs of removal to the owner of the vehicle, as well as ordering its return.

#### **K. Appeals**

The appeal process for traffic cases is the same as for criminal cases, and the procedures as outlined in the “Appeals” appendix should be followed. In addition, if the defendant, as part of the sentence, surrendered his driver’s license *and* there is *no other* license suspension or revocation in effect which required the defendant to surrender his driver’s license, then the driver’s license is returned upon the noting of the appeal. If the appeal is withdrawn and the driver’s license was suspended originally, have the defendant surrender his driver’s license and execute a new DC-210, ACKNOWLEDGMENT OF SUSPENSION OR REVOCATION OF DRIVER’S LICENSE together with his written notice withdrawing his appeal.

If a defendant prepays the fine and costs on a traffic infraction and then advises the court of a desire to “appeal” prior to the return day, the request should be treated as a request to withdraw a guilty plea and the collected funds refunded, if paid. *See* “Withdrawal of Guilty Plea” in this section of the manual.

The case papers should not be transferred to the circuit court until after the expiration of the ten-day appeal period.

#### **L. Motion to Rehear**

A defendant convicted of a traffic offense may file district court form DC-368, [MOTION TO REOPEN \(CRIMINAL/TRAFFIC\)/MOTION TO REHEAR \(CIVIL\)/MOTION FOR NEW TRIAL \(CIVIL\)](#) in district court, within sixty days of the conviction date. There is no refund of fines or court costs as there is for an appeal. If the motion is granted by the judge, the clerk’s office reopens the case removing all final disposition codes in CMS, inserts the court date, prepares the Notice of Hearing portion of the district court form DC-368, [MOTION TO REOPEN \(CRIMINAL/TRAFFIC\)/MOTION TO REHEAR \(CIVIL\)/MOTION FOR NEW TRIAL \(CIVIL\)](#), and attaches the motion to the original case. If the DC-368, [MOTION TO REOPEN \(CRIMINAL/TRAFFIC\)/MOTION TO REHEAR \(CIVIL\)/MOTION FOR NEW TRIAL \(CIVIL\)](#) is filed after the case has transmitted to DMV, do not remove the suspension unless the court grants the rehearing. Also, it is not necessary to zero out the fine and costs in the individual account. If the unpaid abstract has not transmitted to the Department of Motor Vehicles, update the FMS record with REV in the action field. This will prevent the account from being reported for outside collection action and no notice of license suspension is sent to Department of Motor Vehicles. Once the court has ruled on the Motion to Rehear it will be necessary to remove the **REV** from the action field. [Va. Code § 16.1-133.1](#).

**M. Constitutionality of Statues**

[Va. Code § 16.1-131.1](#)

In any criminal or traffic case in a court not of record, if the court rules that a statute or local ordinance is unconstitutional, it shall upon motion of the Commonwealth or County/City Attorney, stay the proceedings and issue a written statement of its findings of law and relevant facts, if any, in support of its ruling, and shall transmit the case, together with all papers, documents and evidence connected therewith, to the circuit court for a determination of constitutionality. If the Circuit court rules that the statute or local ordinance is constitutional; it shall remand the case to the court not of record for trial.

**CMS UPDATE**

The Clerk should update the case using **F** as hearing result and **TR** as the final disposition. In remarks it is suggested to put “appealed pursuant to Va. Code § 16.1-131.1”. **DO NOT PUT DATE IN THE APPEAL DATE FIELD.** Keep copy of the original summons or warrant. Immediately transfer original to Circuit court along with district court form DC-322, ORDER - TRANSFER OF JURISDICTION.

**VII. PAYMENT PROCEDURES**

A defendant convicted of a traffic violation is normally required to pay the fine and court costs within thirty days. If the defendant is unable to make payment within the thirty days, the court shall place the defendant on a written installment or deferred payment plan using a DC-210, ACKNOWLEDGMENT OF SUSPENSION OR REVOCATION OF DRIVER’S LICENSE. The court shall establish a community service work program to allow discharge of all or part of the fine or costs.

**A. Payment Procedures for Payment within Thirty Days of Sentencing**

For those convicted of traffic offenses who desire to pay fines and costs immediately, or within thirty days of sentencing, the clerk’s office will:

- Determine amount of fine and costs from case papers.
- Collect fines and court costs.
- Prepare and issue a receipt and record payment on appropriate form.
- Deposit and account for money collected. *See DISTRICT COURT FINANCIAL MANAGEMENT SYSTEM USER’S GUIDE* for details.

In addition, for those who desire to pay within thirty days of sentencing but not immediately, notice must be given to the defendant that the privilege to operate a motor vehicle in the Commonwealth will be suspended for failure to pay within thirty



days of sentencing or in accordance with an installment or deferred payment agreement. Such notice may be given:

- at the time of trial by completing Section I of district court form DC-210, ACKNOWLEDGEMENT OF SUSPENSION OR REVOCATION OF DRIVER'S LICENSE and providing a copy of the form including the reverse side, to the defendant;
- by sending of DC-225, NOTICE TO PAY AND NOTICE OF SUSPENSION FOR FAILURE TO PAY by first-class mail, on the date of the sentencing or within five days thereof, to the defendant's current mailing address.

**B. Deferred or Installment Payments or Community Service**

Where the defendant is unable to make payment within thirty days of sentencing, an installment payment plan or deferred payment plan is required. [Va. Code § 19.2-354](#). If the court allows a deferred payment plan, the defendant must pay the fine and court fees and costs in a lump sum by a certain date. In an installment payment plan, the defendant pays a portion of the total of fine and court fees and costs on a periodic basis (*e.g.*, weekly or bi-weekly) until the total is paid. The procedures for establishing and maintaining partial payment agreements require that the clerk's office will:

- Establish an installment or deferred plan if the defendant cannot make a complete payment.
  - If non-payment, the defendant may be required to show cause.
  - If excusable, the defendant may be granted further extension of time for payment.
- Complete district court form DC-210, ACKNOWLEDGMENT OF SUSPENSION OR REVOCATION OF DRIVER'S LICENSE with a payment schedule established by the judge or by the clerk, if the court has authorized the clerk to establish deferred and installment payment plans. [Va. Code § 19.2-354](#).
- Each defendant will receive district court form DC-225, NOTICE TO PAY AND NOTICE OF SUSPENSION FOR FAILURE TO PAY on a delayed or partial payment plan ten days before the due date of his final payment as an early reminder notice.

The court should, pursuant to the policy of the Committee on District Courts, assess a one-time fee of ten dollars to cover the costs of management of the defendant's account, pursuant to [Va. Code § 19.2-354 \(A\)](#) for all agreements to pay exceeding ninety days.

Another option for satisfying the fine and costs is for the defendant to perform community service pursuant to [Va. Code § 19.2-354](#). In placing a defendant into a community service program, the court's records should show:



- the name of the entity for whom the service is to be performed
- the type of service to be performed if specified by the judge.
- the number of hours of service to be performed.
- the hourly rate at which credits will be earned for discharging fines and costs.

When the defendant completes his service, the entity for which the services were performed must report to the court that the defendant has completed his community service and the number of hours worked. Make correct accounting entries. See *District Court Financial Management System User's Guide*. For auditing purposes, the clerk should file the report with the case papers.

### **C. Claims of Inability to Pay Fines and Costs**

If the defendant claims to be unable to pay fines and costs in court, the judge shall:

- Require those not indigent to enter into an installment payment plan. The court may also authorize a deferred payment agreement. The defendant should be advised that failure to pay as required on time and in full may result in:
  - His or her being sentenced to jail for up to sixty days and/or fined up to \$500 and being forced to work in the local work force. [Va. Code §§ 19.2-358 and 53.1-128](#).
  - Suspension of driver's license by court order ([Va. Code § 46.2-395](#)) and suspension of vehicle registration and license plates by DMV ([Va. Code § 46.2-391.1](#)). See "Trial Procedures - Suspension of License" above.
- Require an indigent defendant, as a condition of suspension of sentence, to perform community service work. [Va. Code § 19.2-354](#).
- If a defendant is otherwise eligible for a restricted license, he may petition each court that suspended his license for failure to pay, for authorization for a restricted license. Upon written verification of employment and for good cause shown, the court may authorize DMV to issue a restricted license for any of the purposes set forth in [Va. Code § 18.2-271.1 \(E\)](#). No restricted license may be issued unless each court, which suspended the defendant's license pursuant to [Va. Code § 46.2-395](#), provides authorization for a restricted license. The restricted license shall not be issued for more than a six-month period, or permit a person to operate a commercial motor vehicles as defined in the Commercial Driver's License Act ([Va. Code § 46.2-341.1](#) et seq.)

### **D. Local License Violations - Special Conditions**

Local motor vehicle license ordinances may provide that violations may not be discharged by payment of a fine except upon presentation of satisfactory evidence that the required local license has been obtained. [Va. Code § 46.2-752 \(G\)](#).

However, clerks should accept payments tendered for fines and costs for such violations, even in the absence of proof of obtaining the required local license. Defendants may not have their driver's license suspended solely for failure to obtain the locally required license; a failure or refusal to pay fines and/or costs must also take place. *See Attorney General Opinion to Morrison, dated 11/20/96; General district court clerk must accept fines and costs paid in full by registered vehicle owner convicted of violating ordinance of locality participating in regional compact for cross-jurisdictional enforcement of local motor vehicle licensing requirements, but may not discharge violation until evidence is presented that owner has obtained required license. Suspension of driving privileges of person who has fully paid fines and costs, but has not provided proof of local license purchase, is not penalty court may impose.* If a state trooper charges a defendant with a local license ordinance, fifty percent of the fine is remitted to the Commonwealth.

## **VIII. POST-TRIAL PROCEEDURES**

### **A. Notices to the Department Of Motor Vehicles (DMV)**

The [Department of Motor Vehicles](#), because of its power to revoke, suspend, or restrict motor vehicle registrations or operator's licenses, receives notices from the district court clerk's office concerning traffic cases.

- Convictions are reported to DMV by CMS/DMV interface. The abstract of conviction provides disposition information to DMV on disposed traffic cases.

If there is a finding by the court that the offense involved a "commercial motor vehicle" or a "commercial motor vehicle" hauling hazardous materials or the prepaid offense contains such allegations in the charge portion of the summons, then such information should be included in CMS.

- Amended Abstract of Conviction--Amended abstracts (Form DI-18c) should be sent to DMV to report changes in conviction data.
- Corrected abstracts should be made to report:
  - Correction of errors in the original abstract.
  - Court verdict on rehearing a case after the original abstract has been sent, including changes in the sentence.
- Form DI-437, NOTICE OF FAILURE TO COMPLY WITH CITATION (RECIPROCAL STATE MOTORIST)--*See* "Suspension of License" above. The arresting officer, who may send it to DMV directly or through the clerk's office, completes this form.
- Form DI-19, FAILURE TO APPEAR WARRANT REPORT--The failure to appear warrant report is certified and sent to DMV by the clerk after a failure to appear

warrant remains unserved or the defendant fails to appear after being served with such warrant.

- Form FR-6, Abstract of Civil Judgment --The Abstract of Civil Judgment (not the “Abstract of Conviction”) is used at plaintiff’s request in *civil* automobile accident cases to report unsatisfied judgments to DMV, which will take action against the defendant under the motor vehicle financial responsibility statutes.

Driver’s license reinstatement information is transmitted electronically to the Department of Motor Vehicles via the CMS/DMV interface.

The clerk’s office should advise the defendant to take the receipt and/or form to DMV to obtain reinstatement of his license. The PCR receipt also serves as district court form DC-30 DRIVER’S LICENSE REINSTATEMENT FORM.

#### **B. Unpaid (“Bounced”) Checks or Dishonored Credit Card/Debit Card Payments**

If a check tendered for payment of fines and costs is returned unpaid by the bank or notice is received from the credit card or debit card issuer that payment will not be made on a credit or debit card charge, the following steps are to be taken:

**NOTE:** Following a dishonored check or credit card/debit card charge, payment shall be made by cash, certified check, cashier’s check or money order only.

- Send district court form DC-215, NOTICE OF DISHONORED CHECK OR CREDIT CARD CHARGE, to the defendant to notify him of dishonored payment and to assess penalty of \$50 for the return of the check or unpaid credit card/debit card charge.
- Make correct accounting entries, *See District Financial Management System User’s Guide*.
- If full payment (including the penalty) is received within ten days after notice, treat it in same manner as other payments received after trial.
- If full payment (including the penalty) is *not* received within ten days after notice, DMV will be notified electronically to suspend the defendant’s driver’s license for failure to pay fine and costs.

#### **C. Restoration of Driver’s License upon Entering into an Installment or Deferred Payment Agreement**

A defendant whose driver’s license has been suspended for failure to pay fines and costs may request to enter into a deferred or installment payment agreement in order to have his driver’s license restored. The request should be considered and processed based on the same criteria the court has established for any defendant requesting time to pay in accordance with [Va. Code § 19.2-354](#). If a “time-to-pay” agreement is

approved, both sections of district court form DC-210, ACKNOWLEDGMENT OF SUSPENSION OR REVOCATION OF DRIVER'S LICENSE/PETITION FOR DEFERRED PAYMENT FOR INSTALLMENTS OR DEFERRED OR COMMUNITY SERVICE should be completed. Upon entering into a "time-to-pay" agreement and payment of the reinstatement fee to the [Department of Motor Vehicles](#), the person's license is restored by operation of law. [Va. Code § 46.2-395 \(B\)](#).

**NOTE:** If a check used for prepayment "bounced" and full payment was not made prior to trial date, the judge may have imposed a fine different from the prepayable fine on the UNIFORM FINE SCHEDULE. If the difference between the prepayable fine and the court-imposed fine at trial is not significant, the judge may, in her sole discretion, amend and initial her order so as not to cause an underpayment and cause the defendant's license to be suspended by DMV for failure to fully pay the fine and costs.

If the defendant's unpaid fines and cost account has already been classified as delinquent and referred to the [Department of Taxation](#) or a private collection agent/attorney, the court should notify the collection entity that the defendant has established a payment plan with the court. The collection entity will still be entitled to its commissions for any and all payments receipted by the court, in the same manner as those defendants who elect to pay their debt directly to the court in response to an enforcement action initiated by the collection entity.

Interest does not accrue on the account following the approval of the new time to pay agreement unless the account once again becomes delinquent as a result of a subsequent failure to comply with the deferral or installment agreement.

#### **D. Records Management**

As cases are closed in traffic court, certain administrative tasks must be completed to assure that cases are properly recorded. Upon disposing of a case, the clerk's office will:

- Record the disposition in CMS on the Hearing/Disposition Update Screen.
- Ensure that the judge has recorded the disposition on the summons or warrant.
- Abstract of conviction will be sent via interface to DMV.
- For traffic proceedings in general district court, file case papers, with all documents attached in the date certain Court Date Disposed File in numerical order.