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Traffic Adjudication in Virginia Report and Recommendations



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Honorable Rayner V. Snead
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Dear Judge Snead:

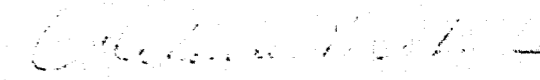
I am pleased to forward to you and the Committee on District Courts the National Center for State Courts' Report and Recommendations on Traffic Adjudication in Virginia.

Traffic adjudication touches most citizens in the Commonwealth. It is fitting that the Committee on District Courts is willing to take a fresh look at the process and to seek improvements. To that end, we offer 30 recommendations. Some suggest major innovations, but most look to modification of a basically sound system. We hope this report will prove useful to you and the citizens of Virginia.

We deeply appreciate the fine cooperation received throughout the study from all court personnel and judges. The study could not have been completed without this help.

We remain available to the Committee if it has any questions about any particulars of the report.

Very truly yours,



Alexander B. Aikman
Regional Director

ABA/lp

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TRAFFIC ADJUDICATION

IN VIRGINIA —

REPORT AND RECOMMENDATIONS

NATIONAL CENTER FOR STATE COURTS
MID-ATLANTIC REGIONAL OFFICE
WILLIAMSBURG, VIRGINIA

JANUARY 1977

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I. INTRODUCTION

Traffic adjudication is one of the judiciary's most important functions. Traffic represents its greatest volume of cases. Most citizens' only contact with the courts is the result of a traffic violation; their impressions of the entire justice system can be determined by that contact. In Virginia, traffic cases accounted for almost 55% of the transactions in all of the general district courts in the first six months of 1976.¹ In some of these courts, the percentage approached 90%.² Traffic requires from 40 to 50% of all clerical and judicial time in most courts.³ It is appropriate, therefore, for the Committee on District Courts to take a fresh look at traffic adjudication in Virginia. If improvements can be made in traffic adjudication, the entire district court system will benefit.

¹Supreme Court of Virginia, Office of the Executive Secretary, "Virginia Uniform Docketing and Caseload Reporting System: January - June 1976 Court Summary Report," page 310, "General District Court Statistics--State Totals." (Report UDS-02, July 16, 1976). The term "transaction" is broader than "case," in that it includes the various steps in court proceedings, such as preliminary hearings, adjudicatory hearings with or without testimony, continuances, and final dispositions, among others. To the extent that non-traffic cases have more transactions, this percentage figure underrepresents the proportion of traffic cases.

²Id.

³Estimates made during personal interviews in 20 general district courts, which represent about 40% of the Commonwealth's total traffic caseload.

The National Center for State Courts was asked in March 1976 to undertake a comprehensive examination of traffic adjudication in Virginia. This report is the culmination of that review.

For the most part, the National Center's 30 recommendations seek to "fine tune," modernize and standardize practices. The basic structure is accepted as sound.

Two major adjustments are recommended. The first is that Virginia recharacterize its minor traffic offenses as "traffic infractions." Changing the characterization of minor traffic offenses from "misdemeanors" to "traffic infractions" is a recognition of their relatively minor severity and moral opprobrium and more nearly conforms to the perceptions of citizens and judges alike. As importantly, however, it facilitates a number of other desirable procedural adjustments.

For instance, it is recommended that the almost universal practice of accepting pre-payment of fines in traffic cases be sanctioned in the statutes, whether or not minor traffic offenses are recharacterized. But accepting an admission of guilt and pre-payment of fine is simplified if the offense is an infraction rather than a misdemeanor. Similarly, simplified rules for adjudication of minor traffic offenses, the handling of those who fail to appear, the information provided by the traffic summons, and the development of a uniform state-wide schedule of fines are all facilitated by the recharacterization.

The second recommended adjustment is that enhanced punishment of a repeat offender become the exclusive province of the Division of Motor Vehicles (DMV). The courts should provide for adjudication of the violation, assessment of a fine or other punishment upon a finding of guilt, and swift communication of a record of conviction to the Division. Previous driving records should not affect the right to pre-pay by plea.

The point system recently established by the General Assembly and implemented by DMV should be the sole means of addressing the problem of the driver repeatedly guilty of minor traffic offenses. This places responsibility for driver improvement in an agency charged with that duty and staffed to fulfill it. It avoids numerous administrative difficulties and costs arising from a requirement that courts have access to conviction records before permitting a guilty plea prior to trial or when imposing punishment. It also avoids the problem of double punishment for a poor driving record, once by the courts and once by DMV. Finally, it focuses attention on a repeat violator's retention of her/his license, which should be a more effective and direct influence on driving habits than increased fines.

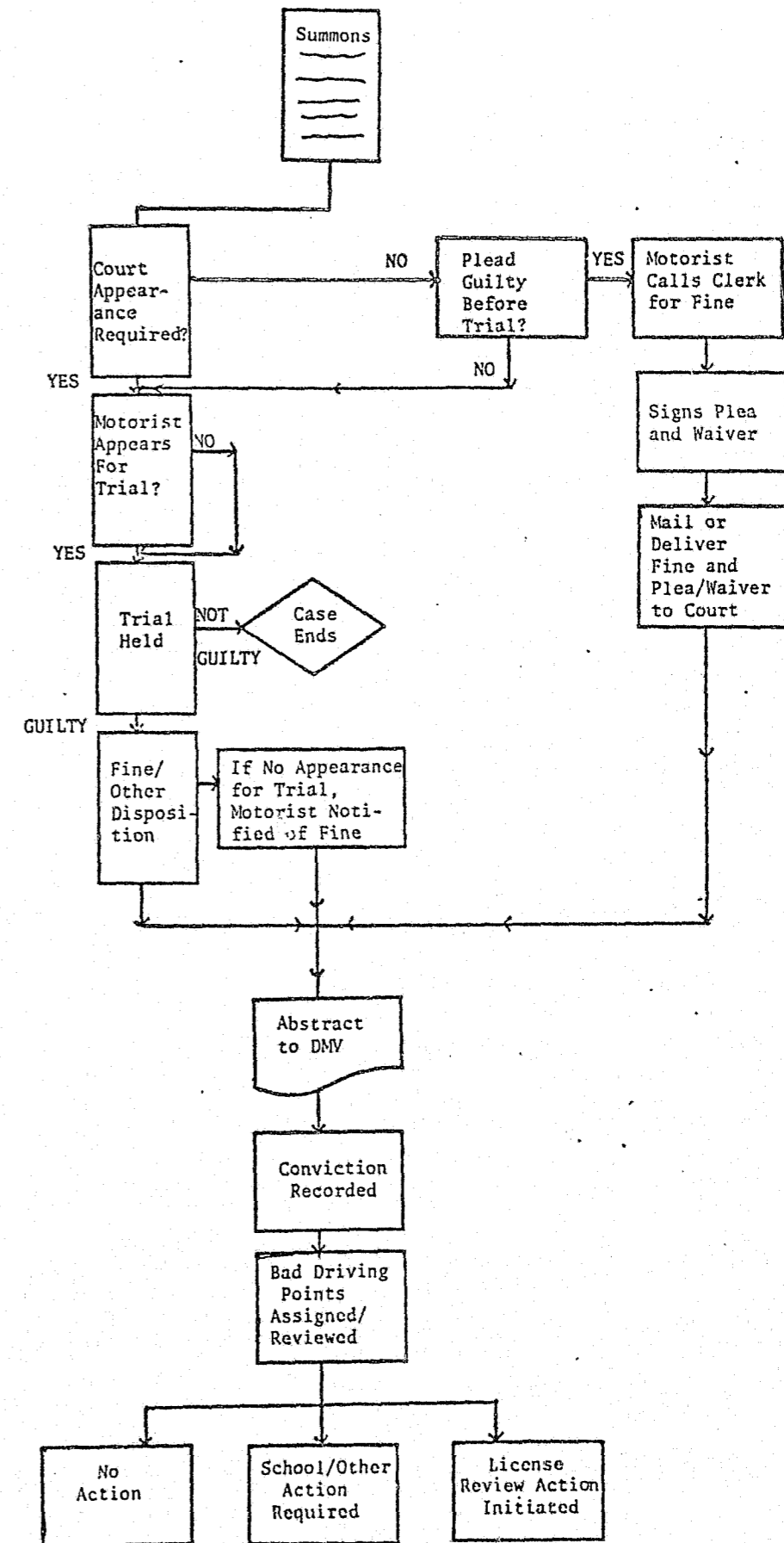
For serious offenses (those which will remain misdemeanors or felonies), enhanced punishment by the court would continue to be an option.

There are a number of improvements in traffic adjudication that can be made even if minor traffic offenses are not recharacterized, however. The changes should occur within the court system; it is recommended that administrative adjudication not be attempted in Virginia. One example of "fine tuning" the present system relates to payment of fines before trial. Almost 95% of the courts presently accept "pre-payment" of fines, but the practice is not officially sanctioned by the General Assembly. Such authorization is recommended. To facilitate pre-payment and respond to concern of motorists who travel throughout the state, a uniform schedule of fines is recommended. The schedule would be only advisory for judges, but would be mandatory when a motorist pre-pays a fine. It also is recommended that the pre-payment be denominated as a pre-trial admission of guilt and waiver of trial, rather than posting of bond or collateral. See page 5 for a sketch of how infractions and pre-payment would work.

The practice in most courts of scheduling traffic cases separate from other criminal cases is recommended for all courts, although it is not recommended that such a practice be made mandatory at this time, except in circuit courts. Also, efforts to improve police officers' skills as witnesses are recommended, as well as greater involvement by Commonwealth's Attorneys at the screening, prosecution, and sentencing stages of traffic adjudication.

Figure 1

HOW THE NEW INFRACTION SYSTEM SHOULD WORK



Greater cooperation between the courts and law enforcement agencies in scheduling court appearances is recommended, both for the initial court appearance and for continuance dates.

Virginia's practice of requiring only one court appearance of most motorists conforms to recommended standards, but procedures are recommended which might assist some courts to come even closer to the goal. The handling of motorists who fail to appear for trial has presented problems to most district courts. It is recommended that these people be tried in their absence for infractions and given ten days to pay the fine. If they do not do so, the Division of Motor Vehicles should be notified of their failure to pay. For misdemeanants who do not appear, the lodging of a separate charge of failure to appear is the recommended court option.

One of the areas of greatest variation around the state is the collection of fines and costs. A few courts, for instance, accept personal checks, but most do not. It is recommended that the acceptance of personal checks in traffic cases be sanctioned by the General Assembly. Statutory language waiving personnel liability for judges or other court personnel is recommended. Appropriate administrative and accounting procedures also are recommended.

Cost assessments vary markedly around the state, with some courts charging one cost per charge on which a motorist

is convicted, some, one cost per summons, some one cost per appearance and some one cost per defendant. An uniform statewide policy is desirable. The recommended rule is to assess one cost charge per court appearance in which a finding of guilt or pre-payment by plea is made, including pleas or findings for multiple offenses. Installment and deferred payments of fines also has caused great concern to the courts. It is recommended that installment payment of fines be permitted only following a deferred period of payment and a showing by the motorist that a single lump sum payment is not possible, and that the period a court may hold the license for security be clarified. A maximum period of 90 days is recommended.

The question whether to recommend making district courts courts "of record" also was examined. Since the study was limited to traffic adjudication and the implications of making general district courts courts of record are far broader than traffic adjudication, no change is recommended at this time. It is recommended, however, that general district courts retain traffic index cards for as long as traffic dockets are retained, rather than disposing of them within weeks or months of final disposition, and that consideration be given to shortening the period for holding the traffic docket.

Juvenile and domestic relations (J & DR) district courts hear all traffic offenses by juveniles. It is recommended that this practice continue. Two changes within

J & DR courts are recommended, however. The first is to permit individual courts to allow licensed juveniles to pre-pay fines either in person at the court or by mail, provided a parent or legal guardian appears with the juvenile at court or provides a notarized countersignature on the waiver of appearance and plea of guilty. Second, the J & DR courts' involvement in the transmittal of the initial operator's license to juveniles should be eliminated.

The traffic summons is the most important document in traffic adjudication, since it is important to law enforcement, the courts and the Division of Motor Vehicles. Yet only law enforcement and the Division of Motor Vehicles has a statutory right to be involved in its design. The courts should be added to those who must be involved in design of the traffic summons. It also should be made clear that the courts receive the original of the traffic summons, rather than a copy, as is true in some areas. Because the traffic summons is such an important and central document, a number of the changes recommended in the report impact its design. These are discussed and the changes to be made recommended.

Immediately following is a statement of the basic premises that guided development of the recommendations. It is hoped an understanding of these will help the reader understand more fully the recommendations. The thirty recommendations are discussed in the next eight chapters. There are seven appendices. The first reviews the study's methodology, including a list of the courts visited. The

second contains the questionnaires distributed to all district court judges and clerks and a sample of 50 law enforcement agencies, and tabulations of their responses. Also included in this appendix is an opinion survey distributed to members of the Tidewater Automobile Association and a tabulation of the almost 825 responses received. Appendix C provides a list of the offenses recommended for recharacterization as infractions. Appendix D contains recommended statutory amendments and additions to implement the recommendations made. The fifth appendix contains a proposed uniform schedule of fines. Appendix F reviews the changes and additions to the Virginia Uniform Traffic Summons. The last appendix, Appendix G, contains proposed rules to be adopted to govern traffic proceedings in the district courts.

Throughout the study, the project study team has received invaluable assistance from an advisory committee of district court clerks. They are:

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Drafts of this report also were reviewed by the following:

Judge H. D. Kashouty, Eighth Judicial District
Judge D. G. Simpson, Twenty-Sixth Judicial District
Judge J. R. Zepkin, Ninth Judicial District
Richard Spring, Division of Motor Vehicles

This study and report could not have been completed without their counsel and advice. The findings and recommendations herein are those of the study team only, however, and do not necessarily reflect the views of our advisors or reviewers.

II. POLICY ORIENTATIONS UNDERLYING RECOMMENDATIONS

Every study's recommendations are made on the basis of certain underlying policy preferences. Often these are unstated. Sometimes debates about the specifics of recommendations really represent different views of the underlying policy decisions rather than the specifics of the recommendations. Several basic policy orientations underlie the recommendations of this report. To assist the reader, these are set out in this chapter.

° Each court should receive and determine cases in as simple and orderly a manner as possible.⁴

° Each motorist is entitled to a fair and speedy disposition of the charge before an impartial and qualified tribunal.⁵

° To a greater extent than presently, Virginia's traffic adjudication process should be more considerate of motorists' interest in a simple process facilitating the admission of guilt and payment of fine.

° Some traffic offenses are very serious and merit denomination as crimes, but most do not fit into traditional concepts and should not be treated as "criminal."

⁴American Bar Association, Standards Relating to Court Organization, Section 1.00 Commentary (1974).

⁵American Bar Association, Committee on the Traffic Court Program, Standards for Traffic Justice, Section 3.0 (1972) [hereafter "ABA Traffic Standards"].

• Traffic laws are vital to control and order behavior and their violation should be punished in an appropriate manner. Sanctions addressed to driver behavior should be among those provided by a traffic adjudication system.

• The judiciary should determine the fact of violation. The judiciary and executive together should be responsible for appropriate sanctions.

• Multiple violators should receive increased punishment, either by the courts or an executive agency.

• The resources of the court should not be expended in hearing a high percentage of uncontested cases.

• Punishments of violations should have an adverse impact on drivers to emphasize society's disapproval of such violations. But a traffic adjudication process which reflects concern for the motorist is desirable, since it will generate good will and enhance the prestige of the courts.

• For minor traffic offenses, the primary goal should be to improve the judiciary's efficiency without detriment to its fairness.

The project team has made every effort to accommodate the practical and political realities of the district court system in developing its recommendations. The accommodations have been made in light of the above policy considerations, however. It is hoped that these policies will be acceptable to the citizens of Virginia and, therefore, that the recommendations also will be seen as appropriate.

III. TRAFFIC PROSECUTIONS

A. Traffic Offenses as "Crimes"

By statute all traffic offenses in Virginia are crimes; most are misdemeanors, but a number are felonies.⁶ Because they are characterized as crimes, any defendant charged with a traffic offense is entitled to trial by jury.⁷ Since trial by jury is not available in district court, a defendant has the right of appeal to circuit court where the proceedings may be tried de novo to a jury.⁸ Until recently it was statutorily provided that any traffic offense, regardless how inconsequential, might be punished by imprisonment. In the most

⁶Felonies are defined by Code of Virginia § 18.2-8 as offenses punishable by imprisonment in the penitentiary or by death. All other crimes are misdemeanors. [Hereafter, all references to the Code of Virginia will be cited as "Code" or by reference to the section number, i.e., "Section ____."] Felonies in violation of traffic laws are punishable under Code § 46.1-17 by imprisonment for one to five years or fine \$500 to \$5000, or both. Class 1 and Class 2 misdemeanors are punishable by jail or fine, or both; Class 3 and Class 4 misdemeanors are punishable only by fine. Code § 18.2-11. All violations of Chapters 1-4 of the motor vehicle statutes (§§46.1-1 through 46.1-347) are Class 3 or Class 4 misdemeanors unless otherwise characterized.

⁷Va. Const. Art. I, § 8. The right to trial by jury has been held not to extend to wrongs punishable under common law as "petty offenses" at the time the Virginia Constitution was adopted, however. Newberry v. Commonwealth, 192 Va. 819, 66 S.E.2d 841 (1951); Ragsdale v. City of Danville, 116 Va. 484, 82 S.E. 77 (1914).

⁸Code §§ 16.1-132, 16.1-136; see Griffin v. Wilkerson, 335 F. Supp. 1272 (W.D. Va. 1972).

recent legislative session, however, many lesser traffic offenses were downgraded to misdemeanor categories not carrying the possibility of imprisonment.⁹ With any likelihood of imprisonment for such offenses removed, defendants charged with these offenses no longer have a constitutional right to court-appointed counsel.¹⁰

The statutory judgment that all traffic offenses are crimes is not shared by most people. A questionnaire distributed to district court judges and clerks and to law enforcement

⁹Acts 1976, c. 135 repealed Code § 46.1-16, which made most traffic offenses Class 1 or Class 2 misdemeanors, and substituted Section 46.1-16.01 which makes the first violation of any provision of Sections 46.1-1 through 46.1-347 a Class 4 misdemeanor, any second such violation a Class 3 misdemeanor, and any third or subsequent such violation a Class 2 misdemeanor. But at the time a motorist is cited for a traffic offense, the arresting officer cannot indicate whether the offense charged is a Class 2, 3, or 4 misdemeanor, because normally he has no knowledge of the driver's prior record. Indeed, the court does not have knowledge of the level of the offense until after the motorist has been found to have committed it. If the offense is a motorist's third offense within a year, the court cannot then imprison the motorist, unless she or he had counsel: to do so would be in violation of Argersinger v. Hamlin, 407 U.S. 25 (1972). Also, the arresting officer need not provide the court with a motorist's prior driving record unless the charge is for driving while under the influence, reckless driving, leaving the scene of an accident, or driving without a license. Code § 46.1-413.1. Acts 1976, c. 148, eliminated the requirement that arresting officers request the prior record of motorists charged with speeding. Most courts have no independent access to the records of the Department of Motor Vehicles. The General Assembly has provided increased sanctions for repeat offenders, but no mechanism for compliance is available.

¹⁰Cf. Argersinger v. Hamlin, 407 U.S. 25 (1972).

officials asked if they believed that motorists charged with minor moving traffic offenses consider themselves to be criminals. With virtual unanimity, they answered that such motorists do not consider themselves to be criminals. They also were asked whether they themselves consider such motorists to be criminals: only one in eight of the judges responding answered that they do;¹¹ only 2.4% of the clerks indicated they believe such motorists to be criminals; none of the law enforcement officials or juvenile and domestic relations court (J & D R) clerks expressed such a feeling. Similarly, only 10% of the citizens responding to a questionnaire distributed by the Tidewater Automobile Association for this study answered that a person committing such a minor offense should be considered a criminal.¹²

It was also found that jail seldom has been imposed for lesser traffic offenses, even before the amendment removing the possibility of imprisonment. Judges and clerks were asked how often in the last two years motorists have been sentenced to serve time in jail for minor traffic offenses, other than for contempt and failure to appear. Over 76% of the judges and 72% of the clerks responding said that no one

¹¹Interviews indicate these "yes" answers in many cases involve legal rather than moral judgments by judges: *i.e.*, those committing minor traffic offenses are only technically "criminals," because they have committed wrongs defined as misdemeanors by statute.

¹²See Appendix B for the questionnaires and a tabulation of responses.

who has committed a minor traffic offense had been sentenced to jail in the past two years.

Notwithstanding the low incidence of actual imprisonment, there was considerable difference of opinion among judges, clerks, and law enforcement officials on whether the statutory possibility of imprisonment should be removed. In response to the question, "Do you believe jail should remain a sentencing option for minor moving traffic violators?" almost 47% of the judges answered "yes." Slightly less than 30% of the clerks answered "yes," while 35% of the responding law enforcement officials favored retention of jail as a sentencing option. Approximately 62% of all those answering the question believe that jail should be removed as a sentencing option. In contrast, the general public, represented by members of the Tidewater Automobile Association, almost unanimously (93%) disagreed with the statement that jail should be a possible penalty for any traffic violation. With respect to the substantial number of judges who wish to retain the option of a jail sentence, personal interviews suggest that some judges perceive the threat of jail as an effective inducement for immediate payment of a fine by someone claiming inability to pay. It was not clear from the interviews that the option of jail is desired as a punishment.

In the wake of Argersinger v. Hamlin, the possibility of a jail penalty is closely related to appointing

counsel for indigent defendants in traffic matters. Paralleling the low incidence of jail punishment for lesser traffic offenses is a low incidence of court-appointed counsel. About 88% of the judges responding to our questionnaire stated they either have not appointed counsel at all or have appointed counsel in less than ten cases in the past two years. Almost one-third of the judges (31.2%) and a quarter of the law enforcement officials (24.1%) stated that they think indigents accused of minor moving traffic violations should have the right to court-appointed counsel. Only 9% of the clerks agreed.

The right to trial by jury on appeal to circuit court is another issue on which there was considerable difference of opinion. About half (51.7%) of the law enforcement officials responding to the questionnaire indicated that the right to a jury trial on appeal should be retained. Slightly less than 60% of the clerks favored retention of the jury right, while judges most strongly favored retention (69%).

The results of interviews were not totally consistent with these results. Judges were asked their opinion of removing the possibility of jail as a punishment, removing the right to court-appointed counsel, and removing the right to trial by jury from minor traffic offenses. Ten of the nineteen judges interviewed favored all three of these changes, while only two disapproved of all three. The remaining seven judges were mixed in their responses, favoring removal of one or two

of the three.

Judges were asked in interviews what the primary purpose of traffic adjudication should be. Twelve answered that it should be both to improve highway safety and to punish offenders, or to improve highway safety through the punishment. Three of these judges felt that its purpose should be the improvement of highway safety for minor matters, but that its purpose should be more punitive for serious offenses. Four judges believed that its purpose in all circumstances should be the improvement of highway safety. Three judges may have had the same thought in mind when they indicated that the courts' role in traffic adjudication should be primarily educational. Another judge answered that its purpose should be punitive from the perspective of the courts; highway safety, he feels, should be the primary concern of the Division of Motor Vehicles (DMV). One judge conceded that the purpose of traffic adjudication sometimes is simply to produce revenue for state or local governments.

RECOMMENDATION: ALL MINOR TRAFFIC OFFENSES SHOULD BE RECLASSIFIED AS "TRAFFIC INFRACTIONS," PUNISHABLE BY A FINE OF NOT MORE THAN \$100. A "TRAFFIC INFRACTION" SHOULD BE A NON-CRIMINAL PUBLIC OFFENSE, WITH NO POSSIBILITY OF IMPRISONMENT AND NO RIGHT TO TRIAL BY JURY, BUT A FULL RIGHT TO TRIAL IN DISTRICT COURT IF ONE IS DESIRED AND AN ABSOLUTE RIGHT OF APPEAL TO CIRCUIT COURT.

Discussion

This recommendation focuses on minor offenses defined in Chapters 1 to 4 of Title 46.1, and controlled by Section 46.1-16.01, with particular emphasis on violations of the "rules of the road" not involving personal injury or property damage.¹³ It does not contemplate reclassification of those offenses involving a culpable state of mind, moral opprobrium of the community, or threat to society in the form of personal injury or property damage. Thus, offenses such as vehicular homicide or motor vehicle felonies, driving while under the influence,¹⁴ failure to stop at the scene of an accident,¹⁵ driving without a license or while under suspension or revocation,¹⁶ submitting a false affidavit in relation to motor vehicle matters,¹⁷ and tampering with an odometer¹⁸ would

¹³If an offense results in an accident, appearance in court would be required even though the offense remains an infraction. (See Chapter IV, pp. 52-55 for a discussion of circumstances for accepting pre-payment by plea.) An accident causing personal injury would be expected to result in a charge of reckless driving, as well as whatever infractions are charged.

¹⁴Code § 18.2-266 and parallel local ordinances.

¹⁵Code § 46.1-176 and parallel local ordinances.

¹⁶Code §§ 18.2-272, 46.1-349, 46.1-350, 46.1-351 and parallel local ordinances.

¹⁷Code § 46.1-15.

¹⁸Code §§ 46.1-15.1 and 15.2.

not be infractions. Similarly, any offense under Chapters 1 to 4 of Title 46.1 now specifically defined as a misdemeanor, and not controlled by the terms of section 46.1-16.01, will remain a misdemeanor. See Appendix C for a proposed list of offenses to be reclassified as "traffic infractions."

Virginia statutes now distinguish the relative seriousness of motor vehicle offenses by providing for different classes of felonies and misdemeanors.¹⁹ As indicated above, many traffic offenses now are classified in the lowest classes of misdemeanors. But characterization of all motor vehicle offenses as "crimes" does not distinguish those offenses involving a blameworthy state of mind or threat to the safety of the community in the form of personal injury or property damage from those that are more purely "regulatory" in nature, and which are not considered morally blameworthy by the community. The creation of a category of "traffic infractions" allows such a distinction.²⁰ It also facilitates implementation of other desirable changes in the system, including notification of rights for those waiving trial, the treatment of motorists who fail to appear and implementation of an uniform fine schedule.

¹⁹Code §§ 18.2-9, 18.2-10, 18.2-11, 18.2-12, 18.2-13, 18.2-14, and 46.1-16.01.

²⁰It is widely believed that violation of a routine traffic law does not connote a criminal mind. See Perkins, Criminal Law 792 (2d ed., 1969).

Further, implementation of this recommendation would remove the anomaly that repeat offenders are now to be treated more severely under Section 46.1-16.01 than first-time offenders, but neither the courts nor police can enforce this provision because driver records from DMV are not required for offenses covered by the statute.²¹ The proposition that persistent violators should be treated differently and more severely than occasional offenders is affirmed; but a system providing enhanced court penalties for repeat traffic offenders can only be as effective as the level of court access to driver record information. In the absence of means for court access to records, the difficulty for courts and police in identifying repeat offenders should be acknowledged and responsibility for allocation of graduated sanctions assigned primarily to the agency (DMV) capable of such identification. Under the recommendation made above, a minor traffic offense would be an "infraction" regardless of prior offenses. A repeat offender would still be subject to more severe sanctions: assessment of points, required participation in driver improvement programs, and ultimately license suspension or revocation.

The Supreme Court of Virginia has held that the "rules of the road" are intended primarily "for the guidance and

²¹See footnote 9, page 14, above.

benefit" of those using the highways.²² District court judges generally agree that an overall purpose of traffic adjudication is to promote highway safety. But the emphasis of the criminal process is on adjudication of guilt, not in improvement of driving habits; and the traditional criminal sanctions such as a fine and imprisonment do not address the causes of poor driving.²³ Adoption of this recommendation will shift Virginia from the punitive model suggested by the criminal process toward efforts to change the drivers' behavior. Of course, the courts still will impose fines for violations and contemptuous refusal to pay such fines will remain a basis for imprisonment. By these and other means the courts and justice system generally can indicate clearly that violations of the motor vehicle laws are disapproved and will be punished. But with a shift away from the more traditional criminal process, the focus can shift to highway

²²See Loving v. Mason, 206 Va. 613, 145 S.E.2d 131, 134 (1965), quoting Simmons v. Craig, 199 Va. 338, 99 S.E.2d 641, 645 (1957).

²³In a major study on decriminalization of traffic offenses by the National Highway Traffic Safety Administration (NHTSA), it was found that, "threats of criminal sanctions appeared to be relatively ineffective in deterring commission of minor traffic offenses." NHTSA, New Trends in Advanced Traffic Adjudication Techniques 8 (February 1976).

safety. As many Virginia judges have observed, the authority of the courts and DMV to suspend or revoke operating licenses is a far more effective tool in encouraging safe driving than fine or imprisonment. The transition to "traffic infractions" emphasizes the importance of the new point system and driver improvement program operated by DMV, which are more directly oriented toward the driving habits of motorists.

The recommendation modifies but does not weaken basic due process rights of notice, hearing and appeal. Any motorist wishing to contest a charge that he or she has committed a "traffic infraction" is to be allowed a trial. Further, de novo appeal to the circuit court would be preserved, although a jury will no longer be available for fact determination.

This recommendation will bring Virginia law into accord with the views of Virginia citizens. Almost all motorists and officials in the justice system do not consider minor traffic offenders to be "criminals." Nor is Virginia unusual in this respect: in a recent study done for the National Highway Traffic Safety Administration it was found that society generally does not commonly recognize most traffic offenses as criminal acts.²⁴

²⁴NHTSA, 1 Effective Highway Safety Traffic Offense Adjudication 5 (June 1974).

Similarly, this recommendation builds on the current evolution of Virginia legislation and court practice. The removal of jail as a penalty for many minor traffic offenses represents not only an effort to lessen the burden of appointing counsel at public expense for indigent motorists charged with such offenses, but also a recognition of the less serious nature of such violations. Jail is seldom imposed as a penalty for such offenses, and judges seldom see a need to appoint counsel for poor defendants.

Removal of the right to trial by jury is constitutionally proper. It has long been held that the right to trial by jury provided by Article 1, Sections 8 and 11 of the Virginia Constitution is no broader than what was available at the time the Constitution was adopted.²⁵ Motor vehicle offenses were unknown to the common law at the time the Virginia Constitution was adopted; motor vehicle offenses are totally statutory in nature. The right to trial by jury under the United States and Virginia Constitutions does not extend to so-called "petty" offenses.²⁶ Violation of highway regulations before the advent of motor vehicles was summarily punishable, without

²⁵ Newberry v. Commonwealth, 192 Va. 819, 66 S.E.2d 841 (1951); Bowman v. Virginia State Entomologists, 128 Va. 351, 105 S.E. 141 (1920); Ragsdale v. City of Danville, 116 Va. 484, 82 S.E. 77 (1914).

²⁶ Baldwin v. New York, 399 U.S. 66 (1970); Duncan v. Louisiana, 391 U.S. 145 (1968); Ragsdale v. City of Danville, supra; Ex parte Marx, 86 Va. 40, 9 S.E. 475 (1889).

the interposition of a jury, under English common law and under Virginia colonial and early state legislation.²⁷ The constitutional provision permitting laws that provide for the trial of non-felonious offenses by a court not of record without a jury, if the right to trial by jury in a court of record is preserved,²⁸ is permissive, not mandatory. It contemplates the same right to jury trial as was available historically.

The recommendation follows the most recent thinking by national authorities about the most effective means of traffic adjudication. The National Advisory Commission on Criminal Justice Standards and Goals (NAC) has recommended that all traffic violation cases except those involving serious offenses be recharacterized as non-criminal "infractions."²⁹ A similar recommendation was made by the National Highway Safety Advisory Committee's Ad Hoc Task Force on Adjudication.³⁰ The National Highway Traffic Safety Administration views decriminalization of low risk

²⁷ Frankfurter and Corcoran, "Petty Federal Offenses and the Constitutional Guaranty of Trial by Jury," 39 Harv. L. Rev. 917, 928, 963, 1011-1019 (1926).

²⁸ Va. Const. Art. I, § 8.

²⁹ NAC, Courts Standard 8.2 (1973).

³⁰ Ad Hoc Task Force on Adjudication, Final Report 8-9 (1973).

traffic offenses as a necessary step toward improved adjudication of traffic cases.³¹ In each of these recommendations it is suggested that the possibility of punishment by imprisonment, the right to court-appointed counsel, and the right to trial by jury be removed.

In 1974 the National Committee on Uniform Traffic Laws and Ordinances recommended that violations of most sections in chapters 10-14 of the Uniform Vehicle Code relating to accidents, rules of the road, equipment, inspection, and size of vehicles be reclassified as "infractions."³² While the American Bar Association Committee on the Traffic Court Program has not explicitly recommended decriminalization of minor traffic offenses, it has recommended that persons accused or convicted of non-hazardous traffic offenses should not be incarcerated, and it has left open the question whether the rules of criminal procedure should be applied in the adjudication of minor offenses.³³ The American Bar Commission on Standards of Judicial Administration, on the other hand, has explicitly recommended that "crimes" be distinguished procedurally from offenses punishable by fine, loss of license, or a similar sanction; such lesser offenses, they say, should

³¹NHTSA, note 24 above, at 7.

³²*Id.* at 8.

³³ABA Traffic Standards, §§ 2.5, 5.0.

be deemed "infractions" and recognized as essentially civil in nature.³⁴

Several states have revised their statutes to decriminalize most traffic offenses. They include Florida, New Hampshire, Minnesota, New York, California, North Dakota, New Jersey, Rhode Island, Pennsylvania, Wisconsin, Ohio, Vermont, Maine, and Oregon.

RECOMMENDATION: CODE § 46.1-16.01 SHOULD BE REPEALED AND REPLACED.

Under Code § 46.1-413.1 police are not required to request from DMV the records of drivers charged with any offense punishable as provided under Section 46.1-16.01. It is thus unlikely that courts or law enforcement officers would be able to determine whether any driver committing an offense within the scope of this section is a repeat offender subject to its enhanced penalty provisions. As a practical consequence, district courts now either require driver records for all traffic cases or ignore the enhanced penalty provisions of the section altogether.

One approach possible for the General Assembly to remedy this problem would be to retain Section 46.1-16.01 in its present form and to amend Section 46.1-413.1 by adding a provision that arresting officers be required to

³⁴ABA Commission on Standards of Judicial Administration, Standards Relating to Trial Courts § 2.01 and Commentary (1976).

request driver records for all violations punishable under Section 46.1-16.01. This would reverse the amendment of Section 46.1-413.1 by Acts 1976, c. 148, which removed speeding from the list of offenses requiring driver records, and it would add a number of other offenses. In order to accommodate this increase in requests for driver records, the General Assembly would have to authorize an appropriate increase in DMV's budget to increase its personnel and equipment and expand its facilities. Since Section 46.1-16.01 (c) provides that any third or subsequent violation covered by its terms within one year is a Class 2 misdemeanor, potentially punishable by imprisonment, the General Assembly would have to assure means for providing such information to the courts prior to trial in order to allow appointment of counsel for an indigent defendant desiring such representation.

A simpler, less expensive, and less problematic approach would be to provide in Section 46.1-16.01 that all offenses within its scope have the same classification regardless of prior offenses. Full implementation of the present approach of increasing the class of misdemeanor committed would be exceptionally expensive. The proposed approach would place primary responsibility for punishment of repeat offenders on DMV through the point system, the driver improvement program, and license suspension or revocation. These are all more direct responses to the problem than increased fines. Proposed statutory language for

implementation of this recommendation is presented in Appendix D, at page D-8. Two versions are provided, one for use in the event all traffic offenses remain criminal in nature.

For more serious traffic offenses, the court naturally retains the option to request driving records and to apply the habitual offender statute.³⁵ For both infractions and criminal offenses, multiple violators would be subject to more severe punishment than first offenders. The difference is that the means and the agency would change.

B. Forum for Adjudication of Traffic Matters

At present, the primary forum for determination and adjudication of traffic offenses is the courts. There are, however, certain proceedings of a judicial nature carried on outside the court system.

Among the general powers and duties of the Division of Motor Vehicles are the administration of motor vehicle licenses, registration and title laws, and the issuance, suspension, and revocation of licenses.³⁶ The Commissioner of DMV may adopt reasonable rules and regulations to carry out the laws administered by his agency.³⁷ Revocation of motor vehicle registration³⁸ is a "quasi-judicial" function performed by DMV, and anyone aggrieved by such a revocation has a right to appeal to circuit court.³⁹ It is mandatory that DMV revoke the license for one year of any person convicted of such offenses as motor vehicle manslaughter, driving while intoxicated, driving after license forfeiture, leaving the scene

³⁵ Code § 46.1-387.1.

³⁶ Code § 46.1-25.

³⁷ Code § 46.1-26.

³⁸ Code § 46.1-59.

³⁹ Code § 46.1-61.

of an accident, or a felony involving a motor vehicle.⁴⁰ It is in the discretion of the DMV Commissioner to revoke or suspend a motorist's operating license, after due notice and hearing, for periods of up to five years upon proof of a fairly broad range of traffic offenses.⁴¹ Any motorist may appeal such a discretionary suspension or revocation to the circuit court.⁴² DMV also operates a "Uniform Demerit Point System" under the Virginia Driver Improvement Act, and conducts driver improvement schools in connection with the point system.⁴³

During interviews in general district courts, judges were asked their opinion of having jurisdiction over minor traffic offenses placed in an administrative agency such as DMV. Only four of the nineteen judges answered that they thought such an approach would be a good idea for Virginia.

⁴⁰Code § 46.1-417.

⁴¹Under Code § 46.1-430, DMV may revoke or suspend a license for not more than one year whenever it is satisfactorily proven that a motorist has (1) caused or contributed to an accident resulting in death, injury, or serious property damage by reckless or unlawful operation of a vehicle; (2) is incompetent to drive; (3) has mental or physical disabilities making it unsafe for her or him to drive; (4) is a habitual reckless or negligent driver; (5) has committed a serious traffic violation; and (6) is a habitual drunkard or is addicted to drugs. Under Section 46.1-436, DMV may suspend or revoke an operating license for up to five years, after due notice or hearing, of any traffic violator if done upon reasonable grounds and to promote highway safety.

⁴²Code § 46.1-437.

⁴³See Code § 46.1-514 et seq.

Eleven of the judges responded that the present system should not be changed. They indicated that a change to administrative adjudication would involve more cost and more bureaucracy than the present system. In effect, they answered, administrative adjudication would simply create another layer of courts. But there were also four judges who had mixed opinions on the matter. Two judges generally opposed administrative adjudication, but thought that it might be justified in areas where the courts now have a high caseload. Two other judges were opposed to the administrative disposition of contested matters, but felt that an administrative agency such as DMV could very well handle noncontested matters.

Another alternative to the present traffic adjudication system would be to have minor traffic matters heard within the courts but by para-judicial hearing officers other than judges. Although this option was not discussed at length in most interviews for this study, judges and clerks in one high-volume court mentioned it as one meriting further exploration. One judge in the court suggested that a non-lawyer hearing officer with training in highway traffic safety would be appropriate in uncontested cases where motorists sought to explain their circumstances. The same judge agreed with an assertion by a clerk in the court that legally-trained hearing officers might be used for contested infraction cases.

A judge in another district court stated that such an

approach would not be proper. If contested cases are to be treated by the courts, he said, they should be heard by judges. Non-lawyers are not trained to deal with many evidentiary issues in contested cases, and lawyers serving as part-time hearing officers are subject to potential conflict-of-interest problems. This judge feels that if minor traffic cases are heard by officials other than judges, there should be a complete transition to administrative adjudication.

RECOMMENDATION: ADJUDICATION OF TRAFFIC OFFENSES SHOULD REMAIN
A FUNCTION OF THE JUDICIAL BRANCH OF GOVERNMENT.

Discussion

The National Advisory Commission on Criminal Justice Standards and Goals (NAC) has recommended that all but the most serious traffic offenses be made subject to disposition by an administrative agency other than the courts.⁴⁴ The National Highway Traffic Safety Administration (NHTSA)⁴⁵ and the Ad Hoc Task Force on Adjudication of the National Highway Safety Advisory Committee⁴⁶ have recommended that administrative adjudication systems be considered as an alternative to court systems as a forum for adjudication of minor traffic

⁴⁴NAC, Courts Standard 8.2 (1973).

⁴⁵See NHTSA, "Highway Safety Program Standard No. N-7, Traffic Courts and Adjudication Systems," 37 Fed. Reg. No. 150, Part 247, especially § 247.4 (August 3, 1972).

⁴⁶Ad Hoc Task Force on Adjudication, Final Report 9 (1973).

matters. Similarly, it has been recommended that the Fairfax County Board of Supervisors study alternative approaches for handling less-serious traffic offenses, including administrative adjudication systems.⁴⁷ Administrative adjudication systems are operating in New York State's three largest cities,⁴⁸ and in Rhode Island,⁴⁹ while California is considering the feasibility of such an approach.⁵⁰

But the American Bar Association Committee on the Traffic Court program "has concluded that traffic cases can most effectively, efficiently, and fairly be handled within the courts, rather than in the executive branch of state government as is currently proposed in some quarters."⁵¹ The ABA Traffic Standards recommend that all traffic cases be decided in the judicial branch, and that the principle of separation of powers be preserved.⁵²

While the Tidewater area, metropolitan Richmond, and the Virginia suburbs of Washington, D.C. may be comparable to New

⁴⁷Fairfax County Criminal Justice Coordinating Council, Report Recommendation 10.1 (1976).

⁴⁸Under N.Y. Veh. & Traffic Law § 155 (McKinney 1973), only cities with a population in excess of 275,000 may implement administrative adjudication. Traffic offenses in all other parts of New York State are handled by the courts.

⁴⁹R.I.G.L.A. § 31-43-1 (1974).

⁵⁰See California Division of Motor Vehicles, Administrative Adjudication of Traffic Offenses in California--A Feasibility Study (1976).

⁵¹ABA Traffic Standards, Preface (1974).

⁵²Id. § 2.0 and Commentary.

York State's metropolitan Buffalo and Rochester in population density and traffic caseload, it is not clear that administrative adjudication is suitable for Virginia. In New York State, the minimum staffing for an administrative hearing office, regardless of the size of traffic caseload, is two referees with seven clerical support staff.⁵³ It has been estimated that implementation of an administrative system in Fairfax County would initially require two to three hearing officers and approximately ten clerical personnel to process the resulting paperwork.⁵⁴ Introduction of administrative adjudication in Virginia's metropolitan areas alone might require the establishment and staffing of at least eight hearing offices.⁵⁵ Assuming the existence of suitable facilities, the expenses of renovation, office equipment, information-processing equipment, and other supplies would have to be added to personnel costs. Even with pre-existing facilities and information-processing equipment, the start-up costs for New York State's administrative system were

⁵³ Interview with Donald J. Bardell, then Deputy Commissioner and Counsel, New York Motor Vehicle Department, November 6, 1974.

⁵⁴ Report, note 47 above, at 10-4.

⁵⁵ Arlington, Alexandria, Falls Church, and Fairfax in the greater Washington, D.C. area, at least one such office in Virginia Beach, Norfolk, and Newport News, and at least one office in Richmond.

substantial.⁵⁶ These administrative hearing offices would be operating in addition to the present district court system, and statewide implementation of administrative adjudication would call for the establishment of other hearing offices at suitable locations throughout the Commonwealth.

Much of the success claimed by the administrative adjudication systems in New York and Rhode Island can be attributed to procedural and information-processing innovations. Many of the procedural innovations, if found to have merit, could be adopted by the Virginia court system without the necessity of creating a separate adjudicative process.⁵⁷ Similarly, a study of the information-processing system used in New York might suggest improvement of the processing of traffic cases in the metropolitan areas of Virginia.

C. Procedural Rules for Traffic Cases

Trials of traffic cases are now governed by the rules of criminal procedure. When judges were asked whether they felt separate procedural rules would be appropriate for traffic

⁵⁶ Halper and McDonnell, An Exemplary Project: Administrative Adjudication Bureau of the New York State Department of Motor Vehicles, 6-7, 69 (1975).

⁵⁷ The project team evaluating New York's administrative adjudication program concluded that there is "no legal or logical reason why courts could not implement [New York's innovative practices and procedures] as well." New York administrative adjudication officials agreed with this conclusion, provided the adjudicatory system has access to DMV records. Id. at 73.

matters if minor traffic offenses were recharacterized, more than half saw no need for development of separate procedural rules. In practice, however, traffic matters are treated differently than other criminal matters. Counsel is seldom appointed and jail is seldom imposed. Rules of evidence are relaxed for motorists not represented by counsel and there is much greater opportunity for explanation of one's actions. The rights of defendants in traffic cases are reviewed in a much more cursory manner and there is considerable variation from court to court in the procedures for explaining rights. There is evidence that the standard of proof ("beyond a reasonable doubt") may not be applied as rigorously. Finally, there are special statutory rules of evidence for certain aspects of traffic proceedings.⁵⁸

The judges were asked about specific procedural modifications which might follow from the recharacterization of minor traffic offenses:

- (1) allowing pleas of "admission," "admission with an

⁵⁸ Under Code § 46.1-193.1, a sworn report of the results of the calibration of either the arresting officer's car or the defendant motorist's car is admissible as evidence in prosecution for speeding violations. Under Section 46.1-198, the results of radar used to check the speed of an automobile are admissible as prima facie evidence of the speed of the defendant's car. The results of chemical tests to determine the alcoholic content of blood, when properly identified and certified as provided by Section 18.2-268(f), are admissible as evidence of the level of in the accused's blood, giving rise to legal presumptions as to whether the accused was under the influence of alcoholic intoxicants. Code § 18.2-269.

- explanation," and "denial" rather than the traditional pleas of "guilty" and "not guilty";
- (2) allowing the motorist to waive confrontation with the arresting officer; and
- (3) changing the standard of proof in minor traffic proceedings from "beyond a reasonable doubt" to "clear and convincing evidence."⁵⁹

A small plurality of judges (7 of the 19 interviewed) would not favor modifying the pleas to be entered in minor traffic cases. Two judges observed that present practice allows motorists to plead guilty to traffic offenses and to offer an explanation that might mitigate the penalty to be imposed. Although the change in the kinds of pleas to be entered is to reinforce the "noncriminal" nature of the minor traffic offenses, two of the judges suggested that this change would be only a semantic distinction that would in fact involve no change in the way people perceived the nature of traffic offenses. Three of the judges indicated that they would support such a change as a symbolic demonstration of "decriminalization"; four gave qualified support, saying either that they would not oppose such a change or that it would be acceptable if traffic sessions were held separate from all other proceedings.

⁵⁹ These are procedural modifications under consideration in California as that state studies the feasibility of introducing administrative adjudication for traffic matters. See California Division of Motor Vehicles, note 50 above, Volume I, 39-48.

If motorists are allowed to plead guilty with explanation and to waive confrontation with the arresting officer, the potential number of court appearances for officers would be reduced. Judges' reactions to this approach were mixed. Four expressed flat disapproval of such a change. Four others responded favorably, indicating that such a practice is now done as a practical matter. Three judges do not allow such a practice, but would not oppose it. Two judges thought the idea might be good, but envisioned problems if it were necessary for certain factual matters to be clarified, requiring the presence of the law enforcement officer.

Regarding the modification of the standard of proof to "clear and convincing evidence," ten of seventeen judges discussing the matter expressed a preference for retaining the present standard. Only two of the judges endorsed such a change, although three said that they would not be opposed to the modification as an indicator of the new nature of minor traffic offenses.

RECOMMENDATION: THERE SHOULD BE SEPARATE RULES FOR THE TRIAL OF TRAFFIC INFRACTIONS, DISTINGUISHED FROM OTHER RULES AND UNIFORM THROUGHOUT THE STATE. FOR INFRACTIONS, THE STANDARD OF PROOF SHOULD BE "CLEAR, SATISFACTORY AND CONVINCING."

Discussion

Despite the fact that traffic cases are now theoretically governed by the Rules of Criminal Procedure, they are in fact treated differently from criminal matters. This distinction should be reflected in the procedural rules. Failure of the rules to recognize this distinction has resulted in a great variation among different courts in their treatment of traffic proceedings. Because such variation threatens the quality and uniformity of justice, the American Bar Association Committee on the Traffic Court Program has recommended that tribunals trying traffic cases be governed by published rules that are uniform throughout the state, with local deviations allowable only where expressly permitted by the statewide rules.⁶⁰ The American Bar Association's Commission on Standards of Judicial Administration also recommends that procedural rules differentiate between "criminal" proceedings and those involving offenses punishable by limited fine, loss of license, or similar sanctions ("infractions"). Procedural rules providing for adequate notice, opportunity to present legal contentions and evidence, and appropriate procedures for review should be preserved.⁶¹

Because there appears to be considerable variation in

⁶⁰ABA Traffic Standards § 2.8.

⁶¹ABA Commission on Standards of Judicial Administration, Standards Relating to Trial Courts §§ 2.00, 2.01 and Commentary (1976).

the extent to which district court judges advise traffic defendants of their rights, a specific rule addressing the rights to be reviewed for motorists seems appropriate. The rule might also state that before accepting a plea of guilty to a traffic offense other than one for which the motorist is allowed to waive appearance, the court should inform the defendant of his rights, which would include, but not be limited to, the right:

- (1) to engage counsel or, in appropriate cases, to have counsel appointed;
- (2) to testify or not testify in his or her own behalf;
- (3) to appeal; and
- (4) to a trial by jury upon appeal to the circuit court.

The rule should also provide for the court to advise a defendant of the consequences of a plea of guilty or no contest, including the maximum penalties provided by law, and that a record of the conviction will be sent to DMV.⁶²

It is contemplated that "infractions" will be non-criminal violations. In California, Pennsylvania, New Jersey and Maine the standard of proof has remained "beyond a reasonable doubt" following recharacterization. But if the violations are non-criminal, this standard seems to be higher than necessary. The National Advisory Commission on

⁶² See ABA Traffic Standards § 3.2; National Conference of Commissioners on Uniform State Laws, "Model Rules Governing Procedure in Traffic Cases," 1:3-6(a) (1957).

Criminal Justice Standards and Goals recommends a standard of "clear and convincing evidence." This is the standard in New York. North Dakota is close to the normal civil standard of "a fair preponderance of the evidence." Wisconsin has adopted the standard proposed here, which suggests that the evidence must be legally satisfactory. This may be a valuable additional requirement, since infractions remain regulatory and law enforcement officers, and not attorneys trained in rules of evidence, probably will remain largely responsible in the near future for presentation of evidence for the Commonwealth.⁶³

Proposed rules for traffic infraction cases are included in Appendix G.

D. Separate Traffic Sessions

Court sessions for hearing traffic and other matters are generally set by the clerk, acting under the guidance or direction of the judge. Schedules differ considerably from court to court depending on each court's overall workload and upon the relative number of traffic, criminal or civil cases it must hear. Of general district court clerks responding to the questionnaire, about two-thirds stated that they scheduled criminal and traffic cases for hearing together. But the answers given during interviews suggest that although traffic and criminal matters might be heard

⁶³ See pages 43-45, below.

during a single session, traffic matters are often heard separately, either before or after regular criminal matters are heard. Very few of the courts follow a practice where traffic and criminal matters are interspersed with one another, unless a single defendant has both traffic and criminal charges against him, or unless a single law enforcement officer has both traffic and criminal matters before the court. In courts where traffic and criminal defendants are docketed for appearance at the same time, some judges always hear traffic matters first. Other judges, however, may change from court session to court session, hearing criminal matters one day, traffic matters first the next and interspersing them on a third day.

RECOMMENDATION: A COURT RULE SHOULD PROVIDE THAT, WHENEVER POSSIBLE, TRAFFIC CASES SHOULD BE SCHEDULED APART FROM OTHER COURT BUSINESS, AND TRAFFIC SESSIONS OR DIVISIONS SHOULD BE ESTABLISHED WHENEVER THE CASELOAD IS SUFFICIENT.

Discussion

This recommendation is closely patterned on those by the American Bar Association Committee on the Traffic Court Program,⁶⁴ and the National Conference of Commissioners on Uniform State Laws.⁶⁵ The ABA Committee comments that:

Separation of traffic cases reduces waiting time, permits use of opening remarks for education about

⁶⁴ ABA Traffic Standards § 2.6.

⁶⁵ "Model Rules," note 62 above, Rule 1:3-4.

available constitutional safeguards, hearing procedures and traffic safety goals, and facilitates case processing.⁶⁶

Even in courts where a low caseload does not permit separate traffic sessions, it should be possible in most instances to schedule traffic matters apart from regular criminal cases. Such a separation reinforces the distinction between the purposes and procedures for traffic adjudication and those for other proceedings. It also facilitates the changes in plea procedure and the standard of proof proposed.

E. Prosecutors in Traffic Cases

In some of the courts visited, attorneys for the Commonwealth frequently prosecute traffic matters. Judges are authorized by statute⁶⁷ to call for the presence of a Commonwealth's Attorney to prosecute traffic offenses that are reportable by the courts to DMV. But the overwhelming majority of traffic offenses are prosecuted on evidence provided by law enforcement officers without the presence of a prosecuting attorney. During interviews judges observed that problems are sometimes created by police presentation of evidence. Officers will sometimes "overcharge," by charging more offenses than they expect to prove. Or they might charge every possible offense at the time of summoning in order to avoid having to be the "judge" at that time. This causes added paperwork in the courts and results in charges being dismissed when

⁶⁶ ABA Traffic Standards § 2.6 Commentary.

⁶⁷ Code § 46.1-413.2.

officers do not actively pursue their prosecution. Another problem seen by the judges is that the quality of evidence presented by the police officers is not always consistent. This sometimes results in the dismissal of "good" charges against motorists. It sometimes results in convictions based on poorly-presented evidence, where the judge feels a better case for the Commonwealth is likely to be made in Circuit Court if there is an appeal for trial de novo.

RECOMMENDATION: PARTICIPATION BY LAW ENFORCEMENT OFFICERS IN TRAFFIC PROGRAMS TO IMPROVE THEIR EFFECTIVENESS AS COMPLAINING WITNESSES FOR TRAFFIC CASES IN LOCAL COURTS SHOULD BE STRONGLY ENCOURAGED. A RULE SHOULD PROVIDE THAT, WHENEVER POSSIBLE, A COMMONWEALTH'S ATTORNEY BE AVAILABLE TO AID THE PROSECUTION AND DISPOSITION OF TRAFFIC CASES.

Discussion

As observed by the ABA Committee on the Traffic Court Program, the presence of a prosecuting attorney in a traffic case can accelerate adjudication and allow the court to maintain its impartiality, because the judge will not be forced to assure that all the elements of the state's case have been presented and will not have to conduct examination of witnesses.⁶⁸ Given sufficient time, a prosecuting attorney could also screen charges and distinguish those without merit, thereby potentially saving time and paperwork for the courts.

But Commonwealth's Attorneys do not now have time to review cases with police before trial, and the presence of

⁶⁸ ABA Traffic Standards § 3.7 and Commentary.

a Commonwealth's Attorney at each traffic session is not physically or financially feasible in many courts. In view of this reality, the courts should give encouragement, assistance and support to programs offering to help law enforcement officers improve their understanding of law and procedure and their competence as complaining witnesses in traffic cases.

Because the use of Commonwealth's Attorneys in prosecuting traffic cases now is discretionary with the court,⁶⁹ no change in law is required. But the presence of a Commonwealth's Attorney, when it is possible, can provide a resource to law enforcement officers in the presentation of evidence and to judges in the consideration of disposition alternatives. As the emphasis in adjudication of minor traffic cases shifts from criminal sanctions to those more directly addressing driver behavior, the Commonwealth's Attorney may be able to advise the court on the availability of such local programs as driving schools. He or she may, upon the court's request, be able to assist the court in determining the propriety of suspending sanctions and imposing "conditions of probation" addressed to improvement of a motorist's driving habits.

⁶⁹ Code § 46.1-413.2.

IV. PRE-PAYMENT

A. Court Appearance Not Required for All Offenses

Although such a practice is not clearly authorized by statute, 94% of the judges and clerks responding to questionnaires for this study stated that their courts accept pre-payments of fines or the forfeiture of cash bond or other collateral.⁷⁰ Almost all courts allow pre-payment in person or by mail. When judges were asked in interviews whether court appearance is necessary for all motorists, 17 of the 19 interviewed answered "no," while one judge answered "yes," but only for local motorists (who the judge felt were more within the scope of his concern than non-local motorists). Most judges saw a court appearance as only a limited deterrent to future unsafe driving.

There is no uniformity among general district courts as to what a motorist's pre-payment is called. Among clerks responding to the questionnaire, about 42% consider it to be a plea of guilty and payment of the fine, while 32.5% call it a forfeiture of bond. In fact, 14.5% of the clerks responding say that they call it both pre-payment and forfeiture. In other courts, it may be called forfeiture of "collateral," or "cash forfeiture."

⁷⁰ 95% of the motorists responding to the survey distributed by the Tidewater Automobile Association approve of such practice.

The different conceptualizations of pre-payment reflect the absence of any clear statutory authorization for the practice. Judges allowing some form of pre-payment gave 13 different responses when asked for the legal basis for accepting pre-payment. By far the most common basis was that the motorist had pleaded guilty.⁷¹ Some judges, who may also point to the motorist's guilty plea, cite statutory provisions which provide for personal recognizance and deposit for cash bail in lieu of a recognizance with surety, and for trial in the absence of a defendant who has defaulted on his recognizance. The amount of the defendant's cash deposit is to be applied to fines and court costs.⁷² Still other judges refer to Supreme Court Rule 3A:10, which provides that arraignment in open court is not necessary in a misdemeanor case when waived by the accused or his counsel or when the accused fails to appear. Finally, it should be noted that Section 46.1-179.2 provides that an out-of-state motorist residing in a state under reciprocal agreement with Virginia may elect to post collateral or bond rather than be released on personal recognizance. In the absence of any other clear reason for this provision, it appears that the General Assembly intended that

⁷¹ Under Section 19.2-254 of the Code, arraignment in a misdemeanor case is not necessary when waived by the accused or his counsel, or when the accused fails to appear; an accused in a misdemeanor may plead not guilty, guilty, or nolo contendere. Under Section 19.2-258, a misdemeanor defendant who fails to appear after having been released on bail or on his own recognizance is considered to have waived trial by jury, and his case may be heard in his absence "as upon a plea of not guilty."

⁷² Code §§ 19.2-132, 19.2-140.

out-of-state residents of reciprocal states be allowed to forfeit collateral or bond.

RECOMMENDATION: THERE SHOULD BE STATUTORY AUTHORIZATION FOR WRITTEN WAIVER OF COURT APPEARANCE AND ENTRY OF A PLEA OF "GUILTY" AND PAYMENT OF FINE BY MAIL OR IN PERSON TO A COURT CLERK OR IN PERSON TO A MAGISTRATE FOR MINOR TRAFFIC OFFENSES. WHERE TRAFFIC VIOLATION BUREAUS EXIST, MAIL PAYMENT MAY BE MADE TO THE BUREAU.

Discussion

This recommendation and the two that follow in this chapter should be implemented whether or not Virginia decides to recharacterize minor traffic offenses as "traffic infractions." It will give formal approval to a desirable practice now followed almost universally throughout the Commonwealth. Express statutory authorization will remove uncertainty about the propriety of such a practice and will also help remove the great variation from court to court in procedures for pre-payment. See below, Appendix D at page D-6, for proposed statutory wording to implement this recommendation.

Judges whose courts now allow pre-payment in traffic cases have pointed out that there are many advantages to motorists in following such a practice. These include convenience, the saving of time, avoiding loss of work, and reduction of travel expenses to and from the courthouse. These factors are particularly relevant for motorists not residing close to the courts to which they are cited. Some courts may have local residents as defendants in 90% or more of their traffic cases. But other courts may have local residents in as few as 20% of their traffic cases. Based on

estimates made by clerks, non-local Virginia residents and out-of-state motorists may constitute more than 40% of all traffic defendants in the general district courts.

The advantages to the district courts most commonly cited by the judges were saving time in processing cases and relieving the courts' heavy traffic dockets. With uncontested minor cases handled outside the courtroom, judges are able to devote more of their in-court time to the hearing of contested and more serious cases. This helps not only the adjudication of traffic cases, but all other cases, too.

Some opponents of pre-payment have argued that it is "cash register" justice that demeans the justice system. But the overwhelming majority of traffic offenses are minor violations by "average" citizens who may be cited for traffic offenses no more than once or twice in their entire driving careers. Many, especially when they acknowledge their error, resent taking time from work and spending hours waiting in court for their cases to be heard, only to have them disposed of within seconds with the imposition of a small fine. Such inconvenience and inefficiency must itself demean the majesty of the law in the minds of these people.⁷³

One judge known to be an outspoken opponent of pre-payment bases his policy of requiring court appearance for all traffic offenders on a city council resolution, and main-

⁷³ See H. Jones (ed.), The Courts, the Public and the Law Explosion 56-58, 115-121 (1965).

tains that his position is consistent with American Bar Association recommendations. While allowing pre-payments was once viewed by national authorities as "a usurpation of the judicial function without compensating factors" and a practice that might promote a "violate-for-a-price" attitude among motorists,⁷⁴ the American Bar Association has for years endorsed pre-payment practices accompanied by appropriate safeguards.⁷⁵

The recommendation proposes substantial uniformity in the procedure for receipt of pre-payments. Since each of the two basic procedural options--bond forfeiture or guilty plea and payment of fine--is employed by a substantial number of courts, the choice of either option as the preferred procedure may involve significant conceptual and administrative changes for many courts. The choice of a bond forfeiture system has the virtue of preserving the motorists' option to contest; until he fails to appear, the money is potentially recoverable. But the use of a bond-forfeiture system ignores important distinctions between hazardous and non-hazardous traffic offenses. For

⁷⁴George Warren, Traffic Courts 59 (National Conference of Judicial Councils, 1942).

⁷⁵See J. P. Economos, Traffic Court Procedure and Administration 40-42 (1961), where provisions under "The Model Rules Governing Procedure in Traffic Cases" relating to pre-payment to traffic violations bureaus are discussed. See also ABA Traffic Standards § 3.4 and Commentary.

hazardous offenses and those for which appearance is otherwise required, bond is intended as a means of assuring that the motorist will appear. For minor offenses, on the other hand, the amount of money paid into the court is viewed both by the motorist and by court officers as a means of complying with court sanctions without requiring appearance. When all concerned so view the amount posted, it is a fiction to characterize that amount as an "appearance bond." This is especially the case in situations where a motorist seeks to make pre-payment by mail. The procedure recommended here allows avoidance of the "bond" fiction. It also more accurately reflects the real purposes of pre-payment, which are to release the motorist from the requirement to appear in court and to treat minor cases more efficiently.

A motorist's waiver of court appearance and trial and entry of a "guilty" plea should be in writing and a matter of record. A form for waiver and entry of plea can be provided on the traffic summons, where the motorist can also be advised in writing of her or his procedural rights. Using the traffic summons, the motorist can then make pre-payment by mail. A written form identical to the waiver and plea on the traffic ticket can be used in the court clerk's office if the motorist seeks to make pre-payment in person and does not have a copy of the summons. See below, Chapter IX and Appendix F, for further treatment

of the material proposed to be included on the motorist's copy of the summons.

A few courts have established traffic violations bureaus. In these, magistrates or others process pre-paid guilty pleas rather than the clerks' offices. If mailed pleas and fine payment came to the clerk's office in the new system, workload would shift significantly. Therefore, if these courts so desire, the traffic violations bureau could process the pre-trial pleas and fines.

B. Circumstances for Accepting Pre-payment by Plea

In the absence of statutory provisions clearly providing for pre-payment of fines by plea or through bond forfeiture, it is not surprising that the courts do not agree on the traffic offenses for which type of pre-payment should be allowed. A number of fine or bond schedules are used throughout the Commonwealth; there is considerable discrepancy in the specific offenses scheduled.

Nor is there any agreement on whether a repeat or multiple offender should be required to appear in court. The study questionnaires asked whether respondents favored allowing pre-payment or bond forfeiture in a variety of different circumstances. (See Appendix B for summary of responses.) Those responding generally do not favor allowing pre-payment for a motorist charged with his first offense regardless of its gravity. If hazardous offenses are excluded, however, respondents were much more inclined to favor pre-payment of some kind. Judges and clerks were generally inclined to allow pre-payment for minor offenses even if the motorist had committed one or more similar offenses in the past year. This attitude might reflect a recognition that it is not now possible for police or clerks in most circumstances to determine at the time of arrest or shortly thereafter whether a motorist has

a record of recent traffic convictions. Though arresting officers must request driver records for serious offenses, they are not required by statute to do so for speeding or other minor offenses.⁷⁶

RECOMMENDATION: A STATUTE SHOULD BE ENACTED TO IDENTIFY CIRCUMSTANCES UNDER WHICH MOTORISTS MAY MAKE PRE-PAYMENT FOR TRAFFIC OFFENSES. A MOTORIST SHOULD BE ALLOWED TO MAKE PRE-PAYMENT FOR ANY NON-HAZARDOUS OFFENSE.

The statute proposed for implementation is presented below in Appendix D. at page D-6. It is based on section 1:3-7 of the "Model Rules Governing Procedure in Traffic Cases" promulgated in 1957 by the National Conference of Commissioners on Uniform State Laws.⁷⁷ Enactment of a statute like that recommended will help promote uniformity in procedures for acceptance of pre-payments.

The distinction to be made in the proposed statute is between traffic offenses of a more trivial nature and those which pose a greater threat to highway safety or suggest poor driving habits. Many motorists will be allowed the convenience of accepting punishment without being required to appear in court. But serious offenses and those involving accidents will be subject to the closer scrutiny of the court, to impress upon motorists that such violations are not to be taken lightly and to assure that there is a just

⁷⁶ See the discussion of Section 46.1-16.01 in Chapter III above.
⁷⁷ The "Model Rules" can be found in the 1957 Handbook of the Commissioners as well as at pages 156-162 of Economos, note 75 above.

basis for any sanctions to be imposed by the Commonwealth.

A critical feature for the implementation of this recommendation will be the procedure for identifying defendants allowed to make pre-payments. If a motorist has been charged with a serious offense, the decision will be easy. The arresting officer will be able to indicate at the time of arrest that court appearance will be required. Whether a "repeat" offender should be allowed to pre-pay depends on the ability of an arresting officer or a court clerk to determine whether the motorist has prior offenses. There are at least five approaches to this problem.

- Arresting officer initiate check with DMV before issuing summons.
- Court clerk initiate check with DMV before accepting pre-payment.
- Motorist certify on summons that there have been no traffic convictions in last 12 months.
- Modify driver's license to include a "conviction stub," which would be submitted with pre-payment, the absence of which would alert the arresting officer.
- Forego efforts by law enforcement agencies and courts to determine and act upon "peater" status of motorists, making sanctions for repeaters the sole province of DMV.

For the courts, the least expensive of the above alternatives would be to permit DMV to assume sole responsibility for sanctioning repeat offenders in the minor offense category. This approach is most consistent with the view that the sanctions for traffic offenses should be addressed to the causes of poor driving. It would result in the abolition of heavier court sanctions for any repeat minor offenses. It would also be the easiest approach to administer, since it would not call for the introduction of systems for court communication of information about "repeat offender" status between DMV and the courts or police,⁷⁸ nor would it call for the revision of all driver licenses to include a "conviction stub."

C. Uniform Fine Schedule

During personal interviews, 14 of 19 judges stated that they favor having clerks receive fines under a schedule of recommended amounts. Three of the judges expressed disapproval of such a system, saying, in effect, that it limits the ability of their courts to handle problem drivers and it demeans the justice system generally. One judge said that he allows pre-payment only for non-local motorists, since he feels that it is important to give special attention to local motorists in court.

⁷⁸ See the discussion of Section 46.1-16.01 in Chapter III above.

Information gathered during site visits and interviews shows that there is a great deal of variety in the amount of fines or bonds that must be paid by motorists for pre-payment or release on bond. The variation in pre-payment amounts is paralleled by a variation in the amount assessed to those convicted after hearing in court. Table 1 compares the amounts of fines or bonds recommended for several common traffic offenses in the schedules of some of the courts visited during this study. While these courts do not constitute all Virginia's courts, the amounts indicate the wide range of fines that motorists have to pay for the same offenses in different parts of the Commonwealth.

Representatives of AAA clubs in Virginia were also interviewed in the course of this study. They indicated that a common complaint by members was the wide variation from one region of the state to another in the amount of fines to be paid for a particular offense. It seemed unfair to members and to the AAA representatives that the same offense should have a different penalty in one part of the state than in another part.

In view of these facts, judges were asked whether a schedule for fines for ministerial use by clerks should be uniform throughout Virginia. Fourteen of the nineteen judges favored implementation of a uniform fine schedule. Four maintained that the schedule should be set locally, and one observed that he would oppose the uniform schedule

Table 1 Comparison of Fines or Bonds Recommended in Selected General District Court Schedules for Common Traffic Offenses*

Offense ¹	Court or Court District**						
	A	B	C	D	E	F	G
Speeding 10-19 mph Over Limit		\$30-100	\$33-38	\$45-60	\$30-50	\$25-40	\$45-4
Failure to Obey Highway Sign	\$28	10	28-38	35	30	15	
Reckless Driving		100	100-150	70-170		50-500 ²	70 ³
Operating/Permitting Operation of Unlicensed Vehicle	28	50	28	45		25	
DWI (1st Offense)		200 ⁴		270		400	300
Failure to Yield Right of Way ⁵	28	30-40	28-38	35-45	30-65	15-25	
Equipment Violation	28-35	10	28	30-48	30	10-25	30-40

* Source: Fine or bond schedules provided to NCSC interviewers.
 ** The following courts or court districts are represented here:

- | | |
|-------------------------|---------------------------|
| A: Arlington | D: 15th Judicial District |
| B: Winchester-Frederick | E: Fairfax County |
| C: Charlottesville | F: Caroline County |
| | G: Alleghany-Covington |

1. Offenses presented here include those identified as "high volume" offenses in DMV data entry conviction statistics for July 1976 (DMV Interdepartmental Correspondence, August 11, 1976).
2. Bond may be increased up to \$1500 if a felony charge is involved.
3. The amount is increased if circumstances are aggravated.
4. The amount is \$300 if there was an accident.
5. The amount is increased if there was a collision.

as a curtailment of judicial discretion. Several judges favoring uniformity pointed out that any schedule should give adequate latitude for local discretion in individual circumstances, and one judge maintained that the schedule should be detailed enough to distinguish offenses of different magnitude. For example, he suggested, speeding 10 to 19 miles above the speed limit on an inter-state highway cannot be compared to speeding 10 to 19 miles above the limit in a residential area.

RECOMMENDATION: THERE SHOULD BE A STATEWIDE UNIFORM SCHEDULE FOR PRE-PAYMENT OF FINES PROMULGATED BY COURT RULE AND SETTING FORTH RECOMMENDED FINES FOR SPECIFIC OFFENSES. THIS SCHEDULE SHOULD GUIDE BUT NOT CONTROL JUDICIAL DISCRETION FOLLOWING IN-COURT HEARINGS.

Communities in different parts of Virginia may have varying opinions of the seriousness of certain traffic offenses. If there were community input to the determination of fines for specific offenses, local variations might thus be justified as reflecting different community standards. But statutes defining traffic offenses do not provide for local variation, and no evidence was found of community participation in the level of fines actually assessed for specific offenses.

The basic principle of like treatment in like circumstances gives strong support to the notion that there be basic uniformity in the sanctions imposed for particular offenses. This does not mean that judicial discretion must be curtailed. In a public hearing it is proper that the

judge exercise his or her authority to adjust fines or dismiss charges when warranted by the individual circumstances of a motorist.⁷⁹ This does not mean that the discretion properly exercised by judges may be permitted for clerks, whose functions are more properly ministerial. Traffic regulations should be uniform as well as reasonable;⁸⁰ citizens are entitled to feel that variations in fines are based on sound principles of justice rather than on personal differences among judges.

It is recommended that such a schedule be promulgated by court rule rather than by statute. Court rules are more flexible than statutes, and those within the court system will be more closely attuned to any developing need for changes in sanctions. The parameters within which the courts will operate as to fine levels will, of course, be set by statute.

A proposed fine schedule for traffic offenses is presented below in Appendix E. Its contents are based on a review of sample fine and bond schedules collected in the course of this study.

⁷⁹ See ABA Traffic Standards § 6.1.

⁸⁰ See ABA Traffic Standards § 1.2.

V. COLLECTION OF FINES AND COSTS

A. Acceptance of Personal Checks

Almost 90% of the clerks responding to the questionnaire indicate they do not accept personal checks.⁸¹ Discussions suggest, however, that a more accurate response might be more qualified: citizens are told not to send or bring personal checks to pay fines and in most cases they are not accepted when offered.

A variety of reasons for not accepting personal checks were offered. Most clerks said too many checks bounced and/or they were too much trouble. A substantial number of clerks cited the absence of statutory authorization or potential personal liability for bounced checks. A potential problem is cited in the practice of some banks of charging the payee as much as five dollars for returned checks.

The Attorney General's Office consistently has interpreted what is now Section 19.2-353 as creating personal liability for those accepting personal checks in satisfaction of state fines and/or costs. In relevant part, that section says that fines and penalties collected for offenses committed against the State, "shall be paid and collected only in lawful money in the United States" Checks are negotiable instruments, not "lawful money."⁸² Therefore, the Attorneys General for almost 30 years have said that they

⁸¹ "Personal checks" does not include certified personal checks or money orders.

⁸² See Code §§ 8.1-201(24), 8.3-107.

are not acceptable and that if a judge or clerk accepts a personal check which is returned unpaid by a bank, the judge and/or clerk is personally liable for the value of that check.⁸³ The Auditor of Public Accounts accepts the Attorney General's rulings.⁸⁴ It should be emphasized, however, that this section applies only to fines collected on behalf of the Commonwealth. There is no statutory provision concerning the medium of payment for fines imposed for violation of local ordinances. Therefore, there is no statutory inhibition to accepting checks in payment of fines imposed for local traffic violations.⁸⁵ Apparently, however, courts do not attempt to make this distinction.

Despite the Attorneys General's view, some courts accept checks. In some of these, checks are accepted for 50% of the fines collected. These include two of the highest volume courts in the state, Richmond and Alexandria. Richmond's traffic caseload in 1975 was over 34,000 cases, third highest in the state. Eighty thousand dollars to \$100,000 in fines and costs are collected a month; \$30,000 to \$40,000 is paid by personal check. Checks above \$100 must be certified and personal

⁸³ See 1974-1975 Ops. Atty Gen. 109; 1974-1975 Ops. Atty Gen. 71; 1969-1970 Ops. Atty Gen. 42; 1956-1957 Ops. Atty Gen. 48; 1948-1949 Ops. Atty Gen. 100.

⁸⁴ Letter from Charles A. Tribble to Honorable Thomas A. Williams, Jr., November 9, 1976.

⁸⁵ Cf. 1959-1960 Ops. Atty Gen. 47.

checks from out-of-staters normally are not accepted. Ten to fifteen checks, representing \$300 to \$350 average, are unpaid by banks a month. Of these, most are paid within 8 weeks. It is estimated that about \$2,000 a year (.6% of checks received) remain uncollected. Upon return of a check, the accounting entry is reversed and the fine reverts to an unpaid fine. The DMV is notified. Reversing the accounting entries and sending revised abstracts of conviction to DMV require a total of two hours or less per month.

Alexandria had the ninth highest traffic caseload in the Commonwealth in 1975: 21,500. It accepted about 5,000 checks for fines in all types of cases in the six months April through October 1976. Of those, 24 (.5%) checks representing \$1,435 were returned unpaid. By the second week of November, \$365 worth of bad checks had been redeemed, leaving a net debit of about \$1,100 (.3% of the checks received) to that date. No personal checks for over \$100 are accepted. DMV is not notified that a fine has been paid until after a check clears the bank. Receipts are marked with the notation: "THIS RECEIPT IS VOID IF CHECK IS NOT HONORED." Motorists whose checks are returned are notified of that fact by letter, which also says driving privileges have been suspended and that DMV has been notified.

Other, smaller courts willing to accept checks say they have not lost any money as a result.

Cities commonly accept personal checks for payment of

parking tickets. In Richmond, the parking ticket instructs that check, draft, or money order, but not coin or paper money, be sent for noncontested parking violations. The highest parking fine in Richmond is a \$24 towing fee, and it is payable by check. Individuals are not required to pay cash to retrieve a towed car.

Personal checks are accepted by some executive branch agencies. Forty to fifty percent of the \$140 million collected by the Division of Motor Vehicles is paid by check. Of that, perhaps \$45,000 per year (.8% of the fines collected by check) is uncollected. A list of those presenting bad checks is maintained and distributed to each office. The Department of Taxation also accepts personal checks. Both of these agencies have special statutory provisions providing for penalties of \$10 or 10% of the value of the check, whichever is greater, for returned checks. It is a misdemeanor for a person submitting a check for payment of sales or use taxes which is returned unpaid by a bank to fail to pay the amount due after written notice from the Commissioner of Taxation. This is the only instance of a separately defined crime for a bad check.⁸⁶ On the other hand, the Alcoholic Beverage Control Board decided this year to continue its cash-only policy in its retail stores.

⁸⁶ Code §§ 18.2-181-18.2-184 define the general crime of tendering a bad check.

RECOMMENDATION: A SECTION SHOULD BE ADDED TO CHAPTER 19.2 OF THE CODE OF VIRGINIA PERMITTING PAYMENT OF TRAFFIC FINES BY PERSONAL CHECK.

Discussion

Personal checks are a commonplace mode of payment today. In 1975, America's banks cleared 28 billion business and personal checks. One of the reasons for the almost universal use of checks is convenience. Another is safety: mail containing cash may get stolen or not be delivered and cash carried on the person may be lost or stolen. A system requiring cash payment for bonds, fines and costs runs counter to most commercial and personal practices today.

The courts accepting personal checks are motivated principally by a desire to accommodate motorists' interest in a convenient way to pay an acknowledged obligation. In addition, however, they believe that the total collected is greater than if they insisted only on cash or certified checks and money orders. It often is neither easy nor convenient to obtain a certified check or money order. Even if a policy of not accepting checks is announced, some people will tender them. In these cases, many clerks accept the check rather than return it, because experience indicates the chance of a certified check, money order, or cash being returned is small. Citizens who offer a personal check which is rejected may choose to "punish" the court by ignoring the fine. In time, the citizen must pay or lose his right to drive in Virginia, but in the meantime the court will not be paid.

The questionnaire responses indicate that most believe

that clerical costs and time required to deal with bad checks exceed the benefits of accepting them. The experience of courts which accept checks belies the belief. Further, the percentage of bounced checks (less than one percent) seems to be substantially less than many guess, as well as less than instances where people never attempt to pay.

The reference in Section 19.2-353 to "lawful money" has been seen as an impediment to accepting personal checks. Furthermore, there is some feeling that payment of a fine by personal check by the thief, the assaulter or the person ordered to support his family would be inappropriate and that the "bounce" rate would be much greater than for traffic offenders. Rather than amend Section 19.2-353, then, it might be preferable to create a new section, 19.2-353.05, limited to traffic offenses. Recommended wording for such a section appears in Appendix D, page D-5.

It is recommended that payment by check be authorized for all traffic offenses, both infractions and misdemeanors. The chief judge of the district should have the option but not be required to permit payment by check. Thus, to the extent that doubts remain about the wisdom of accepting personal checks, some districts can experiment before all are required to accept checks. One consideration would be whether a bank is available which is willing to forego charges to the court for returned checks. The choice should be made for a district, though, to avoid confusion among the public and staff that would result if the choice were left to each judge. It should

be clear, however, that someone who tenders a bad check will not escape responsibility for the fine and costs. The proposed statutory language (D-5) includes a section paralleling the substance of penalty provisions available to the Division of Motor Vehicles and the Department of Taxation. The penalty (fee) should serve two purposes: 1) to discourage the presentation of bad checks, and 2) to help defray the additional cost of handling bad checks. Such a penalty should be considered a cost and distributed in the books as such (see D-2 for proposed statutory authorization).

Finally, judges and clerks seeking to accommodate citizens and obtain payment of fines by accepting checks should not incur personal liability for the value of checks that are unpaid. Clerks and judges are not liable if a motorist fails to pay in the first instance; they should not be liable if the motorist tenders a check which thereafter is dishonored, since in both cases the court and Commonwealth are in the same position. The proposed section includes a waiver of liability for judges and other court personnel.

Several resources are available to the Commonwealth upon receipt of a bad check for payment of a fine. Section 19.2-358 confirms the court's power upon default in the payment of a fine to cite a defendant to show cause why he should not be imprisoned. It permits imprisonment for up to 60 days unless the defendant shows that his default was not an intentional refusal to obey the sentence or a failure on his part to make a good faith effort to obtain the necessary funds for payment.

This section supplements other available statutory means for collection. In appropriate cases, it may be more effective and expeditious than other means, such as civil collection.⁸⁷

Sections 18.2-181-18.2-184 provide that tendering a bad check is itself a crime, although some court officials believe that it does not apply to a check written to cover a pre-existing debt, such as a fine.

The experience of courts now accepting checks suggests that notifying motorists when a check is returned will result in recoveries, and it is an advisable practice. In addition, efforts at prevention will reduce the need for bad check recovery.

RECOMMENDATION: THE OFFICE OF THE EXECUTIVE SECRETARY SHOULD REQUEST FROM THE DIVISION OF MOTOR VEHICLES AND OTHER EXECUTIVE AGENCIES, IF ANY, AND THEN MAKE AVAILABLE TO ALL DISTRICT COURTS IN THE STATE, THE DIVISION'S OR AGENCY'S LIST OF THOSE WHO HAVE TENDERED BAD CHECKS.

Discussion

Because of the number of checks and the dollar volume in which it deals, the Division of Motor Vehicles has created and maintains a list of people who have tendered two or more bad checks. The absence of a name from this list would not assure that a check will be honored, but if each court had a copy of the list, it might be able to minimize the number of bad checks.

⁸⁷ Code §§ 19.2-340 and 19.2-341 provide that fines imposed and costs taxed in a criminal prosecution for offenses against the state, and monetary penalties, constitute judgments in favor of the Commonwealth upon which execution may be had in the same manner as upon any other monetary judgment.

The Division of Motor Vehicles has indicated informally to the National Center that it would be willing to make its list available to the courts.⁸⁸ The Office of the Executive Secretary will investigate the usefulness of compiling and circulating a list of people who write bad checks to courts. If other executive branch agencies have similar lists, the chances of identifying in advance people likely to tender bad checks would be enhanced. There might be need to cull multiple lists for duplicate names, but the benefit from having one complete list would seem to be worth the effort.

RECOMMENDATION: CLERICAL PROCEDURES WITH RESPECT TO BAD CHECKS SHOULD INCLUDE REVERSING THE ORIGINAL ACCOUNTING ENTRY INDICATING PAYMENT AND SENDING THE DIVISION OF MOTOR VEHICLES AN AMENDED ABSTRACT OF CONVICTION, INDICATING NONPAYMENT OF FINE.

Discussion

Several administrative procedures were considered, including conditional receipts and escrow accounts. Under the new accounting system established for the district courts, money received is to be deposited in a bank daily. Conditional receipts would not conform to that procedure unless an escrow account were established. Use of an escrow account would require a conditional receipt and a second bookkeeping entry when the check is paid by the bank. A second account would have to be created and monitored. Every check would require two entries, rather than just bad checks. With the recommended approach, clerks

⁸⁸The list is prepared by region. To qualify, an individual must give two bad checks to the Department. Most of the lists are rather short.

will have to redo completed work and also create new abstracts for DMV, but only for bad checks. The experience in Richmond indicates that this would be a very minor burden in most courts. An amended abstract is preferred to holding the original abstract until the check clears because of the need to advise DMV of driving convictions as soon as possible.

B. Installment Payments at the Time Sentence Is First Imposed

According to interviewed clerks, almost one in every three fined motorists asks for time to pay the fine. In many instances payment is deferred to a future date; in many others, the motorist is permitted to pay the fine in installments pursuant to Section 19.2-354. Some clerks estimate that even so, 20% or more of these motorists default.

Clerks almost universally oppose installment payments because of the administrative burden on their offices. Many judges oppose them, too. Some also dislike the administrative burden. Others' opposition is more philosophical. They feel either that it is inappropriate for courts to be in the credit business or that a fine, to have impact, must be a burden for the defendant to bear. The reason for permitting installment payments is to ease the burden while nonetheless requiring payment; for some, this undercuts the rationale of the sanction.

Proponents of installment fine payment cite the fact that the United States Supreme Court requires accommodation

to a defendant's economic situation.⁸⁹ Further, they argue that in a recession economy such as Virginia's in recent months, total elimination of the opportunity to pay fines in installments is inappropriate, if not impossible.

RECOMMENDATION: INSTALLMENT PAYMENT OF FINES SHOULD BE PERMITTED ONLY AFTER THE COURT HAS DEFERRED PAYMENT FOR A REASONABLY SHORT PERIOD AND A DEFENDANT THEN IS ABLE TO DEMONSTRATE THAT HE IS UNABLE TO PAY THE FINE FORTHWITH.

Discussion

The General Assembly has authorized courts to extend the right to pay fines and costs in installments.⁹⁰ It is clear from the statute's language, however ("that such defendant is unable to pay such fine forthwith"), that the Assembly did not assume that the right to pay fines in installments would replace the requirement of immediate payment. In at least two courts visited by project staff, an estimated 70% to 80% of fined defendants are granted deferred or installment payments. This may not be what the General Assembly had in mind. To clarify the matter, Section 19.2-354 should be amended. Installment payments of fines should be retained where it is apparent they are needed, but there should be a clearer statement that fines in most cases are to be paid in one lump sum at or reasonably soon after the time the fine is imposed.

⁸⁹ Tate v. Short, 401 U.S. 395 (1971). See also State v. DeBonis, 58 N.J. 182, 276 A.2d 137 (1971).

⁹⁰ Code §§ 19.2-354-19.2-358.

It is not recommended that a case be continued for the purpose of payment. Rather, the motorist should be summoned to return at a day certain with money in payment of the fine. If the motorist is then unable to pay and is able to demonstrate valid reasons, deferred payment is made available. For those known to be of limited means, the court may choose to require only a brief period of deferment before establishing a payment schedule.

C. Security for the Payment of Fines

In a small number of courts that were visited during this study, motorists seeking time to make payments must sign a written promise that they will make full payment. But by far the most common practice to assure full payment (used in over half the courts visited) is to require that the motorist surrender his or her operating license to the court until full payment is made. Courts are authorized to suspend driving privileges as security for payment of traffic fines and costs when a motorist fails or refuses "for any reason" to pay a fine.⁹¹ The court must return the license to the motorist once payment is made.

Confusion exists concerning the statutes governing this procedure. The relationship between section 46.1-425(a), which sets the period for which a license may be held by a

⁹¹ Code § 46.1-423.3. A request for deferral of payment probably is a "failure" to pay within the statute's meaning.

court and Section 46.1-423.3, which authorizes taking the license for security, is ambiguous. There are reasonable grounds for differing views of whether time limits in 425(a) govern action taken under 423.3. In addition, there are different understandings of the time limits themselves.

Many courts believe that Section 46.1-425(a) puts a 30-day limit on the time a license may be held, after which it is to be forwarded to DMV. That section also says the license may not be held beyond the time allowed for appeal, which is 10 days.⁹² A close reading suggests that this is to be the limit in the event the suspension or revocation is for greater than 30 days and no appeal is effected. However, there is confusion among courts.

While clerks have found that holding motorists' licenses is an effective device for assuring payment, the practice is not without problems. Many motorists come to the courthouse not expecting to surrender their licenses if they are unable to pay the fine imposed; they then find themselves without the right to drive their cars home. At least one clerk, who does not require motorists to surrender their licenses as security for payment, believes that the practice is unreasonable and may be unconstitutional because no other fined offender must surrender his license as collateral. Several clerks observed that motorists surrendering their licenses then proceed to drive their vehicles anyway, risking

⁹²Code § 16.1-132.

citation for driving without a license or, perhaps, while under suspension. A representative of DMV said that because courts holding licenses do not notify the Division of the temporary suspension, there is no way for people in other parts of the Commonwealth to know of the temporary suspension. Because most motorists can go to DMV and obtain a replacement license, there is no reason why a motorist under court-ordered temporary suspension could not go to DMV the same day and obtain a replacement license, thereby defeating the purpose of the court's action.

RECOMMENDATION: THE PERIOD OF TIME FOR WHICH A COURT MAY HOLD A LICENSE UPON FAILURE OF A MOTORIST TO PAY A FINE FORTHWITH SHOULD BE CLARIFIED.

Discussion

Deferral of a fine is an accommodation to the motorist. In the wake of Tate v. Short, courts cannot use imprisonment to enforce payment by persons of limited means.⁹³ Thus, action on the license to drive is the most effective "leverage" for that purpose. Confusion concerning procedures dilutes the effectiveness of statutory provisions for such a security device. The uncertainty should be resolved, to standardize practice around the state. Recommended language appears in Appendix D (D-9, 10), explicitly severing any relationship between 425(a) and 423.3, and clarifying the time limits in each section.

It is recommended that the limit for a court to hold a license for security for payment of a fine become ninety days

⁹³401 U.S. 395 (1971).

from the date of surrender. In most cases, this should be more than adequate, since fines normally do not exceed \$100. If more than 90 days is needed by a motorist, the court must determine whether leniency (suspension of remaining fine) or an increased penalty is appropriate. The increased penalty results because in the event the license is forwarded to the Commissioner, the motorist becomes subject to a \$25 reinstatement fee. (No reinstatement fee is required upon return of a license by the court within the 90 days.) For the most part, the revised provisions should reduce the number of extremely lengthy installment periods in which little money is collected, simplify bookkeeping, and reinforce the courts' credibility as an enforcer of sanctions.

The intent of the General Assembly in Section 46.1-425(a) was to require that courts notify DMV and transmit the license involved to DMV for any suspension or revocation exceeding 30 days. The court can order suspension for any period of 30 days or less without sending the license to DMV. Wording is provided to make this intent clear.

No ready solution to the possibility of a motorist's obtaining a replacement license is apparent. Telephone transmission of suspension information suffers from security problems, and batch processing is too slow. The risk of a few instances of this evasion of the law is too low to justify the cost of preventing it.

Whenever possible, motorists should be warned before their appearance in court that if payment of a fine is deferred their license may be suspended during the period allowed for payment.

D. Assessing Costs

In any case where a motorist pays a fine for a traffic offense, he or she must also pay court costs. In many circumstances, the amount assessed for court costs exceeds the amount of the fine. Moreover, the assessment of court costs cannot be waived by the court,⁹⁴ even though it can suspend payment of the fine.

The amount usually assessed for court costs is \$18 per case. But problems arise in defining what is a "case": if a motorist is charged with more than one traffic offense in a single arrest by a law enforcement officer, both officers and courts differ throughout the Commonwealth in their treatment of the situation. Some law enforcement agencies write a different summons for each offense charged, while others include all charges on a single summons. For any motorist charged with more than one offense at a single court appearance, some courts treat each offense as a separate "case," while others consolidate all charges into a single "case" against the motorist. Whether or not a multiple defendant has the charges consolidated into a single "case," some courts feel bound to assess costs on a guilty finding for

⁹⁴See Code §§ 14.1-123(3a), 14.1-200, 14.1-200.2.

each offense, while other courts impose only one cost assessment against any single defendant regardless of how many findings there are against him. Asked in the questionnaire what percentage of the traffic summonses involve more than one charge against individual motorists, the most frequent response by clerks was that about one-fourth of their traffic summonses involve multiple charges. In some courts the percentage of multiple charges was estimated as high as 80%, but 11% of the courts said that no summons contained multiple charges.

Because many judges feel that the assessment of court costs works a substantial hardship on motorists, a number often suspend imposition of fines and simply assess costs. In courts where costs are imposed on each offense, judges may dismiss a second charge against the motorist after a guilty finding on the first charge in order to limit the total amount of fines and costs that the motorist is forced to pay.

For motorists charged with more than one offense on a single summons, 52% of the clerks stated that only one cost charge is assessed; multiple costs are assessed in the other courts. Almost 70% of the clerks stated that they favor a policy of assessing just one cost charge for each defendant, rather than assessing multiple costs.

RECOMMENDATION: THERE SHOULD BE A STATEWIDE POLICY THAT ONE COST CHARGE IS ASSESSED WHEN A COURT APPEARANCE RESULTS IN FINDING(S) OF GUILT OR WHEN A PRE-PAYMENT IS MADE.

Discussion

i. Single statewide policy

One of the first comments by officials of automobile associations throughout Virginia regarding this project was that the members of Virginia's automobile associations do not understand why fines and costs vary so much around the state. In a unified, statewide system, costs should be uniform. Most clerks favor a uniform, statewide policy. There appear to be no sound arguments favoring diverse cost policies. The fact that the General Assembly has adopted a section defining the circumstances under which costs will be imposed indicates that a single policy was anticipated.

ii. One cost per adjudication

There are several possibilities: 1) one cost per court appearance in which a finding of guilt is made; 2) one cost per court appearance; 3) one cost per summons; 4) one cost per offense committed and 5) one cost per occurrence. In recommending the first option above, the following factors were deemed critical by the National Center.

First, costs are, in effect, a user's tax, presumably related to the cost of clerical services provided. Some clerical services are required whether a defendant does not appear, appears once, or appears numerous times. Others, however, are related directly to the number of separate

transactions where one or more findings of guilt are entered. Since most motorists in Virginia are adjudicated even on multiple charges at the same appearance, a cost charge per separate hearing or pre-payment plea resulting in finding(s) of guilt⁹⁵ would not create unreasonably high cost charges and would have the same effect for most motorists as one cost per defendant. However, if multiple charges are serious enough to merit more than one hearing in which a finding of guilt is rendered, additional costs are justified.

Second, tying costs to number of court appearances creates problems of definition and equity. Continuances at the state's instance should not penalize the defendant, nor necessarily should his own need for an additional appearance to produce evidence. Applying definitions of court appearance for purposes of equity would create clerical complications affecting accounting and give rise to variation in interpretations of required cost assessments. Similarly, charging costs per occurrence, or incident, would be difficult to administer uniformly.

Third, about one-fourth of the summonses received by Virginia's district courts contain more than one charge, but 11% of the courts say none of their summonses contain more than one charge. A policy tying costs to charges or to a summons, therefore, would necessarily operate against one or another of these groups of motorists.

⁹⁵In the few instances where an ASAP continuance results in separate hearings where findings of guilt are entered for the same charge, the intent would be that only one cost be assessed.

Fourth, cost charges in Virginia are high. In many cases they exceed the fine. Many courts have adopted a cost per summons or per-appearance policy, or have suspended fines in order to minimize the burden of cost charges. A policy of one cost per summons would produce even higher cost charges when officers put only one charge on a summons. A policy of one cost per charge might create undue hardship on many motorists, since the courts have no authority to suspend the imposition of costs. The recommended cost policy minimizes the occasions on which multiple costs will be assessed for the vast majority who handle all charges in one appearance, while making those who answer different charges on separate days and are found guilty each time bear a fuller share of the cost they are creating.

In nearly every instance of pre-payment, one cost would be assessed. If, however, a motorist pre-paid multiple summonses at different times, additional costs would be incurred. Nor would it be in his interest to pre-pay one charge and contest another. See Appendix D, at page D-1, for proposed statutory language.

VI. COURT APPEARANCES

A. Scheduling Appearances of Motorists and Officers

i. Police-Court Cooperation in Setting Appearance Days

Law enforcement agencies were asked by questionnaire how court appearance days are set. In most cases, the motorist is told to appear in court on a day that the arresting officer will be on the day shift or on the officer's "court day," which normally is the same thing. On any given day, an officer will make his "court day" the court appearance day for all motorists to whom he issues summonses. In a few areas the motorist's court appearance date is set by agreement between the officer and the motorist. Two-thirds of the responding agencies said that court appearance days were determined without consultation with the courts. In only a few instances are cases scheduled by court clerks with no prior reference to the convenience of individual officers. Only 10% of the clerks interviewed stated they have experienced problems with having court appearance dates set by individual officers. Normally these were courts where officers occasionally scheduled more court appearances for a given day than the court realistically could handle.

RECOMMENDATION: COURTS AND LAW ENFORCEMENT AGENCIES SHOULD WORK TOGETHER TO ESTABLISH MUTUALLY ACCEPTABLE ORIGINAL AND CONTINUANCE COURT DATES, BUT THE COURTS, WHEN NECESSARY, SHOULD EXERCISE FINAL CONTROL OVER THE NUMBER OF CASES APPEARING ON THE DOCKET FOR ANY ONE DAY.

Discussion

Cooperation between law enforcement agencies and the courts is preferable to confrontation. If one or the other insists on exclusive control over appearance days, the legitimate interests of the other may not be served. Once the summons is issued, the focus shifts to the courts rather than law enforcement, but if the courts proceed without consideration of officers' needs, particularly for when the officers work nights, problems are inevitable.

A preferred approach would be for each motorist to contact the court to obtain an appearance day, set by the court in light of the needs and schedules of the arresting officer. The officers' schedules would be provided by the law enforcement agencies. This would give the courts control of their dockets. This approach is not recommended for implementation across the state, though, because most courts have had few or no problems with the present arrangements and see no need to change them. Also, some courts in Virginia see this procedure as unduly burdensome, even though many courts across the country use it. Nonetheless, it is desirable for law enforcement agencies and the courts to work together to establish court appearance days, rather than have those days dictated by law enforcement alone, especially where that decision results in overloading the docket. The approach recommended preserves present satisfactory arrangements, yet attests to courts' ultimate control over their dockets.

ii. Notice to police of continuances

Only 10% of the law enforcement agencies responding to the questionnaire said they were always notified of continuances or removal of a case from the docket.

RECOMMENDATION: LAW ENFORCEMENT AGENCIES SHOULD BE KEPT APPRISED OF TRAFFIC CASES REMAINING ON THE DOCKET. DEPENDING ON THE PERCENTAGE OF CASES PREPAID, THEY SHOULD BE TOLD EITHER THE CASES LEFT TO BE ADJUDICATED OR THE CASES WHICH HAVE BEEN REMOVED BECAUSE OF PRE-PAYMENT OR POSTPONEMENT.

Discussion

On many days, officers have a number of cases to be heard, so the postponement or removal from the docket of one or two does not create major disruption; they have to be in court anyway. On some occasions, though, they may have only one or a limited number of cases and the postponement or removal from docket causes difficulty. On every day, officers have to review their files and collect their notes. Part of the cooperation between law enforcement agencies and the courts should include advising officers when their cases have been postponed or removed from the docket.

iii. Single appearance by motorist

Unless cases are continued, most traffic matters of a minor nature are disposed of in a single appearance by the motorist. Some courts follow the practice, however, of scheduling a "docket call" day or "return" day. In these courts, motorists pleading guilty to traffic charges make only one appearance, but those pleading not guilty are set down for a second, separate trial day.

RECOMMENDATION: A RULE SHOULD PROVIDE THAT, WHENEVER POSSIBLE, MOTORISTS SHOULD BE ABLE TO DISPOSE OF THEIR CASES IN ONE APPEARANCE.

Discussion

The American Bar Association Standards for Traffic

Justice say:

Multiple appearances should be avoided, except where appearance at a separate arraignment is required. A single in-person appearance by a person charged with a traffic offense should resolve most ordinary traffic charges⁹⁶

Most Virginia courts appear to adhere to this standard. The formalization of pre-payment of fines⁹⁷ also should facilitate compliance with the standard.

Two types of hearings, one for those pleading guilty and one for those wishing to confront the arresting officer, reduces the time commitment of officers and streamlines court procedures. Those requiring confrontation need not appear twice, however. An idea which courts using a "docket call" system might consider is the use of a code-a-phone to replace "docket call." Motorists could be told to call the court for an appearance date and a recorded message used to advise those who wish to plead guilty but not to pre-pay to appear on one date and those wishing to contest the charges to appear on a second date (or call another number to obtain the second date, which would be determined by the officer's schedule). The message can be changed daily. The cost of the units is minimal. It would assist the courts to achieve

⁹⁶ABA Traffic Standards § 3.1.

⁹⁷See pp. 46-55, above.

a single appearance day for motorists and officers while preserving the two-step docket call system.

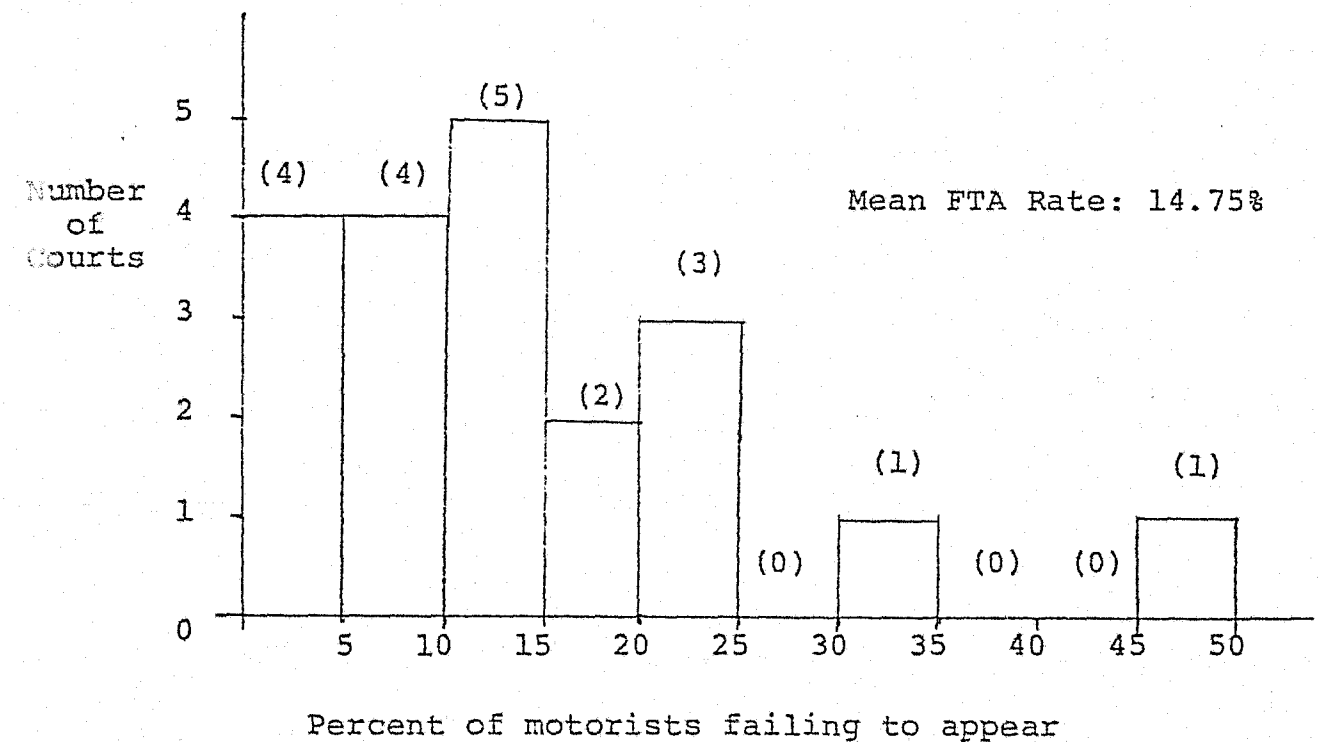
B. Failures to Appear

Among the courts selected for site visits, many have no significant problem with motorists who have not pre-paid but who fail to appear on their scheduled appearance date. Yet in a number of courts, there was a substantial percentage who failed to appear. As Figure 2 shows, there are some courts where as many as a third or a half of the motorists fail to appear on their scheduled court days, and the average in the courts visited was about 15%. Almost two-thirds of the clerks interviewed estimated that no more than five percent of those who fail to appear ultimately escape adjudication.

A variety of procedures are employed to deal with motorists who fail to appear. Forty percent of the courts visited indicated that all defaulting motorists are tried in their absence on the date originally set for court appearance.⁹⁸ In about 25% of the courts, a failure to appear warrant is issued for the absent defendant's arrest. Still other courts continue a case, with notice by mail of the new appearance date. In Fairfax County, continuances are granted only for non-moving offenses; for moving offenses, law enforcement officers are authorized to obtain arrest

⁹⁸ See Code §§ 46.1-413, 46.1-423.3.

Figure 2. Estimated Percentage of Traffic Defendants Who Fail to Appear Without Having Arranged Pre-payment (General District Courts)*



* Source: Estimates by clerks in NCSC interviews.

CONTINUED

1 OF 2

warrants for defaulting motorists after allowing ten days for the motorist to contact the court to make arrangements for appearance or fine payment. Two courts issue a capias. Several of the courts trying motorists in their absence send a letter stating the amount of the fine and threatening license suspension or revocation if the fine and costs are not paid, but other courts do not send such letters; these courts simply send notice to DMV, whereupon the absent motorist's operating license is suspended.

RECOMMENDATION: THERE SHOULD BE A STATE-WIDE PROCEDURE THAT MOTORISTS CHARGED WITH INFRACTIONS WHO FAIL TO APPEAR WILL BE TRIED IN THEIR ABSENCE AND NOTIFIED OF THE FINE AND COSTS. IF THE FINE AND COSTS ARE NOT PAID WITHIN 10 DAYS OF THE NOTICE, THE DIVISION OF MOTOR VEHICLES SHOULD BE NOTIFIED.

Discussion

Section 19.2-258 provides that a person charged with a misdemeanor who has defaulted on his recognizance is deemed to have waived trial by jury and that the case may be heard in his absence. A plurality of courts seem to follow this practice at present. It is only a slight extension to adopt this procedure for the trial of infractions. Because of the nature of infractions, trial in absence poses few problems of due process.

With the recharacterization of minor traffic offenses as infractions and the explicit acknowledgment of prepayment Virginia's traffic adjudication process would be substantially more

responsive to motorists' needs and concerns. Having made these accommodations, it is appropriate for the Commonwealth to determine that if a motorist promises to appear on a certain day and then fails to do so, when an infraction is involved the motorist will be tried in his absence and the Division of Motor Vehicles notified within 10 days. For proposed statutory language, see Appendix D, at page D-6. In order to avoid problems of notice, the summons can include a statement to that effect. See Appendix F.

Misdemeanors and felonies present a different situation, particularly after recharacterization of the minor offenses. Following recharacterization, only the more serious offenses will remain crimes. In these cases, trial in absence in most cases should not proceed without the defendant having some notice of a new trial date and the consequences of continued failure to appear. The court may choose to continue the case and send notice, or it may issue an arrest warrant for the separate offense of failing to appear.⁹⁹ The proposed summons highlights notice of the possibility of arrest for failure to appear for an offense which must be answered to in court. See Appendix F.

⁹⁹See Code § 46.1-178.

VII. RECORD RETENTION

A. Making District Courts "Of Record"

District courts are "courts not of record."¹⁰⁰ For the most part, records and documents of the general district courts are transferred to the circuit courts (the trial courts "of record") for permanent storage. Therefore, almost all district courts have limited storage space and filing equipment. In the questionnaire, clerks were asked whether they approved of forwarding traffic records to circuit court. Principally because of personnel and space limitations, 88% approved of the practice.

Circuit court clerks receive a fee for each file transferred from district court. In civil cases, the clerk's fee is \$1.25, paid initially by plaintiff; it is \$2.00 in criminal cases, paid by the defendant.

RECOMMENDATION: NO CHANGES IN THE STATUS OF DISTRICT COURTS AS COURTS "NOT OF RECORD" SHOULD BE MADE WITH RESPECT TO TRAFFIC RECORDS.

Discussion

Some clerks and judges feel very strongly that district courts should have full control of their records, including indefinite storage and retention. The limited jurisdiction of district courts does not require that they lose control

¹⁰⁰ Section 16.1-69.5(a).

of their records. States rarely require their limited jurisdiction courts to transfer their records to general jurisdiction courts for permanent retention and storage.

There also might be additional cost to citizens because of the transfer. The circuit court clerk's fees are not insubstantial. The fees are to cover personnel, supplies, and equipment related to storage.¹⁰¹ It is not clear whether or not these fees exceed costs on a per file basis.

Whatever merit there is in the general proposition that district courts should be "courts of record," it seems inappropriate to make the district courts "of record" for traffic cases, but not for other criminal or civil cases. The district courts are the only courts not of record in Virginia; the implications of a change for the entire system are beyond the scope of this study. Therefore, it is recommended that no change be made at this time in the status of district courts as courts of record with respect to traffic cases, whether or not these cases are recharacterized as infractions.

B. Retention of Traffic Index Cards

A year ago the district courts' uniform docketing system went into effect. The daily docket sheet is the courts' permanent record of the existence of the case, disposition, and the costs and fines assessed, if any. Access to the sheets

¹⁰¹ The city or county must provide storage space. Code § 15.1-257.

is through a card index system, maintained alphabetically by defendant's name. Warrants and summons in traffic cases eventually are forwarded to circuit courts for indexing, filing and storage. Because permanent storage is in circuit court, a district court's traffic index is regarded as only a pending cases index. Index cards are to be destroyed when all three of the following conditions have been met:

- full payment of fines and costs has been made;
- the abstract of conviction has been sent to DMV; and
- the warrant or summons has been sent to circuit court.¹⁰²

About two-thirds of the clerks responding to the questionnaire disapprove of destruction of the traffic index.

RECOMMENDATION: THE TRAFFIC INDEX SHOULD BE RETAINED IN DISTRICT COURT FOR THE SAME LENGTH OF TIME AS TRAFFIC DOCKET SHEETS.

Discussion

The clear legal distinction between courts of record and courts not of record is not known by most citizens and often is overlooked by law enforcement officers and others. Therefore, many people seek traffic histories in the district courts rather than circuit courts. Also, although circuit court clerks have the statutory obligation to index traffic summons and warrants, such indexing is not a high priority and often is deferred or neglected altogether. Thus, in some jurisdictions effective access to traffic histories is

¹⁰²Office of the Executive Secretary, Uniform Docketing System User Manual, p. 11.

not available in circuit court. The Division of Motor Vehicles has the records, but for many citizens it often seems to be more convenient to ask the local court than to ask DMV. Further, on occasion the Division of Motor Vehicles makes a mistake in creating or updating a record. The court record may need to be checked to confirm the error. For all these reasons, there is good reason for district courts to have access to the docket sheets which contain the full record. Such access is not possible without the index.

Retention of traffic indexes might require twice as much space for card storage as is required for criminal and civil indexes, since traffic represents about half of the average court's work. For 6,000 cards (the mean 1974 traffic caseload was 6,140), slightly less than four feet of filing space is required. In most courts, this would not create a substantial burden. In high volume courts special arrangements might have to be made. For instance, revolving tub files may be needed. Authority to microfilm index cards may be in order.¹⁰³ The latter may have to be authorized by the General Assembly. The former would have to be obtained through the local budget process. To the extent possible, the Executive Secretary's Office and the Committee on District Courts should assist courts for whom

¹⁰³For discussion of microfilm applications, see National Center for State Courts Publication No. R0026, Microfilm and the Courts: Guide for Court Managers, July, 1976.

retention of traffic indexes would create storage problems. The potential storage problem in less than half a dozen courts should not preclude the change for the other 115, however.

An alternative approach to reducing need for storage space may be to reduce the period of time traffic dockets must be kept.

RECOMMENDATION: CONSIDERATION SHOULD BE GIVEN TO PROVIDING FOR THE DESTRUCTION OF DOCKETS AND INDEX AFTER A PERIOD OF TIME SHORTER THAN TWENTY YEARS.

Discussion

The period which circuit court is required to keep criminal papers transferred from district court is 20 years.¹⁰⁴ The goal of the present provision that traffic index cards be destroyed is to minimize duplicate record keeping. The same goal can be effectively and consistently reached by holding both the docket and the index cards for some period of time shorter than the 20 years incumbent upon circuit court.

The creation of an infraction category need have little impact on circuit court record keeping. Though criminal cases may be destroyed after 20 years and civil papers, which records of infractions would be, must be held indefinitely, in practice few courts destroy any records. However, to simplify record keeping in the circuit courts and avoid possible confusion, the summons for an infraction should be

¹⁰⁴ Section 19.2-346.

treated in the same way as criminal records, both as to 20-year retention and indexing. This can be accomplished by a slight change in the section requiring district court clerks to forward summonses to circuit courts. See Appendix D, page D-7.

VIII. ADJUDICATION OF JUVENILE TRAFFIC OFFENSES

Traffic offenses committed by juveniles are adjudicated in the juvenile and domestic relations (J & DR) courts rather than the general district courts. In a few rural courts, however, juvenile traffic offenders are tried in general courts. A juvenile is defined by statute as a person less than 18 years of age.¹⁰⁵ Unlike the usual juvenile case, almost all traffic cases are initiated by a summons rather than a petition. Failures to appear frequently result in the issuance of a petition, though. Conviction records for cases initiated by summonses are public records,¹⁰⁶ but otherwise the same protections afforded juveniles for other criminal offenses are extended to them for traffic offenses: 1) the records initiated by petition and charges of violation are not considered public, and 2) juveniles are not required to answer charges in the same court where adult traffic violators are tried. The initial license of a juvenile is sent by DMV to the J & DR court, which then transmits it to the juvenile.¹⁰⁷ In most cases today, the license is mailed or handed to him or her by the clerk's office. In a few courts the judge makes a courtroom ceremony of the presentation.

¹⁰⁵Code § 16.1-141.

¹⁰⁶Code § 16.1-163.

¹⁰⁷Code § 46.1-375.1.

A juvenile may not waive court appearance. In addition, court appearance normally is mandatory for the juvenile's parents or legal guardian. Though there are aspects of lenience to juvenile court practices, the J & DR judge retains the power which now has been removed from general district court judges to suspend or revoke the driving privilege for any offense.¹⁰⁸

Juvenile traffic cases do not overburden J & DR courts. Preliminary figures from the 1976 Uniform Caseload Reporting System indicate that slightly less than 25% of the hearings held in Virginia J & DR courts relate to traffic offenses. Nor is the total traffic caseload high. The J & DR courts adjudicate only 3.5% of the traffic cases in Virginia.¹⁰⁹ On-site attendance at J & DR courts affirms the less pressed condition of these courts. The clerk's offices are usually less busy than the sometimes overwhelmed general district courts. Files are more manageable, and less called upon, since only the court has a right of access to them.

During on-site visits, speeding was cited as the most common offense. Fines assessed are generally consistent with those assessed adults in the general district court in the same area. All of the courts visited allow juveniles to make arrangements for installment or deferred payment. Very few juveniles apparently default on payment of fines, in part because many parents will pay the fine (at least initially) if the juvenile is unable to pay.

¹⁰⁸ Code § 16.1-178(8), (9).

¹⁰⁹ Based on statistics of the Division of Motor Vehicles for 1975.

All of the J & DR judges interviewed estimated that traffic requires about 15% of their time. Most see education as the primary purpose of juvenile traffic adjudication, with improvement of highway safety a closely related purpose. Unlike general district court judges, punishment is their least important concern. Three of the four interviewed judges said that for minor offenses, however, juveniles are treated largely as adult offenders.

Only one of the interviewed judges flatly opposed transferring jurisdiction over minor traffic violations to general district court. One of the other judges pointed out, however, that the juvenile judges last year voted heavily against such a transfer of jurisdiction.

RECOMMENDATION: JUVENILE AND DOMESTIC RELATIONS DISTRICT COURTS SHOULD RETAIN JURISDICTION OVER JUVENILE TRAFFIC OFFENSES.

Discussion

Juvenile and domestic relations district court jurisdiction over juvenile traffic offenses is a luxury, in that it duplicates existing resources for a small number of drivers. But it is a luxury with sound policy justifications.

Juvenile drivers are involved in a disproportionate number of accidents.¹¹⁰ And some judges who were interviewed believe that the same social and psychological characteristics are shared by bad juvenile drivers and juvenile delinquents.

¹¹⁰Dept. of State Police, Virginia Crash Facts 20, 40-49 (1975).

A greater opportunity for individual attention exists in J & DR courts. The courts also have complete flexibility in fashioning appropriate sanctions. When the judge considers it wise to protect a juvenile's record, he can do so by holding the abstract in his court rather than sending it to DMV. As a matter of practice, parents are summoned also, so they are made aware of their child's violation. Often parents impose individually appropriate penalties of which a court would not be aware.

Some juvenile traffic offenses clearly belong in the juvenile courts. For instance, unlicensed juveniles below the age of 16 improperly operating mini-bikes or bicycle violators. The youth and nature of the offense of some of these offenders places them squarely within the guiding philosophy of the juvenile court--to lighten the weight of the law upon youthful shoulders.

Except for the latter group, though, most of the advantages perceived for juvenile and domestic relations district courts could be achieved in general district courts if jurisdiction were transferred. And despite the theoretical distinctions, in practice there is little difference, other than the absence of pre-payment by mail and the requirement that parents be present, between traffic adjudications in juvenile and domestic relations and general district courts.

Nonetheless, there is little interest among general district court judges and clerks in assuming the cases or accommodating the new procedures that might be required. Clerks cite potential problems in separating traffic offenses by unlicensed juveniles below the age of 16, which would remain in the purview of juvenile court, from other traffic offenses by older juveniles. And, as indicated, J & DR judges overwhelmingly oppose a change. Jurisdiction over juvenile traffic offenses can be justified in either court. Since Virginia has chosen to place it in the J & DR courts, there is no compelling reason to change.

RECOMMENDATION: INVOLVEMENT BY JUVENILE AND DOMESTIC RELATIONS COURTS IN THE DISTRIBUTION OF JUVENILE DRIVERS LICENSES SHOULD END. LICENSES SHOULD BE SENT DIRECTLY TO JUVENILES BY DMV.

Discussion

Safety indoctrination for new juvenile drivers is now provided by two methods. J & DR courts issue first licenses to juveniles, and no juvenile can obtain a license without first taking a driver's training course, usually in high school.¹¹¹ The first requirement predates the second by six years. As a result, some view the courtroom ceremony as diminished in importance by the requirement for training. They believe there is little prospect that a juvenile uninfluenced by several weeks or months of training in school by a certified instructor will be influenced by a brief courtroom ceremony. Some courts do not hold a ceremony at

¹¹¹ Code § 46.1-357. The requirement of a driver's training course was added in 1966. 1966 Acts, c. 642. Section 46.1-375.1 was added in 1960.

all, and the juvenile merely stops at the J & DR court clerk's office to pick up her or his license. Others hold only a brief ceremony.

It should be recognized that judges and clerks in many districts do not now favor the requirement that courts issue first licenses, and they view it as a meaningless exercise with little demonstrable impact on highway safety. This attitude may result in lowered respect for the courts in some areas, rather than improved attitudes about safety. There is no evidence that the effort has been successful. These facts should be recognized and Section 46.1-375.1 repealed.

RECOMMENDATION: J & DR COURTS SHOULD HAVE THE OPTION TO PERMIT PRE-PAYMENT OF FINE BY LICENSED JUVENILES, PROVIDED PARENTS ALSO SIGN A WAIVER OF APPEARANCE IN PERSON AT THE COURT OR SUBMIT A NOTARIZED WAIVER.

Discussion

Most parents wish to know of a child's driving violations. All parents should know because of insurance and other possible financial consequences. Adequate notice does not require parents' attendance in court, however. Notice by the child, evidenced by a parent's verified countersignature on the waiver and plea, should be sufficient in most cases of minor violations.

Verification can be obtained either by the parent's accompanying the child to make an in-person pre-payment by written plea, or by certification by a notary of the parent's

mailed signature on a waiver and plea form. Both methods should be available to all parents of charged juveniles. Either is less time-consuming than attendance at a scheduled court session.

Alternatives for notice would be to permit the juvenile to obtain and forward his parent's signature, or to require the court to mail notice to parents. The first suffers from the potential hazard of juvenile forgery of parents' signatures. The second increases the workload of the courts. The recommended procedure increases convenience to parents and child over the present system, while insuring notice to parents of juveniles who pre-pay.

The 16 or 17 year old juvenile has been admitted to the adult world on receipt of a driver's license. He or she now is being treated and fined as an adult in most courts, except for the pre-payment option. Licensed juveniles should enjoy access to the same rights as well as responsibilities of other drivers. Initially, however, it is recommended that granting the right be each court's decision, so that a period of experimentation in some courts will test the approach.

Amendment to Section 16.1-162 is proposed to provide that a court may extend pre-payment privileges to juveniles (see Appendix D, page 4).

IX. TRAFFIC SUMMONS

A. Design and Use

Undoubtedly the most important document in the entire traffic adjudication process is the Virginia Uniform Traffic Summons, which provides the summons for the motorist, the record for law enforcement officials, the basic document from which court processing of a traffic case proceeds, and an abstract of disposition for DMV.

By statute,¹¹² law enforcement officers throughout the Commonwealth are to use a uniform summons approved by the Attorney General after consultation with the Superintendent of the State Police and the Commissioner of DMV. Some chiefs of police have said that the uniform summons now in use is too large and bulky. But an official of DMV expressed the opinion that most of those using the present summons like its size, and that a smaller-sized ticket (for example, the uniform traffic ticket and complaint approved by the American Bar Association)¹¹³ would be too hard to read.

The same official admitted that the detailed information called for on the face of the summons regarding the height, weight, eye color, and other features of a motorist usually is not needed. But when there is a question whether the defendant is in fact the person alleged to have committed

¹¹² Code § 46.1-416.1.

¹¹³ See Economos, note 75 above, at 163-170.

the offense charged, the additional information is of great assistance to the law enforcement process, he said. It is not known how often this is a concern in traffic cases, since the summons form is not limited in its use to traffic cases.

Although the summons is the initiating document for traffic proceedings in the district courts, it is not a document of the courts and is not produced or controlled by the courts. Some courts receive a carbon copy of the summons, others the original, but the statute providing for the uniform summons makes no mention of its use by the courts other than that one copy is to be used to report traffic dispositions to DMV. Many clerks affix a separate "warrant," "back" or "trial record" to each summons copy for the convenience of the judge when entering the findings and disposition on each charge. Though there is no statutory provision for participation by the court system in the design and revision of the form for the uniform summons, representatives of the courts have, in fact, participated in that process.

RECOMMENDATION: THE STATUTE PROVIDING FOR DESIGN AND REVISION OF THE VIRGINIA UNIFORM TRAFFIC SUMMONS SHOULD BE AMENDED TO PROVIDE EXPLICITLY FOR PARTICIPATION BY COURT REPRESENTATIVES IN ITS DESIGN, AND TO PROVIDE THAT THE ORIGINAL SUMMONS BE FORWARDED TO THE COURTS FOR THEIR USE.

Discussion

No one can deny the pivotal role in the enforcement of traffic laws played by the courts. A court's determination whether there has been a violation of the traffic laws is a prerequisite for the imposition of all judicial and administrative sanctions. In order to perform its adjudicative function each court must have a document providing sufficient basis for the exercise of its jurisdiction and providing sufficient information for case processing. The official record of a court's disposition in a traffic case will remain within the court system. Although informal practice now recognizes the need for court input to the design for the summons, this practice is now a matter of grace, not a requirement. The absence of explicit statutory authorization for court involvement is a curious anomaly that should be changed.

The courts are the only ones in the traffic adjudication process needing the initiating document as part of their official records. DMV needs only an abstract. Law enforcement agencies need copies of the summons for collection of statistical information and monitoring officers' performance, but carbon copies of the summons should be sufficient for these purposes. The copy of the summons retained as part of the official record of disposition should be that providing the "best evidence" of the written summons -- the "original" of the document.¹¹⁴

¹¹⁴ A bill sponsored by the Committee on District Court would require only "a" copy for the court. Although this would be an advance over the present statute, the National Center believes the statute should require the original summons for the courts.

B. Contents of the Summons

Despite the fact that almost all district courts now use some form of pre-payment as a means of disposing of minor traffic cases, it may only be by chance that a motorist learns about the availability of the pre-payment option. When asked in the questionnaires how motorists learn about the availability of pre-payment, court clerks gave a variety of answers. In some areas, motorists are informed about it by the arresting officers; in others, however, motorists do not learn of it unless they are told by friends or have had a recent prior traffic offense. In still other areas, they learn about it only if they call the court and ask if it is possible to pay by mail or otherwise avoid court appearance.

Some district courts provide a printed notice that officers hand to motorists upon issuance of a citation. Such a notice usually informs the motorist how to post cash in lieu of appearing in court. The notice also may inform the driver of his or her right to appear in court, to be represented by counsel, to testify or not, to have witnesses summoned, to plead guilty or not guilty, and to appeal, and that there is a presumption of innocence unless guilt is proven beyond a reasonable doubt. But the Virginia Uniform Traffic Summons as presently constituted does not include such information, and motorists wishing to make pre-payment are not always informed of their procedural rights. A revision of the uniform summons is now under way, and advice

of these rights soon may be included on the summons itself.

Similarly, motorists seeking to make pre-payment are seldom called upon to make a specific waiver of procedural rights. Questionnaire responses by general district court clerks indicate a waiver is required to be signed in lieu of appearance in only 16% of the courts. Under Code § 19.2-258, a person charged with a misdemeanor who has defaulted on his recognizance is deemed to have waived trial by jury and the case may be heard in his absence. Some courts require motorists pre-paying fines to complete a written plea of guilty in lieu of court appearance, but this practice is not followed in most of Virginia's courts.

RECOMMENDATION: THE VIRGINIA UNIFORM TRAFFIC SUMMONS SHOULD BE DESIGNED TO SUPPORT PRE-PAYMENT BY INCLUDING
(A) NOTIFICATION WHETHER APPEARANCE CAN BE WAIVED
(B) ADVICE OF RIGHTS AND LIABILITIES, AND (C) A PLACE TO MAKE A WRITTEN WAIVER OF TRIAL AND ENTRY OF PLEA.

Discussion

Three-quarters of the judges interviewed in the course of this study felt that motorists can be adequately informed of their procedural rights if waiver of appearance is allowed. They said that this notice could be provided either on the traffic summons itself or on a separate form. Some judges pointed out that the amount of process that is "due" to a motorist charged with a minor offense and not potentially subject to imprisonment is less than that due to others charged with crimes.

Judges who believed that motorists would not be adequately informed under such circumstances observed that some motorists would not be able to read the summons, or might not be able to overcome their fear of the arrest situation sufficiently to understand what was being explained. This position, however, seems to assume a low level of literacy among Virginia drivers. It also overlooks the fact that pre-payment normally occurs several hours or days after the summons is issued. Furthermore, motorists who cannot read or understand the information on the traffic ticket are not likely to be harmed, because they will appear in court to have their rights explained and their cases adjudicated rather than taking advantage of the pre-payment option. Finally, it is possible to be clear without including a lot of legal terms that citizens might not understand.

The American Bar Association recommends that defendants in traffic cases be given full advice of their rights and the effect of any plea whether or not they are required to appear in court.¹¹⁵ The uniform traffic ticket and complaint endorsed by the American Bar Association (and adopted by 23 states) provides space for the insertion of information to inform a violator of his or her rights.¹¹⁶ The most recent proposal for revision of the Virginia Uniform Traffic Summons would include all this information on the motorist's copy of the summons.

¹¹⁵ ABA Traffic Standards §§ 3.2, 3.4.

¹¹⁶ Economos, note 95 above, at 170.

The ABA-approved uniform ticket also includes a form for written appearance, plea of guilty, and waiver of hearing by the court.¹¹⁷ If sufficient space can be provided on the Virginia Uniform Traffic Summons for such a waiver and entry of plea, motorists will be able to enter a plea by mail, and the court will save on paper-work. In addition, non-compliance is discouraged by warnings of potential liabilities.

There is one further modification of the summons that will aid pre-payment. It is the inclusion of a small box on the face of the summons that can be checked by the arresting officer to indicate that a court appearance is not required for the specific offense charged if a pre-trial guilty plea is entered. This will inform the motorist whether pre-payment is available, and it will limit efforts by motorists to pre-pay when that option is not provided.

See below, Appendix F, for proposed revisions to the Virginia summons in keeping with the changes discussed here.

¹¹⁷ Id.

APPENDIX A

METHODOLOGY

Four types of information were critical for this study:

- 1) general information about practices across the Commonwealth;
- 2) in-depth understanding of the adjudication of traffic cases in sample courts;
- 3) the flow of paper and records between courts and other agencies; and
- 4) the opinions of people involved in and most affected by traffic adjudication regarding important policy issues.

The study's methodology attempted to obtain each type of information.

The general information was obtained from questionnaires sent to each district court judge and clerk and a sample of law enforcement agencies issuing traffic summonses. Sixty-six of the 108 (61%) general district court judges returned their questionnaires. Two indicated they have no traffic jurisdiction. Eighty of the 128 general and combined district court clerks (62.5%) and 39 of the 60 juvenile and domestic relations clerks (65%) returned the questionnaires. Thirty-three of the 50 law enforcement questionnaires (66%) were returned, but only 29 of those were completed.* Questionnaires and the tabulated responses are reproduced in Appendix B.

Neither time nor resources permitted visiting each of the Commonwealth's district courts. Therefore, two generalized criteria were established for selecting courts to be visited. First, representative courts in terms of

*One chief of police said he would not respond and three said they did not issue sufficient summons to respond. In addition to the questionnaires indicated above, there were 11 questionnaires from clerks, 4 from judges and 3 from law enforcement agencies returned after the September 15 cut-off date for tabulation.

volume and geographic location should be visited. Second, large volume courts should be over-represented, because problems needing attention would be most apparent in those courts and any proposed changes would have greatest impact on them. Also, visits to high volume courts would maximize the percentage of the Commonwealth's total traffic caseload included in the study. With these criteria in mind, 19 courts in 16 districts were visited. They were:

<u>District</u>	<u>Court</u>
Third	City of Portsmouth
Fourth	City of Norfolk
Seventh	City of Newport News
Ninth	City of Williamsburg
Eleventh	City of Petersburg
Thirteenth	City of Richmond
Fifteenth	Caroline County Hanover County Lancaster County Northumberland County
Sixteenth	City of Charlottesville
Seventeenth	Arlington County
Nineteenth	Fairfax County
Twentieth	Rappahannock County
Twenty-second	City of Danville
Twenty-third	City of Roanoke
Twenty-fourth	Campbell County
Twenty-fifth	Alleghany-Covington
Twenty-sixth	City of Winchester Frederick County

The 19 courts represent only 16% of all general and combined district courts, but represent almost 40% of the state's traffic caseload.

During each visit, the general district court clerk and at least one judge were interviewed. When time and schedules permitted, the juvenile and domestic relations clerk, one or more judges in the juvenile and domestic relations court, and a representative of the principal law enforcement agency in the jurisdiction also were interviewed. In some cases a judge or clerk both completed a questionnaire and participated in an interview. In order to broaden the scope of opinion from law enforcement agencies, however, there was no overlap between interviews and questionnaire responses; the law enforcement questionnaire was used as the basis for interviewing law enforcement agencies not sent questionnaires.

Input beyond the Judiciary and local law enforcement agencies was needed. Therefore, senior officials of the State Police and the Department of Motor Vehicles were interviewed. Representatives of the Virginia Women for Highway Traffic Safety, the Highway Users of Virginia Association and the Highway Safety Advisory Commission were contacted.

Some of the matters addressed in this study raise important policy issues on which citizens' response may be helpful. Therefore, a short, general public opinion survey was designed relating to whether certain traffic offenses should be reclassified. The survey is being administered by and with the assistance of the Tidewater Automobile Association of Virginia.

Almost 800 responses have been received, and they are summarized below in Appendix B. They have been considered in resolving the issues raised in the study and will be available to Virginia's policy makers as they review the Center's recommendations.

Changes proposed here are likely to have a significant impact on the district court clerks' operations. A seven-member Advisory Committee of district court clerks was appointed to help guide the project study team. Others also will be affected by any changes proposed. Therefore, the National Center from time to time contacted people informally to achieve input from each sector of the government and community affected by alternatives being considered.

APPENDIX B
QUESTIONNAIRES & RESPONSES
AND PUBLIC OPINION SURVEY

FINAL TABULATION
 DISTRICT COURT TRAFFIC ADJUDICATION STUDY
 JUDGES' QUESTIONNAIRE

Court Name: 62 responded

I. One issue being studied is pre-payment by mail or in person of traffic fines for moving violations. The following questions concern that issue.

1. Does your court accept pre-payment of traffic fines or cash bond which then is forfeited?

<u>Yes</u>	<u>No</u>	<u>Yes & No</u>
53	6	3

Yes--Cash Bond Only
2

** If YES, answer questions 2 and 3. If NO, skip to question 4.

2. What advantages do you think result from pre-payment to:

(a) the motorist?

35	Convenience	3	Other (miscellaneous)
14	Saves travel expense	4	No answer
28	Time saved	1	Not usable
14	Saves loss of work		

(b) the court?

34	Faster docket/ Saves time	2	'None'
20	Relieves heavy docket	3	Promotes Justice
4	Convenience	5	Other (miscellaneous)
1	Facilitates paperwork		

3. What is the legal basis for accepting pre-payment of fine or forfeitable bond?

23 'Plea of Guilty'

- 7 'Statutory'
- 5 Guilty Plea/Sec. 19.2-138,140
- 4 No Stat. Authority
- 2 Don't know
- 3 Supreme Court Rule (3A:10,3A:29(f))
- 6 Other
- 8 No answer

5 Various Virginia Code Sections

4. If your court does not accept pre-payments, are they not used because of legal, policy or practical reasons? Please explain below. (Check more than one, if applicable.)

<u>Legal</u>	<u>Policy</u>	<u>Practical</u>	<u>Other</u>	<u>No Answer</u>
4	5	4	1	2

5. Should traffic violators be able to pay fines by personal check?

<u>Yes</u>	<u>No</u>	<u>Not Usable</u>
17	46	1

6. Should violators in any of the following situations be allowed to pre-pay fines, assuming they could be identified? (Answer for each type of violator.)

<u>Type of Offender</u>	<u>Yes</u>	<u>No</u>	<u>No Answer</u>
First offense of any kind.	7	53	4
First offense except drunk driving, property damage, injury or death and other hazardous moving violations.	47	14	3
Prior offense (other than serious offenses indicated above) same as present charge, but first offense in 12 months.	40	20	4
Prior offense (other than serious offenses indicated above) in last 12 months, same as present charge.	35	26	3
First offense of this type (other than serious offenses indicated above) but one or more different offenses in past 12 months.	37	24	3

Yes No No Answer

Person with:

a) two moving violations at one time	28	29	7
b) three moving violations at one time	19	38	7
c) more than three moving violations at one time	16	40	8

7.(a) Should out-of-state violators be given special consideration with respect to pre-payment of fine by mail?

<u>Yes</u>	<u>No</u>	<u>Not Usable</u>	<u>No Answer</u>
33	28	2	1

(b) Should those living 100 miles or more from court (in Virginia or not) be given special consideration with respect to pre-payment of fine by mail?

<u>Yes</u>	<u>No</u>	<u>Not Usable</u>	<u>No Answer</u>
31	30	2	1

8. If you favor permitting some people to pre-pay fines, how could they be classified or identified in a statute?

17 responded. Responses on file with National Center for State Courts.

II. Another issue being studied relates to procedural aspects of processing traffic offenders. The following questions concern only offenses of a less serious nature. Offenses such as drunk driving, driving which results in death or injury to person or property, and other hazardous moving violations, are not included in this series of questions.

9.(a) Do you believe that motorists charged with minor moving traffic violations consider themselves "criminals"?

<u>Yes</u>	<u>No</u>
0	64

(b) Do you consider motorists charged with minor moving traffic violations "criminals"?

<u>Yes</u>	<u>No</u>
8	56

10.(a) In the last two years, how many minor traffic offenders have you sentenced to serve time in jail (exclude contempt and FTA cases)?

<u>None</u>	<u>1-10</u>	<u>11-20</u>	<u>21-30</u>	<u>41-50</u>	<u>Not Usable</u>	<u>No Answer</u>
49	4	1	2	2	5	1

10.(b) Do you believe jail should remain a sentencing option for minor moving traffic violators?

<u>Yes</u>	<u>No</u>
30	34

11.(a) In the last two years, how many times have you appointed counsel to represent indigents accused of minor moving traffic offenses?

<u>None</u>	<u>"Very Few"</u>	<u>1-10</u>	<u>11-20</u>	<u>21-30</u>	<u>41-50</u>	<u>Not Usable</u>	<u>No Answer</u>
46	5	5	2	0	1	3	2

(b) Do you think minor moving traffic violators should have the right to have court-appointed counsel?

<u>Yes</u>	<u>No</u>	<u>No Answer</u>
44	19	1

12. Do you think minor traffic violators should have the right to trial by jury upon appeal to circuit court?

<u>Yes</u>	<u>No</u>	<u>No Answer</u>
44	19	1

13.(a) Are there any moving traffic offenses that should be handled like parking violations?

<u>Yes</u>	<u>No</u>	<u>Not Usable</u>	<u>No Answer</u>
24	36	2	2

(b) If YES, please identify the types of offenses that could be so treated:

20 responded. Responses on file with National Center for State Courts.

14.(a) Has the new docketing system created any problems in handling traffic cases?

<u>Yes</u>	<u>No</u>	<u>No Answer</u>
16	42	6

(b) If YES, what are they?

6 responses from 16 "yes" answers

15. Are there any changes in the way district courts adjudicate traffic cases that you think would improve the system:

for the courts?

for citizens?

DISTRICT COURT TRAFFIC ADJUDICATION STUDY

GENERAL DISTRICT CLERKS' QUESTIONNAIRE

Court Name: 83 responded

I. One issue being studied is pre-payment by mail or in person of traffic fines for moving violations. The following questions concern that issue.

1. Does your court accept pre-payment of traffic fines or cash bond which then is forfeited?

<u>Yes</u>	<u>No</u>	<u>No Answer/Unusable</u>
78	3	1 1

If YES, answer question 2-9. If NO, SKIP to question 10.

2.(a) Do you call it pre-payment of fine or bond which is forfeited?

Fine	<u>35</u>	(both: 12)
Bond	<u>27</u>	
Collateral	<u>2</u>	
Cash Forfeiture	<u>1</u>	
Miscellaneous	<u>2</u>	
No Answer	<u>1</u>	

(b) Do you require a waiver to be signed in lieu of appearance?

<u>Yes</u>	<u>No</u>
13	67

3.(a) In what percent of all your traffic cases is the fine (bond) pre-paid?

<u>No Ans.</u>	<u>1-10%</u>	<u>11-20%</u>	<u>21-30%</u>	<u>31-40%</u>	<u>41-50%</u>	<u>51-60%</u>	<u>61-70%</u>	<u>71-80%</u>	<u>81-90%</u>
1	7	3	13	22	26	3	Ø	4	1

(b) In what percent of your out-of-state cases is the fine (bond) pre-paid? Reciprocal states:

<u>No. Ans.</u>	<u>1-10%</u>	<u>11-20%</u>	<u>21-30%</u>	<u>31-40%</u>	<u>41-50%</u>	<u>51-60%</u>	<u>61-70%</u>	<u>71-80%</u>	<u>81-90%</u>
8	9	3	8	3	12	5	2	12	7

91-100%

8

All other states:									
No Ans.	1-10%	11-20%	21-30%	31-40%	41-50%	51-60%	71-80%	81-90%	91-100%
9	13	3	6	3	7	1	5	12	23

4. For what offenses may pre-payment be made and/or what kinds of people (e.g., out-of-state, ill) are allowed to pre-pay fines?

76 responded. Responses on file with National Center for State Courts.

4 did not respond.

5.(a) Do you accept pre-payment by personal check?

Yes	No	No Answer
9	70	1

(b) If NO, why not?

Not authorized by statute	19
Too many checks bounce	45
Too much trouble	6
Other, misc.	4
No authorization from judge	8
Advised by state auditor	3
Personal liability	12
Not "legal tender"	2
No answer	1

6. Who sets the fine (bond) which is paid?

Judge(s) in each individual case	1
Judge(s) through a schedule of fines (bond)	56
Magistrate in each individual case	0
Magistrate through a schedule of fines	1
Other	
Judge or Magistrate through schedule	18
Misc. combinations	5

7. How do people learn that pre-payment of the fine (bond) is possible? (Check more than one, if appropriate)

They have to ask	53
Learn from friends or acquaintances	19
Court or clerk's office has written handout explaining procedure (check one):	6

Magistrate:	29
by written handout (0)	
orally (29)	
Police officers advise:	68
by written handout (11)	
orally (57)	
Other	2

8.(a) Do you accept pre-payment if people come to the courthouse, or only by mail?

Only in-person payments at courthouse	3
Only by mail	1
Both in-person and by mail	72
No answer	4

(b) If in-person payment is accepted, by whom is it received?

Clerk's office	37
Magistrate	7
Both Clerk and Magistrate	33
Other	
No answer	2

9.(a) Have you or the court created a deadline after which pre-payment will not be accepted?

Yes	No	No Answer
36	43	1

(b) If YES, what is your cut-off point for accepting pre-payment?

On or before trial	5
One hour prior to trial	3
15 minutes prior to trial	1
Midnight before trial	2
Day before trial	15
5 days before trial	1
5 minutes prior to trial	1
30 minutes prior to trial	1
3 days prior to trial	4
2 days prior to trial	2
After records in court	2

10. Should violators in any of the following situations be allowed to pre-pay fines, assuming they could be identified? (Answer for each type of violator.)

	<u>Yes</u>	<u>No</u>	<u>No Ans.</u>
First offense of any kind	9	67	7
First offense except drunk driving, property damage, injury or death and other hazardous moving violation.	60	17	6
Prior offense (other than serious offenses indicated above) same as present charge, but first offense in 12 months.	59	16	8
Prior offense (other than serious offenses indicated above) in last 12 months, same as present charge.	43	29	11
First offense of this type (other than serious offenses indicated above) but one or more different offenses in past 12 months.	50	22	11
Person with:			
a) two moving violations at one time	52	24	7
b) three moving violations at one time	28	43	12
c) more than three moving violations at one time	19	50	14

11. (a) Should out-of-state violators be given special consideration with respect to pre-payment of fine by mail?

<u>Yes</u>	<u>No</u>	<u>No Answer</u>
47	34	2

(b) Should those living 100 miles or more from court (in Virginia or not) be given special consideration with respect to pre-payment of fine by mail?

<u>Yes</u>	<u>No</u>	<u>No Answer</u>
50	29	4

12. When does your court normally learn a driver's past record?

Normally does not learn a driver's past record.	6
In court, from the local or state police officer.	68
In court, from Commonwealth Attorney.	6
With summons, when it is received from the law enforcement agency.	0

As requested, from police department or State Police.

As requested, from DMV.

Other:

Xerox telecopier

10
18
1

13. In what percentage of the cases is a driver's record supplied directly to the court by:

a) DMV?

No answers = 6

<u>1-10%</u>	<u>11-20%</u>	<u>21-30%</u>	<u>31-40%</u>	<u>41-50%</u>	<u>61-70%</u>	<u>71-80%</u>	<u>81-90%</u>	<u>91-100%</u>
4	1	0	1	0	0	1	0	4

b) local or state police officer?

<u>1-10%</u>	<u>11-20%</u>	<u>21-30%</u>	<u>31-40%</u>	<u>41-50%</u>	<u>61-70%</u>	<u>71-80%</u>	<u>81-90%</u>	<u>91-100%</u>
10	5	2	3	4	0	7	3	27

c) Commonwealth attorney?

<u>1-10%</u>	<u>11-20%</u>	<u>21-30%</u>	<u>31-40%</u>	<u>41-50%</u>	<u>61-70%</u>	<u>71-80%</u>	<u>81-90%</u>	<u>91-100%</u>
5	1	0	0	0	0	0	0	2

d) Another source?

11-20%

1

e) No one?

<u>1-10%</u>	<u>11-20%</u>	<u>21-30%</u>	<u>31-40%</u>	<u>41-50%</u>	<u>61-70%</u>	<u>71-80%</u>	<u>81-90%</u>	<u>91-100%</u>
1	1	1	2	1	2	2	4	13

14. (a) Do you believe that motorists charged with minor moving traffic violations consider themselves "criminals"?

<u>Yes</u>	<u>No</u>	<u>No Answer</u>
1	82	0

(b) Do you consider motorists charged with minor moving traffic violations "criminals"?

<u>Yes</u>	<u>No</u>	<u>No Answer</u>
2	81	0

15. (a) In the last two years, how many minor traffic offenders have been sentenced to serve time in jail (exclude contempt and FTA)?

None	Very few	1 to 10	21 to 30	41 to 50	Not Usable	No Answer
60	3	6	1	1	5	7

(b) Do you believe jail should remain a sentencing option for minor moving traffic violators?

Yes	No	No Answer
24	57	2

16. (a) In the last two years, how many times has counsel been appointed to represent indigents accused of minor moving traffic offenses?

None	Very Few	1 to 10	11 to 20	Not Usable	No Answer
53	8	5	1	10	6

(b) Do you think minor moving traffic violators should have the right to have court-appointed counsel?

Yes	No	No Answer
6	77	Ø

17. Do you think minor traffic violators should have the right to trial by jury upon appeal to circuit court?

Yes	No	No Answer
50	32	1

18. (a) Are there any moving traffic offenses that should be handled like parking violations?

Yes	No	No Answer
20	60	3

(b) If YES, please identify the types of offenses that could be so treated:

18 responded. Responses on file with National Center for State Courts.

19. What percent of the traffic summons that your court receives contain more than one charge?

0%	1-10%	11-20%	21-30%	31-40%	41-50%	51-60%	71-80%	No Answer
9	19	16	20	8	6	1	2	2

20. Do you have to do anything differently in processing a summons with multiple charges than you do in processing one with only one charge, other than adding letters to the file number?

Yes	No	No Answer
24	52	7

19 who responded 'yes' explained their answer. All are on file with the National Center.

21. Is someone charged with more than one offense on one summons assessed costs only for the one summons, or for each offense for which he/she is convicted?

One cost charge	43
Costs charged for each offense	32
Other	5
No answer	3

22. Do you favor or oppose a policy of one charge for costs for one defendant, regardless of the number of violations on the summons?

Favor	Oppose	No Answer
58	23	2

52 comments explaining answer were received. All are on file with the National Center.

23. (a) District courts now retain a traffic index until three conditions are met, at which point the index is supposed to be destroyed. Do you agree or disagree with this procedure?

Agree	Disagree	No Answer
28	54	1

(b) If DISAGREE, how long should a traffic index be retained? Why?

One Year	Two Years	3 Years	Five Years	Ten Years	20 Years	Until Audited	Permanent/Indefinite	Other
4	2	4	6	3	1	9	21	4

24. (a) District courts now forward all traffic case records to circuit courts for permanent retention. Do you approve or disapprove of this practice?

Approve	Disapprove	No Answer
73	7	3

(b) If DISAPPROVE, what changes do you propose?

12 responded. Responses on file with National Center for State Courts.

25. (a) Has the new docketing system created any problems in handling traffic cases?

Yes	No	No Answer
18	63	2

(b) If YES, what are they?

17 responded. Answers on file with National Center for State Courts.

26. From the day a traffic summons is issued by a law enforcement officer until final disposition in court, what is the:

Average time:

1-5 days	6-10 days	11-15 days	16-20 days	21-25 days	26-30 days	31-35 days	36-40 days	41-45 days
1	3	21	8	8	29	0	3	4

46-50 days	51-55 days	56-60 days	> 60 days	No Answer
0	0	3	0	3

Minimum Time:

1 day	2 days	3 days	4 days	5 days	6 days	7 days	8 days	9 days	10 days	11 days	12+ days
9	3	3	0	16	1	8			17	1	15

No Answer = 8 Not Usable = 2

Maximum time: (exclude ASAP cases)

21-25 days	26-30 days	31-35 days	36-40 days	41-45 days	46-50 days	51-55 days	56-60 days	61-65 days
1	19	0	0	6	0	1	19	1

66-70 days	71-75 days	4 months	6 months	one year	No Answer	Not Usable
1	1	1	2	3	14	3

27. Are traffic and other criminal cases scheduled for hearing at the same time or is there a time set for hearing only traffic cases? In responding, exclude from "traffic" those traffic cases that are crimes in the Code.

52	Criminal and traffic cases heard at same time.
16	Separate hearing time for traffic cases.
1	Not Usable

28. Are there any changes in the way district courts adjudicate traffic cases that you think would improve the system:

for the clerk's office?

51 responded. Responses on file with National Center for State Courts.

for citizens?

No responses

FINAL TABULATION

DISTRICT COURT TRAFFIC ADJUDICATION STUDY

CLERKS' QUESTIONNAIRE

Responses by Juvenile & Domestic Relations Clerks

Court Name: 39 responded

I. One issue being studied is pre-payment by mail or in person of traffic fines for moving violations. The following questions concern that issue.

1. Does your court accept pre-payment of traffic fines or cash bond which then is forfeited?

<u>Yes</u>	<u>No</u>
16	23

** If YES, answer questions 2-9. If NO, SKIP to question 10. **

2.(a) Do you call it pre-payment of fine or bond which is forfeited?

<u>Fine</u>	<u>Bond</u>
11	5

(b) Do you require a waiver to be signed in lieu of appearance?

<u>Yes</u>	<u>No</u>
1	15

3.(a) In what percent of all your traffic cases is the fine (bond) pre-paid?

<u>1-10%</u>	<u>11-20%</u>	<u>21-30%</u>	<u>31-40%</u>	<u>41-50%</u>	<u>51-60%</u>
8	1	4	1	1	1

(b) In what percent of your out-of-state cases is the fine (bond) pre-paid?

<u>Reciprocal States</u>	<u>All other States</u>
91-100%	91-100%

4. For what offenses may pre-payment be made and/or what kinds of people (e.g., out-of-state, ill) are allowed to pre-pay fines (bond)?

16 responded. Responses on file with National Center for State Courts.

5.(a) Do you accept pre-payment by personal check?

<u>Yes</u>	<u>No</u>
2	14

(b) If NO, why not?

9 Payment by check not authorized by statute

7 Too many checks bounce

3 Too much trouble

1 Other: Misc.

3 No Authorization from Judge

2 Personal Liability

1 State Auditor

6. Who sets the fine (bond) which is paid?

4 Judge(s) in each individual case.

9 Judge(s) through a schedule of fines (bond).

1 Judge and Magistrate through a schedule.

1 Magistrate in each individual case.

Ø Magistrate through a schedule of fines (bond).

1 Other (identify: Clerk through a schedule.)

7. How do people learn that pre-payment of the fine (bond) is possible? (Check more than one, if appropriate)

10 They have to ask.

3 Learn from friends or acquaintances.

Ø Court or clerk's office has written handout explaining procedure (check one).

Ø given to everyone.

Ø given to those who ask.

5 Magistrate:

Ø by written handout.

5 orally.

- 14 Police officers advise:
1 by written handout or summons.
13 orally.
2 Other (explain: Call Clerk's Office).

8.(a) Do you accept pre-payment if people come to the courthouse, or only by mail?

- 1 Only in-person payments at courthouse.
2 Only by mail.
12 Both in-person and by mail.
1 No answer.

(b) If in-person payment is accepted, by whom is it received?

- 10 Clerk's office
1 Magistrate
3 Both Clerk and Magistrate.
0 Other (explain: _____).

9.(a) Have you or the court created a deadline after which pre-payment will not be accepted?

<u>Yes</u>	<u>No</u>
6	10

(b) If yes, what is your cut-off point for accepting pre-payment?

- 3 By trial date
1 One day prior to trial
1 Two days prior to trial
1 Two weeks after trial

10. Should violators in any of the following situations be allowed to pre-pay fines, assuming they could be identified? (Answer for each type of violator.)

<u>Type of offender</u>	<u>Yes</u>	<u>No</u>	<u>No Answer</u>
First offense of any kind	1	34	4
First offense except drunk driving, property damage, injury or death and other hazardous moving violation.	21	14	4
Prior offense (other than serious offenses indicated above) same as present charge, but first offense in 12 months.	17	18	4
Prior offense (other than serious offenses indicated above) in last 12 months, same as present charge.	10	25	4
First offense of this type (other than serious offenses indicated above) but one or more different offenses in past 12 months.	11	24	4
Person with:			
a) two moving violations at one time.	9	26	4
b) three moving violations at one time.	4	30	5
c) more than three moving violations at one time.	2	32	5

11.(a) Should out-of-state violators be given special consideration with respect to pre-payment of fine by mail?

<u>Yes</u>	<u>No</u>	<u>No Answer</u>
33	5	1

(b) Should those living 100 miles or more from court (in Virginia or not) be given special consideration with respect to pre-payment of fine by mail?

<u>Yes</u>	<u>No</u>	<u>No Answer</u>
33	5	1

12. When does your court normally learn a driver's past record?
- 10 Normally does not learn a driver's past record.
 - 23 In court, from the local or state police officer.
 - 2 In court, from Commonwealth Attorney.
 - 0 With summons, when it is received from law enforcement agency.
 - 3 As requested, from police department or State Police.
 - 5 As requested, from DMV.
 - 1 Other (explain: (Misc.)
6 Prior Juvenile Record).

13. In what percentage of the cases is a driver's record supplied directly to the court by:

	Mode Response % of cases
a) DMV?	<u>1-10%</u>
b) local or state police officer?	<u>1-10%</u>
c) Commonwealth Attorney?	<u>1-10%</u>
d) another source?	<u>1-10%</u>
e) no one?	<u>99-100%</u>

II. Another issue being studied relates to procedural aspects of processing traffic offenders. The following questions concern only offenses of a less serious nature. Offenses such as drunk driving, driving which results in death or injury to person or property, and other hazardous moving violations, are not included in this series of questions.

14. (a) Do you believe that motorists charged with minor moving traffic violations consider themselves "criminals"?
- | | |
|------------|-----------|
| <u>Yes</u> | <u>No</u> |
| 1 | 38 |
- (b) Do you consider motorists charged with minor moving traffic violations "criminals"?
- | | |
|------------|-----------|
| <u>Yes</u> | <u>No</u> |
| 0 | 39 |

15. (a) In the last two years, how many minor traffic offenders have been sentenced to serve time in jail (exclude contempt and FTA)?

<u>None</u>	<u>"Very Few"</u>	<u>1 - 10</u>	<u>Not Usable</u>	<u>No Answer</u>
29	2	5	1	2

- (b) Do you believe jail should remain a sentencing option for minor moving traffic violators?

<u>Yes</u>	<u>No</u>
16	23

16. (a) In the last two years, how many times has counsel been appointed to represent indigents accused of minor moving traffic offenses?

<u>None</u>	<u>"Very Few"</u>	<u>1 - 10</u>	<u>Not Usable</u>
29	3	4	3

- (b) Do you think minor moving traffic violators should have the right to have court-appointed counsel?

<u>Yes</u>	<u>No</u>
5	34

17. Do you think minor traffic violators should have the right to trial by jury upon appeal to circuit court?

<u>Yes</u>	<u>No</u>	<u>No Answer</u>
22	16	1

18. (a) Are there any moving traffic offenses that should be handled like parking violations?

<u>Yes</u>	<u>No</u>
12	27

- (b) If YES, please identify the types of offenses that could be so treated:

12 responded. Responses on file with National Center for State Courts.

III. It appears various district courts may have different ways of handling cost assessments in traffic cases in which a person has more than one charge on a summons. The next series of questions are designed to learn how your court handles them.

19. What percent of the traffic summons that your court receives contain more than one charge?

Most frequent response: 1 - 10%

20. Do you have to do anything differently in processing a summons with multiple charges than you do in processing one with only one charge, other than adding letters to the file number?

<u>Yes</u>	<u>No</u>	<u>No Answer</u>
10	25	4

Please explain "YES" answer: 9 who responded "yes" explained their answer. All are on file with National Center for State Courts.

21. Is someone charged with more than one offense on one summons assessed costs only for the one summons, or for each offense for which he/she is convicted?

<u>20</u>	One cost charge.
<u>15</u>	Costs charged for each offense.
<u>2</u>	Other: <u>"Depending on Offense"</u>
<u>2</u>	No Answer

22. Do you favor or oppose a policy of one charge for costs for one defendant, regardless of the number of violations on the summons?

<u>Favor</u>	<u>Oppose</u>	<u>No Answer</u>
23	14	2

Please explain: 27 comments explaining answer were reviewed. All are on file with National Center for State Courts.

IV. The study will look at other areas as well. The following relate to some of these other areas.

23. (a) District courts now retain a traffic index until three conditions are met, at which point the index is supposed to be destroyed. Do you agree or disagree with this procedure?

<u>Agree</u>	<u>Disagree</u>	<u>No Answer</u>
14	20	5

(b) If DISAGREE, how long should a traffic index be retained? Why?

<u>10</u>	Permanent/Indefinite Records	<u>1</u>	Five years
<u>6</u>	Until Juvenile Reaches 18	<u>1</u>	Seven years
(<u>2</u>)	Does not apply to J & DR)	<u>2</u>	Other (Misc.)

24. (a) District courts now forward all traffic case records to circuit courts for permanent retention. Do you approve or disapprove of this practice?

<u>Approve</u>	<u>Disapprove</u>	<u>No Answer, N/A</u>
11	15	14

(b) If DISAPPROVE, what changes do you propose?

13 responded. Responses on file with National Center for State Courts.

25. (a) Has the new docketing system created any problems in handling traffic cases?

<u>Yes</u>	<u>No</u>
2	37

(b) If YES, what are they?

2 responded. Responses on file with National Center for State Courts.

26. From the day a traffic summons is issued by a law enforcement officer until final disposition in court, what is the:

a) <u>Average</u> time	(Mode responses:)	<u>11-15 days</u>
b) <u>Minimum</u> time		<u>5 days</u>
c) <u>Maximum</u> time (exclude ASAP cases)		<u>26-30 days</u>

27. Are traffic and other criminal cases scheduled for hearing at the same time or is there a time set for hearing only traffic cases? In responding, exclude from "traffic" those traffic cases that are crimes in the Code.

<u>23</u>	Criminal and traffic cases heard at same time.
<u>16</u>	Separate hearing time for traffic cases.

28. Are there any changes in the way district courts adjudicate traffic cases that you think would improve the system:

for the clerk's office?

27 responded. Responses on file with National Center for State Courts.

for citizens?

FINAL TABULATION

DISTRICT COURT TRAFFIC ADJUDICATION STUDY

LAW ENFORCEMENT QUESTIONNAIRE

Law Enforcement Agency for: 33 responded

Size of Agency: _____ line officers; _____ ranking officers

1. If the traffic summons you use is different in any respect from the summons prepared by the State Police Department, please attach a copy to this questionnaire. If your summons has multiple pages, please describe the purpose of each if its purpose is not clear on its face.

1 attached by Virginia Beach

2.(a) How are books of summons (or individual summons) distributed to individual officers?

- 13 Book assigned to individual officer
- 4 Thru Control/Services Division
- 6 "As they need them"
- 5 Assigned numerically
- 3 Per vehicle
- 1 One at a time
- 1 All use same book

(b) How, if at all, are summons accounted for by officers?

- 11 Numerically
- 10 Summons Book Log/File
- 3 Not accounted for
- 3 Officer keeps own records
- 1 Other (miscellaneous)
- 3 No answer

(c) Must officers account for lost or destroyed summons?

<u>Yes</u>	<u>No</u>	<u>No answer</u>
20	8	1

3.(a) How are court appearance days set:

(i) for motorists:

- 8 Officer's court day
- 6 Convenience
- 3 Five to seven days from date
- 3 Other (miscellaneous)
- 1 Once monthly
- 8 No answer

(ii) for officers:

- 12 Officer's court day
- 5 When officer on day shift
- 3 Once monthly
- 2 Convenience
- 4 Other (miscellaneous)
- 3 No answer

(b) Were court appearance days determined after consultation with court officials?

<u>Yes</u>	<u>No</u>
10	19

4. Is the officer notified of a postponement or removal of a traffic case from the docket?

<u>Always</u>	<u>Usually</u>	<u>Seldom</u>	<u>Never</u>
3	18	7	1

5.(a) How many hours per week do officers in your department spend in court on traffic cases, on the average?

<u>1-2 Hrs.</u>	<u>3-4</u>	<u>5-6</u>	<u>7-8</u>	<u>9-10</u>	<u>21-30</u>	<u>31-40 Hrs.</u>
11	6	2	2	1	2	1

Other: 2 (72 hrs. and 104 hours) Not usable: 1

(b) Could this time be reduced?

<u>Yes</u>	<u>No</u>	<u>No answer</u>
12	15	2

(c) If YES, how?

12 of 12 "YES" answers responding. Answers on file with National Center for State Courts.

6.(a) Does your agency maintain a record of court dispositions of traffic cases?

Yes No
26 3

(b) If yes, please describe how you obtain the disposition information and the record maintained.

6 Arrest file card	2 Copy of traffic ticket
10 Returned by officer	1 Record book
8 Obtained from court docket	1 Master card
5 Returned by clerk	1 Duplicate document cards

7. In what percent of the instances in which your officers stop out-of-jurisdiction drivers for a moving violation is the driver released with a warning rather than given a summons in order to avoid the inconvenience to the driver of personal appearance before the magistrate and/or court?

None (0%)	1-20%	21-40%	41-60%	61-80%	81-100%	No Answer	Answer Not Usable
4	6	3	4	6	2	2	2

8. In what percent of your cases do you obtain a driver's past record from:

						Answer Not Usable
	100%	90-95%	70%	30%	5-10%	
a) Only your own files		1			1	2
b) Only DMV	11	3		1	3	
c) Both your files and DMV	8	1			2	
d) Other ["No Request"]			1			

9.(a) How long after a summons is issued does your agency request a driver's record from DMV?

1 day 2 days 3 days 4 days 5 days 7 days Not usable
14 7 2 1 2 1 2

(b) Please estimate the percentage of cases in which the DMV advises you of a driver's past record within:

	100%	91-99%	71-80%	41-50%	21-30%	11-20%	1-10%
Same day			1				
2-3 days	1	1					2
4-7 days	7	3	3	1	1	1	2
8-14 days	6	1	3	1	4		2
Over 14 days	1		1			1	

10. May traffic violators pay fines prior to their scheduled appearance date in the court in your jurisdiction?

Yes No Don't know
28 0 1

11. Should violators in any of the following situations be allowed to pre-pay fines, assuming they could be identified? (Answer for each type of violator.)

<u>Type of offender</u>	<u>Yes</u>	<u>No</u>	<u>No Answer</u>
First offense of any kind.	10	18	1
First offense except drunk driving, property damage, injury or death and other hazardous moving violation.	18	11	
Prior offense (other than serious offenses indicated above) same as present charge, but first offense in 12 months.	22	7	
Prior offense (other than serious offenses indicated above) in last 12 months, same as present charge.	19	10	
First offense of this type (other than serious offenses indicated above) but one or more different offenses in past 12 months.	15	14	
Person with:			
a) two moving violations at one time.	13	15	1

	<u>Yes</u>	<u>No</u>	<u>No Answer</u>
b) three moving violations at one time.	5	24	
c) more than three moving violations at one time	4	25	
12. (a) Should out-of-state violators be given special consideration with respect to pre-payment of fine by mail?			

<u>Yes</u>	<u>No</u>
27	2

(b) Should those living 100 miles or more from court (in Virginia or not) be given special consideration with respect to pre-payment of fine by mail?

<u>Yes</u>	<u>No</u>
26	3

II. Another issue being studied relates to procedural aspects of processing traffic offenders. The following questions concern only offenses of a less serious nature. Offenses such as drunk driving, other hazardous moving violations, and driving which results in death or injury to person or property are not included in this series of questions.

13. (a) Do you believe that motorists charged with minor moving traffic violations consider themselves "criminals"?

<u>Yes</u>	<u>No</u>	<u>Not Usable</u>
0	27	2

(b) Do you consider motorists charged with minor moving traffic violations "criminals"?

<u>Yes</u>	<u>No</u>
0	29

14. Do you believe jail should remain a sentencing option for minor moving traffic violators?

<u>Yes</u>	<u>No</u>
10	19

15. Do you think indigents accused of minor moving traffic violations should have the right to court-appointed counsel?

<u>Yes</u>	<u>No</u>
7	22

16. Do you think minor traffic violators should have the right to trial by jury upon appeal to circuit court?

<u>Yes</u>	<u>No</u>
15	14

17. (a) Are there any moving traffic offenses that should be handled like parking violations?

<u>Yes</u>	<u>No</u>
13	16

(b) If YES, please identify the types of offenses that could be so treated:

10 of 13 "YES" answers responding. Answers on file with National Center for State Courts.

18. Are there any changes in the way district courts adjudicate traffic cases that you think would improve the system?

for law enforcement agencies?

25 of 29 responding. Answers on file with National Center for State Courts. Also 6 responding "None/No."

for citizens?

OPINION SURVEY

Distributed to members of the Tidewater Automobile Association in its September-October 1976 Newsletter, Tidewater Motorist.

823 Responses

1. A motorist causing injury, death, or property damage should be treated as a criminal.

<u>Agree</u>	<u>Disagree</u>	<u>Don't Know</u>	<u>Depends on Circumstances</u>	<u>No Answer/ Not Usable</u>
15.1%	64.1%	8.5%	10.3%	2.0%

2. A person who has committed a single minor traffic offense should not be considered a criminal, although he or she should not be allowed to avoid punishment.

<u>Agree</u>	<u>Dis- Agree</u>	<u>Agree pt. 1; Disagr. pt. 2</u>	<u>Don't Know</u>	<u>Depends on Circumstances</u>	<u>No Answer/ Not Usable</u>
85.1%	9.2%	1.4%	1.3%	1.0%	2.0%

3. Jail should be a possible penalty for committing any traffic offense, no matter how inconsequential it may be.

<u>Agree</u>	<u>Disagree</u>	<u>Don't Know</u>	<u>Depends on Circumstances</u>	<u>No Answer/ Not Usable</u>
3.5%	92.7%	0.9%	0.9%	2.0%

4. At least some traffic offenses should be handled like parking violations, through payment by mail or in person to a clerk, without requiring appearance before a judge.

<u>Agree</u>	<u>Disagree</u>	<u>Don't Know</u>	<u>No Answer/ Not Usable</u>
95.0%	4.2%	0.5%	0.3%

APPENDIX C

LIST OF
OFFENSES TO BE RECHARACTERIZED
AS INFRACTIONS

It is recommended that all minor traffic offenses be recharacterized as "traffic infractions." The following is a list of offenses proposed for such a reclassification. Offenses in Appendix F for which a fine may be pre-paid which are not included here also would be infractions. All other motor vehicle offenses are to remain crimes punishable as felonies or misdemeanors.

<u>Code Section</u>	<u>Description</u>
46.1-2, 46.1-3	Removal and disposition of unattended, abandoned or immobile vehicle
46.1-3.2	Leaving vehicle on private property
46.1-4	Failure by lawful owner or possessor to seek replacement for illegible, removed, or obliterated engine or serial number
46.1-7	Failure by licensed operator to carry license or permit
46.1-10	Failure to report vehicle struck by bullet
46.1-11	Failure to report unclaimed vehicle
46.1-12	Failure to report vehicle with bullet-proof glass or smokescreen device
46.1-43	Violation of highway hauling permit
46.1-45	Improper use of farm vehicle on highway
46.1-159	Operation overweight or before payment of fee
46.1-169	Unlawful operation of school bus by person under 18 years old
46.1-170	Violation of age limits for drivers of public passenger-carrying vehicles
46.1-180 to 46.1-188	All violations of local ordinances except those paralleling statutory felonies or misdemeanors
46.1-193	Speeding 1-19 MPH above speed limit

<u>Code Section</u>	<u>Description</u>
46.1-193	Impeding traffic by slow speed
46.1-196	Speeding 1-19 MPH above speed limit on bridge
46.1-200	Coasting on a downgrade
46.1-201	Driving more than 13 hours in a 24-hour period
46.1-203	Improper failure to keep right
46.1-204	Driving wrong way on one-way roadway or rotary
46.1-205	Improper failure to keep right in crossing intersection or roadway
46.1-206	Improper failure to observe traffic lanes
46.1-206.1	Disregard of lane direction control signal
46.1-207 to 46.1-210, 46.1-212	Improper passing
46.1-211	Failure to give way to overtaking vehicle
46.1-213	Following too closely
46.1-214, 46.1-215	Improper turn
46.1-221 to 46.1-225, 46.1-247	Failure to yield right-of-way
46.1-227	Following or parking too near fire apparatus
46.1-228	Driving over fire hose
46.1-229.1	Riding bicycle improperly on a roadway
46.1-229.2	Carrying articles improperly on bicycle
46.1-230 to 46.1-235, 46.1-241	Pedestrian violations
46.1-242	Driving through pedestrian safety zone
46.1-243	Failure to obey railroad warning signal

<u>Code Section</u>	<u>Description</u>
46.1-244 to 46.1-246	Proceeding improperly at railroad grade crossing
46.1-248	Vehicle improperly stopped on highway
46.1-251	Failure to leave scene of accident when directed to do so by officer
46.1-252 to 46.1-254.2	Violation of parking regulation
46.1-255 to 46.1-257	Improper failure to use warning device when vehicle disabled in highway after dark
46.1-258	Parking in front of fire hydrant, near street corner, fire station, etc.
46.1-259 to 46.1-304	Equipment violations
46.1-315	Operating uninspected vehicle
46.1-335	Improper towing

APPENDIX D

PROPOSED STATUTORY AMENDMENTS

A Bill
for the Improvement of Traffic
Adjudication in Virginia

Be it enacted by the General Assembly of Virginia that:

1. Code § 14.1-122.1 is enacted to read:

§ 14.1-122.1. Fees in traffic infraction cases.--
Notwithstanding any other provisions of law, fees for
services of clerks of courts, law enforcement and court
officers, and attorneys for the Commonwealth in cases
involving traffic infractions shall be allowed and paid
as prescribed in this title for misdemeanor cases.

2. Code § 14.1-123, as last amended by Acts 1975, c. 591,
is further amended to read:

§ 14.1-123. Fees for services performed by judges or
clerks of district courts in criminal or traffic cases.
--Fees for services performed by the judges or clerks of
district courts in criminal or traffic actions and pro-
ceedings shall be as follows and such fees shall be
included in the taxed costs:

[subsections (1), (2), and (3) as now set out]

(3a) For trying or examining a case of traffic violation,
including a case in which there has been written appearance
and waiver of court hearing, and including swearing wit-
nesses and taxing costs, fifteen dollars, which shall include
the fee prescribed in § 46.1-413 for transmitting the
abstract to the Division of Motor Vehicles and the assess-
ment of five dollars for reportable violations, payable to
the State Treasurer as a new source of revenue for highway
purposes as defined in §§ 33.1-38 and 33.1-74. Assessment
of this fee shall be based on:

(i) an appearance for court hearing in which there has
been a finding of guilty; or
(ii) a written appearance with waiver of court hearing
and entry of guilty plea; or
(iii) for a defendant failing to appear, a trial in his
or her absence resulting in a finding of guilty.
No defendant with multiple charges shall be taxed the fee
provided in this subsection more than once for a single
appearance or trial in absence.

[subsections (4) and (5) as now set out]

(6) For filing and indexing all papers connected with any criminal or traffic action in a district court, two dollars, which when collected shall be transmitted to the clerk of the circuit court with such papers in the manner prescribed by § 19.2-345, when such papers are required by law to be transmitted to a circuit court.

(7) For processing any check tendered in a case of traffic violation, as provided by § 18.2-353.1, that has been returned unpaid by any banking institution.

3. Code § 16.1-69.35, as last amended by Acts 1976, cc. 307, 444, is further amended by the addition of subsection (d), to read:

(d) The chief judge shall constitute the clerk, deputy clerk, or an assistant clerk of the court or any other appropriate official of the court as traffic violations clerk. When he determines that the efficient disposition of the court's business and the convenience of persons charged with traffic offenses so requires, he may establish a traffic violations bureau with a violations clerk. The violations clerk shall serve under the direction and control of the court. The term "traffic offense" shall mean any moving traffic violation described or enumerated in paragraphs (a) and (b) of § 46.1-412.

4. Code § 16.1-69.40, as last amended by Acts 1974, c. 671, is further amended by an addition to the last sentence, to read:

Such clerks shall keep the docket and accounts of the court and shall discharge such other duties as may be prescribed by the judge, including service as traffic violations clerk.

5. Code § 16.1-69.40:1 is enacted to read:

§ 16.1-69.40:1. Offenses within the authority of the traffic violations clerk; schedule of fines.--The Supreme Court shall by order, which may from time to time be amended, supplemented or repealed, but which shall be uniform in its application throughout the Commonwealth, designate the traffic offenses within the authority of the traffic violations clerk. Such offenses shall not include:

- (a) indictable offenses;
- (b) offenses resulting in an accident;

(c) operation of a motor vehicle while under the influence of intoxicating liquor or a narcotic or habit-producing drug, or permitting another person, who is under the influence of intoxicating liquor or a narcotic or habit-producing drug, to operate a motor vehicle owned by the defendant or in his custody or control;

(d) reckless driving;

(e) leaving the scene of an accident;

(f) driving while under suspension or revocation of driver's license;

(g) driving without being licensed to drive;

(h) exceeding the speed limit by 20 or more miles per hour;

The Supreme Court shall establish a schedule, within the limits prescribed by law, of the amounts of fines to be imposed, designating each offense specifically. The schedule, which may from time to time be amended, supplemented or repealed, shall be uniform in its application throughout the Commonwealth, but with variation from its terms for individual cases in the sound discretion of any circuit or district court judge. The order of the Supreme Court establishing the schedule shall be prominently posted in the place where the fines are paid. Fines and costs shall be paid to, receipted by and accounted for by the traffic violations clerk in accordance with the provisions of this Code or any rules or regulations promulgated thereunder.

6. Code § 16.1-132, as enacted by Acts 1956, c. 555, is amended to read:

§ 16.1-132. Right of appeal.--Any person convicted in a court not of record of an offense not felonious shall have the right, at any time within ten days from such conviction, and whether or not such conviction was upon a plea of guilty, to appeal to the circuit court of the county ~~or corporation or hustings court of the corporation~~ as the case may be. There shall also be an appeal of right from any order or judgment of a court not of record forfeiting any recognizance or revoking any suspension of sentence. Appeal from a conviction in a traffic infraction case shall not be to a jury.

Comment: The deletion here is simply to modernize the statutory wording. Addition of the words limiting the jury right may be necessary to overrule the holding in Lacey v. Palmer, 93 Va. 159, 24 S.E. 930 (1896), decided under a former statute corresponding to this section and providing an unrestricted appeal right (including the right to demand a jury).

7. Code § 16.1-136, as enacted by Acts 1956, c. 555, is amended to read:

§ 16.1-136. How appeal tried.--Any appeal taken under the provisions of this chapter shall be heard de novo in the appellate court and shall be tried without formal pleading in writing; and, except in the case of an appeal from a judgment that a traffic infraction has been committed or an appeal from any order or judgment of a court not of record forfeiting any recognizance or revoking any suspension of sentence, the accused shall be entitled to trial by a jury in the same manner as if he had been indicted for the offense in the circuit or corporation court.

8. Code § 16.1-162, as last amended by Acts 1975, c. 334, is further amended to read:

§ 16.1-162. Dockets; hearings and records private; right to public hearing; presence of child in court; when name of offender, etc. made public.--Every juvenile court shall keep a separate docket for the entries of its orders in cases arising under this law, and the trial of all such cases shall be held at a different time from the hearing of other cases in the court. The general public shall be excluded from all juvenile court hearings and only such persons admitted as the judge shall deem proper, except that in any hearing held for the purpose of adjudicating the alleged violation of any criminal law or law defining a traffic infraction, the child or adult so charged shall have a right to be present and shall have the right to a public hearing unless expressly waived by such person. The chief judge may provide by rule that any juvenile licensed to operate a motor vehicle who has been charged with a traffic infraction may waive court appearance and admit to the infraction or infractions charged if he or she and a parent or legal guardian appear in person at the court or sign and mail to the court a written form of appearance, plea and waiver, provided that the written form contains the notarized signature of the parent or legal guardian. . . . [intervening provisions as now set out] . . . provided, however, that in cases involving criminal offenses or traffic infractions by juveniles, the judge may make public the name of the offender, the names of the parents of the offender and the nature of the offense, if he deems it to be in the public interest.

9. Code § 18.2-8, as amended by Acts 1975, cc. 14, 15, is further amended to read:

§ 18.2-8. Felonies, and misdemeanors and traffic infractions defined.--Offenses are either felonies, or misdemeanors. Such offenses as are punishable with death or confinement in the penitentiary are felonies; all other criminal offenses are misdemeanors. Traffic infractions are violations of public order as defined by § 46.1-1(38a); and not deemed to be criminal in nature.

10. Code § 19.2-353.05 should be added:

Notwithstanding the provisions of section 19.2-353, the chief judge of the district may authorize acceptance of personal checks in payment of fines and costs imposed for violation of any of the provisions of Chapters 1 through 4 of Title 46.1. If any check is returned unpaid by the banking institution upon which it is drawn with the notation that the account upon which it is drawn has insufficient funds or has been closed, or that the drawer has no account with that bank, no judge or other court personnel shall be personally liable for the sums uncollected. The fine and costs shall be treated as unpaid and the court may pursue all available remedies to obtain payment. The court may notify the Division of Motor Vehicles that a fine and costs are unpaid, and the Division may proceed as if the sums will not be paid, at any time after the check is returned unpaid by the bank. The court to whom the unpaid check was tendered may impose a fee of ten dollars or ten percent of the value of the check, whichever is greater, in addition to the fine and costs already imposed.

11. Code § 19.2-240, as last amended by Acts 1975, c. 495, is further amended by adding a third paragraph to read:

Cases involving traffic infractions shall be docketed with misdemeanor cases.

Note: this amendment sets out the duty of the circuit court clerk in docketing traffic infraction cases, distinguishing them from misdemeanors but providing that they be treated in the same fashion.

12. Code § 19.2-241, as last amended by Acts 1975, c. 495, is further amended by adding a third paragraph to read:

Traffic infractions shall be set for trial separate from other cases.

Note: as with the proposed amendment to § 19.2-240, this provision distinguishes traffic infractions from misdemeanors.

13. Code § 19.2-254.1 is enacted to read:

§ 19.2-254.1. Procedure in traffic infraction cases.

In a traffic infraction case, a defendant may elect to enter a written appearance and waive court hearing, except in instances in which property damage or personal injury resulted. Arraignment is not necessary when waived by the accused or his counsel, when the accused fails to appear, or when such written appearance has been elected.

An accused may plead not guilty, guilty, or nolo contendere; and the court shall not refuse to accept a plea of nolo contendere. A plea of guilty may be entered in writing without court appearance.

When an accused tenders payment by mail without executing a written waiver of court hearing and entry of guilty plea, such tender of payment shall itself be deemed a waiver of court hearing and entry of guilty plea.

In districts with traffic violations bureaus on the effective date of this section, the chief judge of the district may designate the traffic violations bureau for the receipt of a written appearance, waiver of court hearing and guilty plea.

14. Code § 19.2-258.1 is enacted to read:

§ 19.2-258.1. Trial of traffic infractions by court without jury; measure of proof; failure to appear.--In any case involving a traffic infraction, the court shall hear and determine the case without the intervention of a jury. The defendant shall be presumed innocent until proven guilty by clear, convincing and satisfactory evidence.

When a person charged with a traffic infraction fails to enter a written or court appearance, he shall be deemed to have waived court hearing and the case may be heard in his absence, after which he shall be notified of the court's finding. He shall be advised that if he fails to comply within ten (10) days of the date of the notice with any order of the court therein, the court may order suspension of his operator's or chauffeur's license as provided in § 46.1-423.3.

15. Code § 19.2-345, as last amended by Acts 1976, c. 374, is further amended by amending the first sentence to read:

§ 19.2-345. District courts to return warrants and summonses with itemized fines and costs, and pay to clerk.--Between the first and tenth day of each month every district court shall make return of the warrants and summonses in all criminal and traffic cases finally disposed of by such court in the preceding month. . . .

16. Code § 19.2-354, as last amended by 1975 Acts, c. 495, is amended to read:

Whenever any defendant is convicted of a violation of any criminal law of the Commonwealth or of any political subdivision thereof, or found not innocent in the case of a juvenile and is sentenced to pay a fine, if the defendant does not pay the fine forthwith or by a date certain established by the court, and ~~it shall appear to the court on its own motion or on motion of the defendant, that such defendant is unable to pay such fine forthwith, the court~~ may order the defendant to pay such fine and any costs which the defendant may be required to pay in installment or upon such other terms and conditions or within such period of time as may enable the defendant to pay such fine and cost.

17. Code § 46.1-1, as last amended by Acts 1976, c. 372, is further amended by adding a new paragraph (38a) to read:

(38a) "Traffic infraction."--"Traffic infraction" shall mean any violation of any provision of this Title, or of any ordinances, rules or regulations established thereunder, not expressly defined as a felony or misdemeanor, and otherwise not punishable by incarceration or by a fine of more than \$500. The penalty for a traffic infraction shall not be deemed for any purpose a penal or criminal punishment. There shall be no right to trial by jury for a traffic infraction.

The term "traffic infraction" as used in any other Title of this Code, or in any ordinance, rule or regulation adopted pursuant to any provision of this Code, shall have this same meaning and effect.

18. Code § 46.1-16.01, as enacted by Acts 1976, c. 135, is repealed and the following enacted in place thereof:

§46.1-16.01. Violation of Chapters 1 through 4.-- It shall be unlawful for any person to violate any of the provisions of Chapters 1 through 4 (§§ 46.1-1 through 46.1-347) of this Title, and unless otherwise stated, such violations shall constitute traffic infractions punishable by a fine of not more than one hundred dollars.

Note: Statutes defining offenses for which this report recommends reclassification as "traffic infractions" are listed in Appendix C.

[If 18 above is not approved, the following is offered in its place:

18-a. Code § 46.1-16.01, as enacted by Acts 1976, c. 135, is repealed and the following enacted in place thereof:

§ 46.1-16.01. Violations of chapters 1 through 4.-- It shall be unlawful for any person to violate any of the provisions of chapters 1 through 4 (§§ 46.1-1 through 46.1-347) of this Title, and unless otherwise stated, such violations shall be Class 4 misdemeanors.]

19. Code § 46.1-178.01 is enacted to read:

§ 46.1-178.01. Traffic infractions treated as misdemeanors for arrest purposes.--For purposes of arrest, traffic infractions shall be treated as misdemeanors. Except as otherwise provided by this title, the authority and duties of arresting officers shall be the same for traffic infractions as for misdemeanors.

20. Code § 46.1-178.02 is enacted to read:

§ 46.1-178.02. Plea and payment of fines and costs to violations clerk.--Any person charged with any traffic offense within the authority of the traffic violations clerk of the district court with jurisdiction of the offense charged, except one involved in any incident resulting in property damage or personal injury, may file a signed appearance in person or by mail before the traffic violations clerk, enter a waiver of trial and a plea of guilty, and pay the fine established for the offense charged, with costs. He shall, prior to the plea, waiver and payment, be informed of his right to stand trial, that his signature to a plea of guilty will have the same force and effect as a judgment of court, and that the record of conviction will be sent to the Commissioner or the appropriate offices of the state where he received his license to drive.

21. Code § 46.1-375.1, as last amended by Acts 1964, c. 185, is repealed.

22. Code § 46.1-416.1, as enacted by Acts 1968, c. 712, is amended to read:

§ 46.1-416.1. Uniform summons to be used for reportable motor vehicle law violations.--The Attorney General, after consultation with the Committee on District Courts, the Superintendent of State Police and the Commissioner of the Division of Motor Vehicles, shall approve a form for the summons to be used in cases of motor vehicle law violations reportable to the Division of Motor Vehicles under the provisions of §§ 46.1-412 and 413 and such form shall be used on and after January one, nineteen hundred sixty-nine by all enforcement officers throughout the Commonwealth.

The form of such summons shall include multiple copies, with the first copy to be used for court records and other copies in sufficient numbers to permit the use of one such copy by the courts for purposes of filing abstracts of records with the Division as required by § 46.1-413 and shall be deemed to be a form prepared by the Division within the meaning of § 46.1-414. The form of such summons shall also include appropriate space for use in cases of violation of either State laws or local ordinances.

23. Code § 46.1-423.3(b), as last amended by Acts 1975, c. 134, is amended to read:

(b) In addition to any other penalty provided by law, when any person shall be convicted, or found not innocent in the case of a juvenile, of any violation of this title, or any other law of this State pertaining to the operator or operation of a motor vehicle or of any valid ordinance of any county, city or town adopted pursuant to § 46.1-180, and shall fail or refuse for any reason to provide for payment of any fine and costs lawfully assessed against him, the privilege of such person to operate a motor vehicle upon the highways of this State may be suspended by the court or judge until such time as such fine and costs shall have been paid. In such case, the court or judge shall order the surrender of such person's operator's or chauffeur's license or both to the court, at the time the fine and costs are imposed or at a later date, to be determined in the discretion of the court, when the fine and costs are not paid on the date the court has set therefor. In the event such fine and costs shall not be paid within 90 days following such surrender, then the court shall ~~dispose of such license in accordance with the provisions of § 46.1-425~~ forward such license to the Commissioner. If such person has not obtained a license as required by chapter 5 (§ 46.1-348 et seq.)

of this title, or is a nonresident, the court may direct in the judgment of conviction that such person shall not drive or operate any motor vehicle in this State for a period to coincide with the nonpayment of such fine and costs.

24. Code § 46.1-425(a), as last amended by Acts 1973, c. 164,

is further amended to read:

§ 46.1-425. Disposition of surrendered licenses upon revocation or surrender.--(a) In any case in which the accused is convicted of an offense, upon the conviction of which the law requires or permits revocation or suspension of the operator's or chauffeur's license of the person so convicted, the court shall order the surrender of such license, which shall remain in the custody of the court during the period of such revocation or suspension if such period does not exceed thirty days, or ~~until~~ (1) if such period exceeds thirty days, until the time allowed by law for appeal has elapsed, when it shall be forwarded to the Commissioner, or (2) until an appeal is effected and proper bond posted, at which time it shall be returned to the accused. The provisions of this section have no application to the suspension of a license by the court pending payment of a fine, as permitted by section 46.1-423.3.

Comment: The addition is to remove what appears to be an irreconcilable conflict between the 30-day holding period and the requirement that the license be forwarded to the Commissioner at the end of the 10-day appeal period.

APPENDIX E

STATEWIDE TRAFFIC VIOLATIONS

FINE SCHEDULE

This is a schedule of amounts for fines that may be pre-paid on a plea of guilty. It is based on a comparison of several fine schedules now used in the Commonwealth.

The fines listed here are RECOMMENDED amounts when used by judges, in whose judgment higher or lower amounts within statutory limits may be appropriate for individual cases. In setting an appearance bond, magistrates must consider factors relating to a defendant's likelihood of appearing. These bear little or no relation to the offense charged. No bond figures are provided here, therefore. Listed bondable offenses are indicated, however, to distinguish them from those prepayable.

The fine schedule is to be BINDING on court clerks. Under the proposed Code § 16.1-69.40:1 (see Appendix D), such a schedule should be uniform statewide, except that each jurisdiction would have to add any local ordinances appropriate for the schedule. The schedule should be prominently posted where fines are to be paid.

Situations for which court hearing and bond are required are indicated by an asterisk (*). Costs are not included in the dollar amounts listed below.

<u>Description</u>	<u>Fine</u>	<u>Appearance Required</u>
1. <u>Speed violations</u>		
Speeding (speed limit 45 MPH or lower) (MPH over speed limit)		
1-4	\$10	
5-9	\$20	
10-19	\$30	
20 or more*		*
Speeding (speed limit over 45 MPH) (MPH over speed limit)		
1-9	\$20	
10-14	\$30	
15-19	\$50	
20 or more*		*
Reckless driving (see below)		
Impeding traffic by slow speed	\$10	

<u>Description</u>	<u>Fine</u>	<u>Appearance Required</u>
2. <u>Other Moving Offenses</u>		
(If no accident)	\$15	
(If accident)*		*
Failure to dim headlights		
Failure to give proper turn signal		
Failure to keep right of center		
Failure to maintain control of vehicle		
Failure to obey highway sign		
Failure to stop at sign or signal		
Failure to yield right of way		
Following too close		
Improper backing		
Improper lane change or use		
Improper passing		
Improper stop		
Improper turn		
Parked on highway		
Squealing tires		
Wrong way on one-way street		
3. <u>Equipment Violations</u>		
Alteration of suspension system	\$25	
Defective or improper equipment	\$15	
Motorcyclist failure to wear protective equipment	\$15	
Radar detection device*		*
4. <u>Regulatory (Inspection, Insurance, License, Registration) Violations</u>		
Allowing another to use license or registration*		*
Allowing uninsured motorist to drive	\$25	
Allowing unlicensed person to drive	\$25	
Altered license or registration*		*
Driving while license suspended or revoked*		*
Driving without insurance and without payment of uninsured motorist fee*		*

<u>Description</u>	<u>Fine</u>	<u>Appearance Required</u>
Driving without license	\$15	
Expired or invalid license, registration, or inspection sticker (within 15 days from expiration)	\$15	
--(more than 15 days from expiration)	\$30	
Invalid license, registration, or inspection sticker	\$25	
No registration or inspection sticker	\$15	
No county or city tag	\$15	
Stolen inspection sticker in possession*		*
Unauthorized use of inspection sticker*		*
5. <u>Reckless Driving*</u>		
Generally*		*
One-car accident*		*
Two-car or multiple-car accident*		*
Defective brakes*		*
Passing school bus stopped for passengers*		*
Racing*		*
Racing (aiding and abetting)*		*
Speeding*		*
6. <u>Trucks and Towing Vehicles</u>		
Allowing load to spill on highway	\$30	
Excess axleweight	\$10 plus 2¢ per pound up to 5,000 lbs. overweight and 5¢ per lb thereafter	
Failure to display flag on load extending 4 feet	\$15	
Failure to display "slow-moving vehicle" sign	\$15	

<u>Description</u>	<u>Fine</u>	<u>Appearance Required</u>
Failure to secure load	\$15	
Illegal towing	\$15	
No S.C.C. sticker	\$50	
S.C.C. registration displayed on wrong vehicle or by someone other than owner*		*
Vehicle over authorized length, width or height	\$30	
7. <u>Other Offenses</u>		
Disregarding officer's signal to stop*		*
Driving under influence of alcohol or drugs*		*
--(accident)*		*
--(refusing blood/breath test)*		*
Failure to report accident	\$15	
False statement; perjury*		*
Felony, generally*		*
Hit and run (property damage only)*		*
--(personal injury)*		*
Manslaughter*		*
Pedestrian on Interstate	\$15	
Trying to elude officer*		*

APPENDIX F

PROPOSED CHANGES
TO
UNIFORM TRAFFIC SUMMONS

Provided below are proposed changes in the Virginia Uniform Traffic Summons. These changes are suggested in Chapters III and IV and explicitly recommended in Chapter IX of this report.

1. An indication whether court hearing is required should be added to the front of the summons:

COURT HEARING NOT REQUIRED IF GUILTY PLEA ENTERED
WITHIN 10 DAYS FROM TODAY (See NOTICE, reverse side)

It is suggested that this be added between the description of the offense and the motorist's promise to appear, and that the box be checked off by the officer issuing the citation.

2. The proposed format for the back of the motorist's copy of the summons is as follows:

READ CAREFULLY

You have a right to a full and fair trial hearing at which you are presumed innocent until proven guilty. You also have the right:

- (1) to be represented by counsel;
- (2) to testify or not testify;
- (3) to have witnesses summoned;
- (4) to plead guilty or not guilty;
- (5) to appeal within 10 days after trial.

Entry of a guilty plea will have the same force and effect as a judgment of the court, and a record of conviction will be sent to the Division of Motor Vehicles (or the licensing authority where you received your license to drive).

NOTICE

IT IS A SEPARATE OFFENSE, AND A WARRANT FOR YOUR ARREST MAY BE ISSUED, IF YOU FAIL TO APPEAR IN WRITING (SEE BELOW) OR IN PERSON. IN SOME CASES YOU MAY BE TRIED IN YOUR ABSENCE. IF FOUND GUILTY, THE DIVISION OF MOTOR VEHICLES WILL BE NOTIFIED AND YOUR LICENSE MAY BE SUBJECT TO SUSPENSION.

If the officer has checked the "COURT HEARING NOT REQUIRED" box on the other side of this summons, if you wish to plead guilty to this charge, and do not wish to appear in court for trial, you may plead by mail or by appearing before the clerk of the court listed on the reverse side of this summons.

To determine the amount of fine to be paid and the manner of payment, you may call the clerk of court between 9:00 AM and 5:00 PM any weekday at: _____ . This must be done within

10 days of the date you received this summons.

NOTE: Licensed drivers under 18 years of age should call the clerk of the Juvenile and Domestic Relations Court at: _____ .

YOU MUST SIGN THE FOLLOWING IF YOU ARE ELIGIBLE TO WAIVE COURT APPEARANCE AND WISH TO DO SO:

APPEARANCE, PLEA, AND WAIVER

By signing this form, I am entering my written appearance in the court case resulting from the violation(s) charged on the other side of this summons. I understand that I have a right to a trial, which I am giving up. I also understand that my plea of guilty will have the same force and effect as a finding of guilty by a judge, and that a record of my guilty plea will be sent to the Division of Motor Vehicles (or the licensing authority where I have my license to drive). Understanding all this, I PLEAD GUILTY to the violation charged, WAIVE my right to a court hearing, and agree to pay the fine and court costs prescribed for my offense.

Signature

Address (Please print)

APPENDIX G

PROPOSED COURT RULES FOR

TRAFFIC INFRACTIONS

Court Rules for Traffic Infractions

1. Scope, Purpose and Construction. These rules govern the procedure in courts with jurisdiction to hear and determine cases involving traffic infractions. They are intended to provide for the just determination of these cases and to that effect shall be construed to secure simplicity and uniformity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.
2. Rules Governing Other Traffic Proceedings. To the extent they are applicable and not inconsistent with rules herein set forth, rules governing procedure in cases involving traffic offenses defined as misdemeanors shall control procedure in traffic infraction cases.
3. Separation of Traffic Infraction Cases. Whenever possible, traffic infractions shall be tried separate and apart from other cases, though they may be tried in a general traffic session or division.
4. Scheduling Court Appearances.
 - (a) The court should work with law enforcement agencies to establish mutually acceptable original and continuance court dates, but when necessary it shall exercise final control over the number of cases appearing on its docket for any one day.
 - (b) The court shall give adequate notice to law enforcement agencies when a case has been removed from the docket for any court day because of waiver of court appearance or continuance.
5. Waiver of Court Hearing and Guilty Plea. The court shall provide for one or more clerks or a traffic violations bureau to accept written appearance, waiver of court hearing, plea of guilty and payment of fine and costs in any traffic infractions case for which court appearance is not required.
6. Uniform Fine Schedule. In determining the amount of fine to be paid for any traffic infraction not requiring court appearance, the designated clerk or clerks, traffic violations bureau and magistrates shall be governed by the Uniform Fine Schedule promulgated by order of the Supreme Court of Appeals. The Uniform Fine Schedule shall be prominently posted for public inspection in the place where fines are to be paid.

7. Rights of Defendant. Before accepting a plea of guilty to a traffic infraction, the court shall assure that a defendant has been informed of his rights, which shall include the right:

- (a) to a full and fair hearing at which he is presumed innocent until proven guilty;
- (b) to be represented by counsel;
- (c) to testify or not testify;
- (d) to have witnesses summoned;
- (e) to appeal within 10 days after trial.

The court shall assure that the defendant is informed that entry of a guilty plea will have the same force and effect as a judgment of the court, and that a record of conviction will be sent to the Division of Motor Vehicles or the licensing authority where he received his license to drive.

8. Single Appearance for Defendant. Whenever possible, each traffic infraction case shall be disposed of with only one appearance by the defendant.

9. Presence of Commonwealth's Attorney. The court may request the presence of an attorney for the Commonwealth to aid the prosecution and disposition of traffic infraction cases.

10. Conduct of Trial. Trials of traffic infraction charges shall be conducted informally, to the maximum extent possible, to facilitate citizens' participation in and understanding of the trial process.

11. Measure of Proof. In the trial of all traffic infraction cases, the defendant shall be presumed innocent until proven guilty by clear, satisfactory and convincing evidence.

12. Local Rules. Any court with jurisdiction of traffic infraction cases may make rules for the orderly conduct of such proceedings before it, not inconsistent with these rules.

13. Time of Taking Effect. These rules shall take effect on _____.

END