

140281

**REPORT OF THE
VIRGINIA STATE CRIME COMMISSION**

Court Appearance Waiver

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



Senate Document No. 5

**COMMONWEALTH OF VIRGINIA
RICHMOND
1989**

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IN RESPONSE TO
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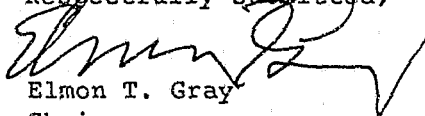
ATTORNEY GENERAL'S OFFICE
H. LANE KNEEDLER

October 18, 1988

TO: The Honorable Gerald L. Baliles, Governor of Virginia,
and Members of the General Assembly:

Senate Joint Resolution 56, agreed to by the 1988 General Assembly, directed the Virginia State Crime Commission to study allowing drivers charged with traffic violations resulting from certain motor vehicle accidents to waive a court appearance and plead guilty. In fulfilling this directive, a study was conducted by the Virginia State Crime Commission. I have the honor of submitting herewith the study report and recommendations on Virginia's court appearance waiver.

Respectfully submitted,


Elmon T. Gray
Chairman

ETG:tes

ENCLOSURE

Members of the
Virginia State Crime Commission

From the Senate of Virginia:

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From the House of Delegates:

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H. Lane Kneedler

Subcommittee
studying
Court Appearance Waiver

Members:

Mr. H. Lane Kneedler, Chairman
Senator Elmo G. Cross, Jr.
Delegate Robert B. Ball, Sr.
Delegate V. Thomas Forehand, Jr.
Delegate Clifton A. Woodrum
Reverend George F. Ricketts, Sr.
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Table of Contents

I.	Authority for Study.....	1
II.	Members Appointed to Serve.....	2
III.	Executive Summary.....	2
IV.	Legislative History and Background.....	3
V.	Methodology and Research.....	3
	A. Applicable Virginia Laws.....	4
	B. Earlier Study.....	4
	C. Survey of General District Court Judges and Clerks.....	5
	D. Adjudication of Traffic Infractions in Other States.....	7
VI.	Findings.....	9
VII.	Recommendations.....	12
VIII.	Acknowledgments.....	12
	Appendices.....	13
	A. Relevant Bills and Resolutions of the General Assembly.....	14
	B. Current Virginia Statutes.....	19
	C. Sample Surveys Sent to District Court Judges and Clerks.....	22
	D. Adjudication of Traffic Offenses in Other States.....	27
	E. Detailed Examination of Traffic Laws of Selected States.....	30
	F. Cost Estimates and Number of Traffic Violations.....	37

I. Authority for Study

Current law in Virginia, as set forth in §19.2-254.1 of the Code of Virginia, allows a driver charged with a traffic infraction to enter a written appearance and waive court hearing, except in instances where property damage or personal injury result. Many times, however, when property damage has occurred, a driver who has been charged with a traffic violation does not wish to contest the charge and pleads guilty. Allowing a driver to waive a personal appearance and prepay his fine when no personal injury is involved may reduce inconvenience to the driver, improve the efficiency of the courts and save the Commonwealth and localities some costs in the form of overtime pay for state and local police officers who are required to appear. For these reasons, the 1988 General Assembly passed Senate Joint Resolution 56 (Appendix A), which was introduced by Senator Dudley J. Emick of Botetourt. SJR 56 directs the Virginia State Crime Commission to conduct a study to determine the potential benefits and adverse effects of an amendment to the Code of Virginia that would allow drivers charged with a traffic violation to waive court appearance in instances where property damage, but no personal injury, resulted.

Section 9-125 of the Code of Virginia establishes and directs the Virginia State Crime Commission "to study, report and make recommendations on all areas of public safety and protection." Section 9-127 provides that "the Commission shall have the duty and power to make such studies and gather information and data in order to accomplish its purposes as set forth in §9-125..., and to formulate its recommendations to the Governor and General Assembly." Section 9-124 authorizes the Commission to conduct private and public hearings and designate a member of the Commission to preside over such hearings. The Crime Commission, in fulfilling its legislative mandate, undertook this Court Appearance Waiver Study as directed by Senate Joint Resolution 56.

II. Members Appointed to Serve

During the April 19, 1988 meeting of the Crime Commission, Senator Gray appointed Mr. H. Lane Kneedler of the Attorney General's Office to serve as chairman of the subcommittee on Court Appearance Waiver. Members of the Crime Commission who serve on the subcommittee are:

Mr. H. Lane Kneedler (Attorney General's Office), Chairman
Senator Elmo G. Cross, Jr. of Hanover
Delegate Robert B. Ball, Sr. of Richmond
Delegate V. Thomas Forehand, Jr. of Chesapeake
Delegate Clifton A. Woodrum of Roanoke
Reverend George F. Ricketts, Sr. of Richmond
The Honorable Robert F. Horan, Jr. of Fairfax

III. Executive Summary

The full Crime Commission met on October 18, 1988 and received the report of the subcommittee. After careful consideration, the findings and recommendations of the subcommittee were adopted by the Commission. The Crime Commission subcommittee studying court appearance waivers for motor vehicle accidents involving property damage pursuant to SJR 56 held three public meetings, including a public hearing held in conjunction with one of its meetings, conducted research, and received public comment on the issue. This section of the report provides a summary of the findings and recommendations of the subcommittee.

The subcommittee found that there are a substantial number of motor vehicle accidents in the Commonwealth that result in property damage and that a very high percentage of those accidents involve a traffic infraction. The subcommittee also found that general district court clerks and judges devote a substantial amount of time to such cases. Many defendants would prefer to prepay their fine and plead guilty and do not wish to appear for trial for a traffic offense. Indeed, a number of defendants, especially out-of-state defendants, do not appear for such cases and are tried in their absence.

Requiring court appearance can also cause great inconvenience to witnesses, especially when a continuance is granted or the defendant does not appear or appears only to plead guilty. It was not clear to the subcommittee, however, that court appearance waiver for property damage cases would substantially reduce that inconvenience. The subcommittee found that notifying witnesses was a more complicated issue than it might seem at first glance. Such notification would require an early determination that the defendant was eligible for court appearance waiver (i.e., that the accident did not result in personal injury) and the defendant would have to elect to waive court appearance in sufficient time before trial to notify the witnesses. In addition, there was no consensus on who should have the responsibility to notify the witnesses. Suggestions included the general district court clerk or the defendant, or that the witnesses themselves should be required to contact the clerk to determine if it was necessary for them to appear.

The subcommittee also found that there may be some reduction in time police officers must spend in court if court appearance waiver were permitted in property damage cases. Since, however, most police officers already take steps to reduce their time in court -- by, for example, scheduling all their traffic cases on one or more "court days" each week or month -- it was not clear to the subcommittee that the proposed court appearance waiver would substantially reduce the time police officers now spend in court.

The proposed court appearance waiver would be for traffic infraction cases where only property damage, but no personal injury, occurred. The subcommittee concluded that it will be very difficult in many cases to determine that no personal injuries occurred as a result of the accident since such injuries often are not known until some time after the accident.

The subcommittee believes that there is some deterrent effect associated with a required court appearance. Furthermore, a majority of the subcommittee believes that the proposed court appearance waiver could restrict the judge's sentencing discretion. Since the defendant no longer would be required to appear in court, the judge no longer would have the opportunity to determine if the defendant was in need of special training or special restrictions on his use of a motor vehicle.

The proposal also would have an impact on the victim of the defendant's traffic infraction. The victim no longer would have the opportunity to obtain information at the trial of the traffic infraction that could be used against the defendant in a later civil suit. In addition, even though a victim still may sue a defendant civilly, some victims feel strongly that they are entitled to have a "day in court" when the defendant is tried and, if found guilty, is required to answer publicly for the traffic infraction itself.

Finally, concern was expressed that the option of waiving court appearance and avoiding the inconvenience of spending a day in court might be sufficient to persuade a driver to waive appearance and plead guilty to a traffic infraction even when he has a valid defense. This could have a significant negative impact on the defendant in subsequent civil litigation.

Based on the testimony and other information available to it, and on the above findings, the subcommittee recommends that §19.2-254.1 of the Code of Virginia not be amended to permit court appearance waiver in traffic infraction cases that result in property damage but no personal injury.

IV. Legislative History and Background

Chapter 585 of the 1977 Acts of Assembly added §19.2-254.1 to the Code of Virginia. This section provides a procedure for traffic infraction cases and enables a driver charged with an infraction "to enter a written appearance and waive court hearing, except in instances in which property damage or personal injury resulted." The section has remained intact except for a 1978 amendment (Chapter 604 of the 1978 Acts of Assembly) which incorporated the definition of a traffic infraction (§46.1-1(40)) and the Uniform Fine Schedule (Rule 3B:2 of the Rules of the Supreme Court of Virginia as authorized by §16.1-69.40:1) into the section.

During the past three General Assembly sessions, two senators have introduced bills to amend the language in §19.2-254.1. First, Senator Gartlan offered Senate Bill 239 in the 1986 session. (Appendix A). This bill proposed that a waiver of court appearance "be permitted in instances in which property damage or personal injury resulted but only if no criminal offense arising from the incident is charged." This bill was not enacted by the General Assembly.

Subsequently, Senator Mitchell introduced Senate Bill 57 in the 1988 session. (Appendix A). His proposal also seeks to allow waiver of court appearance in traffic infractions that result in property damage or personal injury, but does not include language excepting cases which involve criminal offenses. This bill was passed unanimously by the Senate but was subsequently carried over to the 1989 session by the House.

Also during the 1988 session, the Assembly passed Senate Joint Resolution 56. This resolution requests the Crime Commission to study the feasibility and desirability of an amendment to §19.2-254.1 that would allow drivers to waive court appearance for traffic infractions that involve property damage but no personal injury. This study will be presented to the 1989 session of the General Assembly.

V. Methodology and Research

The subcommittee held three meetings, on June 8, July 20, and September 1, 1988, and one public hearing, which was held in conjunction with the subcommittee's meeting on July 20. The subcommittee reviewed current Virginia law and practice and other available study reports, conducted a survey within the state of general district court judges and clerks, and examined the law of a number of other states.

In addition to the testimony received at its public hearing and public comment at its three meetings, the subcommittee considered the following research and information:

A. Applicable Virginia Laws

1. Va. Code §19.2-254.1 (Appendix B) Procedure in Traffic Infraction Cases: A driver charged with a traffic infraction may "enter a written appearance and waive court hearing except in instances in which property damage or personal injury resulted."

2. Va. Code §46.1-1(40) (Appendix B) Definition of "Traffic Infraction:" A traffic infraction is a violation of any provision of Chapters 1 through 4 of Title 46.1 of the Code of Virginia or of any rule, regulation or ordinance established under Title 46.1 that is not defined as a felony or misdemeanor, and that is not otherwise punishable by incarceration or by a fine of more than \$100.

3. Rule 3B:2 of the Rules of the Supreme Court of Virginia (1988): This rule is a uniform fine schedule. It lists various offenses with corresponding fines.

B. Earlier Study

The National Center for State Courts (NCSC) undertook a study of the traffic adjudication system in Virginia pursuant to a grant from the Virginia Council on Criminal Justice. National Center for State Courts, Traffic Adjudication in Virginia (1977). Many of NCSC's recommendations were incorporated into the Code by the General Assembly in 1977.

Particularly relevant to the current study on court appearance waiver are NCSC's findings and recommendations pertaining to prepayments and court appearance waivers. One noteworthy recommendation was that Virginia should enact a statute "to identify circumstances under which motorists should be allowed to make pre-payment for any nonhazardous offense." (Traffic Adjudication in Virginia, p.53). NCSC's report did not elaborate on the definition of a "nonhazardous" offense; however, it suggested that infractions involving accidents fall outside the purview of "nonhazardous." The addition of §19.2-254.1 to the Code of Virginia in 1977 mirrors this proposal. That section permits prepayment of fines and waiver of court appearance where a traffic infraction does not involve property damage or personal injury.

The NCSC's report offered two reasons for requiring court appearance in more serious offenses. First, appearance in court may deter future offenses. Second, closer judicial scrutiny of such violations gives greater assurance to the public that the sanctions imposed are just.

Also relevant is the report's recommendation that Virginia not shift to administrative adjudication of traffic cases. By the time of the publication of the NCSC report in 1977, a few cities in New York (N.Y. Veh. & Traffic Law §155 (McKinney, 1973)) and Rhode Island (R.I.G.L.A. §31-43-1 (1974)) had just implemented administrative systems. NCSC found that the start-up costs in those cities had been very high. It also found that many of the efficiencies achieved by those systems could be achieved in Virginia without shifting to an expensive administrative forum.

NCSC also made the following additional findings:

- ° For January-June, 1976, almost 55% of dispositions in Virginia general district courts involved traffic cases.
- ° Traffic cases consume from 40% to 50% of the time of clerks and judges.
- ° Of 19 general district court judges interviewed, 14 judges stated that they approved of a prepayment system where clerks received fines under a schedule of recommended amounts. Three judges disapproved of such a system because "it limits the ability of their courts to handle problem drivers and it demeans the justice system generally." One judge explained that he accepted prepayments from non-local motorists only because he wanted to confer "special attention to local motorists in court."
- ° At the time NCSC undertook this study of Virginia traffic adjudication, a driver who paid a fine for a traffic violation was also assessed court costs. (Va. Code §§14.1-123(3a), 14.1-200, 14.1-200.2). Eighteen dollars was the usual assessment.
- ° Most law enforcement officers who issued traffic summonses set aside a "court day" on which they scheduled a court appearance for all drivers they had charged with infractions. 10% of clerks interviewed stated that they experienced problems with court appearance days set by officers. 10% of law enforcement agencies responding to the NCSC's inquiries reported that they were always notified of continuances or removal of a traffic case from the docket.
- ° In the general district courts of the judges interviewed by NCSC, an average of 15% of motorists charged with an infraction failed to appear on their scheduled court date.
- ° 40% of the judges interviewed stated that they tried defaulting motorists in their absence. 25% issued a warrant for the absent driver's arrest and some courts continued the case and notified the driver of the new appearance date.

C. Survey of General District Court Judges and Clerks

The subcommittee surveyed about one hundred district court judges and clerks to determine whether they would be in favor of a court appearance waiver in traffic infraction cases. Copies of the questionnaire are included in Appendix C.

1. Judges:

Of 19 judges who responded, 14 were in favor of a court appearance waiver where the traffic infraction resulted in property damage but no personal injury. Four were against a waiver and one had no opinion. The following reasons were given by individual judges in support of the waiver:

- ° Many drivers charged with infractions are from out-of-state and are not coming back for trial anyway.
- ° A person should not be required to disrupt his or her schedule to appear in court to enter a plea of guilty to a traffic infraction.

- ° The persons most inconvenienced are the witnesses who appear only to find: (1) the defendant pleads guilty or (2) the defendant does not appear. In either case, the testimony of the officer is sufficient to convict without more evidence. There can be a monumental waste of citizens' time where their only fault has been that they have observed an auto accident.
- ° The degree of culpability may be the same whether an accident happened or not. Whether an accident occurred is insufficient to determine whether a case is prepayable or not.
- ° Traffic courts are inundated with defendants wishing to plead guilty and with witnesses who are not happy to be there.

Two of the judges who favored the use of court waivers suggested that waivers should not be evidence in subsequent civil litigation. One judge suggested that a method be developed to inform witnesses that fines have been prepaid and that their appearance is not required.

Two of the judges offered the following reasons for opposing court waivers in property damage cases:

- ° In some cases the damage may be major. The owner of property damaged may be able to obtain insurance information from the defendant at the court hearing.
- ° Allowing drivers to waive court appearance severely restricts the judge's discretion.

Seventeen of the 19 judges described their method for adjudicating traffic infraction cases where the defendant driver fails to appear. Fourteen of the 17 stated that they try drivers in their absence. Two judges issue warrants for the driver's arrest. One judge issues a warrant if the driver is from Virginia, but tries a driver in his absence if he is from out-of-state.

2. Clerks:

Thirty-five general district court clerks responded to surveys or were interviewed over the phone. Twenty-one clerks favored a court appearance waiver in property damage cases, 11 were opposed, and three had no opinion. The following reasons were offered by individual clerks in support of a court appearance waiver in property damage cases:

- ° It is less time consuming for the court to handle prepayment and waiver of an infraction than to handle cases which are tried in the defendant's absence. Often we receive calls from defendants involved in accidents who would like to prepay and advise this office they will simply wait for a bill in lieu of court appearance.
- ° It would save a lot of court time.
- ° Most of the traffic infraction cases are just fender benders and the people want to plead guilty and pay without losing time from work to appear in court. It would help clear court dockets and not only would defendants save work time, but witnesses would also. We get numerous calls trying to pay these cases and it would be less time consuming to give payment information than try to explain to people why they cannot pay. I feel that anything serious enough that the officer would not want it to be prepaid would be a charge of reckless driving, rather than an infraction.

- ° The officer should have discretion to determine whether or not the defendant should appear. The ability of defendants to prepay minor traffic offenses where the officer has approved it would greatly reduce the amount of waiting time for the defendants and the processing time in court. In the event of injury, of course, the victims have their civil remedies, which is not a part of the criminal hearing.
- ° A traffic infraction is not a crime of moral turpitude; why force the defendant into court?
- ° The degree of culpability does not depend on whether a violation involves property damage. Damages can always be recovered in civil litigation.
- ° This jurisdiction already accepts prepayments and waivers. The system works fine and is pretty efficient. If an infraction resulted in serious damage, the officer usually writes the driver up for reckless driving and forces the driver into court that way.
- ° Most courts try drivers in their absence when they don't show up. If a driver can be tried in his absence, why not allow him just to prepay?

The following reasons were offered in opposition to a court appearance waiver in property damage cases:

- ° There could be many factors involved in an infraction resulting in property damage that would not come out if not in court. For instance, it could be a D.U.I.
- ° If traffic infractions cases go to trial, there is a better chance of restitution.
- ° There is concern that personal injury is often not discernible at the time of the accident. Additionally, defendant information is frequently copied by the investigating officer from the defendant's operator license which has not been updated with address changes.
- ° Allowing a driver to waive and prepay without admitting the waiver in civil litigation appears to be allowing the defendant to have his cake and eat it too.
- ° Court appearance helps victims. When a defendant is not insured, the victim can get the defendant's employer's name and a good address for the defendant at the trial for the infraction. Also, a victim may be able to elicit more information about the accident from the officer or defendant at trial.
- ° Notifying witnesses will become a problem.

One clerk suggested that court appearance waivers be allowed only in instances where no witnesses have been subpoenaed. Otherwise, notifying witnesses that their case has been prepaid may be too burdensome. Another clerk suggested that drivers be forced to decide at the scene of the accident whether they will waive court appearance. That way the officer will know whether to subpoena witnesses. A third clerk suggested that drivers be allowed to waive court appearance, but not to prepay the fine.

D. Adjudication of Traffic Infractions in Other States

The subcommittee also researched the traffic laws of other states. Appendix D contains a general review of the traffic laws of all 50 states and the District of Columbia. Appendix E contains a more detailed description of

the traffic laws in 13 states, 12 of which permit court appearance waiver in at least some cases. Florida's court appearance waiver provision is similar to the proposal which is the subject of this study and is set forth below as well as in Appendix E. The other 12 states included in Appendix E provide an interesting variety of alternatives. Particularly noteworthy are Maine's administrative adjudication system; Michigan's legislation on the admissibility of a traffic infraction conviction which the state supreme court held was superseded by its rule-making power; and New Hampshire's option of nolo contendere pleas. The Florida court appearance waiver statute provides as follows:

Florida

1. Traffic Infraction:

A violation of Florida's traffic laws is a civil infraction. More serious offenses such as driving under the influence are misdemeanors.

2. Waiver:

A driver charged with an infraction may waive court appearance unless the infraction involved an accident resulting in death or serious bodily injury:

§318.14. Noncriminal traffic infractions; exception; procedures

(1) Except as provided in ss. 318.17(3)(b), and 322.03(5)(b), any person cited for a violation of chapter 316, s. 320.0605(1), s. 320.07(3)(a)1, s. 322.03(1), s. 322.15(1), s. 322.19, or s. 240.265 shall be deemed to be charged with a noncriminal infraction and shall be cited for such an infraction and cited to appear before an official.

(2) Any person cited for an infraction under this section shall sign and accept a citation indicating a promise to appear. The officer may indicate on the traffic citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty established in §318.18.

* * * *

(4) Any person charged with a noncriminal infraction under this section who does not elect to appear shall pay the civil penalty and delinquent fee, if applicable, either by mail or in person, within 30 days of the date of receiving the citation, unless the citation is for violation of §316.646, in which case payment may be made, either by mail or in person, within 20 days of the date of receiving the citation. If the person cited follows the above procedure, he shall be deemed to have admitted the infraction and to have waived his right to a hearing on the issue of commission of the infraction. Such admission shall not be used as evidence in any other proceedings.

§318.19. Infractions requiring a mandatory hearing

Any person cited for the infractions listed in this section shall not have the provisions of §318.14(2) and (4) available to him but must appear before the designated official at the time and location of the scheduled hearing:

(1) Any infraction which results in an accident that causes the death of another; or

(2) Any infraction which results in an accident that causes "serious bodily injury" of another as defined in §316.1933(1).

3. Adjudication:

Traditional judicial. A modified judicial system is under consideration.

4. Evidence:

A waiver is inadmissible in "any other proceeding." See §318.14(4).

VI. Findings

Based on the public testimony it received and on its research, the subcommittee made the following findings:

1. Number of accidents involving a traffic violation in which property damage occurs:

In 1985, there were 81,533 accidents in Virginia in which property damage was caused; these accidents resulted in \$97.8 million in property damage, or an average of \$1,199 per accident. Of those 81,533 accidents, 72,922 (or 89%) involved a traffic violation. In 1986, there were 85,983 accidents totalling \$137.5 million in property damage; figures were not available on the number of traffic violations involved. (See Appendix F.)

2. Amount of time general district court clerks and judges devote to processing traffic infraction cases that involve property damage but no personal injury:

Although specific statistics were not available, testimony presented to the subcommittee and its research indicated that a substantial amount of time is devoted by general district court judges and clerks to processing traffic infraction cases that involve property damage but no personal injury.

3. Inconvenience to defendants who would prefer to plead guilty and prepay their fine:

Many defendants in property damage cases would prefer merely to plead guilty and prepay their fine. They have no desire to take the time -- and perhaps to miss work -- to have their day in court.

4. Appearance of out-of-state defendants:

Although specific statistics were not available, the subcommittee was told that many out-of-state defendants do not appear for trial on a traffic infraction where no personal injury occurred in the accident and are tried in their absence. Generally, all that is required by the court in such instances is the police officer's testimony.

5. Inconvenience to witnesses and notification of witnesses:

The subcommittee found that requiring court appearance often causes great inconvenience to witnesses, especially when a continuance is granted or the defendant does not appear or appears only to plead guilty. It was not clear to the subcommittee, however, that permitting court appearance waiver in traffic infraction cases where no personal injury occurred would substantially reduce that inconvenience. In order to reduce the inconvenience, the witness would have to know well before the trial date that it was not necessary for him to appear. This would, in turn, require that (1) a decision be made early in the

process that the defendant is eligible for court appearance waiver (i.e., that the accident did not result in personal injury), and that (2) the defendant elect to waive court appearance in sufficient time before trial to enable the witness to be notified that it will not be necessary for him to appear.

The issue of how a determination is made that the accident did not result in personal injury is addressed in finding #7 below. It was suggested to the subcommittee that the need to notify witnesses well before trial that they do not have to appear could be addressed by requiring that the defendant must notify the clerk's office of his decision to prepay the fine and not appear no later than a specified time (e.g., three days) before trial. There was no consensus, however, on who should be responsible for notifying the witnesses.

One suggestion was that the clerk be required to notify the witnesses. Since such a requirement would be time consuming, the issue then was whether the time required of a clerk to notify the witnesses would be substantially less than the time required to process the case if the defendant were required to appear. The subcommittee concluded that there would be some savings of time but was unable to quantify that savings. Another suggestion was that the defendant should be required to notify the witnesses if he decided not to appear. The issue here was how to ensure that the defendant made a good faith effort to notify the witnesses and what sanction to impose if he failed to do so. A final suggestion was that the witnesses themselves be responsible for contacting the clerk after a certain date (e.g., within three days of the trial) to determine whether it was necessary for them to appear. While witnesses certainly have an incentive to take steps to determine whether they must appear, the subcommittee was concerned that some witnesses might become confused by the process and that it therefore might not achieve its desired objective.

On balance, the subcommittee found that notifying witnesses was a more complicated issue than it might seem at first glance, but that a solution probably could be developed if the subcommittee otherwise decided to recommend that the proposed court appearance waiver be permitted.

6. Potential reduction in time police officers must spend in court:

The subcommittee found that there may be some reduction in time police officers must spend in court if a court appearance waiver is permitted in traffic infraction cases that resulted in property damage but no personal injury. Such a reduction would result in some savings to the Commonwealth and localities in personnel and overtime expenditures. Witnesses testifying before the subcommittee and the subcommittee's research revealed, however, that most police officers already take steps to reduce their time in court, such as by scheduling all traffic cases on one or more "court days" during the week or monthly, and by arranging to have all their cases considered sequentially by the court. Thus, it was not clear to the subcommittee that the time police officers now spend in court would be substantially reduced by permitting defendants in traffic infraction cases involving only property damage to waive court appearance.

7. Determining whether personal injury occurred:

The proposed court appearance waiver requires a determination that no personal injury occurred in the accident. It is not clear how that determination would be made. Personal injuries often are not known until some time after an accident. The subcommittee believes that police officers, defendant drivers, and others involved in an accident generally are not in a position to make that judgment. Indeed, the police officers testifying before the subcommittee indicated that they would be opposed to placing the responsibility on the investigating police officer to determine whether the accident resulted in personal injury.

8. The deterrent effect of court appearance:

There is some deterrent effect associated with requiring the defendant to appear in court before a judge, even in those cases where the defendant wants to plead guilty. That deterrent effect would be lost in property damage cases if court appearance waiver were permitted.

9. Impact on judge's sentencing discretion:

The subcommittee considered the impact the proposed court appearance waiver might have on the ability of the trial judge to fashion an individualized sanction for a particular problem driver who was in need of special training or special restrictions on the use of a motor vehicle. A judge who appeared before the subcommittee, for example, testified that he uses the court appearance to determine whether the driver may suffer from some disability that would require further testing to decide if the person should be permitted to continue to drive. A majority of the subcommittee agreed that the proposed court appearance waiver could restrict the judge's sentencing discretion.

10. Impact on the victim:

The subcommittee also considered the potential effects of a court appearance waiver on the victim of the driver's traffic infraction. There are at least three such potential effects. First, if the defendant's nonappearance is considered a guilty plea, then, under current rules of evidence, the victim would have evidence of an admission that would be admissible at a subsequent civil trial. Victims probably would consider this to be an advantage. It was suggested to the subcommittee that, since a defendant could still elect to appear on the trial date and be found guilty, and since, under current rules of evidence, such a finding of guilt would not be admissible in a subsequent civil trial, court appearance waiver could be a trap for the unwary defendant who did not know that his nonappearance and accompanying guilty plea would be admissible against him in a later civil trial but an appearance and finding of guilt by the court would not. The subcommittee agrees, but that same problem exists for the defendant under the current system when he appears on the trial date and pleads guilty, unaware that if he had pleaded not guilty and was found guilty by the court, that finding of guilt would not be admissible against him in a later civil suit. The subcommittee concluded that this effect of a court appearance waiver was a function of the admissibility of the accompanying guilty plea in a later civil suit and not a function of the court appearance waiver itself.

Second, requiring a defendant to appear in court may provide the victim with additional information that could be used against the defendant in a later civil suit. That is, the court appearance serves as an opportunity for informal discovery that would be lost if court appearance waiver were permitted.

Third, the subcommittee was told that some victims feel strongly that they are entitled to their "day in court" at which time the defendant will be tried for the infraction and, if found guilty, will be required to answer publicly for his wrongdoing. Even though these victims still may sue the defendant civilly, a court appearance waiver in property damage cases will deprive victims of their "day in court" for the traffic infraction itself.

11. Impact on subsequent civil litigation:

Concern was expressed to the subcommittee that the option of waiving court appearance and avoiding the inconvenience of spending a day in court might be sufficient to persuade a driver to waive appearance and plead guilty to a traffic infraction even when he has a valid defense. This could have a significant negative impact on the defendant in subsequent civil litigation.

VII. Recommendations

Pursuant to SJR 56 (1988), the subcommittee studying court appearance waiver examined the feasibility and desirability of amending §19.2-254.1 of the Code of Virginia to allow a driver to waive court appearance when charged with a traffic infraction that resulted in property damage but no personal injury.

The subcommittee recommends that §19.2-254.1 of the Code of Virginia not be amended to permit such a waiver. The subcommittee has thoroughly researched the possible effects of allowing drivers to waive court appearance when a violation results in property damage but no personal injury. In addition, the subcommittee has discussed the legal ramifications of such a waiver and has listened to comments from numerous interested parties. After thoughtful deliberation, and based on the testimony it received and other information available, the subcommittee determined that the disadvantages of permitting a court appearance waiver in these circumstances outweigh the advantages of such a waiver.

VIII. Acknowledgments

The following groups and agencies made substantial and valuable contributions to this study. Their input and support is greatly appreciated.

Virginia State Police
Local police organizations
General District Court Clerks
General District Court Judges
Department of Motor Vehicles
Office of the Attorney General of Virginia
Other states' Offices of the Attorney General
Counsel for insurance agencies
Virginia Trial Lawyers Association

APPENDICES

APPENDIX A
RELEVANT BILLS AND RESOLUTIONS
OF THE GENERAL ASSEMBLY

1988 SESSION

LD4285114

SENATE JOINT RESOLUTION NO. 56
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Rules
on March 4, 1988)

(Patron Prior to Substitute--Senator Emick)

Requesting the Crime Commission to study the feasibility and desirability of allowing persons involved in certain motor vehicle accidents to waive appearance.

WHEREAS, current law requires drivers involved in motor vehicle accidents and charged with an offense to personally appear in court on the charge; and

WHEREAS, in many instances the driver does not wish to contest the charge and pleads guilty; and

WHEREAS, allowing such drivers to waive a personal appearance and prepay their fine when no personal injury results from the accident would reduce the inconvenience to the driver, improve the efficiency of the courts and result in a cost savings to the Commonwealth in the form of reduced overtime pay for state and local police officers who are also required to appear; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Virginia State Crime Commission is requested to study the feasibility and desirability of allowing persons involved in motor vehicle accidents which do not result in personal injury or death to waive appearance and plead guilty.

The Commission shall complete its study and submit its recommendations to the 1989 Session of the General Assembly.

The direct costs of this study are estimated to be \$4,460 and such amount shall be allocated to the Virginia State Crime Commission from the general appropriation to the General Assembly.

Official Use By Clerks

Agreed to By The Senate

without amendment ☐

with amendment ☐

substitute ☐

substitute w/amdt ☐

Agreed to By

The House of Delegates

without amendment ☐

with amendment ☐

substitute ☐

substitute w/amdt ☐

Date: _____

Date: _____

Clerk of the Senate

Clerk of the House of Delegates

1988 SESSION

LD1105127

SENATE BILL NO. 57

Offered January 15, 1988

A BILL to amend and reenact § 19.2-254.1 of the Code of Virginia, relating to procedure in traffic infraction cases.

Patron—Mitchell

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-254.1 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-254.1. Procedure in traffic infraction cases.—In a traffic infraction case, as defined in § 46.1-1(40), and for which offense has been included in the uniform fine schedule established by Rule 3B:2 of the Rules of the Supreme Court of Virginia as authorized by § 16.1-69.40:1, 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 July 1, 1977, 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.

Official Use By Clerks

Passed By The Senate

without amendment ☐
with amendment ☐
substitute ☐
substitute w/amdt ☐

Date: _____

Clerk of the Senate

Passed By

The House of Delegates

without amendment ☐
with amendment ☐
substitute ☐
substitute w/amdt ☐

Date: _____

Clerk of the House of Delegates

1986 SESSION

LD1605118

SENATE BILL NO. 239

Offered January 21, 1986

A BILL to amend and reenact §§ 16.1-69.40:1 and 19.2-254.1 of the Code of Virginia, relating to procedures for appearance and waiver in traffic cases.

Patron—Gartlan

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-69.40:1 and 19.2-254.1 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-69.40:1. Traffic infractions within authority of traffic violations clerk; schedule of fines.—The Supreme Court shall by rule, 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 infractions for which a pretrial waiver of appearance, plea of guilty and fine payment may be accepted. Such infractions shall not include:

(a) Indictable offenses;

(b) *Infractions Offenses* resulting in an a motor vehicle accident involving personal injury or property damage which are punishable as crimes ;

(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) [Repealed.]

An appearance may be made in person or in writing by mail to a clerk of court or in person before a magistrate, prior to any date fixed for trial in court. Any person so appearing may enter a waiver of trial and a plea of guilty and pay the fine and any civil penalties 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 of the Department of Motor Vehicles or the appropriate offices of the State *Commonwealth* where he received his license to drive.

The Supreme Court, upon the recommendation of the Committee on District Courts, shall establish a schedule, within the limits prescribed by law, of the amounts of fines and any civil penalties to be imposed, designating each infraction specifically. The schedule, which may from time to time be amended, supplemented or repealed, shall be uniform in its application throughout the Commonwealth. Such schedule shall not be construed or interpreted so as to limit the discretion of any trial judge trying individual cases at the time fixed for trial. The rule 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 in accordance with the provisions of this Code or any rules or regulations promulgated thereunder.

§ 19.2-254.1. Procedure in traffic infraction cases.—In a traffic infraction case, as defined in § 46.1-1(40), and for which offense has been included in the uniform fine schedule established by Rule 3B:2 of the Rules of the Supreme Court of Virginia as authorized by § 16.1-69.40:1, a defendant may elect to enter a written appearance and waive court hearing ; except in instances in which property damage or personal injury resulted . However, such appearance and waiver shall be permitted in instances in which property damage or personal injury resulted only if no criminal offense arising from the incident is charged.

1 Arraignment is not necessary when waived by the accused or his counsel, when the
2 accused fails to appear, or when such written appearance has been elected.

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

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

9 In districts with traffic violations bureaus on July 1, 1977, the chief judge of the district
10 may designate the traffic violations bureau for the receipt of a written appearance, waiver
11 of court hearing and guilty plea.

Official Use By Clerks

Passed By The Senate

without amendment ☐
with amendment ☐
substitute ☐
substitute w/amdt ☐

Passed By
The House of Delegates

without amendment ☐
with amendment ☐
substitute ☐
substitute w/amdt ☐

Date: _____

Date: _____

Clerk of the Senate

Clerk of the House of Delegates

APPENDIX B
CURRENT Virginia Statutes

§ 19.2-254.1. Procedure in traffic infraction cases. — In a traffic infraction case, as defined in § 46.1-1(40), and for which offense has been included in the uniform fine schedule established by Rule 3B:2 of the Rules of the Supreme Court of Virginia as authorized by § 16.1-69.40:1, 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 July 1, 1977, 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. (1977, c. 585; 1978, c. 605.)

§ 46.1-1

MOTOR VEHICLES

§ 46.1-1

(40) "*Traffic infraction*". -- "Traffic infraction" shall mean any violation of any provision of Chapters 1 (§ 46.1-1 et seq.) through 4 (§ 46.1-168 et seq.) 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 \$100.

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.

APPENDIX C
SAMPLE SURVEYS SENT TO
DISTRICT COURT JUDGES AND CLERKS



COMMONWEALTH of VIRGINIA

VIRGINIA STATE CRIME COMMISSION

General Assembly Building

910 Capitol Street

POST OFFICE BOX 3-AG
RICHMOND, VIRGINIA 23208

IN RESPONSE TO
THIS LETTER TELEPHONE
(804) 225-4534

ROBERT E. COLVIN
EXECUTIVE DIRECTOR

MEMBERS

FROM THE SENATE OF VIRGINIA:
ELMON T. GRAY, CHAIRMAN
HOWARD P. ANDERSON
ELMO G. CROSS, JR.

FROM THE HOUSE OF DELEGATES:
ROBERT B. BALL, SR., VICE CHAIRMAN
V. THOMAS FOREHAND, JR.
RAYMOND R. GUEST, JR.
A. L. PHILPOTT
WARREN G. STAMBAUGH
CLIFTON A. WOODRUM

APPOINTMENTS BY THE GOVERNOR:
ROBERT C. BOBB
ROBERT F. HORAN, JR.
GEORGE F. RICKETTS, SR.

ATTORNEY GENERALS OFFICE
H. LANE KNEEDLER

July 7, 1988

Dear General District Court Clerk/Judge:

The Virginia State Crime Commission is conducting a study on court appearance waiver for traffic infractions. Present law in Virginia allows a driver to waive court appearance if the infraction with which he is charged did not result in property damage or personal injury. (Virginia Code, §19.2-254.1). The Commission would like to know whether a statutory amendment which would allow a waiver when the infraction involves property damage only, would be preferable.

Because such an amendment may have its greatest impact on general district courts, the Commission is soliciting input from various general district courts in Virginia. The enclosed survey contains a few basic questions. Your complete answers will be very helpful to the Commission. Please elaborate when necessary and add any relevant comments or opinions. Completed surveys should be returned to staff research assistant, Liz McGrail at the Virginia State Crime Commission by August 12, 1988.

If you have any questions, please contact Ms. McGrail at (804) 225-4534. Thank you for your help.

Sincerely,

Robert E. Colvin
Executive Director
Virginia State Crime Commission

REC:kr

Enclosure

VIRGINIA STATE CRIME COMMISSION
COURT APPEARANCE WAIVER
JUDGES QUESTIONNAIRE

COURT NAME: _____

The focus of this study is prepayment of traffic fines for violations resulting in property damage. Please answer the following questions concerning that issue.

1. If a motorist charged with a traffic infraction involving property damage (but no personal injury) fails to appear in court on the scheduled hearing date, do you

☐ try the driver in his absence ? (if so , do you assess court costs? how much? _____)

☐ issue a warrant for the absent driver's arrest?

☐ continue the case and notify the driver of a new appearance date?

☐ other _____

2. Do you think a driver charged with a traffic infraction which results in property damage (but no personal injury) should be allowed to waive court appearance? Please explain.

VIRGINIA STATE CRIME COMMISSION
COURT APPEARANCE WAIVER
GENERAL DISTRICT COURT CLERKS QUESTIONNAIRE

COURT NAME: _____

The focus of this study is prepayment of traffic fines for violations resulting in property damage only. Please answer the following questions concerning that issue.

1. What portion of drivers who are charged with traffic violations and are permitted to prepay the fine choose to prepay?

2. What portion of drivers charged with an infraction involving property damage only plead guilty?

3. On the average, how much time does one traffic infraction disposition take?

4. Approximately, what percent of your work time is spent on traffic cases?

5. How does your court notify a subpoenaed witness for a traffic case that his or her case will not be heard on the scheduled date?

6. Do you think that a driver charged with an infraction which results in property damage only should be allowed to waive court appearance? Please explain.

Additional Comments:

APPENDIX D
ADJUDICATION OF
TRAFFIC OFFENSES IN OTHER STATES

Method of Adjudication by State

State	Classification of Lesser Traffic Offenses*	Method of Adjudication
Alabama	Misdemeanor	Traditional judicial
Alaska	Infraction, no jail penalty	Traditional judicial
Arizona	Misdemeanor	Traditional judicial
Arkansas	Misdemeanor	Traditional judicial
California	Infraction, no jail penalty	In 1980, the Traffic Adjudication Board will test an administrative approach in a 3-county pilot project. However, the motorist will have the option to request traditional judicial processing. (In the past, modified systems have operated at the discretion of selected judges.)
Colorado	Misdemeanor, no jail penalty	Traditional judicial
Connecticut	Infraction, no jail penalty	Traditional judicial
Delaware	Misdemeanor	Traditional judicial
District of Columbia	Infraction, no jail penalty	As of February, 1979, administrative adjudication will be the responsibility of the Department of Transportation.
Florida	Infraction, no jail penalty	Traditional judicial; a modified judicial system is under consideration.
Georgia	Misdemeanor	Traditional judicial
Hawaii	Misdemeanor	Traditional judicial
Idaho	Misdemeanor	Traditional judicial
Illinois	Misdemeanor	Traditional judicial
Indiana	Misdemeanor	Traditional judicial
Iowa	Misdemeanor	Traditional judicial
Kansas	Misdemeanor	Traditional judicial
Kentucky	Misdemeanor, no jail penalty	Traditional judicial
Louisiana	Misdemeanor	Traditional judicial
Maine	Infraction, no jail penalty non-criminal proceeding	Traditional judicial
Maryland	Misdemeanor, no jail penalty	Traditional judicial
Massachusetts	Infraction, no jail penalty	Modified judicial: A motorist may choose to pay by mail, have a non-criminal hearing before a clerk-magistrate or go through the traditional judicial process.
Michigan	Infraction and no jail penalty as of May 1, 1979	Traditional judicial, but modified judicial system used in Detroit Records Court, Traffic and Ordinance Division: Motorist may appeal any referee-imposed sentence and obtain trial de novo. Statewide modified judicial system is under consideration.

*"Infraction" is used as a generic term to indicate offenses given less-than-misdemeanor status. In most states, infractions exclude reckless driving, driving while under the influence and homicide by vehicle. The term generally includes such lesser offenses as violations of the basic speed rule, stopping, standing or parking where prohibited, stop sign violations etc. For a comparative analysis of selected offenses across all states, see reference # 15.

Method of Adjudication by State (continued)

State	Classification of Lesser Traffic Offenses*	Method of Adjudication
Minnesota	Infraction, no jail penalty	Traditional judicial
Mississippi	Misdemeanor	Traditional judicial
Missouri	Misdemeanor	Traditional judicial
Montana	Misdemeanor	Traditional judicial
Nebraska	Infraction, no jail penalty non-criminal proceeding	Traditional judicial
Nevada	Misdemeanor	Traditional judicial
New Hampshire	Infraction, no jail penalty, non-criminal proceeding	Traditional judicial
New Jersey	Misdemeanor	Traditional judicial
New Mexico	Misdemeanor	Traditional judicial
New York	Infraction, no jail penalty, non-criminal proceeding	Since 1970, an administrative adjudication system has operated under the Department of Motor Vehicles serving New York City, Rochester, Buffalo and Suffolk County. Further expansion may occur in 1979.
North Carolina	Misdemeanor	Traditional judicial; the state legislature has authorized a feasibility study of administrative adjudication.
North Dakota	Infraction, no jail penalty	Modified judicial
Ohio	Infraction, no jail penalty	Traditional judicial
Oklahoma	Misdemeanor	Traditional judicial
Oregon	Infraction, no jail penalty	Traditional judicial
Pennsylvania	Infraction, no jail penalty	Traditional judicial
Rhode Island	Infraction, no jail penalty, non-criminal proceeding	Since 1975, a statewide system of administrative adjudication has operated under the Department of Transportation.
South Carolina	Misdemeanor	Traditional judicial
South Dakota	Infraction, no jail penalty, non-criminal proceeding	Traditional judicial
Tennessee	Misdemeanor	Traditional judicial
Texas	Misdemeanor, no jail penalty	Traditional judicial
Utah	Misdemeanor	Traditional judicial
Vermont	Infraction, no jail penalty	Traditional judicial
Virginia	Infraction, no jail penalty	Traditional judicial; Fairfax County is considering a modified judicial system.
Washington	Misdemeanor (Infraction in City of Seattle only), no jail penalty	Modified judicial in some courts in King County (Seattle).
West Virginia	Misdemeanor	Traditional judicial
Wisconsin	Misdemeanor	Traditional judicial
Wyoming	Misdemeanor	Traditional judicial

*"Infraction" is used as a generic term to indicate offenses given less-than-misdemeanor status. In most states, infractions exclude reckless driving, driving while under the influence and homicide by vehicle. The term generally includes such lesser offenses as violations of the basic speed rule, stopping, standing or parking where prohibited, stop sign violations etc. For a comparative analysis of selected offenses across all states, see reference #15.

APPENDIX E

**DETAILED EXAMINATION OF
TRAFFIC LAWS OF SELECTED STATES**

Alabama:

Traffic Infraction:

An infraction is a misdemeanor including all violations of Alabama's traffic laws. No distinction is made for those resulting in accidents.

Waiver:

Drivers charged with a misdemeanor traffic infraction must appear in court. For traffic offenses "causing or contributing to an accident resulting in injury or death to any person," or offenses involving driving under the influence, or a felony, the driver must appear before a magistrate at arrest. (Alabama Code §32-1-4) Other offenses require appearance at a later date specified by the summons. A failure to appear results in a misdemeanor conviction regardless of the disposition of the original charge.

Adjudication:

Traditional judicial.

Evidence:

The rules of evidence render evidence of a conviction of a misdemeanor punishable by less than one year inadmissible in subsequent civil litigation. A plea of guilty, however, may be admissible as an admission against interest.

Connecticut:

Traffic Infraction:

An infraction is a non-criminal offense. No distinction is made for those offenses resulting in accidents.

Waiver:

A driver charged with an infraction is issued an infraction ticket. The driver may plead guilty by mail and send his ticket in with a payment of the fine. A driver charged with a more serious offense is issued a summons ticket and must appear in court on the scheduled date. The issuance of a summons or infraction ticket depends on variables such as the driver's record and the offense; it does not depend on whether an accident was involved.

Adjudication:

Traditional judicial.

Evidence:

A plea of guilty is admissible as an admission against interest.

Delaware:

Traffic Infraction:

Violations of Delaware's traffic laws are considered misdemeanors. No distinction is made for offenses resulting in accidents.

Waiver:

Delaware's Code - 21 Del. Code §709 - specifically sets forth the types of violations for which court appearance can be waived and fines prepaid. No distinction is made for violations involving accidents.

Adjudication:

Traditional judicial.

Evidence:

Waivers are considered admissions of guilt and may be admissible in civil litigation as an admission against interest.

Florida:

1. Traffic Infraction:

A violation of Florida's traffic laws is a civil infraction. More serious offenses such as driving under the influence are misdemeanors.

2. Waiver:

A driver charged with an infraction may waive court appearance unless the infraction involved an accident resulting in death or serious bodily injury:

§318.14. Noncriminal traffic infractions; exception; procedures

(1) Except as provided in ss. 318.17(3)(b), and 322.03(5)(b), any person cited for a violation of chapter 316, s. 320.0605(1), s. 320.07(3)(a)1, s. 322.03(1), s. 322.15(1), s. 322.19, or s. 240.265 shall be deemed to be charged with a noncriminal infraction and shall be cited for such an infraction and cited to appear before an official.

(2) Any person cited for an infraction under this section shall sign and accept a citation indicating a promise to appear. The officer may indicate on the traffic citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty established in §318.18.

* * * *

(4) Any person charged with a noncriminal infraction under this section who does not elect to appear shall pay the civil penalty and delinquent fee, if applicable, either by mail or in person, within 30 days of the date of receiving the citation, unless the citation is for violation of §316.646, in which case payment may be made, either by mail or in person, within 20 days of the date of receiving the citation. If the person cited follows the above procedure, he shall be deemed to have admitted the infraction and to have waived his right to a hearing on the issue of commission of the infraction. Such admission shall not be used as evidence in any other proceedings.

§318.19. Infractions requiring a mandatory hearing

Any person cited for the infractions listed in this section shall not have the provisions of §318.14(2) and (4) available to him but must appear before the designated official at the time and location of the scheduled hearing:

(1) Any infraction which results in an accident that causes the death of another; or

(2) Any infraction which results in an accident that causes "serious bodily injury" of another as defined in §316.1933(1).

3. Adjudication:

Traditional judicial. A modified judicial system is under consideration.

4. Evidence:

A waiver is inadmissible in "any other proceeding." See §318.14(4).

Maine:

Traffic Infraction:

An infraction is a civil offense including all violations of Maine's traffic laws. No distinction is made for those resulting in accidents.

Waiver:

Drivers charged with an infraction may waive court appearance except in some circumstances (e.g. repeat offenders, driving under the influence). No distinction is made for drivers involved in accidents. Drivers are permitted to prepay fines according to a standard fine schedule.

Adjudication:

In 1987, the Maine legislature amended its motor vehicles code, effective in 1990. The amendment authorizes the Secretary of State (via the Division of Motor Vehicles) to accept waivers and collect fines in traffic infraction cases where the defendant wishes to admit to the charge, waive trial and pay the fine. Prior to 1990 that authority is restricted to the District Court pursuant to 4 MRSA §154. The amendment establishes a simplified waiver system for traffic infractions by allowing payment of traffic fines directly to the Secretary of State. The new method will streamline the collection of traffic fines and will reduce administrative costs now incurred by the state in processing of waivers and collecting fines.

Note: Maine's Committee to Study the Processing of Traffic Fines proposed the use of administrative adjudication for traffic infraction waivers. In its 1986 Final Report it listed the advantages of the proposed change:

- ° Centralize in a straightforward way the administration of the largest volume of court cited violations.
- ° Reduce the workload for court clerk administration.
- ° Enable citizens to deal with a single licensing agency rather than two separate departments.
- ° Reduce opportunity for confusion as to which official or which one of the thirty-three courts is responsible.
- ° Improve record control and insure more rapid administration: emphasize highway safety.

Evidence:

Maine does not expressly preclude or permit the use of traffic infraction waivers in civil litigation.

Michigan:

Traffic Infraction:

An infraction is a civil offense including all violations of Michigan's traffic laws. No distinction is made for those resulting in accidents.

Waiver:

Drivers charged with an infraction may waive court appearance except in some circumstances (e.g. repeat offenders, driving under the influence). No distinction is made for drivers involved in accidents.

Adjudication:

Traditional judicial. Modified judicial system in some cities.

Evidence:

Michigan expressly bars use of traffic infraction admissions from use in civil litigation. The language states:

Evidence of the conviction or civil infraction determination of a person for a violation of this chapter or of a local ordinance pertaining to use of motor vehicles shall not be admissible in a court in a civil action. (MI. COMP. LAWS ANN. §257.731).

The Supreme Court of Michigan decided in Kirby vs. Larson 256 N.W. 2d. 400 (1977) that contrary to Michigan's statute, evidence of a traffic infraction conviction is admissible to impeach the creditability of a witness. The legislature had failed to express, "a clear legislative policy reflecting considerations other than judicial dispatch of litigation." Because the Court's rule making power is constitutionally supreme in matters of practice and procedure, the courts Rule 607 governing admissibility of traffic tickets superseded the statute.

New Hampshire:

Traffic Infraction:

An infraction is a non-criminal offense. No distinction is made for infractions involving accidents.

Waiver:

Drivers charged with an infraction may waive court appearance and enter a plea of guilty or nolo contendere by mail. Certain offenses are excluded from the waiver option (e.g. reckless driving, driving under influence).

Adjudication:

Traditional judicial.

Evidence:

A plea of guilty may be admissible in civil litigation as an admission against interest. A nolo contendere plea is inadmissible.

New York:

Traffic Infraction:

An infraction is a civil offense. It includes all violations of New York's traffic laws and no distinction is made for those resulting in accidents.

Waiver:

Drivers charged with an infraction are permitted to waive court appearance except in some circumstances. No distinctions are made for violations resulting in accidents.

Adjudications:

Traffic violations are adjudicated administratively through the state traffic violations bureaus.

Evidence:

A waiver is a plea of guilty and is admissible as an admission against interest.

North Carolina:

Traffic Infraction:

A violation of North Carolina's traffic laws is a civil infraction. More serious offenses such as driving under the influence are misdemeanors. No distinction is made for offenses resulting in accidents.

Waiver:

Court appearance may be waived for all infractions and some misdemeanors. No distinction is made for offenses resulting in accidents.

Adjudication:

Traditional judicial.

Evidence:

A plea of guilty by waiver may be admissible in civil litigation as an admission against interest.

Rhode Island:

Traffic Infraction:

An infraction is a misdemeanor. However, the adjudications of traffic offenses are performed administratively by the Division of Administrative Adjudication and are civil in nature. An infraction includes all violations of Rhode Island's laws and no distinction is made for violations involving accidents.

Waiver:

A driver charged with a violation may submit an admission of the charge with a payment of the fine within 30 days of the violation. Some offenses are excluded from the waiver option (e.g. repeat offenders, driving under the influence). No exceptions are made for violations involving accidents. (R. ISLAND GEN. LAWS §31-43-1).

Adjudication:

Statewide administrative adjudication.

Evidence:

The General Laws of Rhode Island do not expressly bar or allow use of traffic violation determinations in civil litigation.

The Supreme Court of Rhode Island ruled in Cannon vs. New England Telephone and Telegraph Co., 471 A.2d 211 (R.I. 1984); that evidence of the Division of Administrative Adjudication's dismissal of a traffic violation was inadmissible in the related civil suit. The court reasoned that because the burden of proof before the administrative division (clear and convincing evidence) was higher than that in the civil case (preponderance of the evidence), the dismissal of the charge could have meant that the state failed to satisfy the rigorous burden rather than that the specific act did not occur. Id. at 214.

South Carolina:

Traffic Infraction:

Violations of South Carolina's traffic laws are considered misdemeanors. No distinction is made for offenses resulting in accidents.

Waiver:

Traffic violation fines are prepayable. The charged driver can waive court appearance except in certain cases (e.g. driving under the influence). No distinction is made for violations resulting in accidents.

Adjudication:

Traditional judicial.

Evidence:

A waiver is considered a guilty plea and may be admissible in civil litigation as an admission against interest.

Tennessee:

Traffic Infraction:

An infraction is a misdemeanor. It includes all violations of Tennessee's traffic laws and no distinction is made for those resulting in accidents.

Waiver:

When a driver is issued a traffic citation he has the option of prepaying his fine and court costs before the scheduled court appearance date, except in special circumstances (e.g. repeat offenders and driving under the influence). It remains in the court's discretion whether to accept the prepayment or compel appearance. (TENN. CODE ANN. §55-10-207). No distinction is made for violations involving accidents.

Adjudication:

Traditional judicial.

Evidence:

Tennessee expressly bars traffic violation determinations from use as evidence in civil litigation. The language states:

Neither the reports required by this chapter, the action taken by the Commissioner pursuant to this chapter, the findings of the Commissioner upon which such action is based, nor the security filed as provided in this chapter shall be referred to in any way, nor constitute any evidence of the negligence or case of either party at the trial of an action at law to recover damages. (TENN. CODE ANN. §55-12-128).

Vermont:

Traffic Infraction:

An infraction is a non-criminal offense. No distinction is made for infractions resulting in accidents.

Waiver:

Drivers charged with an infraction may waive court appearance if the fine for the offense is less than \$100. No distinction is made for offenses involving accidents.

Adjudication:

Traditional judicial.

Evidence:

A waiver is considered a plea of guilty and is admissible in civil litigation as an admission against interest.

APPENDIX F
COST ESTIMATES AND NUMBER OF TRAFFIC VIOLATIONS

ACCIDENTS INVOLVING PROPERTY DAMAGE ONLY

Data collected by the Department of Motor Vehicles

Costs:

1986: \$137.5 million total
for 85,983 property damage crashes
average: \$1,600 per crash

1985: \$97.8 million total
for 81,533 property damage crashes
average: \$1,199.51 per crash

1984: \$89.4 million total
for 75,161 property damage crashes
average: \$1,189.45 per crash

1983: \$79.9 million total
for 69,511 property damage crashes
average: \$1,150 per crash

1982: \$77.6 million total
for 71,212 property damage crashes
average: \$1,090 per crash

1981: \$77.8 million total
for 76,289 property damage crashes
average: \$1,020 per crash

Violations:

1985: 72,922 or 89% of property damage crashes involved violations

1984: 67,539 or 90% of property damage crashes involved violations

1983: 62,680 or 90% of property damage crashes involved violations

1982: 63,735 or 89.5% of property damage crashes involved violations

1981: 68,853 or 90% of property damage crashes involved violations.