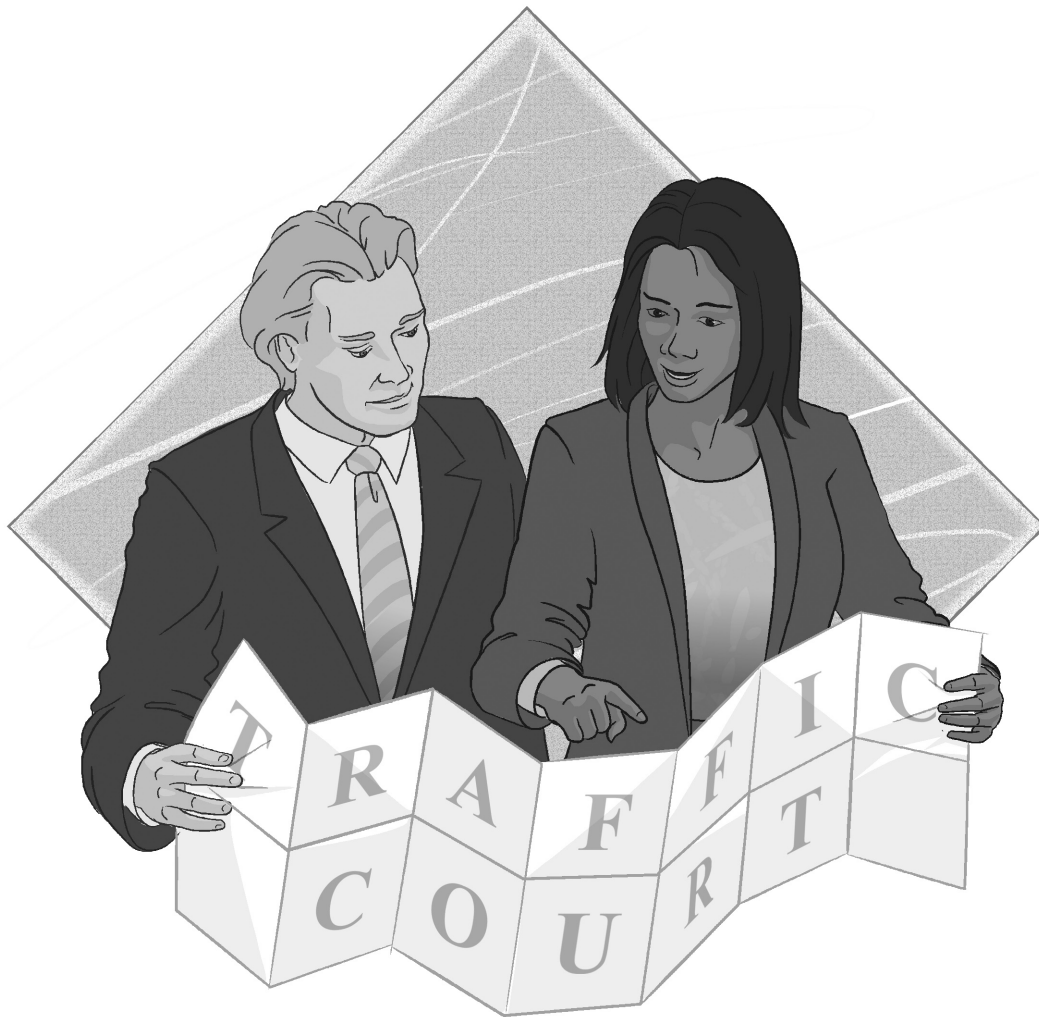


## Criminal Law



# Driving safely through traffic court

by Nicholas R. Hobbs

**A**s the resident traffic and criminal defense attorney for my firm, I often get questions from other attorneys on what advice they can give their relatives after they receive a speeding ticket. They often want to know about the driving-point system, the length of time convictions remain on DMV records, types of punishments, and the routine outcomes that can be expected for a minor charge that they may want to handle themselves or to give advice for. Not regularly practicing in traffic court, they need a little assistance on what to look out for.

I usually start by making sure the offense is not something like driving on a suspended license or reckless driving; those are class 1 misdemeanors and should be handled by someone who regularly works with the officers and judges. Some subsequent offenses carry mandatory jail time and most jurisdictions will give active jail sentences for reckless driving speeding tickets above 89 mph; those should be turned over to attorneys who routinely practice in these areas. But with a simple speeding ticket or other minor traffic infraction with no threat of jail time, I am always happy to give the following pointers on navigating through traffic court.

First, the point system may be a simple concept, but it can get complicated when demerit points begin to accumulate. The system is designed to award points for safe driving and take away points for unsafe driving. The DMV issues one safe-driving point to drivers who have driven safely for a full year, with a maximum of five safe points.1

Demerit points are assigned for moving violations and are designated in the three, four, or six point range.<sup>2</sup> If a driver accumulates eight demerit points in a 12-month period, or 12 points in a 24-month period, he or she will receive an advisory letter from DMV.<sup>3</sup> If a person accumulates 12 to 17 points within a 12-month period, or 18 to 23 points within a 24-month period, the driver will be required to attend a driver-improvement clinic.<sup>4</sup> He or she will have 90 days to complete the clinic or face license suspension. Exceptions may be granted for good cause for those drivers who are outside of the Commonwealth, either in college or the military, with no available comparable program.<sup>5</sup> Each such driver must serve a six-month probation period.<sup>6</sup> During this period, if the driver receives another demerit-point violation, DMV will suspend his or her license for 90 days when six demerit points are assigned, for 60 days when four demerit points are assigned, or for 45 days when three demerit points are assigned.<sup>7</sup> The driver will also be under an 18-month control period after the 6-month probation ends.<sup>8</sup> If a moving violation occurs within the control period, the driver will be placed back in probation for another six months.<sup>9</sup>

Examples of three-point violations are speeding one to nine miles per hour over, improper passing, improper driving, driving through a safety zone, driving/riding on a sidewalk, improper U-turn, failure to obey a highway sign, and driving at night without lights. (A full list is also printed beginning on page 22.) Some four-point violations are speeding 10 to 19 miles per hour over, failure to stop and yield the right of way, following too closely, improper signal, failure to obey a railroad crossing signal, aggressive driving, and failure to obey a traffic signal. Six-point violations include most reckless-driving charges and speeding 20 miles per hour or more over, driving under the influence, manslaughter, driving on a suspended license, and attempting to elude police.<sup>10</sup> Typically, three-point violations will remain on a driving record for three years, four-point violations for three to five years, and six-point violations for 11 years.<sup>11</sup>

Outcomes of traffic violations are therefore heavily dependent upon the category of demerit points assigned, and how rapidly a driver accumulates these points.

### Basics of traffic-court practice

Should a general practitioner who does not often attend traffic court face need to make an appearance, here are some basics.

Always notify the clerk before the trial date of your appearance as counsel of record. Some courts will move attorney cases to the front of the docket; this can save you time sitting in court, waiting for your case to be called. It is also a good idea to arrive early and notify the clerk that you are present. Some larger jurisdictions require you to give them the "line number" of your case. This is found on the

docket printed outside of the courtroom. Just look for the defendant's name and the number of the line they are on then give this number to the clerk when you check in with them. Some courts also provide slips on the defense table where you list your name, your client's name, and the officer's name which you fill out and hand to the bailiff if the judge is already sitting. Another important advantage of arriving early is the opportunity to find the officer who wrote the ticket and ask if it is possible to work out some kind of agreement.

Agreements can range from a deferred finding, where the court will dismiss the case after 6 to 12 months if there are no further violations, to a reduction of the charge from a six-point violation to a three-point violation, or even a non-moving violation, such as improper equipment, which carries no points whatsoever. The type of agreement often will depend on the driver's DMV record, which most officers will have when they arrive. Most of the time, if the driver has no prior violations and has never received the benefit of a deferred finding, officers will agree that a chance to keep a driving record clean is warranted. Keep in mind that some judges may not accept agreements you make with officers, so it would be wise to find that out ahead of time from a local attorney who regularly appears before your judge.

If the judge does not accept agreements from officers, you will most likely have to try the case. Some judges ask your client for their plea and some will ask the attorney, make sure your client is prepared to answer not guilty if it is a trial, and the officer will present evidence. This is when you should make sure the officer testifies to the elements of the offense; that it occurred within the city or county the court is in; and that he properly identifies the defendant.

If the client has a clean driving record, after the officer has finished testifying you can ask the judge for a deferred finding or other reduction to keep the driver's record intact. This is a good time to mention that your client was cooperative with the officer; judges usually like that. Sometimes it is helpful to ask for the opportunity for the client to attend a driver-improvement course and have the client forward the completion certificate to the court during the period of probation. In most situations the court will not require you or the client to appear on the disposition date if there are no further problems and all conditions have been completed. It is always a good idea in these situations to ask the judge if it is necessary to appear at the end of the deferred finding period.

You should never enter a guilty plea in an accident case, even where you have reached an agreement with the officer on the disposition of the charges. This is to prevent the plea from being used against your client in a civil case as an admission of liability. The judge usually will not care if the plea

is guilty, not guilty, or no contest, as long as the evidence is stipulated to. If you have a case with an accident and you obtain an agreement with the police officer, tell the judge that you are entering a no-contest plea with a stipulation that the evidence, if heard, would be sufficient for a finding of guilt, and that you waive formal presentation of evidence.

You will frequently get questions concerning reckless driving – usually something like, “How did I get a reckless driving ticket when I wasn’t doing anything different than anyone else?” To enable you to answer this question, here are some thoughts on what I often inform people when I am confronted with these types of violations.

Many people already know that driving 20 miles per hour over the speed limit is an automatic reckless driving. However, many people are surprised to learn, sometimes the hard way, that driving in excess of 80 miles per hour, regardless of the posted speed limit, is also reckless driving.<sup>12</sup> There is even a statute where a person can be found guilty of reckless driving for driving too fast under the circumstances existing at the time, also regardless of the speed limit.<sup>13</sup>

There are at least 14 different ways a person may be convicted of reckless driving under the Code of Virginia. Among these are inadequate brakes, passing on a curve, driving with an obstructed view, passing a school bus, racing, driving too fast, driving recklessly in a parking lot, and even just plain-old driving recklessly, to name a few.<sup>14</sup>

### What advice to give generally to clients, family members and friends

So now that you are aware that a driver can be issued a reckless-driving ticket for what some would say is just about anything, here are a few things you can do to improve your own circumstances, should you find yourself holding that yellow piece of paper citing you for reckless driving.

First, stay calm and be cooperative with the officer. Of course, this does not mean it’s time for a confessional; you do not have to consent to a search or anything else you feel is unreasonable. But remember, the officer usually knows nothing about you or what your intentions might be as he approaches your vehicle, so it may improve your situation when it comes time for court if the officer remembers that you were polite and professional during the stop. For the attorney, it is always helpful to confirm with the officer before trial that the client was cooperative. If so, this should be highlighted for the judge; if not, you should try to convince the officer to not bring up the driver’s attitude, or else stipulate to the officer’s testimony to avoid mention of the uncooperative behavior. Judges often refuse to accept agreements, or to give a deferred finding, if the driver was obstinate during the stop. Even if your client tells you, “I was cooperative,” make sure the officer remembers it that way.

Remind the client that he or she is only being charged with reckless driving, and that the place for argument is in the courtroom, not at the scene. The judge, not the officer, is the person who will make the ultimate decision on whether to convict. Arguing with the officer while receiving the ticket is never productive and can only impede any potential agreements that may be worked out in court.

With this information at hand, you will be well-equipped to handle those sometimes minor, but rather pesky, traffic violations should a friend or relative ask you the question, “You’re a lawyer, right? I got a speeding ticket; what can you do?”

### Endnotes

1. Va. Code § 46.2-494
2. Va. Code § 46.2-492
3. Va. Code § 46.2-495
4. Va. Code § 46.2-498
5. Va. Code § 46.2-501
6. Va. Code § 46.2-499
7. *Id.*
8. Va. Code § 46.2-500
9. *Id.*
10. [http://www.dmv.state.va.us/webdoc/citizen/drivers/points\\_assess.asp](http://www.dmv.state.va.us/webdoc/citizen/drivers/points_assess.asp)
11. *Id.*
12. Va. Code § 46.2-862
13. Va. Code § 46.2-861
14. Va. Code §§ 46.2-852-868



*Nicholas R. Hobbs is a former prosecutor for the city of Newport News and a lifelong resident of the peninsula. He has litigated numerous bench and jury trials in criminal and traffic court. He also practices in the personal injury and civil litigation areas throughout the Hampton Roads area, and is also a licensed real estate closing agent. He attended Virginia Tech and received his Bachelors of Arts from Old Dominion University in 2001. He then earned his Juris Doctorate from Regent School of Law in 2005.*

3 points	
Speeding	<ul style="list-style-type: none"> <li>• Speeding 1-9 mph above the posted speed limit (5 years)</li> <li>• Impeding traffic, slow speed (5 years)</li> </ul>
Passing/Driving	<ul style="list-style-type: none"> <li>• Improper passing on the right (3 years)</li> <li>• Improper driving (3 years)</li> <li>• Improper stopping on highway (3 years)</li> <li>• Changing course after signaling (3 years)</li> <li>• Coasting with gears in neutral (3 years)</li> <li>• Failure to give way in favor of overtaking vehicle (3 years)</li> <li>• Failure to give way when abreast of another car (3 years)</li> <li>• Driving through safety zone (3 years)</li> <li>• Driving over fire hose (3 years)</li> <li>• Unauthorized use of crossover on controlled highway (3 years)</li> <li>• Driving/riding on sidewalk (3 years)</li> </ul>
Turning/Backing	<ul style="list-style-type: none"> <li>• Improper turn (3 years)</li> <li>• Improper U-turn (3 years)</li> <li>• Violation of right turn on red (3 years)</li> <li>• Violation of left turn on red (3 years)</li> </ul>
Signs/Signals	<ul style="list-style-type: none"> <li>• Failure to obey highway sign (3 years)</li> <li>• Evading traffic control device (3 years)</li> </ul>
Lights	<ul style="list-style-type: none"> <li>• Driving without lights/excessive lights (3 years)</li> <li>• Failure to dim headlights (3 years)</li> <li>• Parking without proper lights displayed (3 years)</li> <li>• Inadequate hazard lights (3 years)</li> </ul>
Licenses/Permits	<ul style="list-style-type: none"> <li>• No Virginia driver's license (3 years)</li> <li>• No Virginia license plate (3 years)</li> <li>• Failure to obtain a driver's license (3 years)</li> <li>• No driver's license - vehicle/motorcycle (3 years)</li> <li>• Failure to have license revalidated (3 years)</li> <li>• Learner's permit violation (3 years)</li> <li>• Permitting unlicensed person to drive (3 years)</li> <li>• Driving in violation of restricted license (restrictions related to physical limitation, such as mechanical control device) (3 years)</li> </ul>
Commercial Motor Vehicles	<ul style="list-style-type: none"> <li>• Driving commercial motor vehicle with alcohol in blood (*)</li> <li>• Driving commercial motor vehicle without license (3 years)</li> <li>• Driving commercial motor vehicle with more than! driver's license (3 years)</li> <li>• Driving commercial motor vehicle without endorsement(s) (3 years)</li> <li>• Driving commercial motor vehicle without license in possession (3 years)</li> <li>• Commercial driver's license/instruction permit violation (3 years)</li> <li>• Driving commercial motor vehicle in left lane of interstate (3 years)</li> <li>• Driving in excess of 13 hours in a 24-hour period (3 years)</li> <li>• Driving public passenger-carrying vehicle under age (3 years)</li> <li>• Driving bus transporting school children without a safety belt (3 years)</li> <li>• Driving school bus without license (3 years)</li> <li>• Driving school bus under age (3 years)</li> <li>• Vehicle height exceeds limit for tunnels (3 years)</li> </ul>
Other Violations	<ul style="list-style-type: none"> <li>• Failure to stop at the scene of a crash, unattended property (3 years)</li> <li>• Failure to leave the scene of a crash at the direction of officer (3 years)</li> <li>• Failure to report a crash, unattended property, less than \$250 damage (3 years)</li> <li>• Following/parking within 500 feet of fire apparatus (3 years)</li> <li>• Emergency vehicle violation (3 years)</li> <li>• Drinking while driving (3 years)</li> <li>• Improper driving/riding motorcycle (3 years)</li> <li>• Driving with TV screen visible to driver (3 years)</li> <li>• Driving while using earphones (3 years)</li> <li>• Passenger restriction violation (3 years)</li> <li>• Curfew violation (3 years)</li> <li>• HOV violation, second or subsequent offense - Northern Virginia planning district 8 (5 years)</li> </ul>

4 points	
Reckless Driving/Speeding	<ul style="list-style-type: none"> <li>• Reckless driving - failure to stop before entering a highway (11 years)</li> <li>• Speeding (5 years)</li> <li>• Speeding 10-14 mph above the posted speed limit (5 years)</li> <li>• Speeding 15-19 mph above the posted speed limit (5 years)</li> <li>• Speeding 10-19 mph above the posted speed limit (5 years)</li> </ul>
Passing	<ul style="list-style-type: none"> <li>• Passing when unsafe (3 years)</li> <li>• Passing to the left of approaching vehicle (3 years)</li> </ul>
Stopping/Yielding	<ul style="list-style-type: none"> <li>• Failure to drive to the right and stop for police/fire/emergency vehicle (3 years)</li> <li>• Failure to stop for pedestrian with white cane (3 years)</li> <li>• Failure to stop and yield right-of-way (3 years)</li> <li>• Failure to yield right-of-way (3 years)</li> <li>• Failure to yield when turning left (3 years)</li> <li>• Failure to yield to funeral procession (3 years)</li> </ul>
Keeping to the Right	<ul style="list-style-type: none"> <li>• Failure to drive on right half of highway or street (3 years)</li> <li>• Failure to keep to the right when crossing an intersection (3 years)</li> <li>• Driving to the left of rotary traffic island (3 years)</li> </ul>
Following/Signaling	<ul style="list-style-type: none"> <li>• Following too closely (3 years)</li> <li>• Failure to signal before moving from curb (3 years)</li> <li>• Improper signal (3 years)</li> </ul>
Railroad Crossings	<ul style="list-style-type: none"> <li>• Failure to obey railroad crossing signal (3 years)</li> <li>• Failure to stop at railroad grade crossing (3 years)</li> <li>• Failure to keep to the right at a railroad crossing (3 years)</li> <li>• Failure to stop passenger-carrying vehicle at railroad grade crossing (3 years)</li> <li>• Railroad crossing/stopping (3 years)</li> <li>• Improper operation of crawler-type tractor over railroad crossing (3 years)</li> </ul>
Railroad Crossings (Commercial Motor Vehicle Drivers)	<ul style="list-style-type: none"> <li>• Failure to slow down/stop at a railroad crossing (*)</li> <li>• Failure to have sufficient space to drive through a railroad crossing (*)</li> <li>• Failure to obey traffic control device or enforcement official at a railroad crossing (*)</li> <li>• Failure to have sufficient undercarriage clearance at a railroad crossing (*)</li> </ul>
Other Violations	<ul style="list-style-type: none"> <li>• Operating a motor vehicle while suspended/revoked/restricted with a blood alcohol content of .02% or more (11 years)</li> <li>• Failure to stop at the scene of a crash, unattended property, damage in excess of \$500 (11 years)</li> <li>• Failure to stop at the scene of a crash, property damage (3 years)</li> <li>• Emergency vehicle violation - property damage (5 years)</li> <li>• Emergency vehicle violation - injury (5 years)</li> <li>• Aggressive driving (5 years)</li> <li>• Failure to obey traffic signal (3 years)</li> <li>• Failure to obey lane directional signal (3 years)</li> <li>• Failure to obey highway lane markings (3 years)</li> <li>• Improper backing, stopping or turning (3 years)</li> <li>• Driving the wrong way on one-way highway or street (3 years)</li> <li>• Impeding/disrupting funeral procession (3 years)</li> <li>• Disregarding police officer's signal to stop (3 years)</li> <li>• Disregarding crossing guard/officer's signal (3 years)</li> </ul>

6 points	
Reckless Driving (Felony or Misdemeanor)	<ul style="list-style-type: none"> <li>• Reckless driving - speeding in excess of 80 mph (11 years)</li> <li>• Reckless driving - speeding 20 mph or more above the posted speed limit (11 years)</li> <li>• Reckless driving - racing (11 years)</li> <li>• Reckless driving - passing or overtaking an emergency vehicle (11 years)</li> <li>• Reckless driving - passing a school bus (11 years)</li> <li>• Reckless driving - passing on the crest of a hill (11 years)</li> <li>• Reckless driving - passing at a railroad crossing (11 years)</li> <li>• Reckless driving - passing two vehicles abreast (11 years)</li> <li>• Reckless driving - driving two vehicles abreast (11 years)</li> <li>• Reckless driving - driving too fast for conditions (11 years)</li> <li>• Reckless driving - failing to give a proper signal (11 years)</li> <li>• Reckless driving - faulty brakes/improper control (11 years)</li> <li>• Reckless driving - on parking lots, etc. (11 years)</li> <li>• Reckless driving - with an obstructed view (11 years)</li> <li>• Reckless driving - generally (11 years)</li> <li>• Speeding 20 mph or more above the posted speed limit (5 years)</li> </ul>
Driving Under the Influence	<ul style="list-style-type: none"> <li>• Driving while intoxicated (11 years)</li> <li>• Driving under the influence of alcohol or drugs (11 years)</li> <li>• Driving under the influence of drugs (11 years)</li> <li>• Driving after illegally consuming alcohol (persons under age 21) (3 years)</li> <li>• Driving while intoxicated - maiming (11 years)</li> <li>• Involuntary manslaughter/alcohol (11 years)</li> <li>• Refusing blood/breath test (11 years)</li> <li>• Driving while your license is suspended or revoked for driving while intoxicated (11 years)</li> <li>• Driving while your license is revoked for driving while intoxicated - maiming (11 years)</li> <li>• Driving while your license is revoked for driving while intoxicated - involuntary manslaughter (11 years)</li> </ul>
Manslaughter	<ul style="list-style-type: none"> <li>• Manslaughter (11 years)</li> <li>• Involuntary manslaughter (11 years)</li> <li>• Involuntary manslaughter/aggravated (11 years)</li> </ul>
Habitual Offenders	<ul style="list-style-type: none"> <li>• Driving after being declared a habitual offender (11 years)</li> <li>• Authorizing person suspended for habitual offender and/or driving while intoxicated to drive (3 years)</li> </ul>
Licenses/Permits	<ul style="list-style-type: none"> <li>• Driving on suspended license (11 years)</li> <li>• Driving while your license is suspended or revoked (11 years)</li> <li>• Driving while your license is suspended or revoked for non-payment of court fines and costs (11 years)</li> <li>• Driving under suspension or revocation before giving proof of financial responsibility (11 years)</li> </ul>
Commercial Motor Vehicles	<ul style="list-style-type: none"> <li>• Driving commercial motor vehicle while disqualified (*)</li> <li>• Driving commercial motor vehicle with blood alcohol .04 or more (*)</li> <li>• Driving commercial motor vehicle with blood alcohol .08 or more (*)</li> <li>• Driving commercial motor vehicle under influence of drugs (*)</li> <li>• Driving commercial motor vehicle under influence of drugs/alcohol (*)</li> <li>• Refusing blood/breath test while operating commercial motor vehicle (*)</li> <li>• Violating out of service order (11 years)</li> </ul>
Other Violations	<ul style="list-style-type: none"> <li>• Speeding 20 mph or more above the posted speed limit (5 years)</li> <li>• Injuring person while racing - felony (11 years)</li> <li>• Failure to stop at the scene of a crash - injury (11 years)</li> <li>• Failure to stop at the scene of a crash - death (11 years)</li> <li>• Failure to stop at the scene of a crash - property damage of \$1 000 or more (11 years)</li> <li>• Emergency vehicle violation - death (11 years)</li> <li>• Vehicular assault or willful stopping, impeding or damaging vehicle (11 years)</li> <li>• Blocking access to service facility (11 years)</li> <li>• Attempting to elude police                             <ul style="list-style-type: none"> <li>o felony offense (11 years)</li> <li>o misdemeanor offense (3 years)</li> </ul> </li> <li>• Passing stopped school bus (non-reckless) (3 years)</li> <li>• Operating unsafe vehicle (3 years)</li> </ul>