

	POLICY & PROCEDURE	SERIES # 1016	PAGE 1 OF 5
	<b>TRAFFIC VIOLATIONS – SPECIAL CASES/PROCESSING</b>		EFFECTIVE DATE <b>05/01/02</b>
			OVERSIGHT <b>Operations</b>
DISTRIBUTION <b>ALL MANUALS</b>	AMENDS/SUPERSEDES/CANCELS P&P # 1016 dated 09/01/88		

- I. **PURPOSE:** The purpose of this policy is to identify and establish guidelines required for processing traffic violations committed by special classes of persons.
  
- II. **POLICY:** It shall be the policy of the Hampton Police Division to follow certain procedures when charging non-residents, juveniles, legislators, foreign diplomats and military personnel with traffic violations.
  
- III. **PROCEDURE:**
  - A. The typical method of charging persons with traffic violations involves the officer issuing a summons thereby notifying the motorist in writing to appear at a specified time and place to answer to the violation. Once the motorist gives his written promise to appear at such time and place, the officer releases him from custody.
  
  - B. Exceptions to this routine procedure require the arresting officer to take the motorist before a magistrate in the following cases:
    1. Where the officer believes the person is likely to disregard a summons.
    2. The motorist refuses to give a written promise to appear.
    3. The motorist is a non-resident (including those who are residents of states that are members of Reciprocal Agreements) when conviction of the offense may result in suspension of the motorist's right to drive.
  
  - C. A further exception that will be given consideration is driving while intoxicated. While this charge is a violation of the criminal code, it is so closely related to other traffic charges that it necessitates inclusion in a practical approach to processing traffic violations. DUI cases require the officer to make an arrest and release is accomplished by a magistrate.

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APPROVED:  
CHIEF OF POLICE



D. SPECIAL PROCESSING REQUIREMENTS:

1. Non-Residents

If the motorist is a non-resident, the question of reciprocity must be considered.

- a. Reciprocity represents an agreement among states effecting the processing of some traffic violations. This agreement extends to residents of member states, while outside their home state jurisdiction, the rights and privileges of their home state.
- b. Residents of states which are party jurisdictions in a reciprocal agreement with Virginia are to be processed in a similar manner as Virginia residents. Consequently, most traffic violations will be charged through the summoning procedure except:
  - 1. The violation is such that conviction requires the revocation of the motorist's license
  - 2. The motorist specifically requests to post collateral or bond in a manner provided by law
  - 3. In the absence of the motorist's written promise
  - 4. The motorist is likely to disregard a summons
- c. Resident Reciprocal Compact will be maintained in the Communications Sections.

2. Juveniles

- a. As established in the jurisdiction of the Juvenile and Domestic Relations District Court, juveniles are charged with traffic violations under the State Code.
- b. The same process of issuing summons for adults is used in dealing with juvenile violators. The process requires special handling when it becomes necessary to take the juvenile into custody.
- c. Once the arrest is made, the juvenile is processed through the Intake Office of Juvenile Court Services.

3. Legislators

- a. During the session of the General Assembly, and for five (5) days before and after the session, members, clerks and their assistants shall be privileged from being taken into custody

under any process except for treason, felony or breach of the peace. This privilege shall also extend to the Lieutenant Governor. Legislative privilege is granted under State Code and Virginia Constitutional provision.

- b. Under conditions of legislative privilege, the officer shall issue a summons in those cases where an arrest may be effected. There are, otherwise, no restrictions on the use of state summonses in cases of persons with legislative privilege as no arrest occurs.
- c. In the event that the violator refuses to give written promise to appear, the officer shall note the refusal and the fact of legislative privilege on the summons in lieu of a signature and present the violator with the appropriate copy of the summons. The remainder of the summons will be processed in the usual manner.

#### 4. Foreign Diplomats/Consular Officers

- a. Diplomatic immunity is the exclusion of official personnel of a foreign mission from federal or local jurisdiction. Diplomatic immunity represents an agreement among nations and international law.
- b. There are several levels of immunity which may include criminal, civil, or full immunity.
- c. Person with immunity may not be:
  - 1. Detained or arrested
  - 2. Prosecuted
  - 3. Subjected to body searches
  - 4. Required to give evidence as witnesses
- d. However, law enforcement officers may temporarily restrain individuals in order to verify identification and ascertain their level of immunity.
- e. Diplomatic license plates do not determine immunities or identify the driver of a vehicle. The levels of immunity attached to an individual and the validity of any diplomatic license should be separately verified.
- f. While a person claiming diplomatic immunity may present any

number of identification papers, the only one that is indicative of the level of privilege and immunity is a card issued by the U.S. State Department. The holder's level of immunity will be indicated on the card. If a person claiming immunity does not possess this card and the incident involves a criminal offense, officers may detain the person, either at the scene or at a police facility long enough to verify official status.

- g. Upon exhibiting proof of diplomatic immunity, persons shall be released upon being stopped for a misdemeanor traffic violation. If questions arise about this procedure, or if an arrest for a felony is necessary, call and advise the U.S. State Department Office of Security (202-647-4415, days, or 202-647-1512, nights and weekends).

#### 5. DUI (Legislator and Diplomats)

- a. Those individuals with either legislative privilege or diplomatic immunity cannot be arrested and prosecuted for driving while intoxicated.
- b. Under criminal immunity, the individual should not be subjected to any sobriety or other mandatory test.
- c. Except in extreme cases, the driver should not be restricted. The officer's primary concern is the safety of the public as well as the driver.
- d. Corrective action may include making arrangements to provide transportation, allowing access to a telephone, etc.
- e. In the event a person covered by legislative privilege or diplomatic immunity is involved in an incident, the officer's supervisor shall be immediately notified and will respond to the scene when required.

#### 6. Military Personnel

- a. Under the provisions of the Federal Soldiers and Sailors Relief Act, military personnel licensed as operators in their home states are permitted to drive a motor vehicle upon the highways of Virginia. Furthermore, in the event their operator's license
- b. expires while they are stationed in Virginia, they may continue to drive on the otherwise valid operator's license.

- c. State law also provides for the licensing exemption of military spouses and dependents when:
  - 1. The spouse/dependent is not less than sixteen (16) years of age
  - 2. The spouse/dependent possesses a valid home state operator's license.