

Civil Infraction Traffic

TABLE OF CONTENTS

6.1 Overview

- A. Authority and Definitions 1
- B. Sources of Civil Infraction Traffic Law 1
- C. Civil Infraction Traffic Offenses 4

6.2 Minimum Standards

6.2.1 Commencing a Civil Infraction Traffic Action

- A. Issuing Citation..... 7
- B. Michigan Uniform Law Citation 7
- C. Proceedings for Nonresidents..... 8

6.2.2 Appearance

- A. Overview 9
- B. Admission of Responsibility with Explanation;
Appearance in Person or By Representation 11
- C. Admission of Responsibility with Explanation;
Appearance by Mail 19
- D. Denial of Responsibility 22
- E. Taking Judgments Under Advisement 23

6.2.3 Failure to Appear

- A. Entering Default Judgment..... 25
- B. Setting Aside Default Judgment..... 26
- C. Failure to Appear by Plaintiff..... 27

Civil Infraction Traffic

TABLE OF CONTENTS (continued)

6.2	Minimum Standards (continued)	
6.2.4	Informal Hearing	
	A. Facilities and Environment.....	29
	B. Information Sheet.....	29
	C. Conducting the Hearing.....	29
	D. Complete Case Processing.....	35
6.2.5	Adjudication	
	A. Establishing Elements of Traffic Case.....	37
	B. Applying Law to Facts – Evaluating Evidence.....	42
	C. Speeding Offenses.....	46
	D. Evidence of Speeding Offenses.....	54
	E. Right-of-Way or Failure-to-Yield Offenses.....	57
	F. Careless and Reckless Driving.....	64
6.2.6	Sanctions	
	A. Fines and Costs.....	69
	B. Assessments.....	74
	C. Treatment, Education, and Rehabilitation Programs.....	75
	D. Licensing Sanctions.....	75
	E. Abstract.....	77

Civil Infraction Traffic

TABLE OF CONTENTS (continued)

6.2 Minimum Standards (continued)

6.2.7 Appeals

A. Authority 79

B. Process..... 79

C. Conviction Reversed on Appeal..... 79

6.2.8 Noncompliance with Judgments

A. Late Penalty and Collection 81

B. Sanctions 81

6.3 Procedures

**6.3.1 Checklist for Admission of Responsibility with Explanation;
Appearance in Person or by Representation 85**

**6.3.2 Checklist for Admission of Responsibility with Explanation;
Appearance by Mail..... 87**

6.3.3 Checklist for Conducting Informal Hearings..... 89

6.3.4 Script for Informal Hearings 93

6.3.5 Worksheet for Informal Hearings 95

6.3.6 Explanation About Informal Hearings 97

6.4 Forms 99

Civil Infraction Traffic

TABLE OF CONTENTS (continued)

Appendix

Traffic Civil Infraction Fine, Cost, Fees

Locating and Mapping Valid Speed Limits

6.1 Overview

A. Authority and Definitions

A district court magistrate may hear and preside over traffic civil infraction admission and admission with explanation and conduct informal hearings in traffic civil infraction actions under the Michigan Vehicle Code. (MCL 257.746) In exercising authority pursuant to MCL 257.746, the magistrate may administer oaths, examine witnesses, and make findings of fact and conclusions of law.

A district court magistrate may preside over admissions of responsibility with explanation only to the extent expressly authorized by the chief district judge. Michigan law provides that a district court magistrate may conduct an informal hearing if authorized by a district judge to do so and after completing the specified course in traffic adjudication. (MCR 4.401)

If the defendant is determined to be responsible for a traffic civil infraction, the magistrate may impose the civil sanctions authorized by MCL 257.907. (MCL 600.8512)

A **traffic civil infraction** is an act or omission prohibited by law which is not a crime and for which civil infractions may be ordered. For specific violations, points may be assessed by the Michigan Secretary of State. (MCL 750.5)

A local administrative order (LAO) outlining a magistrate's duties is recommended. This order validates the magistrate's authority to handle traffic civil infractions, as well as other duties. An LAO, filed with the State Court Administrative Office, provides the chief judge, the magistrate, and SCAO administrators and analysts a helpful tool in responding to challenges to a magistrate's authority.

B. Sources of Civil Infraction Traffic Law

In adjudicating a civil infraction traffic case, the magistrate must first make sure that the violation in question is a civil infraction over which he or she has jurisdiction. Next, the magistrate must determine the proper procedural steps to take in processing the case after the officer issues the citation. Ultimately, the magistrate must decide whether the defendant's conduct is in violation of state law or a local ordinance, and impose the proper penalty. In making all of these decisions, the magistrate must consult Michigan's traffic law.

Michigan traffic law should be available in the court's library. Finding Michigan's traffic law can be confusing for the following reasons.

- 1) Both the state Legislature and local governments enact traffic laws, so there is no single official compilation of statutes and ordinances that contains all of Michigan's traffic law. A traffic offender may be cited under state or local law, depending on where the offense occurred and what law enforcement agency took action.
- 2) The Legislature has not published all its enactments on traffic matters into one place. Michigan legislation is organized by broad topical categories, and statutes involving motor vehicles are scattered throughout these categories. Thus, even though the Michigan Vehicle Code contains most of the "rules of the road," the Penal Code contains certain additional serious felonies involving vehicles.
- 3) To some extent, laws describing the elements of Michigan's traffic violations are compiled separately from the laws describing the procedure for adjudicating traffic violation cases.
- 4) In certain cases, one statute may describe an offense, while a second statute may describe the penalty for that offense.

Because Michigan traffic law is not located all in one place, the magistrate must consult multiple sources of law in adjudicating a traffic case. The most common sources of law are as follows.

1. Michigan Compiled Laws (MCL)

The Michigan Compiled Laws is a compilation of all the statutes enacted by the Michigan Legislature, including references to relevant appellate case decisions.

2. Local Ordinances

Local ordinances are a type of law enacted by a local unit of government, such as a city or township. They are a major source of traffic law in many parts of Michigan. Some ordinances deal with subjects not addressed by the Michigan Legislature; others are identical to, or substantially similar to, statutes enacted by the Legislature.

Local ordinances must be consistent with the Michigan Vehicle Code (MVC). According to Michigan law, local ordinances that conflict with the MVC are void to the extent of the conflict. Therefore, many local governments adopt the MVC "by reference," that is, they enact a set of ordinances identical to the MVC.

In addition, local governments may, and do, enact ordinances governing specific areas. Areas that local governments are allowed to regulate include the following: (1) parking, (2) speed regulations, (3) traffic signals, (4) one-way streets, (5) stop or yield signs, (6) turns, (7) use of highways (e.g., restriction to certain vehicles, regulating parades, etc.), and (8) bicycles.

Magistrates should familiarize themselves with the applicable local ordinances in their jurisdiction because no two sets of local ordinances are exactly the same in format, organization, or numbering system. Ordinance compilations may be obtained from local sources such as courts, public libraries, and city, county, village and township clerks' offices.

The Uniform Traffic Code is available from the Michigan Department of State Police, and can also be accessed at http://www.michigan.gov/documents/UTC_50201_7.pdf.

Many localities have adopted a model set of traffic ordinances called the Uniform Traffic Code for Cities, Townships and Villages. The Uniform Traffic Code was prepared by the Michigan Department of State Police in the early 1980s and has not been updated.

3. Michigan Court Rules

The Michigan Court Rules are adopted by the Michigan Supreme Court and set forth procedural requirements for the Michigan courts. The magistrate should consult the following court rules governing traffic adjudication procedures, the powers of the district judge and magistrate, and recordkeeping requirements for magistrates.

- MCR 4.101, which sets out procedures to be followed in civil infraction cases.
- MCR 4.401, which deals with the district judge's control over the magistrate's duties, responsibilities, and decisions.
- MCR 8.125, which addresses electronic filing of citations.
- MCR 8.119, which imposes recordkeeping and reporting requirements on magistrates.

4. Published Case Decisions

In published case decisions, the Michigan Supreme Court and Court of Appeals resolve questions not directly addressed by the foregoing statutes, ordinances, and court rules.

Michigan Supreme Court decisions are collected in reporters called the *Michigan Reports*. Court of Appeals decisions appear in reporters called *Michigan Appeals Reports*. All Michigan trial courts are required to follow published case decisions by the state's appellate courts.

The Michigan Supreme Court publishes all of its decisions. The Court of Appeals, however, only publishes selected decisions. Michigan's trial courts are only required to follow published decisions by the Court of Appeals. Unpublished Court of Appeals opinions may be considered, but are not binding. (MCR 7.215[C])

Michigan court decisions are published in a parallel reporter from West Publishing Company, called *Northwestern Reporter*. When used, the parallel citation always follows the official *Michigan Reports* or *Michigan Appeals Reports* citation.

5. Attorney General Opinions

Occasionally, the Michigan Attorney General issues opinions about legal issues that magistrates might encounter. The courts are not required to follow these opinions, but they typically offer helpful guidance. Attorney General opinions are found in a multi-volume set called Report of the Attorney General. Each volume in the set contains opinions issued during a one- or two-year period.

C. Civil Infraction Traffic Offenses

As indicated above, there are a number of sources of Michigan traffic law. However, the primary source is Chapter 257 of the Michigan Vehicle Code. It is a misdemeanor for a person to violate this act, unless that violation is by this act or other law of the state declared to be a felony or a civil infraction. Unless another penalty is provided in this act or by the laws of this state, a person convicted of a misdemeanor for the violation of this act shall be punished by a fine of not more than \$100.00, or by imprisonment for not more than 90 days, or both. (MCL 257.901[1])

Uniform Traffic Code provisions will specify whether a given offense is a misdemeanor or a civil infraction. (MCL 257.951)

The decriminalization of minor traffic offenses in 1979 substantially changed the court procedures for handling these cases. Because the defendant in a civil infraction case does not face the possibility of going to jail, he or she is not entitled to all the procedural safeguards associated with a criminal trial.

Accordingly, civil infraction hearings in traffic cases differ from criminal trials in the following respects.

- Jury trial is not allowed. (MCL 257.746[1], MCL 257.747[4])
- A defendant may be found responsible for a traffic civil infraction by only a preponderance of the evidence, rather than by the criminal standard of proof beyond a reasonable doubt. (MCL 257.746[4], MCL 257.747[5])
- Because civil infractions are not "crimes," findings of responsibility are not reported on the defendant's criminal record. However, most civil infractions must still appear on the defendant's driving record maintained by the Michigan Secretary of State. (MCL 257.6a, MCL 257.732)

6.2 Minimum Standards

6.2.1 Commencing a Civil Infraction Traffic Action

A. Issuing Citation

A civil infraction traffic action may be initiated:

1. by a law enforcement officer serving a written citation on the defendant, and filing the citation in the district court, or
2. if the infraction is a parking violation
 - a. by placing a citation securely on the vehicle and filing the citation in the district court, or
 - b. by placing a parking notice securely on the vehicle, mailing a citation to the registered owner of the vehicle, and filing the citation in the district court.

The citation, filed with the district court, serves as the complaint. The citation also serves as the summons to command the initial appearance of the defendant and a response from the defendant as to his or her responsibility for the alleged violation. (Michigan Uniform Law Citation form UC-01a)

Some municipalities maintain their own parking bureau. In this instance, the citation is not filed with the court unless the respondent requests a hearing to contest the citation or fails to pay the citation at the bureau.

(MCR 4.101[A], MCR 6.615[A][2], MCL 257.727c[1])

B. Michigan Uniform Law Citation

The Michigan Uniform Law Citation (UC-01a) consists of six parts: three originals (court copies), one police copy, one misdemeanor copy, and one civil infraction copy. The three originals allow an officer to cite three violations on a single form. For each violation, the officer must file an original with the court. Each of the originals shows the court the other violations written; however, the other violations will be shaded to indicate that they are not the charge for this particular original.

Each original copy of the citation filed with the district court serves as a separate complaint. (MCR 4.401[A], MCL 257.727c) The civil infraction copy given to the driver serves as a summons that brings the driver within the court's jurisdiction and notifies the driver of all the

charges regardless of how many originals are filed with the district court. Filing may be electronic pursuant to MCR 8.125.

C. Proceedings for Nonresidents

When the defendant is not a Michigan resident, special proceedings apply. The citing officer is required by law to take the defendant's license as security for the defendant's appearance in court, unless the nonresident leaves either a guaranteed appearance certificate or a sum not to exceed \$100.00. If the court is open and a magistrate is available, the nonresident may demand to be taken to the nearest magistrate to answer the civil infraction charge. (MCL 257.749)

6.2.2 Appearance

See Section 6.3 for procedural checklists.

A. Overview

The defendant must contact the court within the time specified on the citation to respond to the alleged violation to avoid default. (MCL 257.743[4], MCR 4.101[B][4])

The procedure for arranging the appearance date varies from court to court. Some district courts set a specific date for the defendant's appearance; other courts require the defendant to appear on a "walk-in" basis on or before the appearance date specified on the citation. When the appearance date is arranged by telephone, the court shall mail the defendant a notice confirming the appearance.

1. Response to Citation

All defendants who receive a citation for a traffic civil infraction are required to make an appearance in person, by representation, or by mail. (MCL 257.743, MCL 257.745, MCR 4.101[B][1]) Upon making an appearance, the defendant or representative must respond to the citation in one of the following ways:

- admit responsibility without explanation,
- admit responsibility with explanation, or
- deny responsibility for the civil infraction.

2. Method of Appearance

a. In Person

Appearance in person is made when the defendant personally appears in court to admit or deny responsibility. Appearance by representation is when a defendant authorizes another person to come before the court and admit responsibility on the defendant's behalf. The defendant's representative need not be a licensed attorney.

Once an appearance date is set, the defendant is required to appear, either in person or by representation. Default will also be entered against defendants who fail to appear at scheduled hearings. (MCL 257.748, MCR 4.101[B][3]) See Section 6.2.3 for a discussion on defaults. The contact with the court to schedule an appearance date does not itself constitute an appearance. (MCR 4.101[B][2])

b. By Representation

New magistrates should inform themselves about their court's practices regarding appearances by representation. A defendant need not give another person written authorization to act on his or her behalf, but the magistrate may ask for written authorization or a written admission of responsibility if the circumstances surrounding the representative appear questionable.

Once an appearance date is set, the defendant is required to appear, either in person or by representation. Default will also be entered against defendants who fail to appear at scheduled hearings. (MCL 257.748, MCR 4.101[B][3]) See Section 6.2.3 for a discussion on defaults. The contact with the court to schedule an appearance date does not itself constitute an appearance. (MCR 4.101[B][2])

c. By Mail

Appearance by mail is made when the defendant returns the citation to the court with a signed admission or denial of responsibility, and/or full payment of the applicable fines and costs. (MCL 257.743[4]) If payment is not enclosed, the court may order appropriate sanctions as described in MCL 257.907, and notify the defendant of the amount due and the payment deadline. In any event, the court must comply with the notice requirements in MCL 257.321a.

3. Type of Response**a. Admission of Responsibility without Explanation**

A district court magistrate may accept an admission of responsibility for a civil infraction without explanation and order sanctions if the magistrate is so authorized by the district judge. (MCL 600.8512, MCR 4.101[E][1]) If the defendant admits responsibility without explanation, the magistrate finds the defendant responsible for the infraction and imposes the appropriate sanctions. (MCL 257.745)

b. Admission of Responsibility with Explanation

A magistrate may accept a written or verbal admission of responsibility with explanation only as expressly authorized by the district judge. (MCL 600.8512, MCR 4.101[E][2]) Therefore, it is essential that the magistrate obtain the necessary authorization to preside over admissions of responsibility with explanation. When the explanation is offered by representation or by mail, the court may require the defendant to offer further explanation and/or appear in court in person.

c. Denial of Responsibility

A case involving a defendant who denies responsibility for a civil infraction may be adjudicated at a formal or informal hearing. Most contested cases are heard and decided at informal hearings. A formal hearing occurs when the defendant expressly requests one, or when one of the parties appeals a decision rendered after an informal hearing.

The defendant shall request a hearing by contacting the court in person, by mail, by telephone or by representation to obtain a scheduled hearing date. The court shall provide a written notice confirming the hearing date.

4. Timeliness of Appearance

The defendant's appearance must occur within the time specified on the citation. Failure to make a timely appearance will result in entry of a default judgment against the defendant. (MCR 4.101[B]) Noncompliance with the judgment will result in eventual suspension of the defendant's license, as well as other possible sanctions. (MCL 257.743[4]) The timeliness of a mail appearance is determined by the postmark date of the defendant's letter. (MCR 2.107[C][3])

B. Admission of Responsibility with Explanation; Appearance in Person or By Representation

There are a number of steps to be conducted in an admission of responsibility with explanation in person or by representation. The magistrate must make certain determinations with regard to some of these steps. See Section 6.3.1 for a procedural checklist. The steps involved in accepting an admission of responsibility with explanation in person or by representation include:

- checking the citation for material defects,
- reading the charges and explaining the responses,
- determining whether the defendant has admitted responsibility,
- evaluating defendant's explanation, and
- entering judgment.

1. Material Defects

a. Defined

The citation must be checked for material defects. A material defect is an error pertaining to a fact that is necessary to prove an element of the offense, or that attacks the essence of the complaint. See Section 6.2.5, C.2 and MJI's *Traffic Benchbook*, vol. 2, sec. 1.8, as last updated. Courts vary in their opinion as to what constitutes a material defect, and new magistrates should check with their chief judges regarding this issue. Material defects may include:

- no signature on the citation by the citing officer (the absence of a signature is a material defect that makes the entire citation invalid) (MCL 257.742[1]).
- incorrect identification of the defendant.
- incomplete identification of the offense.
- failing to specify the location of the offense.
- failing to specify the date of the offense, or entering an incorrect date.

b. Court Policy

New magistrates should also ask their chief judges what to do if a citation contains a material defect. The case may be dismissed without prejudice by the judge or magistrate (if the magistrate is authorized to do so), and the citing officer may issue a new citation. A new citation must be served on the defendant. The court should have a clear policy regarding proof of service.

c. Discrepancies

A citation may contain a discrepancy between the officer's written description of the offense and the statute or ordinance section number, or there may be a written description with no section number given. Another possible discrepancy is that the section number might indicate one offense, but the defendant's explanation may contain facts that make the magistrate think another offense should be charged.

One approach to this problem would be to schedule an informal hearing in which testimony from both sides can be heard. After hearing testimony from both sides, the magistrate could allow the officer to amend the citation. Another approach would be to dismiss the citation without prejudice and permit the officer to reissue it with appropriate corrections.

Magistrates should not amend a citation themselves.

2. Reading Charges and Explaining Responses

The magistrate should read the charge(s) from the citation and ask whether the defendant understands the charge(s). If the defendant does not fully understand, the magistrate must explain further to make the charge(s) clear. Once the defendant or defendant's representative indicates an understanding of the charge(s), the magistrate should explain the possible responses to the charge(s) (admission, admission with explanation, and denial), and again ask the defendant how he or she wishes to respond.

Because defendants are often confused about the difference between an admission with explanation and a denial, the magistrate should make sure the defendant understands that an admission with explanation will not result in dismissal of the citation; only a denial may lead to this result. If a defendant ultimately denies responsibility, the magistrate must schedule a formal or informal hearing. (MCR 4.101[E][3])

Some defendants admit responsibility and accept sanctions only to dispose of the matter quickly. There is nothing wrong with this; however, a magistrate should make clear the options that are available.

If multiple offenses are listed on a multi-charge citation, the magistrate should ask if he or she has appeared to respond to the other charges. If the defendant has not appeared on the other charges, the magistrate should explain that a separate response is necessary for each charge. Defendants sometimes assume incorrectly that a single appearance will suffice for each charge on a multi-charge citation.

3. Determining Whether Defendant Has Admitted Responsibility

a. Defined

A defendant's admission of responsibility with explanation consists of an admission of responsibility for the offense charged and an explanation of the circumstances surrounding the offense.

A defendant who responds to a citation with an admission of responsibility with explanation admits committing a civil infraction, but requests that the sanctions should be mitigated because of extenuating circumstances. The court must enter a finding of responsibility for the violation charged and decide whether the defendant's circumstances warrant mitigation of the sanctions.

The magistrate determines whether the facts the defendant admits are the elements that constitute the charged offense and considers any mitigating circumstances related in the explanation. Upon consideration of the explanation, the magistrate decides whether to accept the defendant's admission, and may impose the appropriate sanctions. The magistrate may mitigate the sanctions against the defendant in light of his or her explanation. (MCL 257.745[4]) See Section 6.3.

b. Consulting Law

In deciding whether the defendant is admitting facts constituting responsibility for an infraction, the magistrate must consult the statute or ordinance that creates the infraction. This statute or ordinance will describe the particular factual elements that comprise the infraction. The elements of all the traffic offenses in the Michigan Compiled Laws are listed in MJI's *Traffic Benchbook* as last updated. See also Section 6.2.5 A.

c. Admission to Correspond with Factual Elements

The facts contained in the defendant's admission of responsibility must correspond with the factual elements described in the statute in order to establish that the defendant committed the infraction. For example, the elements of coasting, a civil infraction pursuant to MCL 257.678(1) are: defendant drove a motor vehicle on a down grade and, at that time, defendant coasted with the gears of the vehicle in neutral. Before a defendant can be sanctioned for coasting, the behavior to which he or she admits must have been consistent with both of these elements.

d. Missing Elements

If a defendant purports to admit responsibility, yet the facts he or she admits to don't amount to the facts that constitute the offense, the magistrate should inquire further about the missing elements. If an inquiry does not resolve the issue, or if the officer's testimony is needed, the magistrate should schedule a formal or informal hearing.

e. Factors that Excuse Responsibility

In some cases, the defendant's behavior may meet the statutory elements for an infraction, but other circumstances offered in explanation constitute a defense to the infraction that would excuse the defendant entirely from responsibility. The statute governing admissions with explanation, read strictly, does not allow the magistrate to enter a not-responsible judgment or dismiss the citation in such cases. (MCL 257.745[3]-[4])

One possible solution is to again remind the defendant of his or her right to deny responsibility and to request an informal/formal hearing. The magistrate should reach a clear understanding with his or her chief judge about what to do in this situation.

The magistrate should distinguish between explanations that mitigate the defendant's circumstances and justify a reduction in sanctions, and explanations that contest the elements of the offense or otherwise excuse the defendant from responsibility. The latter type of explanation should alert the magistrate to the need for a formal or informal hearing on the issue of the defendant's responsibility.

See Section 6.2.5, A. 3, page 39, for a discussion on situations where the defendant contests the elements of the offense or offers an excuse from responsibility.

4. Evaluating Defendant's Explanation

Once the magistrate has determined that the defendant has admitted responsibility for the charged infraction, he or she must decide whether to accept the defendant's explanation, and consider reducing the applicable sanctions. Michigan law does not provide clear guidelines for evaluating a defendant's explanation, or for mitigating the civil sanctions imposed when a defendant is found responsible.

Although magistrates rely on their own experience and sense of justice in evaluating defendants' explanations, each magistrate should have an understanding with the chief judge about the court's policies to reduce sanctions for admissions with explanation.

In evaluating a defendant's explanation, the magistrate may consider the following factors.

a. The Defendant's Basic Knowledge About Driving

The magistrate should be reluctant to mitigate sanctions when the defendant's explanation does not reflect a basic knowledge of:

- the basic rules of the road,
- the additional care and caution required in inclement weather or other hazardous traffic conditions, and
- the necessary precautions to take when driving trucks, motor homes, or motorcycles, or when towing vehicles.

Some magistrates will mitigate the fine and cost upon satisfactory completion of a driver safety education program, if such a program is available in their jurisdiction.

b. The Defendant's Credibility

Magistrates should also be wary of statements that do not appear credible under the circumstances. For example: (1) an unsubstantiated claim of a sudden health emergency, (2) an unsubstantiated lack of familiarity with the area where the offense occurred, or (3) an unsubstantiated claim of an inaccurate speedometer.

The above claims might justify a mitigation in sanctions if the magistrate is satisfied that they were made truthfully. The magistrate must often rely upon his or her "gut" feeling about the defendant when assessing credibility.

Other factors to consider, however, are the defendant's ability to corroborate his or her explanation with documentation or other credible witnesses, the defendant's current driving record, and whether the defendant's explanation offers good-faith reasons for his or her behavior, rather than excuses.

c. Relevance of the Explanation

The defendant's explanation must also relate to the elements of the charged infraction. Even a credible explanation offered in mitigation of a defendant's behavior will not justify a reduction in sanctions if it is irrelevant to the charged infraction. Some defendants offer "explanations" that do not relate to the facts of the incident, such as:

- complaints about the citing officer's discourtesy,
- concerns about losing the driver's license,
- concerns about repair expenses,
- concerns about lost time from work,
- claims of a clean driving record, or
- concerns about increased insurance premiums.

These sorts of "explanations" may merely be appeals to sympathy that do not justify mitigated sanctions. The magistrate should give the defendant a reasonable opportunity to "blow off steam." In the case of the discourteous officer, the magistrate might suggest the defendant take the complaint to a more appropriate forum, such as the citing officer's police chief or the jurisdiction's governing board.

d. Emergencies

Where the defendant claims that he or she violated the law in response to an emergency, the magistrate should consider whether the defendant could have avoided the "emergency" situation by more careful behavior. For example, a magistrate may be reluctant to mitigate sanctions where the defendant was speeding to avoid being late for an appointment; if the defendant scheduled the appointment in advance, he or she should have also allowed enough time to drive to it, or taken other action to avoid having to violate the law.

A true emergency, if it involves extraordinary, unexpected circumstances outside the defendant's control, may operate as a complete excuse from responsibility. See Section 6.2.5 A. 3, page 40, on the doctrine of sudden emergency. Where the "emergency" does not meet the criteria for this doctrine, it might nonetheless justify a mitigation of sanctions.

The decision to mitigate sanctions is a matter of discretion for each magistrate to decide on an individual basis. Magistrates may reasonably differ as to what types of circumstances justify mitigation. Factors to consider include:

- the extent to which the driver might have been able to anticipate the emergency if he or she had been driving at a prudent speed, or a safe following distance.
- the extent to which a distraction would interfere with a normal person's ability to focus on driving.
- the driver's awareness of his or her surroundings.

5. Enter a Judgment

When the defendant has admitted responsibility for the offense, the magistrate should, after evaluating his or her explanation, enter a judgment that finds him or her responsible for the citation and impose the appropriate sanction. See Section 6.2.6, page 69, for details on sanctions. If the magistrate does not mitigate the sanctions, then the usual sanctions are imposed. If, on the other hand, the magistrate finds the defendant's explanation worthy of consideration, he or she may decide how much the defendant's sanctions may be reduced from the recommended fines and costs schedule.

a. Refusing Admission

When, after hearing the defendant's admission and explanation, the magistrate determines that the defendant has denied responsibility, the magistrate should refuse to accept the admission as stated, and have the case scheduled for a formal or informal hearing as if the defendant had denied responsibility.

b. Mitigating Sanctions

The magistrate has no authority to mitigate the sanctions against the defendant by amending the charged offense so that the driver will get fewer points. If, for example, a defendant charged with driving 45 mph in a 30-mph zone (a three-point offense) admits to driving 40 mph (a two-point offense), the magistrate should treat defendant's statement as a denial and schedule a formal or informal hearing.

c. Assessing Fines and Costs

The magistrate has no authority to assess a fine or costs without entering an accompanying finding of responsibility and, in appropriate cases, abstracting the judgment for the Michigan Secretary of State.

d. Preparing Order

The magistrate's judgment is entered on SCAO-Approved form CIA 02 (Judgment) or by way of a computerized form. The original judgment should be filed with the court and a copy given to the defendant.

e. Abstract

Mitigation of sanctions does not amount to a dismissal of the citation. Thus, if the infraction is one that must be placed on a defendant's driving record, the court must still send an abstract of the judgment to the Michigan Secretary of State upon a finding of responsibility, regardless of the sanctions imposed.

The Michigan Secretary of State is required by statute to assess violation points on the defendant's driving record. The court has no authority to reduce the number of points the defendant will receive for an offense. (MCL 257.732, MCL 257.320a)

C. Admission of Responsibility with Explanation; Appearance by Mail

When the defendant timely appears by mail, the magistrate may accept the admission with explanation as if the defendant had appeared personally in court. However, if the defendant's mailed explanation is unclear, or if it does not clearly admit responsibility, the magistrate may require the defendant to provide further explanation at a court appearance. (MCL 257.745[2],[4])

There are a number of steps to be conducted in an admission of responsibility with explanation by mail. The magistrate must make certain determinations with regard to some of these steps. See Section 6.3.2, page 87, for a procedural checklist. The steps involved in accepting an admission of responsibility with explanation by mail include:

- examining the case file,
- checking the citation for material defects,
- determining whether the defendant has admitted responsibility,
- evaluating defendant's explanation, and
- entering judgment.

1. Examining the Case File for Completeness

a. Contents

The case file will contain the court copy of the citation (consisting of either paper or an electronic file with data from the citation) and the defendant's letter of explanation, accompanied by the defendant's signed civil infraction copy of the citation. The file might also contain a copy of the defendant's driving record or, if the defendant is an out-of-state driver, the bond card or driver's license given as security pursuant to MCL 257.749. For out-of-state drivers, see Section 6.2.1 C, page 8.

b. Examine Appearance Date

In reviewing the case file, the magistrate should first examine the appearance date. If the defendant's letter of explanation is not postmarked by that date, a default judgment of responsibility may be entered. (MCL 257.743[4], MCL 257.748) See Section 6.2.3, pages 25-27, for defaults, and Section 6.2.8, page 81, for noncompliance with judgments.

c. Failure to Timely Respond

Court practice varies as to whether the magistrate or the court's clerical staff enters a default judgment against a defendant who fails to timely respond to a traffic citation. Court practice also varies as to when a default judgment will be entered.

d. Court Policy for Defaults

The magistrate is responsible for establishing the policy for entering defaults, in conjunction with the district judge. In courts with automation, defaults are produced automatically after the expiration of the time for response. In such courts, the magistrate should not consider a defendant's untimely letter of explanation if the case file also contains a judgment of default.

2. Checking the Citation for Material Defects

For information on checking the citation for materials defects, see page 12 of this section. After checking for material defects, the magistrate should compare the contents of the mailed explanation with the citation. The magistrate should verify that the letter and the citation refer to the same offense and offender, and to the same time, location, and offending vehicle. The defendant should sign his or her copy of the citation. If a defendant mails a copy of the citation to the court without signing it, yet provides a letter of explanation, the magistrate should check the chief judge's policy to determine what action to take.

3. Determining Whether the Defendant Has Admitted Responsibility

Once the magistrate has found that the case file is complete, he or she should determine whether:

- the defendant is admitting facts that constitute responsibility for the offense, and
- the defendant is offering an explanation in mitigation of the civil sanctions.

See pages 15-17 of this section for a discussion of principles to follow in making these determinations.

4. Evaluating Defendant's Explanation

Mailed admissions of responsibility with explanation pose special problems not present where the defendant or representative for the defendant appears before the court. Defendants are usually not attorneys; they are not trained or experienced in the legalities of admissions, denials, or admissions with explanation.

A defendant's explanation may be ambiguous, or the written admission with explanation may fall short of the legal requirements for an admission. The defendant may not understand the difference between an admission with explanation and a denial, and may send the court a written defense to the infraction with the expectation that the court will render a decision on responsibility. In these situations, the magistrate does not have the advantage of the defendant's presence in the hearing room to answer clarifying questions.

Where the defendant's admission with explanation is unclear or defective, the magistrate has the following options (depending on the court's time and staff constraints, and the district judge's preferences):

- mail a notice to appear in court regarding the letter of explanation.
- mail the defendant a judgment of responsibility, informing him or her of the right to appeal.
- schedule an informal hearing.
- send the defendant a letter of nonacceptance of the admission with explanation, advising the defendant to submit a revised response to the citation by a stated time deadline. The letter should also inform the defendant of the particular sanction that may be imposed and of the consequences of failing to reply within the time deadline.

5. Entry of Judgment

After evaluating a mailed explanation, the magistrate should prepare a judgment to be sent to the defendant.

If the defendant sent payment with his or her mailed explanation, the payment should be applied to the fine and cost upon entry of judgment. If a balance is still owed, the mailed judgment should indicate the balance due. If the payment is too much, the excess amount should be deposited into the court's bond account, and the difference refunded by mail. See the *Michigan Court Administration Reference Guide*, page 6-05-09, F.4 at http://courts.michigan.gov/scao/resources/publications/manuals/carg/rg_sec6.pdf.

The magistrate should determine the court's policy regarding situations where the defendant includes payment with the mailed explanation and the explanation results in the scheduling of an appearance or hearing. The court may either: (1) return the check with the notice to appear, or (2) deposit the payment to the bond account pending the outcome of the hearing.

D. Denial of Responsibility

A case involving a defendant who denies responsibility for a traffic civil infraction may be adjudicated at a formal or informal hearing. Most contested traffic cases are heard and decided at informal hearings. A formal hearing occurs when the defendant expressly requests one, or when one of the parties appeals a decision rendered after an informal hearing.

1. Formal Hearing

According to MCL 257.747, formal hearings in traffic civil infraction cases must be conducted by the district judge. The judge decides whether to find the defendant responsible for the infraction, applying a preponderance of the evidence standard. Each party may be represented by an attorney, but the defendant is not entitled to appointed counsel at public expense. There is no jury at a formal hearing.

2. Informal Hearing

a. Authority to Conduct

Pursuant to MCL 257.746, informal hearings in traffic civil infraction cases may be conducted by a district judge or a district court magistrate. Before conducting an informal hearing, however, the magistrate must be authorized to do so by the district judge and complete a traffic adjudication course in accordance with MCL 600.8512(2).

In a contested case, if the citation is filed electronically, the court may decline to hear the matter until the citation is signed by the officer or official who issued it, and is filed on paper. A citation that is not signed and filed on paper, when required by the court, may be dismissed with prejudice.

b. Procedural Standards

An informal hearing is similar to a formal hearing in that no jury is empaneled. Also as in a formal hearing, a preponderance of the evidence standard is used to decide whether to find the defendant responsible. However, the procedural rules applicable to a formal hearing do not pertain to an informal hearing. Except with regard to privileged communications (such as the attorney/client or doctor/patient privilege), the magistrate is not bound to follow procedural rules, such as the Michigan Rules of Evidence, and no verbatim record is required. Neither party may be represented by an attorney at an informal hearing. A magistrate may administer oaths, examine witnesses and make findings of fact and conclusions of law.

c. Conduct of Hearing

In general, the atmosphere surrounding the informal hearing allows for greater latitude to parties and witnesses. Nonetheless, the magistrate should keep in mind that informal traffic hearings are many citizens' only experience with the court system. A traffic case that seems routine to a magistrate may be a matter of great concern to the person who has requested a hearing. It is thus important that the magistrate control the proceedings and treat both parties fairly, with courtesy and respect, no matter how routine the case may seem to the magistrate. Magistrates must also seek to make informal hearings understandable to those who appear, and to provide reasons for their decisions. The hearing shall be conducted in an informal manner so as to do substantial justice according to the rules of substantive law.

See Section 6.2.5, page 38, regarding the preponderance of the evidence standard. See also Sections 6.3.3 and 6.3.4, pages 89-94, for a procedural checklist and script on conducting hearings.

E. Taking Judgments Under Advisement

The magistrate's authority comes from statute, court rule, and the chief judge, in that order. A judge has no power to authorize a magistrate to do anything that is not permitted by statute or court rule.

No Michigan statute or court rule permits a court to take a traffic civil infraction case "under advisement" for a period of time for the purpose of dismissing the violation if the driver receives no further citations. In a September 1990 memorandum, the State Court Administrative Office made the following statements regarding the practice of taking civil infraction cases "under advisement."

"Some courts have a practice of taking civil infraction cases 'under advisement' when an offender admits responsibility. While there appears to be no statutory authority to provide for this practice, it is very common in some courts, while not allowed in others. This situation results in confusion for litigants and leads to a perception that all citizens do not have access to equal justice.

"Some courts limit taking civil infractions under advisement to special cases. Other courts have allowed the process to become so common that the officer (when issuing the citation) or the court clerk (when the offender contacts the court) advises the offender that he or she may request an admission to be taken under advisement.

"This practice, regardless of the intentions, negatively impacts the accuracy and integrity of Michigan driving records. Under this procedure, no conviction abstract is submitted to the Department of State. If the offender is not convicted of additional offenses for a specified time period, the citation is dismissed. Consequently, a driver may have several violations under advisement in different courts, or in some cases the same court, and eventually have all of the citations dismissed because no violation was ever submitted for entry to the driving record. As a result, a problem driver could remain on the road with an unblemished driving record.

"While the judiciary has broad discretion over procedural matters, implementation of practice and procedure is controlled by the Michigan Court Rules. To date, neither the Michigan Court Rules nor statute provide for this procedure. Standards relating to driving privileges and traffic safety are set by the Legislature. We recommend that courts discontinue the use of the 'under advisement' procedure.

"Courts are urged to review the following statutory provisions regarding this matter: MCL 257.6b ... MCL 257.8a ... MCL 157.732 ... MCL 257.745 ... MCL 257.746 ... MCL 257.747 ... MCL 257.907"

Since publication of the memorandum, the State Court Administrative Office has become aware of programs similar to taking matters under advisement, but known by other terms, such as "audit," "deferred judgment," "informal probation," "dismissal with costs," and "administrative review."

6.2.3 Failure to Appear

If a driver fails to respond to a traffic citation or to appear for a scheduled hearing, the magistrate may enter a default determination of responsibility. This determination will include the imposition of sanctions. However, the defendant may move to set aside the default for good cause upon timely application and posting of bond.

A. Entering Default Judgment

1. Authority

If a defendant fails to respond to a traffic citation or to appear for a scheduled hearing, the magistrate may enter a default determination of responsibility and impose appropriate sanctions. (MCL 257.748, MCR 4.101[B])

Prior to the entry of a default judgment for failure to respond to a citation, the magistrate must determine whether the plaintiff has filed an affidavit stating whether the defendant is in the military. The check box on the citation is sufficient for this purpose. If the citation indicates the defendant is on active duty in the military service a default judgment cannot be entered until the court appoints an attorney to represent the defendant, unless the servicemember has waived his or her rights and protections under the Servicemembers Civil Relief Act. (50 USCS App 501 *et seq.*)

The court must initiate procedures to prevent default judgments when a citation indicates a person is on active military duty. If a default judgment is entered, the defendant may file a motion to set aside and provide proof that he or she is on active military duty.

2. Sanctions

If a person who posts a certificate or deposit fails to appear as required in the citation or for a scheduled formal hearing, the court having jurisdiction and venue over the civil infraction shall enter a default judgment against the person, and the guaranteed appearance certificate or money deposited shall be forfeited and applied to any civil fine or costs ordered pursuant to MCL 257.907. (MCL 257.749[6])

Failure to answer a citation or a notice to appear in court for a traffic violation can also result in license suspension. Moreover, such failure is a misdemeanor. (MCL 257.321a[1]) The district judge and/or prosecuting attorney (but not the magistrate) will decide whether to prosecute the defendant for this misdemeanor offense.

For details on sanctions, see Section 6.2.6, page 69.

3. Costs to Compel Appearance

The court may assess costs to compel appearance. (MCL 257.729)

4. Court Policy

Magistrates inevitably face the question of what to do about no-shows. Defendants and police officers may arrive late or fail to appear at a scheduled informal hearing. The magistrate should consult with the district judge to develop a clear, no-exceptions policy under which parties who arrive more than a given number of minutes late are considered no-shows. When one party appears and the other does not, the magistrate should advise those present of the time by which the absent party must appear.

5. Process

When the defendant fails to appear for a scheduled hearing, the magistrate shall follow the steps in MCR 4.101(B)(4) and then dismiss the citing officer and any witnesses who appeared. Before dismissing these persons, it is good practice to explain what procedures the court will follow against the defendant who is in default. Pursuant to MCR 4.101(B)(4), the court:

- must enter a default against the defendant,
- must make a determination of responsibility, if the complaint is sufficient,
- must impose a sanction by entering a default judgment,
- must send the defendant a notice of the entry of the default judgment and the sanctions imposed, and
- may retain the driver's license of a nonresident as permitted by statute, if the court has received that license pursuant to statute. The court need not retain the license past its expiration date.

Upon entry of a default judgment, the magistrate should turn over the court file to the court employees who are responsible for sending the defendant the notices required by law and for processing the necessary paperwork.

B. Setting Aside Default Judgment

A defendant may have a legitimate excuse for not answering the citation or attending the hearing. Pursuant to MCR 4.101(D)(1), the defendant may ask the court to have the default judgment set aside.

1. Motion

The defendant's request must be made within 14 days of the day on which the court sends the notice of default. The request may be in writing or presented to the court in person, and must explain the reason for the defendant's failure to appear. The request must also state the defendant wants to offer a defense to or explanation of the complaint and must be accompanied by a cash bond equal to the fine and costs due at the time the motion is filed. (MCR 4.101[D]) A defendant may request that a default be set aside on SCAO-Approved form CIA 04, Motion to Set Aside Default Judgment and Order.

2. Setting Aside the Judgment

Once the defendant has filed a timely request to have the default set aside, the court may set the default aside, for good cause, pursuant to MCR 4.101(D)(2)(a). If the judgment is set aside, an informal hearing on the charge should be scheduled unless a party expressly requests a formal hearing.

If the default has already been abstracted, the court should notify the Department of State to remove the conviction. If the defendant is later found responsible after hearing, a new conviction abstract should be submitted.

3. Hearing on Motion

Alternatively, the judge, for good cause, may require the clerk to schedule a hearing on the defendant's motion pursuant to MCR 4.101(D)(2)(b).

4. Untimely Request

An untimely request to set aside a default must comply with additional requirements set forth in MCR 2.603(D). Defendants may wish to seek legal advice to determine whether they are able to meet the additional requirements of this court rule.

C. Failure to Appear by Plaintiff

Except when the court is notified before the commencement of a hearing of an emergency preventing an on-duty officer from appearing, failure of the police officer to appear as required by this rule shall result in a dismissal of the case without prejudice. If the plaintiff fails to appear, the case shall be dismissed. Whether or not the defendant appears is irrelevant to this action. The plaintiff may motion the court to set aside the dismissal, appeal to circuit court, or file a new citation for the same offense (with proper service on the defendant). (MCR 4.101[C])

6.2.4 Informal Hearing

The magistrate has a duty to maintain control over the proceedings during an informal hearing. Following the steps outlined in this section will assist the magistrate in maintaining control, and will help to ensure that the hearing is conducted fairly. See Sections 6.3.3, 6.3.4, and 6.3.5, starting on page 89, for a checklist, worksheet, and script to assist in properly conducting informal hearings.

A. Facilities and Environment

During an informal hearing, the magistrate should maintain a dignified and judicial environment. The magistrate should wear standard business attire and eliminate personal items from the hearing room, such as family pictures. The ideal hearing room should contain the following:

- a work area for parties and witnesses that includes a calendar and a magnetic board with model cars or chalkboard and writing implements.
- a seating area for parties and witnesses.
- separate seating areas for spectators and for parties awaiting scheduled hearings.
- a raised bench for the magistrate.
- the United States and Michigan flags, and a Michigan state seal.
- a copy of the Michigan Vehicle Code and municipal traffic ordinances.

B. Information Sheet

The magistrate may want to develop an informal hearing information sheet and send it to defendants who have a hearing scheduled. Such a sheet would contain information to help defendants understand what to expect at their hearings. A sample information sheet is found in Section 6.3.5, page 95. This document was adapted from material developed by several district courts.

C. Conducting the Hearing

1. Examine the Case File

The first step in conducting an informal hearing is to examine the case file and determine whether it is complete.

- The file should contain the citation, a copy of SCAO-Approved form CIA 01, Notice to Appear, that corresponds to the citation (court personnel should have sent this to each party in advance), and a copy of SCAO-Approved form CIA 02, Judgment.
- In addition, the case file may contain a copy of the defendant's driving record. To avoid prejudice, the driving record should not be reviewed prior to the hearing.

2. Check for Material Defects

After examining the file for completeness, the magistrate should check for material defects in the citation. See Section 6.2.2 B, page 12, for minimum standards.

3. Determine Elements of Infraction

To support a finding of responsibility, the magistrate should determine the elements of the alleged infraction the officer must prove by a preponderance of the evidence. See Section 6.2.5 A, page 37, on establishing the elements of an offense. During testimony, the magistrate should take notes that document testimony related to each element of the offense. These notes may then be used to establish a preponderance of the evidence. See Section 6.3.3, page 95, for a copy of the worksheet.

4. Call the Case

The informal hearing begins when the magistrate calls the case. The defendant must appear in person and the plaintiff (the State of Michigan, a city, village, or township) must be represented by the officer who issued the citation. To verify that all persons connected with the case are present, the magistrate should ask the officer, defendant, and any witnesses who are present to please step forward.

a. Failure to Appear

If the defendant fails to appear, the magistrate shall enter a default judgment. If the citing officer fails to appear, the magistrate shall dismiss the case without prejudice, except when the court is notified before the hearing of an emergency preventing an on-duty officer from appearing. (MCR 4.101[B][4][a] and [c])

b. Ethical Conduct

Magistrates should not socialize with police officers in view of the public before the start of a scheduled hearing. Parties who perceive the magistrate has a social relationship with the officer may also perceive the magistrate's decision will be biased in the officer's favor.

5. Explain the Proceeding

Once the magistrate is satisfied that the parties and witnesses are present, the magistrate should introduce himself or herself and identify the defendant and officer. The magistrate should next tell all present, in plain English, what will happen. Some of the items to be explained include the following.

- The proceeding is an informal hearing.
- The purpose of an informal hearing is to determine whether the defendant is responsible for a civil traffic infraction.
- Each side will have the opportunity to be heard.
- After the citing officer has testified, the defendant will testify about the facts relating to the incident, and offer a defense.
- The magistrate will decide the case after hearing all relevant testimony and applying the appropriate traffic law.
- A preponderance or majority of the evidence is required to find the defendant responsible. See Section 6.2.5 A. 1. b, page 38, for details.
- The possible civil sanctions include a civil fine, costs, and perhaps alternate sentencing such as treatment, education, or rehabilitation, and a jail sentence is not a possible sanction.
- Either party may appeal if dissatisfied with the magistrate's decision.

6. Read the Traffic Complaint

a. Complaint Information

After explaining what an informal hearing is, the magistrate should read the complaint information aloud, exactly as it appears on the citation, including:

- the citation number,
- the name of the defendant,
- the date and time of the alleged incident, and

- the location and description of the alleged offense.

b. Defendant Response

The defendant may allege at this point that there is an error in the citation. Many defendants believe that any error in the citation makes the citation invalid, no matter how minor the error is. The magistrate (who would have checked the citation for material defects prior to the hearing) should explain that the only defects that affect the validity of a citation are material defects that go to the essence of the charge. See Section 6.2.2 B, page 12, on material defects.

c. Applicable Statute or Ordinance

Next, the magistrate should read the applicable statute or ordinance. The magistrate must be satisfied that the defendant understands the charge and confirm that the defendant denies responsibility. Often, defendants belatedly realize that they committed the infraction and may admit responsibility. If this happens, the magistrate need not hear testimony because the proceeding becomes either an admission of responsibility or admission with explanation. The magistrate may dismiss any witnesses and the citing officer, and proceed to entering judgment with just the defendant present.

d. Inquire Whether Ready to Proceed

If the defendant still wishes to deny responsibility, the magistrate should ask the parties if they are ready to proceed with the hearing.

7. Administer the Oath

Before taking testimony, the magistrate must administer the oath to the parties and witnesses. The parties and witnesses may take the oath as a group. The magistrate instructs the group to raise their right hands while the oath is administered.

8. Take Evidence**a. Officer's Evidence**

The magistrate may begin by asking the citing officer to present the evidence in support of his or her case. The officer's evidence may be in the form of verbal testimony, physical evidence (such as skid mark measurements), or documents (such as photographs). The officer's evidence should be confined to facts relevant to the elements of the offense. See also Section 6.2.5 A and B, pages 37-45.

Testimony about the defendant's attitude toward the officer, for example, is not relevant to the elements of most civil infractions, and should be prohibited. After the officer has finished presenting evidence, the magistrate may ask the officer questions to clarify elements of the alleged infraction.

b. Defendant's Questions

Once the officer's presentation is concluded, the magistrate should ask the defendant if he or she has any questions for the magistrate to ask the officer or the officer's witnesses. The defendant must not be allowed to argue with the officer.

To maintain control of the proceedings, the magistrate should tell the defendant to direct questions to the magistrate who will, in turn, conduct the actual questioning of the officer or the witnesses. The magistrate must ensure that the defendant's questions are relevant and not argumentative. The magistrate may wish to remind the parties that courtroom etiquette applies, even though the hearing is informal.

c. Defendant's Evidence

The magistrate should ask the defendant to present his or her case. Like the officer, the defendant may present verbal testimony, physical evidence, or documents. The defendant is probably less experienced in testifying than a police officer, so his or her evidence is more likely to be disorganized, unfocused, or irrelevant to the main issues of the case. The magistrate will often need to question the defendant after his or her presentation.

d. Treatment of Defendant

The magistrate should be sensitive to the defendant's inexperience, and make every effort to maintain an atmosphere of dignity, decorum, and impartiality. At the end of the defendant's presentation, the magistrate should ask whether the officer has any questions for the magistrate to ask the defendant or the defendant's witnesses.

To avoid arguments arising between the defendant and the officer, the officer's questions should be directed to the magistrate, who in turn will question the defendant. If the magistrate still requires more facts to decide the case after hearing the testimony, he or she should question the parties.

9. Decide the Case

After hearing the testimony and asking questions, the magistrate should assess whether each element of the officer's case has been established by a preponderance of the evidence, and reach a decision. See Section 6.2.5, page 37, for more on the reasoning process involved in deciding a case. When announcing a decision, the magistrate should:

- recite the facts not in dispute.
- explain how he or she has resolved the disputed facts.
- apply the facts to the appropriate traffic law.
- announce whether the defendant is responsible for the infraction.
- give reasons for the decision.

10. Impose Sanctions

a. Finding of Not Responsible

A magistrate who finds a defendant not responsible should dismiss the defendant and anyone else who is still in the hearing room.

b. Finding of Responsible

A magistrate who finds the defendant responsible must impose civil sanctions immediately. Since sanctioning is a matter that concerns only the magistrate and the defendant, the officer and any witnesses may be excused for this stage of the hearing, if they wish to leave.

If the officer or witnesses remain in the hearing room while the magistrate imposes sanctions, they should be advised that they have no opportunity to argue the sanction once it is imposed. The officer has no right to contest the sanction.

The defendant's driving record, if available, may be reviewed at this time. The magistrate may consider the defendant's current driving record, plus any aggravating or mitigating circumstances, in imposing civil sanctions. See Section 6.2.6, page 69, on sanctions.

c. Advice About Failure to Comply with Judgment

Whatever sanctions are imposed, the magistrate should advise the defendant that failure to pay fines and costs or complete a rehabilitation or service program may result in a misdemeanor conviction, possible suspension of one's driver's license, and even punishment for contempt of court. See Section 6.2.8, page 81, on the consequences of noncompliance with a judgment.

d. Advice About Licensing Sanctions

If asked about points on the driving record, the magistrate should advise defendants that points are assessed by the Michigan Secretary of State (not the district court), after the Secretary of State receives notice that a driver has been found responsible for a civil infraction. A magistrate may not withhold reporting of convictions or adjust the number of points assessed. See Section 6.2.6 D, page 74.

D. Complete Case Processing

After deciding a case, the magistrate should ensure that SCAO-Approved form CIA 02, Judgment, is completed, with a copy given to the defendant and the original filed with the court. The magistrate's involvement in the case ends when the defendant is dismissed from the hearing room.

Once the day's proceedings are concluded, all case files should be returned to the court clerk.

The court clerk is responsible for preparing judgment abstracts and sending form DS1-22, Abstract of Conviction and Court Order, to the Michigan Secretary of State. (MCL 257.732)

6.2.5 Adjudication

A magistrate's primary duty in adjudicating a traffic civil infraction case is to determine whether the defendant is responsible for the offense. The magistrate makes this finding by consulting the state statute or local ordinance governing the charged offense, and determining whether the defendant's conduct corresponds to the particular elements that comprise the offense.

A. Establishing Elements of Traffic Case

The elements of an offense are the factual criteria that must be met to prove that the defendant has committed it. The elements of a civil traffic infraction can be established either in the defendant's admission of responsibility given in response to a citation, or in an informal hearing.

1. Burden of Proof

a. Presenting Evidence

1) Plaintiff

The citing officer must present evidence proving that the defendant committed a given traffic offense. At an informal hearing on a civil infraction, the plaintiff (the citing officer) presents his or her evidence first, because the plaintiff has the burden of proof to establish responsibility. To meet this burden, the plaintiff must present evidence establishing each element of the charged offense. These elements constitute the plaintiff's prima facie case. *Black's Law Dictionary* (5th Edition, 1979) defines a "prima facie case" as one that will entitle a party to recover if no evidence to the contrary is offered by the opposite party.

If the plaintiff does not prove each element of the charged offense, the magistrate must enter a finding of nonresponsibility in favor of the defendant.

If the plaintiff presents a prima facie case at the informal hearing, the magistrate should find the defendant responsible if the defendant offers no evidence whatsoever. However, defendants usually present evidence in their defense at an informal hearing.

2) Defendant

When the citing officer has finished his or her presentation of evidence, the magistrate must allow the defendant an opportunity to present his or her evidence before making any decision in the case.

If the defendant has a defense to a traffic violation charge, the defendant must present evidence supporting that defense. The obligation to establish an element of or a defense to a violation of law is known as the burden of proof.

A defendant's evidence will either contradict the facts presented to establish the plaintiff's prima facie case, or raise an excuse from responsibility not present in the prima facie case.

b. Preponderance of the Evidence

In considering the evidence presented by both parties at an informal traffic civil infraction hearing, the magistrate should render a decision that is supported by a preponderance of the evidence. (MCL 257.746[4]) When the evidence shows that a fact is more likely than not consistent with a party's description of it, that fact is said to be established by a preponderance of the evidence. (*Black's Law Dictionary* [5th Edition, 1979]) A preponderance of the evidence is sometimes expressed as a 51 percent showing that the evidence is consistent with a party's version of the facts.

The burden of proof by preponderance of the evidence in civil infraction cases is much different than the burden of proof beyond a reasonable doubt in criminal cases. The prosecution bears a much heavier burden of proof in criminal cases than does the plaintiff in civil infraction cases. To establish a fact beyond a reasonable doubt, the trier of fact must be entirely convinced of it, to a moral certainty. (*Black's Law Dictionary* [5th Edition, 1979])

2. Basic Elements of Traffic Offenses - The Plaintiff's Case

- a. As basic elements of all traffic offenses, the magistrate must be sure that the plaintiff can:
 - 1) identify the vehicle.
 - 2) identify the driver.
 - 3) establish that the alleged violation took place on a public highway (some traffic violations may occur in other locations; see, for example, careless and reckless driving on pages 64-67 of this section).

- 4) establish that the alleged violation occurred within the jurisdiction of the officer and the political subdivision that enacted the statute or ordinance at issue.
 - 5) establish that the alleged offense took place within the magistrate's jurisdiction.
- b. Intent to violate the law is another basic element to consider in adjudicating traffic offenses, particularly those that are criminal. Most traffic civil infractions do not require intent to violate the law as an element of the offense. One exception to this general statement is driving on private property to avoid a traffic signal. (MCL 257.611) A magistrate can find a driver responsible for exceeding a posted speed limit, for example, without finding that he or she did so intentionally. (See MCL 257.627.) However, criminal misdemeanor offenses may often require intentional conduct by the defendant. (See, e.g., MCL 257.626 [reckless driving], MCL 750.382[2] [malicious destruction of trees, shrubs, etc. with a vehicle], MCL 257.625[2] [authorizing or knowingly permitting another to operate a motor vehicle while intoxicated].) The magistrate should consult the statute or ordinance governing the offense to decide whether intent is an element. If an offense requires intentional conduct on the part of the defendant, the statute or ordinance will often describe the prohibited behavior as "wilful," "knowing," or "malicious."

Note: To establish the element of intent, the plaintiff must show that the defendant intended to commit the acts that constitute the violation of law. It is not necessary to establish that the defendant knew that his or her intentional conduct was prohibited by a particular provision of law.

The foregoing elements should be considered with regard to any Michigan traffic offense. Pages 46-67 of this section will discuss the additional elements required for four common traffic offenses. The additional elements of other Michigan traffic offenses can be found in volume 1 of MJJ's *Traffic Benchbook* as last updated.

3. Excuses from Responsibility - The Defendant's Case

The defendant in a traffic case may escape responsibility if he or she can show that an element of the plaintiff's case is lacking. The following are some examples.

a. Incorrect Operation of Speed Measuring Device

A defendant in a speeding case may prove that the citing officer was not correctly operating the device that measured the defendant's speed.

b. Obscured Sign or Signal

A defendant cited for disobeying a traffic sign or signal may show that the sign or signal was obscured by rust or vegetation, or inoperative due to theft, vandalism, or mechanical failure. Requirements for proper sign posting are in the *Michigan Manual of Uniform Traffic Control Devices*, available from the Michigan Department of Transportation, Traffic and Safety Division, 425 West Ottawa, Lansing, Michigan 48909, 517-335-2625. The manual is also available from the Michigan Technological University by calling 906-487-2102, and available on-line at <http://mdotwas1.mdot.state.mi.us/public/tands/plans.cfm>.

c. Doctrine of Sudden Emergency

- 1) The defendant may also raise new issues that are not already present in the elements of the prosecution's case. In certain limited circumstances, the doctrine of sudden emergency operates to excuse a driver from responsibility for a traffic violation. In *Socony Vacuum Oil Co v Marvin*, 313 Mich 528, 546; 21 NW2d 841 (1946), *Walker v Rebeuhr*, 255 Mich 204, 206; 237 NW 389 (1931), and *Paton v Stealy*, 272 Mich 57, 62; 261 NW 131 (1935), the Supreme Court expressed the doctrine as follows:

"One who suddenly finds himself in a place of danger, and is required to act without time to consider the best means that may be adopted to avoid the impending danger, is not guilty of negligence if he fails to adopt what subsequently and upon reflection may appear to have been a better method, unless the emergency in which he finds himself is brought about by his own negligence."

- 2) Note that the doctrine of sudden emergency applies only in extraordinary, unexpected circumstances that arise through no fault of the defendant. The circumstances must be both unusual and unexpected to trigger the exception. (*Vander Laan v Miedema*, 385 Mich 226, 232; 188 NW2d 264 [1971]) In *Amick v Baller*, 102 Mich App 339, 341-341 (1980), the Court of Appeals explained "extraordinary" and "unexpected" as follows:

"[T]he factual pattern is 'unusual' if the facts present in the case vary from the everyday traffic routine confronting a motorist. Thus, a blizzard or other extreme weather condition may cause such an unusual driving environment that the normal expectations of due and ordinary care are modified by the attenuating factual conditions. 'Unsuspected' facts are those which may appear in the everyday movement of traffic, but which take place so suddenly that the normal expectations of due and ordinary care are again

modified by the attenuating factual conditions."

3) The Michigan Court of Appeals has made the following additional statements about the doctrine of sudden emergency.

- *Vsetula v Whitmyer*, 187 Mich App 675, 681-682; 468 NW2d 53 (1991):

In this case, a collision occurred when the defendant was attempting to enter a road from her driveway on a winter day. She was unable to stop her car at the end of the driveway because it skidded on an unseen patch of ice and slid into the road. Earlier in the day, there had been no ice on the defendant's driveway. The Court of Appeals ruled that the sudden emergency doctrine was applicable to this case.

- *Young v Flood*, 182 Mich App 538, 542-544; 452 NW2d 869 (1990):

Failure to stop in the assured clear distance is not excused by hitting an icy spot, where the driver has reasons to suspect icy spots and adjust speed to be able to stop. However, a driver may be excused if he or she is driving at a prudent speed for icy conditions, and loses control of the vehicle due to a sudden unseen, unsuspected patch of ice.

- *People v Jones*, 132 Mich App 368; 347 NW2d 235 (1984):

The defendant in this case was unable to stop his car at a stop sign due to icy conditions, and was ticketed for a civil infraction when his car entered the intersection and struck another car. The citation was for violation of a township ordinance substantially similar to MCL 257.649(6),(8). The defendant was aware of the icy road conditions at least five minutes before the accident and could have applied his brakes earlier than he did. The district court dismissed the citation against the defendant, reasoning that he had attempted to stop his car, and did not intend to violate the traffic ordinance. The circuit court affirmed the district court on appeal. The Court of Appeals, however, reversed the circuit court's decision upholding the dismissal, and ordered the district court to enter a finding of responsibility. The Court of Appeals reasoned that intent was not an element of the civil infraction and that the defendant's lack of intent to violate the ordinance was irrelevant to a finding of responsibility.

- *Hill v Wilson*, 209 Mich App 356, 358; 531 NW2d 744 (1995):

The sudden emergency doctrine did not excuse the negligence of a motorcyclist who collided in heavy traffic with the vehicle in front of him,

when that vehicle stopped suddenly to avoid hitting a family of ducks and another car braking for the same ducks. The court stated: "Far from being a sudden emergency, we find the phenomenon of motorists being forced to make unanticipated stops is a common occurrence during rush hour."

- *Wright v Marzolf*, 34 Mich App 612; 192 NW2d 56 (1971):

The doctrine of sudden emergency is applicable where there is evidence that an emergency existed within the doctrine's meaning. In this case, the doctrine applied where a child suddenly darted into the street before the defendant driver from in front of a parked car.

- *Spillars v Simons*, 42 Mich App 101, 105-106; 201 NW2d 374 (1972):

In this rear-end collision case, the defendant (who drove the following car) claimed that the collision was caused by the lead car's failure to signal for a left turn. The Court of Appeals found that this was not the type of unexpected emergency that would bring the sudden emergency doctrine into play. The court stated:

"Not every difficulty that a motorist encounters is a condition that will excuse his liability [under the sudden emergency doctrine]. The condition must be extraordinary and totally unexpected."

- *Vander Laan v Miedema*, 22 Mich App 170, 178; 177 NW2d 457 (1970), *rev'd on other grounds*, 385 Mich 226 (1971):

In this rear-end collision case, the defendant (driving the following car) claimed he collided with the car in front of him because it stopped while he was looking in the rear-view mirror. The Court of Appeals found that this case presented no unexpected or extraordinary condition that would excuse violation of the assured clear distance and rear-end statutes. Drivers should stay behind other vehicles at such a distance as will permit a quick look into the rear-view mirror without a collision if the other vehicles should suddenly slow or stop.

B. Applying Law to Facts - Evaluating Evidence

Once the magistrate has identified the elements of a traffic offense from the statute or ordinance that creates the offense, he or she must carefully listen to the parties' renditions of the facts, looking for facts that match the elements of the offense. This can be a difficult task in an informal hearing, since the parties are not represented by attorneys who understand that

adjudication involves a process of applying facts to statutory criteria. (MCL 257.746[1])

The parties may present the magistrate with numerous facts that have no relevance at all to the elements of the charged offense, and the magistrate must be familiar enough with these elements to discern which facts are important to the decision and which are not.

The parties may also present the magistrate with evidence that is not reliable. While the magistrate is not bound by the Michigan Rules of Evidence in an informal hearing, certain principles from these rules are useful to the magistrate in deciding what weight to give the evidence that the parties present. See MCL 257.746(1).

1. Relevance

Magistrates should not base their decisions on evidence that is irrelevant to the charged offense. Michigan Rule of Evidence 401 defines "relevant evidence" as:

"... evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

In plain English, this rule lists two components for relevant evidence:

- a. the evidence pertains to a fact that impacts on the magistrate's decision, and
- b. the evidence makes the existence of that fact more or less probable than it would be without the evidence.

Applying the foregoing criteria to speeding offenses, evidence relevant to determining whether a driver's speed was reasonable under Michigan's basic speed law could include such factors as weather, time of day, vehicle type, traffic volume, road surface, and sight limitations. See Section 6.2.5 C, page 46, on speeding offenses. The color of defendant's car or the attitude of the citing officer are irrelevant to this determination.

2. Establishing the Reliability of Evidence Presented

Evidence at an informal hearing may take the form of testimony by the defendant, the complaining officer, or nonparty witnesses, who will verbally explain what happened as it pertains to the charged offense. The parties may also introduce physical evidence. Car parts, speed measurements, and skid marks are forms of physical evidence. Documents (e.g., registration certificates, repair receipts, cancelled checks, photographs) may be presented as part of the evidence in a civil infraction hearing. The following discussion briefly describes some factors a magistrate should consider in assessing the reliability of these types of evidence.

a. Evaluating Testimony of Witness

1) Competency of Witness

When evaluating the testimony of a witness, the magistrate should consider whether the witness is competent to make the statements offered into evidence. A magistrate should not give much weight to a witness's testimony that is not based upon the witness's personal knowledge. See Michigan Rule of Evidence 601, 602.

In an accident case, for example, the magistrate should consider whether the witness was standing in a place from which he or she could view the accident clearly, or whether any conditions existed that would have impeded the witness's ability to see the accident. See *Hicks v Bacon*, 26 Mich App 487, 493-494; 182 NW2d 620 (1970).

2) Distinguishing Between Perception and Statement of Opinion

The magistrate should also distinguish between a witness's description of some fact perceived and a statement of opinion. A witness does not need to be an expert in traffic matters to give an opinion, but if opinion testimony is given, the magistrate should inquire into the perceptions that form the basis for the opinion, and consider whether the opinion is reasonable in light of the witness's perception. See Michigan Rule of Evidence 701. In questioning police officers about evidence pertaining to traffic offenses, magistrates should inquire as to the officer's training and expertise. Frequently, officers will appear in court having observed vehicles that have fallen (fall speeds), vaulted (flip-vault speeds), rolled over (tip-over speeds), or failed to negotiate curves (yaw, sideslip and other critical curve speeds), and based on this, have made a speed determination. Such speed determinations are valid only if the officer has the proper training and experience to support them.

The Michigan appellate courts have made the following statements about opinion testimony in the context of speeding. (Speeding is discussed in C. on page 46.)

- *Stehouwer v Lewis*, 249 Mich 76, 81; 227 NW 759 (1929), *Hicks v Bacon*, 26 Mich App 487, 493; 182 NW2d 620 (1970):

A witness need not qualify as an expert in order to testify as to matters learned through ordinary observation, such as rate of speed at which vehicle is going, provided the witness is fully interrogated as to knowledge upon which judgment is based.

- *Hinderer v Ann Arbor Railroad Co*, 237 Mich 232; 211 NW 734 (1927), *Jackson v Trogan*, 364 Mich 148; 110 NW 612 (1961), *Hicks v Bacon*,

26 Mich App 487, 494; 182 NW2d 620 (1970):

"Estimates of speed based solely on opinions of the force of impact are not admissible."

- *Parks v Gaudio*, 286 Mich 133; 381 NW 565 (1938), *Green v Richardson*, 69 Mich App 133, 140; 244 NW2d 385 (1976):

"An opinion of the speed of a vehicle based on sound alone is properly excluded as evidence."

b. Evaluating Documentary Evidence

When evaluating documentary evidence, the magistrate should make sure that the document is properly identified, and that no questions are raised as to its authenticity. See Michigan Rules of Evidence 901-1007 for guidance on authenticating documents.

c. Evaluating Defendant's Admission of Fact

A defendant's admission of a fact to a police officer may be considered reliable, particularly where the fact admitted is against the defendant's interest. In *People v Chandler*, 75 Mich App 585, 590; 255 NW2d 694 (1976), the Court of Appeals said that admissions made to a police officer by the driver of an automobile involved in an accident are admissible in any court proceedings.

d. Evaluating Scientific Tests or Measuring Devices

When evaluating evidence gathered from scientific tests or measuring devices, the magistrate should seek to establish whether the test or measuring was performed in such a way as to render accurate results. See Section 6.7 of the *New Magistrate Traffic Adjudication Manual* for a full discussion of the guidelines that must be met in order to allow into evidence speed readings from a radar speed measurement device. On laser speed measurement devices, see Section 7.6 of the *New Magistrate Traffic Adjudication Manual*.

The Michigan Speed Measurement Task Force (MSMTF) allows speed measurement device manufacturers to certify that each new device sold in Michigan has been tested to the standards specified by the MSMTF. These manufacturers are required to perform the testing for their equipment for certification rather than having an independent laboratory perform the tests, as was previously the case.

- *People v Strawcutter*, 259 Mich App 142; 673 NW2d 469 (2003):

The court ruled that *People v Ferency*, 133 Mich App 526, does not mandate any specific actions in regard to service of the radar unit beyond that the speedometer be serviced by the manufacturer or other professional as recommended. The court said the guidelines “can be met by a showing that the issuing officer followed the recommendations contained in the Interim Guidelines and other recommendations issued by the Office of Highway Safety Planning.”

C. Speeding Offenses

1. Purpose of Speed Laws

The purposes of speed control laws are to move as many vehicles as possible safely and to promote uniform vehicular speeds. While studies have shown no direct correlation between number of accidents and rate of speed, drivers who travel at rates of speed that deviate — either faster or slower — from the average rate of speed of surrounding traffic increase the probability of accident involvement. Speed control laws are also important because the severity of injuries is directly related to rate of speed.

2. Elements of a Speed Violation

In addition to the elements common to all traffic offenses (see page 38 of this section), the elements of a speed violation case are:

- defendant operated a motor vehicle on the highway, and
- the speed of the vehicle was in violation of the Michigan Vehicle Code or local ordinance.

Intent is not an element of any civil infraction based on speeding.

a. Material Defect of Citation

The citation for a speeding violation shall specify the speed at which the defendant allegedly drove and the speed limit at the location where the violation allegedly occurred. (MCL 257.633[1]) Speeding citations that do not meet this statutory requirement have a material defect. See Section 6.2.2 B, page 12, on material defects.

b. General Speed Limit

MCL 257.628(1) establishes a general speed limit for travel when no other

maximum speed limit applies. “The maximum speed limit on all highways or parts of highways upon which a maximum speed limit is not otherwise fixed under this act is 55 miles per hour, which shall be known and may be referred to as the ‘general speed limit.’”

c. Basic Speed Law - Speed Limit Defined

Michigan's basic speed law provides as follows:

"A person operating a vehicle on a highway shall operate that vehicle at a careful and prudent speed not greater than nor less than is reasonable and proper, having due regard to the traffic, surface, and width of the highway and of any other condition then existing. A person shall not operate a vehicle upon a highway at a speed greater than that which will permit a stop within the assured, clear distance ahead." (MCL 257.627[1])

According to the basic speed law, all drivers must drive so that: (1) their speed is careful and prudent under the road conditions, and (2) they can stop within an assured clear distance ahead.

The basic speed law does not provide any specific speed limit for traffic in Michigan. The basic speed law requires that drivers operate their vehicles in a manner that is “reasonable and proper” regardless of the posted speed limit. Specific statutory speed limits, established by the Legislature, regulate traffic in certain areas and on certain roads. However, the statutes containing these specific speed limits are not well organized and can be very confusing to read.

d. Types of Speed Limits

The basic speed law is broken down into two primary parts:

- 1) advisory speed limits – the recommended maximum speed to negotiate a curve or other special roadway condition.
- 2) regulatory speed limits – established by the Legislature and enforceable in court.

Regulatory speed limits are further broken down into two categories:

- statutory speed limits, and
- modified speed limits.

These concepts will be discussed in more detail later in this section.

3. Careful and Prudent Speed

Underlying the concept of careful and prudent speed in the basic speed law is the premise of ordinary care, i.e., the rate of speed that a reasonable person would conclude to be proper, considering all conditions. Magistrates should recognize that speed limits are designated by authorities in law enforcement and traffic engineering. Speed limits are reasonable only for those conditions for which they are set, which typically are optimum conditions such as fair weather and off-peak traffic volumes.

a. Factors

When deciding whether a driver was traveling at a careful and prudent speed, the magistrate should consider such factors as:

- 1) weather (rain, wind, snow, etc.),
- 2) time of day (daytime vs. nighttime),
- 3) road surface (rough, wet, icy, etc.),
- 4) sight limitations (hills, curves, parked cars, etc.),
- 5) traffic volume (pedestrians, other types of vehicles), and
- 6) vehicle type (braking capacity, stopping distance).

b. Relevant Case Law

The Michigan Supreme Court has made the following comments about "careful and prudent speed."

- *Patterson v Wagner*, 204 Mich 593, 602 (1919):

"The rate of speed of an automobile must always be reasonable and proper, having due regard to existing conditions at the time and place, the lives and safety of the public being the test."

- *Bade v Nies*, 239 Mich 37, 39 (1927):

The driver of an automobile must drive his car in a reasonable safe manner. It may be necessary to drive at a lesser speed than the maximum allowed by law.

- *Szost v Dykman*, 252 Mich 151, 153; 233 NW 203 (1930):

The driver of an automobile may be negligent in driving too slowly. "Speed may be unreasonably slow as well as unreasonably rapid."

- *Dempsey v Miles*, 342 Mich 185, 192-193; 69 NW2d 135 (1955):

A motorist may be guilty of negligence in driving too fast even though keeping within the statutory limit. Drivers must have regard for the situation, and operate their vehicles accordingly.

4. Assured Clear Distance Ahead

a. Factors

The concept of assured clear distance ahead in the basic speed law typically arises in accident cases because the collision itself is evidence of the inability to stop within a clear distance ahead. The ability to stop as a measurement of speed is contingent on several factors, including:

- 1) driver's perception and reaction time,
- 2) road surface conditions, and
- 3) vehicle's braking capacity. See D.2, page 56, of this section on evidence of stopping distances.

b. Relevant Case Law

The Michigan Supreme Court has made the following comments regarding assured clear distance ahead.

- *Buchel v Williams*, 273 Mich 132, 137; 262 NW 759 (1935):

"The 'assured clear distance' rule is not confined ... to the ability to observe fixed objects ahead; it includes moving objects as well."

- *Marek v City of Alpena*, 258 Mich 637, 642; 242 NW 793 (1932):

The rule that a driver must drive at such a speed that he can stop within the assured clear distance ahead does not apply to objects that are a part of the roadway, such as holes or bumps.

- *Thompson v Southern Michigan Transportation Co*, 261 Mich 440, 446-447; 246 NW 174 (1933):

Atmospheric conditions (e.g., fog) do not change the rule that drivers should have their vehicles under control so they can stop within the range of their vision. If a driver's vision is obscured, he or she must slow down so as to be able to stop if necessary.

- *Hoag v Fenton*, 370 Mich 320, 325-326; 91 NW2d 848 (1963), *Cole v Barber*, 353 Mich 427 (1958), *Barner v Kish*, 341 Mich 501; 67 NW2d 693 (1954):

A motorist who has been driving so as to be able to stop within what had been his assured clear distance ahead is not in violation of such rule where such distance is suddenly and unexpectedly invaded by another vehicle coming from the side at a time and place such that the first driver cannot avoid a collision with it.

- *Lett v Summerfield & Hecht*, 239 Mich 699 (1927), *Russell v Szczawinski*, 268 Mich 112, 116; 255 NW 731 (1934):

"[I]t is negligence ... to drive an automobile ... in the dark at such speed it cannot be stopped within the distance that objects can be seen ahead."

- *Meehl v Barr Transfer Co*, 296 Mich 697, 701; 296 NW 844 (1941):

"The duty of so driving as to have assurance of safety ahead is imposed by the law of the road and exacts no higher degree of care than that of the common dictates of prudence."

c. Rear-End Collision

If the accident involves a rear-end collision, MCL 257.402 governs as follows:

"(a) ... when it is shown by competent evidence, that a vehicle traveling in a certain direction, overtook and struck the rear end of another vehicle proceeding in the same direction, or lawfully standing upon any highway within this state, the driver or operator of such first mentioned vehicle shall be deemed prima facie guilty of negligence

“(b) This section may not be invoked by the owner of any vehicle, the rear of which was struck under the circumstances above mentioned, if the accident occurred between 1 hour after sunset and 1 hour before sunrise, and the vehicle so struck did not, at the time, have a lighted lamp or lantern reasonably visible to the drivers of vehicles approaching from the rear.”

d. Prima Facie Evidence

1) Finding

A collision occurring under the circumstances described in this statute is prima facie evidence of negligence on the part of the driver of the vehicle overtaking and striking another vehicle from the rear. Prima facie evidence means that this evidence alone, if uncontested by the defendant, meets the preponderance of the evidence standard set forth in MCL 257.746(4). On burden of proof, see A.1, page 37, of this section. Unless the defendant can produce other evidence that contradicts the prima facie evidence, the magistrate must enter a finding of responsibility against the defendant for failing to stop within the assured clear distance.

2) Relevant Case Law

In *Hill v Wilson*, 209 Mich App 356, 360-361; 531 NW2d 744 (1995), the Court of Appeals considered whether, pursuant to MCL 257.402, an abrupt stop by the lead vehicle is sufficient to contradict the prima facie case for negligence against a following vehicle that collides with it. In *Hill*, a motorcyclist traveling in heavy traffic was injured when his vehicle struck the car in front of it, which had braked for a family of ducks crossing the road. The Court of Appeals ruled that the sudden braking of the lead vehicle in this case did not contradict the prima facie presumption that the motorcyclist was negligent under the rear end statute. Finding the motorcyclist negligent, the Court of Appeals stated that parties driving in heavy traffic where sudden stops could be reasonably expected should drive in the anticipation that unexpected events may cause drivers ahead to slow down or stop.

5. Advisory Speed Limits

a. Defined

As noted in C.2 of this section, page 47, advisory speed limits are the recommended maximum speed to negotiate a curve or other special roadway condition. Advisory speed limits are only posted with an accompanying warning sign “to alert drivers of

the maximum recommended speed” for the condition of the road ahead.

Advisory speed limits are not enforceable in Michigan courts except under the provisions of the basic speed law. Therefore, a driver may be responsible for violating the basic speed law when the driver’s failure to operate his or her vehicle in the manner recommended by the posted advisory speed limit constitutes the failure to operate the vehicle at a careful and prudent speed that is reasonable and proper to the existing conditions.

6. Regulatory Speed Limits

a. Defined

As noted in C.2 of this section, page 47, regulatory speed limits are established by the Legislature and are enforceable in court. There are two categories of regulatory speed limits: (1) statutory speed limits, and (2) modified speed limits.

1) Statutory Speed Limits

Statutory speed limits are established by the Legislature and apply to all of Michigan.

There are two types of statutory speed limits: (1) maximum/minimum speed limits, and (2) prima facie speed limits.

- Maximum/minimum speed limits – The speed limits posted on freeways are examples of maximum/minimum speed limits. Maximum limits are also established for school buses, heavy trucks, and other special vehicles. Maximum/minimum speed limits may be established for traveling under specific circumstances or conditions.
- Prima facie speed limits – These are the speed limits established for travel under most conditions. Prima facie (“on the face of it”) limits are used primarily in residential and business districts and for city and village streets and highways. With the exception of a driver’s duty to drive in a careful and prudent manner and the speed limit for residential areas, prima facie speed limits must be posted in order to be binding. (MCL 257.627[10])

For a list of prima facie speed limits in the Michigan Vehicle Code, see item number 7 on page 53.

2) Modified Speed Limits

Modified speed limits are limits set between the statutory maximum speed limit on state and country roadways and the prima facie speed limit (25 mph) in business and residential areas.

Modified speed limits are established by administrative action based on the results of a traffic engineering study and can only be set by agencies with jurisdiction over the affected roads and the authority to modify maximum/minimum and prima facie speed limits already in effect.

Maximum speed limits established pursuant to MCL 257.628 are subject to the provisions in MCL 257.629b, MCL 257.627(5)-(7), and MCL 257.629(4). (MCL 257.628[9])

With the exception of the general speed limit in MCL 257.628(1), modified speed limits are known as “absolute” speed limits. (MCL 257.628[10]) An absolute speed limit must be obeyed regardless of the conditions.

An example of a modified or absolute speed limit is the statutory speed limit in MCL 257.628(8): “Except as otherwise provided in this section, the maximum speed limit on all freeways shall be 70 miles per hour ... [and] the minimum speed limit on all freeways is 55 miles per hour”

7. Prima Facie Speed Limits

a. Statutorily-Prescribed Limits

For speed violations, the Legislature has specified by statute certain speeds in certain locations that constitute prima facie evidence of a violation. If the defendant presents no contradictory evidence, or insufficient contradictory evidence, the court must find the defendant responsible for the speeding infraction.

The prima facie limits in the Michigan Vehicle Code include the following.

- 25 mph in business districts. (MCL 257.627[2][a], [3])
- 25 mph in residential districts and public parks, “unless a different speed is fixed and duly posted.” (MCL 257.627[2][b]-[c], [3])

- A reasonable and proper speed considering all relevant conditions so that the driver can “stop within the assured clear distance ahead” and not exceeding 15 mph in mobile home parks. (MCL 257.627[4])
- 25 mph in a school zone, under certain conditions set forth in MCL 257.627a and subject to the authority granted to school superintendents and local authorities with jurisdiction over the area. (MCL 257.627a[4], [6]) Permanent signs designating the school zone and the speed limit in it must be posted. **Note:** MCL 257.601b doubles the fine for a moving violation at a construction zone, school zone, or emergency scene.
- The posted speed limit for anyone operating a passenger vehicle that is drawing another vehicle or trailer. (MCL 257.627[5])
- 55 mph for school buses, tractors, trucks, trailers, or combinations weighing 10,000 pounds or more (35 mph when reduced loadings are being enforced). (MCL 257.627[6],[7])
- 60 mph for school buses, tractors, trucks, trailers or combinations on freeways where the maximum speed limit is 70 mph. (MCL 257.627[6])
- 45 mph in construction, survey, and work areas. (MCL 257.627[9]) A different speed limit set by a local authority may apply if posted.
- 25, 35, or 45 mph depending on the number of vehicular access points located on a 1/2 mile segment of the highway. (MCL 257.625[2][d]-[f])

b. Locally-Prescribed Limits

A local authority may establish a prima facie speed limit on a highway under its jurisdiction if it follows the requirements in MCL 257.629. If the local authority increases or decreases a prima facie speed limit from the limit set in the Michigan Vehicle Code, this increased or decreased speed must be posted to be binding.

Subject to the “careful and prudent speed” and “assured clear distance” rules in MCL 257.627(1), absolute speed limits established in MCL 257.628 supersede prima facie speed limits established in MCL 257.627. (MCL 257.627[11])

D. Evidence of Speeding Offenses

1. Facts About Speed and Velocity

Speed is a rate of travel expressed in miles per hour (mph). Police officers can calculate conservative speed estimates using one of the three methods listed below. These methods can be used only if evidence has been collected regarding length of skidmarks,

tire-roadway friction interaction, and type of roadway (grade, wet or dry, etc.).

- a. $\text{speed} = \sqrt{\text{skid distance} \times \text{drag factor} \times 5.5}$
- b. Northwestern University Traffic Institute skidmark-speed nomograph. See J.S. Baker, *Simple Estimates of Vehicle Stopping Distances and Speed from Skidmarks* (Northwestern University Traffic Institute, 1985) in MJI's *New Magistrate Traffic Adjudication Manual* as last updated.
- c. Stopping distance charts. See the chart in D.2 of this section, page 56.

Drag factor is dependent on the type of vehicle. For example, the drag factor is reduced for heavy trucks and buses due to a shift in weight that occurs when these vehicles are braked suddenly. For further discussion of drag factor and other issues relating to stopping distances, see the article *Simple Estimates of Vehicle Stopping Distances and Speed from Skidmarks* in MJI's *New Magistrates Traffic Adjudication Manual* as last updated. The skidmark-speed nomograph in this article is used to compute braking distance.

To be relevant, the testimony of investigating officers regarding skidmarks must link the skidmarks to a given collision, showing a connection between the tracks and the place of collision. (*Wilhelm v Skiffington*, 360 Mich 348; 103 NW2d 451 [1960])

Velocity is a rate of travel expressed in feet per second (fps).

- Use the following equation to convert mph to fps:

$$\text{mph} \times 1.47 \text{ (or } 1.5) = \text{fps} \text{ (1.47 is the precise multiplier; 1.5 is generally accepted.)}$$

- Use the following equation to convert fps to mph:

$$\text{fps} \div 1.47 \text{ (or } 1.5) = \text{mph} \text{ (1.47 is the precise multiplier; 1.5 is generally accepted.)}$$

2. Facts About Stopping Distances

The three components of stopping distances are (1) perception, (2) reaction, and (3) braking times.

Perception time is the amount of time required for a driver's eye to register and transmit signals to the brain about a traffic situation requiring attention. Reaction time begins when the brain has processed the incoming information and has determined that a reaction is necessary. The braking distance is the amount of roadway covered from the moment the driver's foot reacts to the impulses transmitted from the brain and makes

contact with the brake pedal until the car comes to a complete stop.

a. Perception and Reaction

Stopping distance is equal to the sum of perception distance, reaction distance, and braking distance, i.e., stopping distance = perception distance + reaction distance + braking distance. Thus, to calculate perception and reaction distance for purposes of accident analysis, the perception and reaction times must be converted to linear feet. Perception time can range from as little as .09 seconds to 2 seconds depending on the driver's circumstances at the time of the incident. Reaction time can be anywhere from 1/4 second to 3/4 second depending on the driver's degree of attentiveness. (Times provided by the Northwestern University Traffic Institute.) The following example shows how perception and reaction distance are calculated.

Example: A driver is traveling at 40 mph and the perception-reaction time is assumed to be 1.5 seconds. To determine the driver's perception-reaction distance:

- 1) Convert mph to fps:

$$40 \text{ mph} \times 1.5 = 60 \text{ fps}$$

- 2) Multiply fps by perception-reaction time:

$$60 \text{ fps} \times 1.5 \text{ seconds} = 90 \text{ feet} = \text{perception-reaction distance}$$

b. Braking Distance

To calculate braking distance, use the following equation:

$$\text{Braking Distance} = \frac{\text{Speed}^2}{30 \times \text{Drag Factor}}$$

Speed is often a contributing factor in traffic crashes because as a driver's speed doubles, the perception distance and reaction distance also double, but the braking distance quadruples. The following chart shows the relationship of speed to distance required to perceive, react, and brake.

	25 mph (37 ft/sec)	50 mph (74 ft/sec)	75 mph (111 ft/sec)
Perception Distance	28	56	84
Reaction Distance	28	56	84
Braking Distance	27	108 = (4x27)	243 = (9x27)

E. Right-of-Way or Failure-to-Yield Offenses

1. Elements of Right-of-Way Offenses - General Rules

The Michigan Vehicle Code defines right of way as "the privilege of the immediate use of the highway." (MCL 257.53) When adjudicating right-of-way cases, the magistrate should generally consider:

- which driver had the lawful right of way, and
- whether or not failure to yield the right of way caused interference and evasive action to avoid an accident, or resulted in an accident.

The magistrate should disregard whether a collision actually occurred and which vehicle struck the other. These factors are not necessary to support a finding of responsibility.

To determine which driver has the right of way at an intersection on Michigan roads, the following general rules apply.

- "The driver of a vehicle approaching an intersection shall yield the right of way to a vehicle which has entered the intersection from a different highway." (MCL 257.649[1])
- "When 2 vehicles enter an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right." (MCL 257.649[2])
- **Exception:** "The driver of a vehicle traveling at an unlawful speed shall forfeit a right of way which the driver might otherwise have. ..." (MCL 257.649[5])

Note: In some states, if one driver forfeits the right of way the other driver automatically gains it. In Michigan, there is no such right-of-way shift.

The above rules apply except as modified at "through highways" and otherwise as stated in the Michigan Vehicle Code. (MCL 257.649[3]) See item 2 on page 60 for Michigan Vehicle Code provisions regarding specific traffic conditions.

The Michigan appellate courts have made the following statements about the general rules applicable to right-of-way issues.

a. Primary Rule (MCL 257.649[1])

- *Wechsler v Wayne County Rd Comm'n*, 215 Mich App 579, 598 (1996):

The standard of care to be adhered to by a driver having a right of way is the standard of reasonable or due care under the circumstances.

b. Uncontrolled Intersections (MCL 257.649[2])

- *Beauchamp v Olson*, 42 Mich App 323, 325; 201 NW2d 677 (1972):

The favored motorist must still exercise reasonable care at intersections.

- *Green v Richardson*, 69 Mich App 133, 137; 244 NW2d 385 (1976), *Diamond v Holstein*, 373 Mich 74, 80; 127 NW2d 896 (1964):

A driver proceeding straight ahead on a country road intersected at right angles by another road ending in the intersection, neither way being legally favored over the other, is not required to yield first passage to the vehicle on the right; a statute which states that when two vehicles enter an intersection from different highways at approximately the same time, the driver on the left must yield the right of way to the vehicle on the right does not apply to right-angled country roads forming a "T."

- *Stuck v Tice*, 291 Mich 486; 289 NW 225 (1939), *Strong v Kittenger*, 300 Mich 126; 1 NW2d 479 (1942), *MacDonald v Skornia*, 322 Mich 370, 376; 43 NW2d 4 (1948):

"Normally, ... when two cars collide on a bright clear day at the intersection of thoroughfares of equal importance, both drivers are to blame."

- *MacDonald v Skornia*, 322 Mich 370, 377-378; 34 NW2d 4 (1948):

"[T]he driver of an automobile must make proper observation before entering an intersection. ... A driver who proceeds into an intersection without ascertaining whether traffic is approaching on the intersecting street is not excused by the fact that his view, as he approaches the intersection, is obstructed. ... [U]nder such circumstances ... an ordinary, reasonable, prudent[,] and careful person would

stop in a position of safety from which due observation could be made, and look to ascertain to a certainty whether another vehicle is approaching the intersection behind the obstruction. ..."

- *Faustman v Hewitt*, 274 Mich 458; 264 NW 863 (1936):

If neither highway is a through highway, the driver approaching from the right has the right of way if he or she reaches the intersection first, or if both cars enter the intersection at the same time.

c. Forfeiture of Right of Way - Unlawful Speed (MCL 257.649[5])

- *Holloway v Cronk*, 76 Mich App 577, 581; 257 NW2d 175 (1977):

The statutory provision that a speeding vehicle forfeits its right of way applies to all right-of-way provisions to which the vehicle might be otherwise entitled under the statute (with an exception for through highways).

Exception - Through Highways: A through highway that handles long distance travel may also be referred to as an "arterial" or "trunkline" highway.

- *Sabo v Beatty*, 39 Mich App 560; 197 NW2d 871 (1972):

A vehicle traveling on a trunkline highway at an unlawful speed does not forfeit any right of way which it might otherwise have had. Thus, a vehicle that enters a trunkline highway from a subordinate road after stopping at a red flashing signal violated its duty to yield to oncoming traffic when it collided with another vehicle traveling on the trunkline highway at an unlawful speed.

- *Noyce v Ross*, 360 Mich 668, 678; 104 NW2d 736 (1960):

The driver on an arterial highway has a right to assume that drivers on subordinate highways will yield the right of way, and is not bound to anticipate negligent acts on the part of those approaching the arterial highway.

2. Right-of-Way Statutes

The above general rules regarding right of way are modified to some extent by statutes governing specific traffic conditions. Right-of-way offenses are also discussed in *MJI's Traffic Benchbook – Third Edition*, vol. 1, ch. 2, as last updated.

Right-of-way statutes apply to the following traffic conditions.

- a. Intersections:
 - 1) uncontrolled. (MCL 257.649[1][2])
 - 2) signed. (MCL 257.649[4],[6]-[7], MCL 257.671)
 - 3) signaled. (MCL 257.612)
- b. Left turns. (MCL 257.650)
- c. Emergency vehicles. (MCL 257.653)
- d. Funeral procession. (MCL 257.654)
- e. Pedestrians. (MCL 257.612, MCL 257.655)
- f. Using private property to avoid traffic control devices. (MCL 257.611[2])
- g. Failure to obey school crossing guards. (MCL 257.613d)
- h. Railroad grade crossings. (MCL 257.667)
- i. Private drive or alley. (MCL 257.652)
- j. Officers performing manual traffic direction duties. (MCL 257.602, MCL 257.602a)
- k. Bicyclists. (MCL 257.612)

3. Case Law

The Michigan appellate courts have made the following comments regarding some of the infractions listed in item 2 above.

a. Stop Signs (MCL 257.649[6])

- *People v McIntosh*, 23 Mich App 412, 415-418; 178 NW2d 809 (1970):

A stop sign serves only to notify motorists of the approaching intersection, and does not signify the exact spot at which vehicles are required to stop where it is

placed a considerable distance from the intersection. The driver of a vehicle approaching a stop intersection indicated by a stop sign that has no crosswalk or clearly marked stop line shall stop at the point *nearest* the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway. The driver in this case did not stop as required by statute at the point nearest the intersection where he stopped five feet from a stop sign which was placed 55 feet from the intersection, even though he had an unobstructed view from the place where he stopped.

- *Erdei v Beverage Distribution Co*, 42 Mich App 377, 380; 202 NW2d 434 (1972):

A driver who knows or should know that he is approaching a stop intersection may properly be charged with notice that he should stop before entering intersection even though stop sign may be down or for some reason is not showing.

- *People v Jones*, 132 Mich App 368; 347 NW2d 235 (1984):

The defendant in this case was unable to stop his car at a stop sign due to icy conditions, and was ticketed for a civil infraction when his car entered the intersection and struck another car. The citation was for violation of a township ordinance substantially similar to MCL 257.649(6),(8). The defendant was aware of the icy road conditions at least five minutes before the accident and could have applied his brakes earlier than he did. The district court dismissed the citation against the defendant, reasoning that he had attempted to stop his car, and did not intend to violate the traffic ordinance. The circuit court affirmed the district court on appeal. The Court of Appeals, however, reversed the circuit court's decision upholding the dismissal, and ordered the district court to enter a finding of responsibility. The Court of Appeals reasoned that intent was not an element of the civil infraction and that the defendant's lack of intent to violate the ordinance was irrelevant to a finding of responsibility. For other cases involving ice, see *Vsetula v Whitmyer* and *Young v Flood* on page 41 of this section.

b. Left Turns at Intersections (MCL 257.650)

- *Donhorst v Van York*, 23 Mich App 704, 709; 179 NW2d 228 (1970):

A left-turning vehicle may acquire the right of way over oncoming traffic even if the traffic control device gave oncoming traffic a green light.

c. Emergency Vehicles (MCL 257.653)

- *Keevis v Tookey*, 42 Mich App 283, 287; 201 NW2d 661 (1972):

A driver has a right, under permission of a green light, to cross an intersection unless, by the reasonable exercise of the senses of sight and hearing, he should have noticed or heard warning to the contrary in the forms of sirens or oscillating lights.

d. Funeral Procession (MCL 257.654)

- *Mentel v Monroe Public Schools*, 47 Mich App 467, 468-469 (1973):

A special regulation relating to motor vehicles will prevail over a general one relating thereto in a case of an inconsistency between them; the statute giving a funeral procession the right of way when going to any place of burial prevails over the general statute regulating traffic by traffic-control device.

"Burial" in the statute not only means "interment," but also the act or ceremony of burying. A church where a funeral service is to be held is therefore a "place of burial" within the meaning of the statute.

e. Pedestrians on Highways (MCL 257.655)

- *Ludwick v Hendricks*, 335 Mich 633, 638; 56 NW2d 409 (1953):

"Having discovered an oncoming vehicle, it is the pedestrian's duty to keep watch of its progress and to exercise reasonable care and caution to avoid being struck by it."

- *Martin v Leslie*, 345 Mich 305, 309; 76 NW2d 71 (1956):

A sidewalk alongside a highway must be usable in order to make it unlawful for a pedestrian to use the highway instead of the sidewalk.

f. Bicyclists (MCL 257.612)

- *Vercruysse v Ulaga*, 229 Mich 49, 53 (1924):

The rights of a driver of an automobile and of a bicyclist riding along a paved highway are mutual and coordinate, the automobile having no superior right of

way. Accordingly, an automobile driver was bound to respect a bicyclist's rights and observe the law of the road.

3. Facts About Intersections

Intersections are the points at which major and/or minor routes converge. See MCL 257.22.

a. Control Devices

The presence or absence of traffic control devices at a given intersection is based on the combination of route types which converge at that intersection. The three route combinations are:

- 1) The intersection of two major routes. The right of way is determined by well-developed traffic engineering guidelines, and a traffic signal is used to regulate the flow of traffic.
- 2) The intersection of a major and minor route. Traffic flow on the minor route will usually be controlled by a stop sign, therefore giving the major highway the right of way.
- 3) The intersection of two minor routes. At this type of intersection, there are often no traffic control signs or devices. Therefore, it is the task of magistrates to decide traffic disputes arising out of incidents at uncontrolled intersections.

Traffic engineers decide whether or not to sign an intersection based on complaints by citizens, police or other public officials that a traffic problem exists, and traffic studies involving accident reports, volume counts and safe approach speeds.

b. Determining Safe Speed

Safe approach speed studies are a method of determining speeds at which vehicles may safely approach an intersection in relation to vision obstructions. This method is based on certain assumptions:

- the vehicles are in the most dangerous legal position in the roadway,
- reaction time is 1 second,
- deceleration rate is 16 ft. per second (fps),

- driver's eye is 7 feet behind the front bumper, and
- vehicle can stop 8 feet from point where roadway edges cross.

The type of intersection may dictate the case law that is applied to right-of-way disputes. See *Green v Richardson*, 69 Mich App 133 (1976), and *Diamond v Holstein*, 373 Mich 74 (1964), in Section E.1.b, page 58.

F. Careless and Reckless Driving

Although careless and reckless driving have similar elements, the differences between them are great. Careless driving is a civil infraction, subject to a civil fine only and an informal or formal hearing. Reckless driving is a misdemeanor, subject to a fine and/or imprisonment for not more than 93 days, and a pretrial conference and jury trial. Magistrates should thus be careful to distinguish between these two seemingly similar offenses. Other than the maximum penalties and types of hearing afforded to defendants charged with careless or reckless driving, their key difference is the element of intent, as discussed below.

Note: In adjudicating charges of careless and reckless driving, the magistrate should focus on the defendant's *manner* of driving, not the results of the defendant's driving.

1. Careless Driving

a. Defined

MCL 257.626b governs careless driving and provides as follows:

"A person who operates a vehicle upon a highway or a frozen public lake, stream, or pond or other place open to the general public including an area designated for the parking of vehicles in a careless or negligent manner likely to endanger any person or property, but without wantonness or recklessness, is responsible for a civil infraction."

b. Elements

The elements of careless driving are:

- 1) defendant operated a vehicle on a highway, or other place listed in the statute,
and

- 2) defendant's operation of the vehicle was in a careless or negligent manner likely to endanger a person or property.

It is important to note the defendant does not have to intentionally drive in a careless manner in order to be found responsible for a civil infraction under this statute. The language in the statute that excludes "wantonness or recklessness" indicates that intent to violate the statute is not an element of the offense of careless driving. A careless driver's actions are characterized by inadvertence or inattentiveness.

c. Case Law

The Supreme Court addressed the issue of negligence in the following case.

- *Devlin v Morse*, 254 Mich 113, 116; 235 NW 812 (1931):

"In any ordinary case, one cannot go to sleep while driving ... without having relaxed the vigilance which the law requires, without having been negligent; it lies within [the driver's] own control to keep awake or cease from driving. And so the mere fact of ... going to sleep while driving is a proper basis for an inference of negligence sufficient to make out a prima facie case." See burden of proof on page 37 of this section for what constitutes a prima facie case.

2. Reckless Driving

a. Defined

MCL 257.626 governs reckless driving and provides as follows:

“(1) Any person who drives any vehicle upon a highway or a frozen public lake, stream, or pond or other place open to the general public, including, but not limited to, an area designated for the parking of motor vehicles, in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

“(2) A person who violates subsection (1) is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.”

Surrounding conditions and circumstances are very important in deciding whether a driver's conduct is reckless. What would be reckless in one location may not be in another.

b. Elements

The elements of reckless driving, a misdemeanor, are:

- 1) defendant drove a vehicle on a highway or other place listed in the statute, and
- 2) defendant's driving was "in willful or wanton disregard for the safety of persons or property."

"Willful or wanton disregard for the safety of persons or property" describes actions which go beyond the mere carelessness or negligence required for the civil infraction of careless driving. A reckless driver exhibits conscious disregard for the safety of others. (*Black's Law Dictionary*, 8th edition) Therefore, unlike careless driving, reckless driving requires the prosecution to show intent as a required element of the offense, i.e., the driver deliberately drove in the manner alleged.

c. Reduced Charge

If the prosecution, in a plea bargain, decides to reduce the charge from reckless driving to careless driving, the misdemeanor charge must be dismissed, and another citation must be issued for a civil infraction, to which the defendant will then plead responsible.

d. Case Law

The Michigan appellate courts have addressed reckless driving in the following cases:

- *Blasdell v Wooley*, 243 Mich 3 (1928):

The fact that an automobile struck a boy who was sitting on his bicycle at the right-hand side of a street with one foot on the sidewalk, at night when the street lights were burning, did not show that the driver was wanton or reckless or guilty of gross negligence. The driver was merely careless (negligent).

- *Hindes v Heyboer*, 368 Mich 561, 566-567; 118 NW2d 699 (1962), *People v Marshall*, 74 Mich App 523, 528; 255 NW2d 351 (1977):

Intoxication of a driver does not automatically prove recklessness, but it may be a factor.

6.2.6 Sanctions

Violations of the Michigan Vehicle Code (MVC) or local ordinances corresponding to it may be penalized by criminal, civil, and licensing sanctions, depending on the nature of the offense. Civil infractions pursuant to the MVC are penalized by the civil sanctions, which can involve a fine, or participation in an education, rehabilitation, or treatment program. The determination of responsibility for a civil infraction does not appear on the defendant's criminal record, but it may appear on his or her driving record. Licensing sanctions also apply to civil infractions.

Different penalty provisions may apply for traffic offenses defined in local ordinances. Consult these ordinances for the applicable penalties. See the Section 6 Appendix for the chart titled Traffic Civil Infraction Fine, Cost, Fees.

A. Fines and Costs

1. Fines

If the court finds the defendant responsible for a civil infraction, the court may order the defendant to pay a civil fine plus costs. The civil fine and costs shall be payable immediately unless permission for late payment or installments, both within a specified time period, is included in the order or judgment. (MCL 257.907[2])

- a. The Michigan Vehicle Code contains general penalty provisions for civil infractions, which apply unless a different penalty is expressly provided for a particular offense.
- b. For most civil infractions involving noncommercial vehicles, MCL 257.907 provides for a fine of up to \$100.00 plus costs not to exceed \$100.00.
- c. For commercial motor vehicles, the maximum fine is \$250.00. Fines for overweight commercial vehicles may exceed \$250.00 (MCL 257.724[3]) The penalty may also include education, rehabilitation, or a treatment program.
- d. The Michigan Vehicle Code sets forth the following schedule of maximum fines for certain civil infractions:
 - 1) **No insurance/No proof of insurance** — not more than \$50.00 plus costs. (MCL 257.328[1])
 - 2) **Handicap parking violations** — not less than \$100.00 or more than \$250.00 plus costs. (MCL 257.674[1][s])

- 3) **Child restraint violations** — not more than \$10.00 plus costs. (MCL 257.710d)
 - 4) **Safety belt violations** — the civil fine and costs shall be \$25.00. (MCL 257.710e)
 - 5) **Civil infractions that occurred while driving a commercial motor vehicle**— the civil fine shall not exceed \$250.00 plus costs. (MCL 257.907[3])
 - 6) **Civil infractions that occurred in a work zone, school zone, or an emergency scene** — the fine is double the fine otherwise prescribed for that violation. (MCL 257.601b)
 - 7) **Failure to stop for school bus** — the civil fine shall be not less than \$100.00 or more than \$500.00 plus costs. (MCL 257.907[2])
 - 8) **Commercial motor vehicle – operate in violation of out-of-service order** — the civil fine shall be not less than \$1,100.00 and not more than \$2,750.00. (MCL 257.319f[1] and [3], MCL 257.907[2])
 - 9) **Employer knowingly allowing, permitting, authorizing or requiring driver to operate commercial motor vehicle in violation of law or regulation regarding railroad-highway grade crossing** — a fine of not more than \$10,000.00. (MCL 257.319g[1][a] and [2][a], MCL 257.907[3])
 - 10) **Employer knowingly allowing, permitting, authorizing or requiring driver to operate commercial motor vehicle in violation of 49 CFR 392.10 or 392.11** — a fine of not less than \$2,750.00 and not more than \$11,000.00. (MCL 257.319g[1][g] and [2][b], MCL 257.907[3])
- e. The Michigan Vehicle Code further sets out a schedule establishing the minimum fine for violating the maximum speed limit on a limited access freeway that has a maximum speed limit of 55 miles per hour or more. (MCL 257.629c[1])
- 1 to 5 mph over the limit — \$10.00
 - 6 to 10 mph over the limit — \$20.00
 - 11 to 15 mph over the limit — \$30.00
 - 16 to 25 mph over the limit — \$40.00
 - 26 mph and over — \$50.00

However, this schedule does not apply to a person driving a passenger vehicle drawing another vehicle or trailer with combined weight of more than 750 lbs.,

having two wheels or less. It does not apply to a trailer coach with brakes more than 26 feet in length. It does not apply to a truck with gross weight of 10,000 lbs. or more. And it does not apply to a person driving a school bus. (MCL 257.629c[2])

- f. The civil fine imposed for a violation of the Michigan Vehicle Code or any other state statute “shall be exclusively applied to the support of public libraries and county law libraries” (MCL 257.909)
 - 1) The civil fine imposed for a violation of a county, city, township, or village ordinance substantially corresponding to the Michigan Vehicle Code shall be paid 1/3 to the support of the political subdivision whose law was violated and 2/3 to the county in which the political subdivision is located, in districts of the first and second class. However, districts of the third class may agree to a different distribution among the political subdivisions of that district. (MCL 600.8379)
 - 2) Civil fines for civil infraction ordinance violations involving commercial vehicles shall be paid 30 percent for the support of libraries, and 70 percent to the political subdivision whose ordinance was violated.
 - 3) The court may not increase a scheduled civil fine because the defendant requested a hearing. (*People v Courts*, 401 Mich 57; 257 NW2d 101 [1977], *People v Bogedain*, 185 Mich App 349; 460 NW2d 328 [1990])

A state police officer will almost always issue a civil infraction under state law. A local municipal police officer will almost always issue a civil infraction under a local ordinance, if there is one, unless policy within the local municipality dictates otherwise. Obviously, it is an advantage to the local municipalities to have citing officers issue civil infractions under the local ordinance rather than the state statute because both the civil fine and costs go to the support of the municipality, rather than to the support of libraries.

- g. A civil fine ordered to be paid pursuant to MCL 257.907(2) or (3) shall not be waived unless costs are waived. (MCL 257.907[4])

2. Costs

The statute regarding the assessment of costs in civil infraction cases appears to limit costs to expenses, direct and indirect, to which the plaintiff has been put in connection with the civil infraction, excluding expenses to support the day-to-day operations of the court. (MCL 257.907[4], *Board of Library Commr's of the Saginaw Public Libraries v Judges of the 70th District Court*, 118 Mich App 379, 387-388; 325 NW2d 777 [1982])

- a. Costs shall not be ordered in excess of \$100.00. Except as otherwise provided by law, costs shall be payable to the general fund of the plaintiff (the district control unit). (MCL 257.907[4])
- b. The court costs imposed for a violation of a county, city, township, or village ordinance substantially corresponding to the Michigan Vehicle Code shall be paid 1/3 to the support of the political subdivision whose law was violated and 2/3 to the county in which the political subdivision is located, in districts of the first and second class. However, districts of the third class may agree to a different distribution among the political subdivisions of that district. (MCL 600.8379)

3. Schedule of Civil Fines and Costs

The state court administrator annually publishes and distributes to each district court a schedule of recommended ranges of civil fines and costs for first-time civil infractions. The schedule is not binding on the courts; it is intended as a normative guide for judges and district court magistrates and as a basis for public evaluation for disparities in the imposition of civil fines and costs throughout the state. (MCL 257.907) For a copy of the chart, see http://courts.michigan.gov/scao/resources/other/fc_ci.pdf.

The state court administrator expects the individual district courts to prepare their own schedule of civil fines and costs, taking into account the various factors within their court affecting costs. Additional costs resulting from formal or informal hearings, multiple appearances, enforcement proceedings for nonappearance, or failure to pay fines and costs, should be computed and added, as applicable, by the individual courts. If the court does establish a schedule, it shall be prominently posted and readily available for public inspection. It does not have to include all civil infractions and the schedule may exclude cases on the basis of a defendant's prior record of civil infractions or traffic offenses, or a combination of civil infractions and traffic offenses.

In *People v Courts*, 401 Mich 57, 61-62; 257 NW2d 101 (1977), the Michigan Supreme Court held that when a district court adopts a scheduled fine system for specific traffic offenses, it is then barred from individualizing punishment for a covered offense. In *People v Bogedain*, 185 Mich App 349; 460 NW2d 328 (1990), the Michigan Court of Appeals held that a defendant must be sentenced in accordance with the schedule of fines authorized by the district court. In so holding, the Court of Appeals referenced *Courts*.

Regardless of whether a plea is negotiated, once the district court adopts a scheduled fine system for traffic offenses, it is barred from individualizing punishment for a covered offense. Thus, the fines and costs assessed for an offense negotiated by plea cannot be different than the amount established in the court's schedule for that offense.

4. Time to Pay

Fines, costs, and other financial obligations imposed by the court must be paid at the time of assessment, except when the court allows otherwise, for good cause shown. (MCR 1.110) If additional time is given, the 28-day period in MCL 257.321a begins at the end of the extended period of time. In light of the 28-day period and the 14-day notice provision in the statute, the State Court Administrative Office recommends giving extensions sparingly, in cases of real, demonstrated hardship.

5. Mitigation or Waiver of Civil Fines and Costs

a. Authority

Pursuant to MCL 257.745(4), the magistrate has discretion to mitigate the sanctions imposed for a civil infraction in light of the circumstances presented in a defendant's admission of responsibility with explanation.

b. Court Policy and Restrictions

The magistrate should consult with the district judge about the court's policies regarding mitigation of sanctions. While magistrates may consider mitigating factors and impose a lesser amount of sanctions than the schedule prescribes, they may not impose sanctions in excess of the scheduled amounts. (MCL 257.745[4], *People v Courts*, 401 Mich 57 [1977], *People v Bogedain*, 185 Mich App 349 [1990])

Moreover, magistrates may not increase the scheduled fine because the defendant has requested an informal hearing. (MCR 4.101[F])

c. Required Waivers

In the following cases, the magistrate is required to waive the fine and costs. A waiver is not a dismissal, and where required, reporting to the Department of State must occur.

- 1) Failure to have a driver's license in possession (MCL 257.311), upon certification by a law enforcement agency that the defendant, prior to the appearance date on the citation, produced a license that was valid on the date the violation occurred. (MCL 257.901a)
- 2) Equipment violations pursuant to MCL 257.683, upon receipt of certification by a law enforcement agency that repair was made before the appearance date on

the citation. (MCL 257.907[9])

- 3) Violations of the mandatory child-restraint law (MCL 257.710d), if the offender, before the appearance date on the citation, supplies the court with evidence of acquisition, purchase, or rental of a child seating system meeting the law's requirements. (MCL 257.907[12])
- 4) Failure to produce registration certificate (MCL 257.223) upon certification by law enforcement agency that the defendant, prior to the appearance date on the citation, produced a certificate that was valid on the date the violation occurred. (MCL 257.907[15])
- 5) No proof of insurance violations pursuant to MCL 257.328(1), if the offender, before the appearance date on the citation, supplies the court with proof of insurance valid on the date of the violation. The court **shall not** assess any fine or cost or judicial system assessment but may assess up to \$25.00 insurance fee payable to the court funding unit. The court **shall not** abstract the violation to the Department of State. (MCL 257.907[16])

d. Abstract

The magistrate's mitigation or waiver of fines and costs does not amount to a dismissal of the citation. Thus, if the infraction is one that must be put onto a defendant's driving record, the court must still send an abstract of the judgment to the Michigan Secretary of State upon a finding of responsibility, regardless of the sanctions imposed. On judgments that must be abstracted, see E and F of this section, page 77.

B. Assessments

The following amounts shall also be assessed.

1. **No Proof of Insurance** — \$25.00 for each offense where the defendant provides proof of insurance before the appearance date on the citation that is valid on the date of the violation. The assessment is deposited to the court's funding unit. (MCL 257.328)
2. **Justice System Assessment** — \$40.00 for each civil infraction violation except a parking violation or if fine and costs are \$10.00 or less.

The assessments are levied to the state treasury who shall deposit the revenue into the justice system fund. These amounts are not considered civil fines or costs.

C. Treatment, Education, and Rehabilitation Programs

In addition to the civil fine and costs, the defendant may be ordered to attend and complete a program of treatment, education, or rehabilitation. (MCL 257.907[5]) The court may not place the defendant on probation for a civil infraction. (*People v Greenlee*, 133 Mich App 734, 736-737; 250 NW2d 313 [1984])

D. Licensing Sanctions

Defendants who fail to pay the fine for a traffic offense are subject to license suspension and other sanctions. Licensing sanctions for violations of the MVC may involve suspension, revocation, or restriction of the defendant's driver's license. Such sanctions are imposed by the Secretary of State. The court may proceed pursuant to MCL 257.908. For further information about points and suspensions for traffic violations, see Offense Code for Traffic Violations at http://www.michigan.gov/documents/OffenseCode_73877_7.pdf.

1. Points

The finding of responsibility is entered on the defendant’s driving record. Points may be assessed according to the schedule prescribed by statute. Assessing points is a mandatory function of the Secretary of State; it is not a court function. (MCL 257.320a)

a. Speed violations exceeding the lawful maximum (MCL 257.320a[1][g], [l], [n]):

- by 16 mph or more — 4 points; if in construction zone — 5 points.
- by 11 mph to 15 mph — 3 points; if in construction zone — 4 points.
- by 10 mph or less — 2 points; if in construction zone — 3 points.

Speed violations established by executive order issued during a state of energy emergency have the same point schedule. (MCL 257.320a[7])

b. The Michigan Vehicle Code further sets out a point schedule for violating the maximum speed limit on a limited-access freeway that has a maximum speed limit of 55 miles per hour or more. (MCL 257.629c[1])

<u>Speed at time of violation</u>	<u>Points</u>
1 to 5 mph	0
6 to 10 mph	1
11 to 15 mph	2
16 to 25 mph	3
26 mph or over	4

- c. Careless driving — 3 points (MCL 257.320a[1][1]).
- d. Disobeying traffic signal or stop sign, or improper passing — 3 points (MCL 257.320a[1][p]).
- e. All other moving violations that are declared by statute to be civil infractions except those listed in subsections (2) and (4) — 2 points (MCL 257.320a[1][s]).
- f. Points shall not be entered for: (MCL 257.320a[2], [4])
- defective equipment (MCL 257.683-.714a).
 - certain bicycle, motorcycle, and moped violations (MCL 257.658).
 - wide load violations (MCL 257.717).
 - vehicle height violations (MCL 257.719).
 - vehicle towing mobile home violations (MCL 257.719a).
 - identification requirement violations for trucks, tractors, towing vehicles and platform bed wrecker road service (MCL 257.723).
- g. No points are assessed for the following violations (MCL 257.732[16][a-h]):
- parking or standing violations.
 - nonmoving violations that are not the basis for the Secretary of State's suspension, revocation, or denial of a driver's license.
 - registration or certificate of title violations that are not the basis for the Secretary of State's suspension, revocation, or denial of a driver's license.
 - pedestrian, passenger, or bicycle violations.
 - safety belt violations.
 - no proof of insurance when proof is provided by the due date showing insurance was valid on the date of the offense.
 - no proof of driver's license for noncommercial vehicles.

- h. If more than one conviction, civil infraction determination results from the same incident, points shall be entered only for the violation that receives the highest number of points under this section. (MCL 257.320a[5])

2. License Suspension

The court may not suspend the defendant's driver's license for a civil infraction. (*People v Greenlee*, 133 Mich App 734, 736-737; 350 NW2d 313 [1984])

A person shall be guilty of a misdemeanor if he or she fails to answer a citation, fails to appear, or fails to comply with an order or judgment issued for a violation of a civil infraction, or for a criminal traffic violation, within the time prescribed by the court. In addition, the Michigan Secretary of State shall suspend the person's driver's license until all matters relating to the violation or the noncompliance are resolved, including payment of all fines, costs, assessments, and a driver's license requirement fee.

3. Sanctions Imposed by Secretary of State

The Michigan Secretary of State enters the finding of responsibility for a civil infraction on the defendant's driving record and assesses points based on the schedule in MCL 257.320a. Accumulation of excessive points on a defendant's driving record may result in licensing sanctions imposed by the Secretary of State. (MCL 257.320) Assessing points is not the court's function; only the Secretary of State may perform this duty. For information about points and suspensions for traffic violations, see Offense Code for Traffic Violations at http://www.michigan.gov/documents/OffenseCode_73877_7.pdf.

4. Court-Imposed Licensing Sanctions

Imposition of licensing sanctions is the responsibility of the Michigan Secretary of State.

E. Abstract

1. Authority

All findings of responsibility arising from violations of the Michigan Vehicle Code or a local ordinance corresponding to the code must be abstracted, except violations articulated in MCL 257.732. (MCL 257.732[16])

2. Process

Not more than five days after the entry of a reportable civil infraction determination, the court shall prepare and immediately forward to the Secretary of State an abstract of the

court record. The court clerk is responsible for abstracting such judgments electronically (Secretary of State form DS1-22). The abstract must be certified by signature, stamp, or facsimile signature to be true and correct. (MCL 257.732[3]) The abstract must include the following:

- a. name, address, and date of birth of the person charged or cited,
- b. license number, if any,
- c. date and nature of the violation,
- d. type of vehicle driven at the time of the violation,
- e. date of conviction, finding, forfeiture, judgment, or determination,
- f. whether bail was forfeited,
- g. any license revocation, restriction, suspension, or denial ordered by the court, and
- h. other information considered necessary to the Secretary of State.

6.2.7 Appeals

A. Authority

Either party who is dissatisfied with the magistrate's decision after an informal hearing may appeal the decision and have the case reheard at a formal hearing before a district judge. The formal hearing on appeal is held de novo, meaning the judge will hear the case as if for the first time. No consideration will be given to evidence or testimony from the informal hearing. (MCR 4.401[D])

An appeal following an informal hearing is a matter of right, and must be asserted in writing, within seven days after the decision, on a form to be provided by the court. The appeal will result in a de novo hearing. (MCR 4.101[H][2])

There is no appeal of right from an admission of responsibility. However, within 14 days after the admission, a defendant may file with the district court a written request to withdraw the admission, and must post a bond as provided in MCR 4.101(H)(1)(a). If the court grants the request, the case will be scheduled for either a formal hearing or an informal hearing, as ordered by the court. If the court denies the request, the bond may be applied to the fine and costs. (MCR 4.101[H][3])

B. Process

The party appealing must request an appeal in writing within seven days of the magistrate's judgment on form CIA 05, Claim of Appeal of Right. A defendant who appeals must post an appeal bond equal to the fine and costs imposed at the time the appeal is taken. A defendant who has paid the fine and costs is not required to post a bond. A plaintiff's appeal must be authorized in writing by the prosecutor; however, no bond is required.

If a defendant who has posted a bond defaults by failing to appear at the formal hearing, or if the appeal is dismissed or the judgment is affirmed, the bond may be applied to the fine and costs. (MCR 4.101[H][2])

C. Conviction Reversed on Appeal

MCL 257.732(18) directs, when a conviction is reversed on appeal, the person whose conviction was reversed is required to serve a certified copy of the order on the Department of State. The State Court Administrative Office recommends, however, that when the appeal is heard in the district court, the court should take responsibility for the abstract.

If the conviction was abstracted prior to filing the claim of appeal, the court should flag the file for followup after the appeal hearing. If the appeal results in a judgment different from the original, the clerk should send a corrected abstract or remove the conviction, whichever is appropriate.

If the case is appealed to circuit court, the district court should submit the conviction abstract to the Department of State and require the appellee to take any subsequent action.

6.2.8 Noncompliance with Judgments

A. Late Penalty and Collection

Pursuant to MCL 600.4803, a defendant who fails to pay a judgment within 56 days after it is due is subject to a late penalty equal to 20 percent of the amount owed the court. The court is required to notify the defendant of the potential late fee if a judgment is not satisfied. See page 83 for the civil collection process.

B. Sanctions

A defendant who fails to pay a judgment entered after a default or finding of responsibility is guilty of a misdemeanor, and may be subject to criminal prosecution at the discretion of the district judge or prosecutor. (MCL 257.321a[1]) Additionally, the defendant faces possible civil sanctions, including:

- license suspension (MCL 257.907[11]),
- contempt of court proceedings (MCL 257.907[11], MCL 257.908), and
- civil process to collect the judgment (MCL 257.907[10]).

1. License Suspension

a. Notice

MCL 257.321a(2) governs the procedures for license suspension when a defendant has failed to comply with a judgment.

- 1) 28 days or more after noncompliance with the judgment, the court initiates license suspension proceedings by sending SCAO-Approved form CIA 03, 14 Day Notice, to the defendant.
- 2) This notice informs the defendant that if he or she does not comply with the judgment within 14 days, the court will inform the Michigan Secretary of State, which will place a hold on the renewal of the defendant's license. The suspension will remain in effect until both of the following occur:

- the court informs the Michigan Secretary of State the defendant has appeared before the court and that all matters relating to the violation or to the noncompliance are resolved, and
- the defendant has paid the court a \$45.00 clearance fee.

b. Applying Licensing Sanctions

Different license suspension rules apply to the following types of cases:

- 1) The court shall not inform the Secretary of State to suspend a defendant's driver's license for failure to comply with a judgment involving the parking or standing of a vehicle, or a pedestrian, passenger, or bicycle violation. (MCL 257.321a[6])
- 2) The court shall give 10 days' notice to appear in cases where the defendant has failed to answer two or more parking citations pertaining to handicapper parking, or six or more illegal parking citations.

If the defendant fails to appear in response to the 10-day notice, the court will inform the Secretary of State. (MCL 257.321a[7]) Upon receipt of such information from the court, the Secretary of State will not issue a license to the defendant or renew the defendant's license until the court informs the Secretary of State that the defendant has resolved the citations and paid a \$45.00 clearance fee. (MCL 257.321a[8])

2. Civil Contempt Proceedings, Default as Civil Contempt

The court may respond to a defendant's noncompliance with judgment by initiating civil contempt of court proceedings pursuant to MCL 257.908. This decision is made by the district judge and not the magistrate. The prosecutor may also request contempt proceedings against the defendant.

Civil contempt proceedings begin when the court sends the defendant an Order to Show Cause (MC 230) or issues a Bench Warrant (MC 229) signed by the judge. If the defendant fails to appear, or if the court finds the defendant intentionally refused to obey the court order, the defendant may be incarcerated until the matter is resolved.

3. Civil Process to Collect Judgment

The state or locality that issued the citation may decide to collect the judgment using the civil remedies in MCL 600.4001-MCL 600.4065 and MCL 600.6001-MCL 600.6098. The magistrate does not make the decision to use these remedies. These remedies include:

- garnishment of wages,
- attachment of property, and
- levy and execution.

To collect judgments that are 180 days or more in arrears, the district court and its funding unit may enter into an agreement with the Department of Treasury pursuant to MCL 12.131-12.139, assigning delinquent accounts to the Department of Treasury for collection. The department will collect the amount owed by offsetting tax refunds or other payments due from the state to the defendant.

Note: According to MCL 600.8403, a defendant who fails to pay a judgment within 56 days after it is due is subject to a late penalty equal to 20 percent of the amount owed.

6.3 Procedures

6.3.1 Checklist for Admission of Responsibility with Explanation; Appearance in Person or by Representation

- Schedule the defendant's appearance.
- Prepare for the explanation.
 - ✓ Prepare hearing room.
 - ✓ Examine case file for completeness. The case file will contain the court copy of the citation. It also may contain a copy of the police accident report, the defendant's driving record, previous correspondence, or, if the defendant is an out-of-state driver, the bond card or driver's license given as security pursuant to MCL 257.749. On out-of-state drivers, see Section 6.2.1 C, page 8, for minimum standards.
 - ✓ Check for material defects. See Section 6.2.2 B, page 12, for minimum standards.
 - ✓ Verify the defendant's identity by asking the person before you whether he or she is the individual named on the citation, or whether he or she is representing the individual named on the citation.
 - ✓ Read the charge(s) from the citation, and ask whether the defendant understands the charge(s). If the defendant does not fully understand, explain further to make the charge(s) clear. See Section 6.2.2 B, page 13, for minimum standards.
 - ✓ Explain possible responses to the charge(s) (admission, admission with explanation, and denial), and again ask the defendant how he or she wishes to respond. Make sure the defendant understands an admission with explanation will not result in dismissal of the citation; only a denial will lead to this result.
 - ✓ If the defendant is charged with multiple offenses on a multi-charge citation, ask if he or she has appeared to respond to the other charges. If the defendant has not appeared on the other charges, explain that a separate response is necessary for each charge.
- Determine whether the defendant has admitted responsibility. See Section 6.2.5 A, page 37.
 - ✓ Ask for the defendant's explanation.
 - ✓ Determine whether the defendant is admitting facts that constitute responsibility for the infraction.

- ✓ Consult statute or ordinance that creates the infraction.
- ✓ If the defendant denies responsibility, schedule a formal or informal hearing. (MCR 4.101[E][2]) See Section 6.2.2 D, page 22, for minimum standards.
- ☐ Evaluate the defendant's explanation. See Section 6.2.2 B, page 11, for minimum standards.
 - ✓ Distinguish between explanations that mitigate the defendant's circumstances and justify a reduction in sanctions, and explanations that contest elements of the offense or otherwise excuse the defendant from responsibility. See Section 6.2.5 A. 3, page 39, for a discussion on situations where a defendant contests elements of the offense or offers an excuse from responsibility.
 - ✓ Decide whether to accept the defendant's explanation, and consider reducing the applicable sanctions.
- ☐ Enter judgment. See Section 6.2.2, page 17, for minimum standards. When the defendant has admitted responsibility, enter a judgment that finds the defendant responsible for the citation and impose the appropriate sanction. See Section 6.2.6, page 69, for details on sanctions.
- ☐ Prepare order on SCAO-Approved form CIA 02 (Judgment). File original judgment with the court and give copy to the defendant.
- ☐ After judgment is entered, give case file to the court clerk. The court clerk is responsible for preparing the judgment abstract, Form DS1-22, Abstract of Conviction and Court Order, to be sent to the Secretary of State. See Section 6.2.6 D, page 74, on convictions that must be abstracted. Judgment abstracts may also be sent electronically. MCL 257.732 contains the requirements for filing judgment abstracts in civil infraction cases. The number of points assessed for a traffic violation is set forth in MCL 257.320a. See also Section 6.2.6 A. 5. d, page 74, and E, page 77.
- ☐ Once the day's proceedings are concluded, return all case files to the court clerk.

6.3.2 Checklist for Admission of Responsibility with Explanation; Appearance by Mail

- Examine the case file for completeness. The case file will contain the court copy of the citation, and the defendant's letter of explanation, accompanied by the defendant's signed civil infraction copy of the citation. The file may also contain a copy of the police accident report, the defendant's driving record or, if the defendant is an out-of-state driver, the bond card or driver's license given as security pursuant to MCL 257.749. On out-of-state drivers, see Section 6.2.1 C, page 18, for minimum standards.
 - ✓ Examine appearance date. If the defendant's letter of explanation is not postmarked by that date, a default judgment of responsibility may be entered. See Section 6.2.2 C, page 19, for minimum standards; see Section 6.2.3, page 25, for defaults and 6.2.8, page 81, for noncompliance with judgments.
 - ✓ Check for material defects. See Sections 6.2.2 B, page 12, and 6.2.2 C, page 20, for minimum standards.
 - ✓ Compare contents of mailed explanation with citation. Verify that the letter and citation refer to the same offense and offender and to the same time, location, and offending vehicle
 - ✓ Verify citation is signed by the defendant. See Section 6.2.2 C, page 19, for minimum standards.
- Determine whether the defendant has admitted responsibility. See Section 6.2.5 A, page 37; see also Section 6.2.2 C, page 20, for minimum standards.
 - ✓ Determine whether the defendant is admitting facts that constitute responsibility for the infraction and whether the defendant is offering an explanation in mitigation of the civil sanctions.
 - ✓ Consult the statute or ordinance that creates the infraction.
- Evaluate the defendant's explanation. See Section 6.2.2 C, page 20, for minimum standards.
 - ✓ Decide whether to accept the defendant's explanation, and consider reducing the applicable sanctions. Where the defendant's admission with explanation is unclear or defective:
 - mail notice to appear in court regarding the letter of explanation, or
 - mail the defendant a judgment of responsibility, informing him or her of the right to

appeal, or

- schedule an informal hearing, or
 - send the defendant a letter of nonacceptance of the admission with explanation, advising the defendant to submit a revised response to the citation by a stated time deadline and informing the defendant of the particular sanction that may be imposed and of the consequences of failure to reply within time deadline.
- Enter judgment. See Section 6.2.2 C, page 21, for minimum standards. When the defendant has admitted responsibility, enter judgment that finds the defendant responsible for the citation and impose the appropriate sanction. See Section 6.2.6, page 69, for details on sanctions.
- Prepare order on SCAO-Approved form CIA 02 (Judgment). File original judgment with the court and mail copy to the defendant. See Section 6.2.2 C, page 21, for minimum standards.
- ✓ If the defendant sent payment along with his or her mailed explanation, apply payment to the fine and costs upon entry of judgment.
- After judgment is entered, give case file to the court clerk. The court clerk is responsible for preparing the judgment abstract, Form DS1-22, Abstract of Conviction and Court Order, to be sent to the Secretary of State. See Section 6.2.6 D, page 74, on convictions that must be abstracted. Judgment abstracts may also be sent electronically. MCL 257.732 contains the requirements for filing judgment abstracts in civil infraction cases. The number of points assessed for a traffic violation is set forth in MCL 257.320a. See also Section 6.2.6 A. 5. d, page 74, and E, page 77.
- Once the day's proceedings are concluded, return all case files to the court clerk.

6.3.3 Checklist for Conducting Informal Hearings

- Examine the case file. The file should contain the following items.
 - ✓ Court copy of citation.
 - ✓ Form CIA 01, Notice to Appear.
 - ✓ Form CIA 02, Judgment.
 - ✓ Defendant's driving record (optional) – not to be reviewed prior to hearing.
 - ✓ Police accident report (optional).

- Call the case.
 - ✓ Call the parties' names.
 - ✓ Ask the parties and witnesses to come forward.
 - ✓ Ensure that all parties and witnesses are present.
 - ✓ If the defendant is not present, initial default proceedings.
 - ✓ If the citing officer is not present, dismiss the infraction with prejudice or adjourn the hearing, and explain the procedure to those present.

- Explain the proceeding.
 - ✓ Introduce yourself to those present.
 - ✓ Identify the citing officer and the defendant.
 - ✓ Explain the purpose of an informal hearing.
 - ✓ Explain the procedures (such as taking testimony, questioning, decision-making, sanctioning, and right to appeal) to be following in an informal hearing.
 - ✓ Answer any questions relating to the hearing.

- Read the charge.
 - ✓ Read the citation number, defendant's name, and the date, time, and location of the alleged civil infraction.
 - ✓ Read the applicable statutes or regulations.
 - ✓ Ask whether the defendant understands the charge.
 - ✓ If the defendant does not understand the charge, explain further.
 - ✓ Determine whether the defendant still intends to deny responsibility.
 - ✓ If the defendant admits responsibility, impose sanctions; otherwise, continue.
 - ✓ Ask the officer and the defendant if they are ready to proceed.
- Administer the oath.
 - ✓ Swear in all parties and witnesses at once.
 - ✓ Ask all present to be seated.
- Take evidence.
 - ✓ Request and take the plaintiff's (citing officer's) testimony.
 - ✓ Request the plaintiff's witnesses' testimony.
 - ✓ Identify the witnesses' relationship to the case
 - ✓ Take the witnesses' testimony.
 - ✓ If the defendant has questions, direct them to the officer. To maintain control, do not allow the defendant to question the officer directly.
 - ✓ Request and take the defendant's testimony.
 - ✓ Request the defense witnesses' testimony.

- ✓ Identify the witnesses' relationship to the case.
- ✓ Take the witnesses' testimony.
- ✓ If the officer has questions, direct them to the defendant. To maintain control, do not allow the officer to question the defendant directly.
- ✓ If necessary, determine additional facts by questioning the citing officer, the defendant, and the witnesses.
- ☐ Decide the case.
 - ✓ Recite the facts not in dispute.
 - ✓ Give and explain your decision regarding the disputed facts.
 - ✓ State your decision (responsible as charged, responsible for a lesser included offense, not responsible).
 - ✓ Give the reasons for your decision.
- ☐ Impose sanctions.

If you found the defendant not responsible:

- ✓ Advise the defendant of the plaintiff's right to appeal.
- ✓ Dismiss all parties and witnesses.
- ✓ Ensure that all clerical work connected with the case will be completed.

If you found the defendant responsible:

- ✓ Advise the defendant of the right to appeal.
- ✓ Dismiss the citing officer and witness.
- ✓ Review the defendant's driving record (optional).

- ✓ Determine what sanctions will be imposed.
- ✓ Impose the sanctions and inform the defendant.
- ✓ Determine whether the defendant can pay the civil fines and costs.
- ✓ If the defendant cannot pay, make alternate arrangements.
- ✓ Ensure that form CIA 02, Judgment, is completed.
- ✓ Ensure that a copy of the judgment is handed to the defendant.
- ✓ Dismiss the defendant.
- ☐ Complete case processing.
 - ✓ Ensure that the records of your magisterial activity are updated.
 - ✓ Call the remaining cases and repeat the above steps.
 - ✓ Ensure that a Form DS1-22, Abstract of Conviction and Court Order, is completed for each defendant found responsible for an offense that must be abstracted.

6.3.4 Script for Informal Hearings

The following contains recommended language which a magistrate may use while conducting an informal hearing. The steps below are based on the discussion in Section 6.2.4, pages 29-35.

- **Call the Case**

“Would Officer Howell and Mr. Bay please come forward? Do either of you have any witnesses with you today? Will you both please take a seat?”

- **Explain the Proceeding**

“I am Magistrate Smith for the 100th District Court in Whiting. Are you Officer Howell and are you Mr. Bay? We are here for the purpose of an informal hearing. As magistrate, I will preside over this hearing. Based on the evidence, testimony, and application of the appropriate law, I will render a decision. My decision will be a judgment of whether Mr. Bay is responsible or not responsible for the alleged civil traffic violation. I will now describe the informal hearing process.”

“Officer Howell will have the first opportunity to testify as to the reasons and circumstances that caused him to issue the traffic citation. When he has concluded his testimony, Mr. Bay, it will be your opportunity to testify as to what happened and to provide any defense you have concerning this alleged infraction. I reserve the right throughout the hearing to ask either of you questions for purposes of discovering points of fact or clarifying issues raised. I will arrive at my judgment and determine whether or not Mr. Bay is responsible, based on a preponderance of the evidence. Officer Howell or Mr. Bay, either of you may appeal my decision, in which case a formal hearing would be held before a judge.”

- **Read the Charge**

“Civil traffic infraction No. T13574 alleges that on February 14, 1998, Mr. Bay was operating a Chevy Camaro on Mary Street at or near Cedar Avenue which is in the jurisdiction of Whiting. He was allegedly traveling 40 mph in a 25 mph zone.”

“Mr. Bay, do you understand the charge against you? Do you wish to deny responsibility of the charge and continue with this hearing?”

“Are you both ready to proceed?”

- **Administer the Oath**

“Will you each (or all parties and their witnesses) please stand and raise your right hand? Do you swear or affirm the information that you are about to give in this matter will be the truth and nothing but the truth?”

- **Take Testimony**

“Officer Howell, you may now testify.”

After the officer’s testimony is presented, you may ask if there is any additional information that the officer wishes to add. You should then follow with testimony from the officer’s witness(es).

“Mr. Bay, the officer’s side of this case is momentarily concluded. Do you have any questions that you wish me to ask of the officer regarding the testimony?”

After the defendant’s testimony is presented, you may ask if there is any additional information he or she wishes to add. You should then follow with testimony from the defendant’s witness(es).

“Officer Howell, do you have any questions that you wish me to ask of Mr. Bay regarding this testimony?”

- **Decide the Case**

“The defendant has agreed that he was traveling on Mary Street on February 14, 1998. The charge was that Mr. Bay was driving 40 mph in a 25 mph posted speed zone.”

“The court finds the defendant not responsible for driving 40 mph in a 25 mph zone. My reasons for finding Mr. Bay not responsible are the following. First, Officer Howell testified that he was using traffic radar that day and that he had not attended an MLEOTC radar operator training school. He also testified that he had not verified the unit when he came on duty. These factors are the basis for my finding the defendant not responsible. If the officer reads the *People v Ferency* decision by the Court of Appeals on traffic radar, he will find the recommendations by the Michigan Speed Measurement Task Force that address the issue I just raised. I suggest that the officer discuss these recommendations with his department to prevent the court from having to dismiss radar tickets in the future.”

6.3.5 Worksheet for Informal Hearings

The following worksheet may be used to document testimony related to each element of the offense during the informal hearing. See Section 6.2.4, page 29.

Defendant:

Charge:

Plaintiff:

Code:

Case Number:

TESTIMONY:

FACTS IN DISPUTE:

FACTS:

LAW:

DECISION:

State the question that must be answered:

Note: The plaintiff has the burden of proof.

6.3.6 Explanation About Informal Hearings

- **What is an informal hearing?**

An informal hearing is a court proceeding held to decide whether you committed and whether you are responsible for the traffic offense with which you were charged. It is your opportunity to defend yourself, to ask questions, and to have witnesses testify in your favor. The testimony is under oath but the hearing is much less formal than a trial.

- **How is the hearing different from a trial?**

The magistrate, rather than the district judge, usually presides over the hearing. Neither side may be represented by an attorney. There is no jury and no court reporter. The magistrate's decision will be based on a preponderance (a 51 to 49 percent majority) of the evidence, not on proof beyond a reasonable doubt. In general, the hearing will be less formal than a trial.

- **How do I defend myself at the hearing?**

You may testify on your own behalf, have witnesses testify on your behalf, and ask questions of the witnesses against you. It is expected that any questioning will be concise, courteous, and not argumentative. You should also present any documents or other physical evidence you might have that supports your case. Remember that the hearing is your "day in court," so come prepared. Have your defense and questions ready.

- **How do I get my witnesses to appear?**

You may ask witnesses to come voluntarily or, if necessary, you may use the subpoena power of the court. Subpoena forms may be obtained from the court clerk.

- **Must I pay witnesses for appearing?**

Yes, if you are ordering the witness to attend. Ask the court clerk for witness fee amounts.

- **May the citing officer bring witnesses?**

Yes.

- **What are the possible outcomes of the hearing?**

You may be found not responsible, responsible, or responsible for a lesser infraction than the one charged.

- **What happens if the citing officer fails to appear?**

If the officer does not appear, the case will be either adjourned (postponed) or dismissed

“without prejudice,” which means a new citation can be issued by the officer for the same infraction.

- **What happens if I fail to appear?**

If you fail to appear, the court will enter a default judgment against you. This means the court will automatically find you responsible for the infraction charged, set the fine and costs, and mail you a judgment notice requiring you to pay. If you do not pay the judgment within 28 days, the court will send you a 14-day notice. If you do not pay within 14 days of receiving the notice, your driver’s license may be suspended by the Secretary of State and the court may issue a warrant for your arrest.

- **What are the penalties if I am found responsible?**

For most offenses, the maximum fine is \$100.00 or \$250.00 if operating a commercial motor vehicle. You must also pay court costs (not to exceed \$100.00) and other fees required by law. The magistrate may also require you to attend a program such as driving school if it is necessary to make you a safer driver.

- **What about violation points?**

Points are assessed by the Secretary of State’s office when it receives notice from the court that you committed a moving traffic offense. The magistrate who finds you responsible cannot adjust the number of points assessed against you.

- **Do I have a right to appeal?**

If you are found responsible by the magistrate after an informal hearing, you have the right to appeal for a formal hearing before the district judge. If the judge finds you responsible after a formal hearing, you have the right to appeal to circuit court.

- **How do I appeal the decision made at an informal hearing?**

Within seven days of the judgment, you must complete an appeal form and file it with the court, together with an appeal bond equal to the fine and costs imposed by the magistrate. You do not have to pay a filing fee for the appeal.

- **What if I have further questions about informal hearings?**

Ask any court employee. He or she will answer your question or find someone who can. There is one exception: a court employee cannot give you legal advice.

6.4 Forms

The following forms are used in civil traffic infractions.

- 1) MC 216 - 14 Day Notice, Traffic
- 2) DC 223 - Plea by Mail
- 3) UC-01a - Uniform Law Citation
- 4) CIA 01 - Notice to Appear, Civil Infraction
- 5) CIA 02 - Judgment, Civil Infraction
- 6) CIA 03 - 14 Day Notice, Civil Infraction
- 7) CIA 04 - Motion to Set Aside Default Judgment, Civil Infraction
- 8) CIA 05 - Claim of Appeal of Right/Request to Withdraw Admission, Civil Infraction
- 9) CIA 07-JIS - Default Judgment, Civil Infraction (postcard version generated by system)
- 10) MC 230 – Motion and Order to Show Cause

APPENDIX 6

Traffic Civil Infraction Fine, Cost, Fees

Locating and Mapping Valid Speed Limits

TRAFFIC CIVIL INFRACTION FINE, COST, FEES
Revised October, 2010

Description	Amount	Authority
Fine		
<u>Minimum</u>		
Speeding on limited access freeway posted 55 mph or more:		MCL 257.629c
1-5	\$10	
6-10	\$20	
11-15	\$30	
16-25	\$40	
26+	\$50	
Operate CMV w/OOS order; MCL 257.319f(1) ¹	\$1,100	MCL 257.907(2)
Handicapped parking; MCL 257.674(1)(s) ¹	\$100	MCL 257.907(2)
Fail to stop for school bus; MCL 257.682 ¹	\$100	MCL 257.907(2)
<u>Maximum</u>		
In general	\$100	MCL 257.907(2)
	\$250 on CMVs	MCL 257.907(3)
Exceptions:		
Operate CMV w/OOS order; MCL 257.319f(1)	\$2,750	MCL 257.907(2)
Employer of CMV driver violations:		
MCL 257.319g(1)(a)	\$10,000	MCL 257.907(2)
MCL 257.319g(1)(b)	\$11,000 (\$10,000 "with explanation")	MCL 257.907(2) & (3)
No insurance/No proof of insurance; MCL 257.328	\$50	MCL 257.907(2)
Handicapped parking; MCL 257.674(1)(s)	\$250	MCL 257.907(2)
Violation of vendor permit; MCL 257.676a(3)	\$10	MCL 257.907(2)
Fail to stop for school bus; MCL 257.682	\$500	MCL 257.907(2)
Child restraint under MCL 257.710d	\$10	MCL 257.907(2)
Fine shall be increased by \$25 if civil infraction was a moving violation that resulted in at-fault collision with another vehicle, person or other object, but total fine shall not exceed \$100		MCL 257.907(2)
<u>Mandatory</u>		
Fail to complete vehicle transfer; MCL 257.240	\$15	MCL 257.907(2)
Abandoned vehicle; MCL 257.252a	\$50	MCL 257.907(2)
Texting while driving; MCL 257.602b	\$100 (first); \$200 (subsequent)	MCL 257.907(2)
Safety belt and child restraint under MCL 257.710e	\$25 ²	MCL 257.907(2)
Cost (if assessed) ³	\$100 maximum	MCL 257.907(4)
Fees		
Justice system assessment ⁴	\$40	MCL 257.907(14)
No insurance/No proof of insurance	\$25 (permissive)	MCL 257.328(3)
Driver license reinstatement fee	\$45	MCL 257.321a

¹ This offense also has a maximum fine.

² No costs may be assessed.

³ Costs may be assessed only after a fine has been assessed.

⁴ Required if fine or cost exceeds \$10.

Civil contempt	\$10/day	MCL 257.908(5)
Cost to compel appearance	As determined by the court	MCL 257.729

STATE CIVIL INFRACTION FINE, COST, FEES

Description	Amount	Authority
Fine	Set by individual statute	MCL 600.8827(2)
Cost, including expenses up to the entry of judgment	\$500.00 maximum	MCL 600.8381
Justice System Assessment	\$10.00	MCL 600.8827(4)
Driver License Reinstatement Fee	\$45.00	MCL 600.8827(7)(b)
Civil Contempt	\$30.00/day	MCL 600.8829(5)
Cost to Compel Appearance	As determined by the court	MCL 600.8835

MUNICIPAL CIVIL INFRACTION FINE, COST, FEES

Description	Amount	Authority
Fine	Set by individual ordinance	MCL 600.8727(2)
Cost, including damages & expenses up to the entry of judgment	\$500.00 maximum	MCL 600.8381
Justice System Assessment	\$10.00	MCL 600.8727(4)
Trailway Action; damages and expense of impoundment	As determined by the court	MCL 600.8733(2)
Civil Contempt	\$30.00/day	MCL 600.8729(5)
Cost to Compel Appearance	As determined by the court	MCL 600.8735
Trailway Action; Impoundment release bond	\$750.00 cash or surety	MCL 600.8733(1)