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## Chapter 1 – Judicial Administration

### Virginia's Judicial System

The mission of Virginia's judicial system is to assure that disputes are resolved justly, promptly, and economically. The components necessary to discharge these functions are a court system unified in its structure and administration, competent, honest judges and court personnel, and uniform rules of practice and procedure.

The present system consists of four levels of courts: the Supreme Court, the Court of Appeals, the circuit courts, and the district courts. In addition, magistrates serve as judicial officers with authority to issue various types of processes. The courts are organized into 31 judicial circuits and 32 similar judicial districts. More than 2,600 people, including judges, clerks, and magistrates, work within the judicial branch of government to provide the citizens of the Commonwealth prompt and efficient service.

### Supreme Court of Virginia

The Supreme Court of Virginia is the highest court in the Commonwealth consisting of a Chief Justice and six (6) Justices. The Supreme Court of Virginia is frequently referred to as the "court of last resort." It has both original and appellate jurisdiction, but its primary purpose is to review decisions of lower courts from which appeals have been allowed.

The Supreme Court of Virginia receives, processes, and maintains permanent records of all appeals and other official documents filed with the court. The office also maintains a list of qualified attorneys and other administrative records.

Administration of the court system in Virginia is the responsibility of the Chief Justice of the Supreme Court and the chief judges of the circuit and district courts. The Office of the Executive Secretary to the Supreme Court assists the Chief Justice in the administration of the judicial branch of government. Major activities of the Office of the Executive Secretary include maintaining liaison with, and providing support to each of the branches of government in matters affecting the courts and providing appropriate coordination, supervision, and administrative support for operations and systems within the court and magistrate systems. More information on the responsibilities of the Office of the Executive Secretary is provided later in this chapter.

### Court of Appeals

The Court of Appeals of Virginia provides for intermediate appellate review of all decisions of the circuit court in traffic cases and in criminal cases. Before a criminal or traffic case may be reviewed by the Court of Appeals, a petition for appeal must first be filed through the circuit court. The Court of Appeals does not review decisions involving the death penalty.

## Office of The Executive Secretary

The Office of the Executive Secretary (OES) to the Supreme Court assists the Chief Justice in the administration of the judicial branch of government and is comprised of ten departments that assist with the coordination, supervision and support of operations of the courts and magistrate systems. The Office of the Executive Secretary provides administrative support for all of the courts and magistrate offices within the Commonwealth. This includes the training and education of all judicial branch employees, as well as legal research assistance for judges. This office also provides payroll, purchasing, accounts payable, human resources, planning, and grant services to the courts. It supplies all information technology, including Internet, e-mail, case management, and video technology, along with technical support to the courts and magistrate offices in the Commonwealth.

### Assistant Executive Secretary and Counsel

The Assistant Executive Secretary & Counsel provides legal advice and support to the Executive Secretary on matters involving OES and the administration of the judicial branch. Working with the Executive Secretary and the Chief Justice, the Assistant Executive Secretary & Counsel oversees the implementation of the Supreme Court's Judicial Disqualification Policy, and also works with the Education Department on scheduling and planning annual conferences.

### Court Improvement Program

The office of the Court Improvement Program is responsible for court activities relating to children and families and for the qualification of lawyers as guardian *ad litem* for children and incapacitated adults. These responsibilities include developing, conducting, and supporting special projects that address issues of concern to children and families involved with the court system and implementing standards promulgated by the Judicial Council of Virginia governing lawyers who serve as guardians *ad litem*.

Additionally, the Court Improvement Program conducts research, develops recommendations and provides training and technical assistance on the handling of child abuse, neglect, and foster care cases and on other issues of concern to families and children in the judicial system.

### Educational Services

The Educational Services Department of the Office of the Executive Secretary provides yearly continuing education opportunities and training for all Virginia court system employees. Many statewide and some regional educational conferences are sponsored by the Department for judges, clerks, magistrates, hearing officers, and substitute judges. The Department of Educational Services also manages other programs such as the tuition

reimbursement program, the Skillsoft online learning program, and the district court Clerk Judicial Management Program.

### **Fiscal Services**

The Department of Fiscal Services is the court system's financial management center. This includes providing centralized budgeting, payroll, purchase of supplies, accounts payable and grant services.

### **Human Resources**

The Human Resources Department provides centralized human resource management services for approximately 2,800 employees. The Department's primary activities are to develop recommendations concerning human resource management and to administer the personnel management system. It is responsible for attracting and retaining qualified employees using HR management flexibilities, pay practices and benefits. In addition, this department supports the training and development of employee skills to meet current and future needs of the future.

### **Judicial Information Technology**

The Department of Judicial Information Technology (DJIT) administers standardized uniform automated computer systems in support of the Virginia Judicial System including the official website of the Virginia Judicial System and the online payment system.

### **Judicial Services**

The Department of Judicial Services (DJS) serves as the liaison between the Judiciary's administrative offices and the courts throughout the Commonwealth, providing administrative services through publications, trainings, field visits, and the research and support of various programs. The Department serves the courts of this Commonwealth through its seven divisions.

### **Court Performance and Statistical Services**

Develops and maintains effective planning capabilities within Virginia's Judicial System. Working with judicial policy-making bodies (such as the Judicial Council of Virginia and the Committee on District Courts), assists the Chief Justice and Supreme Court of Virginia in identifying present and future needs, and developing and implementing innovative programs and solutions that address those needs. Court Performance and Statistical Services is structurally divided between planning function staff and staff dedicated to specific programs or special projects.

### **Circuit Court Services**

Provides financial management, case management and procedural support for circuit courts judges and clerks through training and technical assistance

### **General District Court Services**

Provides guidance and assistance to general district court judges and clerks on caseflow management, case processing, public relations, and internal financial controls.

### **Juvenile and Domestic Relations District Court Services**

Provides guidance and assistance to juvenile and domestic relations district court judges and clerks on caseflow management, case processing, public relations, and internal financial controls.

### **Dispute Resolution Services**

Provides mediation and other dispute resolution alternatives through certification, training, and technical assistance.

### **Specialty Docket Services**

Specialty Docket Services provides administrative oversight of the specialty dockets in Virginia including technical assistance, budget management, monitoring and evaluation. Specialty Dockets refer to specialized court dockets, established under Rule 1:25 of the Supreme Court of Virginia, within the existing structure of Virginia's circuit and district court system offering judicial monitoring of intensive treatment, supervision, and remediation integral to case disposition:

- [Behavioral Health Dockets \(BHD\)](#)  
Specialized criminal court dockets within the existing structure of Virginia's court system that enable the judiciary to manage its workload more efficiently.
- [Recovery Courts Dockets \(RC\)](#)  
Specialized court dockets within the existing structure of Virginia's court system offering judicial monitoring of intensive treatment and strict supervision of addicts in drug and drug-related cases.
- [Veterans Treatment Dockets \(VTD\)](#)  
Offer eligible defendants who are veterans of the armed services with substance dependency or mental illness a specialized criminal specialty docket that is coordinated with specialized services for veterans

### **Foreign Language Services**

Provides assistance to the judiciary so as to assure non-English-speakers equal access to the judicial process through certification, training, and support

## **Legal Research**

The Department of Legal Research provides staff support and direct assistance to the Office of the Executive Secretary and the judiciary. Primary functions include performing legal research for Virginia trial court judges and for the Executive Secretary, providing assistance with legislative matters affecting court procedures, developing and maintaining court forms, producing instructional manuals for the court system, participating in educational conferences and providing staff support for committees of the judiciary. The Department of Legal Research of the Office of the Executive Secretary does not provide legal advice or legal assistance to members of the public.

## **Legislative and Public Relations**

The Department of Legislative and Public Relations manages legislative matters and handles media and public relations for Virginia's Judicial System. The Department provides staff support for the development of legislative proposals recommended by the Judicial Conferences of Virginia, and represents Virginia's Judicial System on legislative matters before the General Assembly. The Department presents information to legislators about the impact of bills on Virginia's Judicial System and prepares and disseminates to the court system an annual summary of court-related legislation.

The Department is responsible for responding to inquiries from the press and the general public, including requests for records and information. Additional responsibilities include managing the content of Virginia's Judicial System website and reviewing and updating court informational pamphlets.

## **Magistrate Services**

Provides oversight, technical assistance, and training of magistrates throughout the Commonwealth. Magistrates have the responsibility for issuing arrest warrants, search warrants, summonses, emergency mental commitments and protective orders, and, in some localities, civil warrants. Magistrates also set bail in cases involving arrest and determining bond. Magistrates' offices may accept prepayments for minor traffic violations and in certain cases. Magistrates must promptly forward all papers to the court.

## **Virginia Courts**

### **Circuit Courts**

The circuit court is the trial court of general jurisdiction in Virginia. It is the sole court with the authority to try all types of cases except as specifically provided by statute. The circuit



court is the only trial court of record and is the only court in Virginia wherein a jury is provided for the trial of criminal cases. There are 120 Circuit Courts within the 31 Circuits throughout the Commonwealth. The circuit court has jurisdiction of all misdemeanors originally charged in circuit court; all felonies committed by adults, and those felonies committed by juveniles aged fifteen and older whose cases have been certified for trial in the circuit court by the judge of a juvenile and domestic relations district court; and all appeals from the general district court and juvenile and domestic relations district court.

## **District Courts**

District Courts in Virginia are courts of limited jurisdiction. This means that these courts have jurisdiction only in those cases in which jurisdiction is specifically given by statute. Jury trials are not conducted in district courts; all cases are heard by a judge. The district court system in Virginia is divided into general district courts and juvenile and domestic relations district (J&DR) courts, in smaller localities the general district and J&DR courts are combined. Virginia has 32 districts corresponding to the 31 circuits noted earlier. District court employees are state employees who work for the specific local court. These employees are under the supervision of the Chief Judge of the district.

### ***General District Courts***

In civil cases, the general district courts have exclusive original jurisdiction in cases involving \$4,500 or less and concurrent jurisdiction with the circuit courts when the amount claimed is between \$4,500 and \$50,000. The general district court has concurrent jurisdiction with the juvenile and domestic relations district court over adult mental commitment hearings. In criminal and traffic cases involving adults, the general district court has jurisdiction over misdemeanors and violations of ordinances, laws, and bylaws of the counties, cities, and towns within their district. The court also conducts preliminary hearings in felony cases. Each general district court has the power to try misdemeanor offenses which originated as direct indictments or presentments when certified by the circuit court and transferred to the general district court for trial. The court has jurisdiction over all traffic infractions, except those involving juveniles.

### ***Juvenile and Domestic Relations***

The juvenile and domestic relations district court has exclusive jurisdiction over individuals under the age of eighteen; such cases are referred to as “delinquency cases.” The juvenile and domestic relations district court has jurisdiction of all misdemeanor offenses committed by one family or household member against another. Family or household members is defined in [Va. Code § 16.1-228](#).

### ***Combined Courts***

A Combined Court is a merged General District and Juvenile and Domestic Relations District Court into one clerk's office. While individual judges are appointed to serve on either the General District or JDR bench, clerks and deputy clerks are appointed to serve both courts requiring the necessary skills of both levels of courts to perform their job functions. Combined district courts maintain their separateness in terms of case processing.

## Judges

### Chief Judge

Each district has one chief general district judge and one chief juvenile and domestic relations district judge who serve two terms beginning on July 1 of even-numbered years. The chief judge is elected by majority vote of the judges of the district. The powers and responsibilities of the chief judge are set out in [Va. Code §§ 16.1-69.35, 16.1-69.11](#).

Chief judges are responsible for the administration of their respective courts in accordance with policy guidance from the Committee on District Court and the Chief Justice. The chief judge may adjust the schedules of the judges within the district based on workload or absences, determines the operating hours of the court as well as when the clerk's offices may close based on a threat to the health or safety of the clerk's office personnel or general public, and may cross-designate district court judges for specific case types.

If the chief judge of a district court is unable to perform the duties required by law, the chief judge shall notify the other judges of such district court, or if the chief judge is unable to notify the other judges, the judge longest in continuous service who is available shall provide such notice, and the judge longest in continuous service who is available shall be the acting chief judge, and perform such duties during the chief judge's absence. If two or more judges of such district court have served for the same period, the judge most senior in years shall be the acting chief judge. Upon assuming such duties, the acting chief judge shall immediately notify the Executive Secretary of the Supreme Court and the other judges of such district court.

When the chief judge is able to resume the duties of chief judge, the chief judge shall immediately notify the Executive Secretary and the other judges of such district court, and thereupon shall resume such duties [Va. Code § 16.1-69.11:1](#).

### Retired, recalled and substitute judges

When any district court judge is under any disability or for any other cause is unable to hold court and the chief judge determines that assistance is needed:

- The chief district judge shall designate a judge within the district or a judge of another district court within the Commonwealth, if one is reasonably available, to hear and

dispose of any action or actions properly coming before such district court for disposition.

- If unable to designate a judge as provided in paragraph a of [Va. Code § 16.1-69.35](#), the chief district judge may designate a retired district judge for such hearing and disposition if such judge consents; or
- If unable to assign a retired district court judge, the chief district judge may designate a retired circuit court judge if such judge consents or the chief district judge may request that the Chief Justice of the Supreme Court designate a circuit judge if such judge consents.
- If no judges are available under subdivisions a, b, or c of [Va. Code § 16.1-69.35](#), then a substitute judge shall be designated pursuant to [Va. Code § 16.1-69.21](#).
- If one of the above-noted situations exists, district court form DC-90: [Order Designating District Court Judge, Retired Judge or Substitute Judge to Preside in a District Court](#) must be completed.
- Each district court should keep these completed forms in a designation file in chronological order by designation date or by case number for individual case designation.

### Retired judges

The lists of retired circuit court, general district court and juvenile and domestic relations district court judges are forwarded to all clerks periodically from the Assistant Executive Secretary and Counsel's office. As you are aware, only judges whose names appear on the lists provided by the Executive Secretary of the Supreme Court are subject to recall.

### Substitute Judges

Below is the link for a list of attorneys who have been appointed by circuit courts as substitute judges:

<http://www.vacourts.gov/directories/substitute.pdf>

### Judicial Disqualification

The purpose of the Judicial Disqualification Policy is to maintain the trust and confidence of the public when a replacement judge is selected, while ensuring the prompt and efficient administration of justice. To these ends, except as provided herein, if a judge is disqualified for any reason from participating in a case, that judge shall not participate in the selection of the replacement judge.

**Disqualification of a Judge or Chief Judge**

If a judge of the district is disqualified, the judge shall forward an appropriate order of disqualification to the chief judge of the district who will designate a judge to preside, consistent with the provisions of [Va. Code § 16.1-69.35\(1\)](#). If the chief judge of the district is disqualified, the chief judge shall forward an appropriate order of disqualification to the Chief Justice of the Supreme Court of Virginia, who will designate a judge to preside.

Or

If a judge or the chief judge of the district is disqualified, the judge or chief judge shall enter an appropriate order of disqualification and, pursuant to a standing order previously entered by the chief district judge, the case shall be referred to another judge of the district who is available and not disqualified. The standing order may authorize the judge to whom the case is referred to designate another judge to preside, consistent with the provisions of [Va. Code § 16.1-69.35\(1\)](#).

**Disqualification of all Judges**

If all the judges in a district are disqualified, the chief judge shall forward an appropriate order of disqualification to the Chief Justice of the Supreme Court of Virginia, who will designate a judge to preside.

The revised policy differs from the previous policy in providing that the chief judge may enter standing orders that would create a system of rotation to be utilized when the chief judge or another judge in the district is disqualified from hearing a case. We expect that this policy will enable district courts to handle disqualifications in a more efficient manner while maintaining compliance with the Canons of Judicial Conduct and the Code of Virginia. Fewer cases will need to go to the Chief Justice for designation of a judge to preside.

Suggested standing order forms have been created for your use. One would apply to cases in which the chief judge is disqualified. The other would be used in connection with disqualification of other judges in the district. A separate standing order would be entered by the chief judge for each judge in the district. New standing orders would be necessary upon the election of a new chief judge and upon the appointment or retirement of judges in the district. Sample standing orders can be located at:

[http://oesinet.vacourts.gov/manuals/disqual\\_policy/dc\\_jud\\_disqual\\_pol\\_faq.pdf](http://oesinet.vacourts.gov/manuals/disqual_policy/dc_jud_disqual_pol_faq.pdf)

The revised policy requires that an order of disqualification be entered and forwarded to the Chief Justice of the Supreme Court, who shall designate a judge to preside over the case. The order may be signed by each of the judges in the district or by the chief judge on behalf of all the judges of the district.

The links for the general district designation request form, and the juvenile and domestic relations designation request form are below:

[http://oesinet/manuals/disqual\\_policy/gd\\_coversheet.pdf](http://oesinet/manuals/disqual_policy/gd_coversheet.pdf)

[http://oesinet/manuals/disqual\\_policy/jdr\\_coversheet.pdf](http://oesinet/manuals/disqual_policy/jdr_coversheet.pdf)

Form DC-91: [Order of Disqualification](#) is used to document that the judge has either disqualified himself due to a conflict in a particular case or cases, or that a possible conflict may exist and the attorneys and the parties in the case have waived the disqualification of the judge in that particular case or cases.

Canon 3.F provides that “[a] judge who may be disqualified by the terms of Section 3E may ask, or have the clerk of court ask, the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. Written evidence of the agreement shall be incorporated in the record of the proceeding.”

The written waiver must be signed by all attorneys and all parties in the case. Supreme Court form DC-91: [Order of Disqualification](#) must be completed to document the waiver.

For additional information on the revised disqualification policy, you may wish to review the training presentation in the Knowledge Center using the following link:

[https://covkc.virginia.gov/kc/main/kc\\_frame.asp](https://covkc.virginia.gov/kc/main/kc_frame.asp)

### **Cross-Designation**

An order of cross-designation permits a general district judge to sit as a juvenile and domestic relations district judge in a district or permits a juvenile and domestic relations district judge to sit as a general district judge. These orders permit one type of judge to cover for the other type in districts where a judge might not be available in each type of court every day. They also permit judges of one type of court to assist the judges in the other in order to relieve docket congestion.

The chief general district court judge of a district may designate any juvenile and domestic relations district court judge of the district, with the judge's consent, for an individual case or to sit and hear cases for a period of not more than one year, in any of the general district courts within the district. The chief juvenile and domestic relations district court judge of a district may designate any general district court judge of the district, with the judge's consent, for an individual case or to sit and hear cases for a period of not

more than one year, in any of the juvenile and domestic relations district courts within the district. Every judge so designated shall have the same powers and jurisdiction and be authorized to perform the same duties as any judge of the district for which the judge is designated to assist, and, while so acting, the judge's order or judgment shall be, for all purposes, the judgment of the court to which the judge is assigned [Va. Code § 16.1-69.35](#).

Cross-Designated cases are not entered into the receiving court's case management system. The originating court should complete all updates and provide all necessary notices for the case.

### **Paying a substitute**

To receive compensation for retired judges or substitute judges, district court form DC-1101: [Retired, Recalled and Substitute Judges Per Diem and Travel Expenses Reimbursement Voucher](#) must be completed.

## **Clerk's Office**

Each court is supported by a clerk's office, although some are combined with other general district courts or juvenile and domestic relations district courts. The clerks and other employees in the office are appointed by and serve at the pleasure of the chief judge pursuant to [Va. Code § 16.1-69.39](#).

### **Duties of Clerk**

The clerk's office is the administrative arm of the court. The clerks of court are the court's chief administrative officers and are accountable to the presiding judge and chief judge for all office functions. Virginia Code States: The clerk shall develop, implement and administer procedures necessary for the efficient operation of the clerk's office, keep the records and accounts of the court, supervise nonjudicial personnel and discharge such other duties as may be prescribed by the judge.

The duties of the clerk may be classified in the following major groups Financial Management, Records Management, Personnel Management and Public Relations.

### **Financial Management**

The duty of accounting for all funds handled by the court is the responsibility of the clerk. The bookkeeping procedures utilized are uniform throughout the Commonwealth and are detailed in the Financial Accounting System (FAS) User's Guide available on the OESINET.

## **Records Management**

The clerk is responsible for caseload processing, including ensuring that the needs of the court, other criminal justice agencies, and the public are met, as well as to ensure compliance with statutory requirements. In addition, the clerk is responsible for proper security, retention, and the disposition of court records.

## **Personnel Management**

All clerks have personnel management responsibilities. Personnel management includes recruitment, training, evaluation, correction of errors, and motivation.

## **Public Relations**

The clerk is also responsible for fostering a positive image of the court's services to the general public and for liaison with state and local government agencies and magistrates. The manner in which the court's functions are executed and the responsibilities of the clerk's position require that a degree of discretion and judgment be exercised in carrying out the functions of the office.

## **Court Closed – Computation of Time**

If a court is closed for any reason other than an approved holiday or legislative order, the filing deadline is extended to the next business day on which the court is open [Va. Code 1-210](#).

## **Inclement Weather**

Subject to such rules as may be established pursuant to [Va. Code § 16.1-69.32](#), the chief judge shall determine when the district courts or divisions of such courts shall be open for the transaction of business. The chief judge or presiding judge of any district court may authorize the clerk's office to close on any date when the chief judge or presiding judge determines that operation of the clerk's office, under prevailing conditions, would constitute a threat to the health or safety of the clerk's office personnel or the general public [Va. Code § 16.1-69.35](#).

If the clerk's office or court is closed, the clerk is responsible for notifying the [Help Desk](#) and any pre-designated television and/or radio stations. If the court is opening late due to inclement weather, please state the time the court is opening rather than opening two hours late, etc., as the public may not know the normal operating times of the clerk's office. The Office of the Executive Secretary cannot authorize the closing of a clerk's office.

## Judicial Emergency

A judicial emergency may be declared as provided in this section when a disaster, as defined in [Va. Code § 44-146.16](#), substantially endangers or impedes the operation of a court, the ability of persons to avail themselves of the court, or the ability of litigants or others to have access to the court or to meet schedules or time deadlines imposed by court order, rule, or statute. Notwithstanding any other provision of law, the Chief Justice of the Supreme Court or, if the Chief Justice is unavailable, the justice longest in continuous service who is available, shall have the power to declare by order a judicial emergency (i) for any court upon the request of the Governor, (ii) for the Supreme Court sua sponte, (iii) for the Court of Appeals, upon the request of the chief judge of the Court of Appeals or, if the chief judge is unavailable, the judge of the Court of Appeals longest in continuous service who is available, or (iv) for any circuit or district court upon the request of the chief judge of the affected circuit or district court or, if the chief judge is unavailable, the judge from the affected circuit or district court longest in continuous service who is available.

Any order declaring a judicial emergency shall specify (i) the court or courts and facilities affected by the order; (ii) the nature of the disaster necessitating the order; (iii) the time period or duration of the judicial emergency; and (iv) any other information relevant to the suspension or restoration of court operations, including but not limited to extension of deadlines. The order shall become effective for each affected court upon the date set forth in the order or, if no date is set forth in the order, upon the date the order is signed.

Notwithstanding any other provision of law, an order declaring a judicial emergency may designate a neighboring city or county not affected by the disaster for the temporary relocation of the affected circuit or district court. Locations designated under this section may be outside the geographical limits of the affected court's circuit or district.

Any order declaring a judicial emergency shall be recorded in the order book maintained by the clerk of the Supreme Court, and notice shall be provided to the clerk of the Court of Appeals and all judges and clerks of the courts within any affected circuit or district. Notice to the public shall be given by any means reasonably calculated to inform interested persons and may, without limitation, include publication in a newspaper of local or state-wide distribution, posting of written notices at courthouses and other public facilities, and announcements on television, radio, and the Internet [Va. Code §§ 17.1-114, 17.1-330, 17.1-331](#).

## Office Policies – Local

The clerk should consider developing written local policies; have the employee sign and place a copy in the employee's personnel file. Before implementing a new policy, you may wish to contact Human Resources for a sample policy or have them review any policy, which you create. Examples of local policies include:



- Work hours and attendance
- Personal phone calls
- Internet, Email, and Instant Messaging usage
- Leave
- Adverse weather
- Dress code

### **Separation of Employees Checklist**

- Submit Original Appointment/Status Change form to HR.
- Submit any outstanding leave to HR immediately.
- Contact OES to have the employees e-mail address deleted.
- Delete FAS/CMS sign-ons.
- Remove the employee from the bank signature card, if applicable.
- Remove employee's tax set off sign on, if applicable.
- Contact OES to have the employee's E-Pay authority deleted, if applicable.
- Change safe combination if employee had access to safe.
- Collect employee's badge or key to the office; consider re-keying locks if key is not returned.
- Collect any other keys the employee might possess to files etc.
- Assist employee during the departure; make certain the employee does not remove any state property upon departure.

### **Volunteers**

"Effective July 1, 1983, the Committee on District Courts (CDC) endorsed the use of volunteers in district court clerks' offices. Volunteers are covered under the faithful performance blanket bond. Volunteers should be used to provide general public information and clerical assistance. Their use in performing the tasks of those employees who have taken an oath of office should be avoided."

### **Pro Hac Vice**

A lawyer who is not a member of the Virginia State Bar, but is currently licensed and authorized to practice law in another state, territory, or possession of the United States of America may apply to appear as counsel pro hac vice in a particular case before any court, board or

administrative agency in the Commonwealth of Virginia provided the lawyer complies with Rule 1A:4 of the Rules of the Supreme Court of Virginia.

No out-of-state lawyer may appear pro hac vice before any tribunal in Virginia unless the out-of-state lawyer has first associated in that case with a lawyer who is an active member in good standing of the Virginia State Bar (hereinafter called “local counsel”). The name of local counsel shall appear on all notices, orders, pleadings, and other documents filed in the case.

In order to appear pro hac vice as counsel in any matter pending before a tribunal in the Commonwealth of Virginia, an out-of-state lawyer shall deliver to local counsel to file with the tribunal an original notarized application and a non-refundable application fee of \$250.00 payable to the Clerk of the Supreme Court. Pro hac vice counsel must submit a notarized application with the non-refundable application fee of \$250.00 for each separate case before a tribunal. The fee shall be paid to the Clerk of the Supreme Court of Virginia. The tribunal shall file a copy of the notarized application, as well as its order granting pro hac vice admission in the case and the \$250.00 fee, with the Clerk of the Supreme Court of Virginia.

**Note:** The original, notarized applications and any orders granting, denying, or revoking applications to appear pro hac vice shall be retained in a separate file containing all applications.

Below is a Pro hac vice Motions Checklist which was prepared by the Supreme Court clerk’s office:

- The attorney has filed a motion to be admitted pro hac vice in the case. The out-of-state attorney has associated with Virginia-licensed counsel and the Virginia counsel has signed the motion.
- A notarized application (pursuant to the form found in the Appendix of Forms for Part One A of the Rules of the Supreme Court of Virginia) has been filed by the attorney. The application must list all state court bar numbers for the attorney (federal bar number aren’t required). If the attorney was admitted in New York or Maryland, which don’t have bar numbers, their Client Protection Fund numbers are acceptable instead.
- A \$250 check made payable to the Supreme Court of Virginia has been filed by the attorney.
- Note: The attorney is required to pay a \$250 fee per case. If the court order ruling on the pro hac vice motion references multiple case numbers, either a previous order consolidating the cases or \$250 per case number needs to be forwarded to the Supreme Court with check(s). If the cases weren’t consolidated (for example, criminal warrants that charge multiple offenses on the same date), copies of the warrants or other relevant paperwork needs to be forwarded to the Supreme Court with the check to explain the single \$250 fee.

- The clerk or judge needs to check the pro hac vice database maintained by the Supreme Court of Virginia to determine if the attorney is eligible for admission (i.e., has the attorney already admitted 12 times in the past 12 months as pro hac vice counsel?) This information is available via the Supreme Court intranet. If you have any questions about this process, contact the Clerk's Office of the Supreme Court at (804) 786-2251.
- The above papers (and information if the clerk checks the eligibility of counsel) should be given to the Judge to enter an order either granting or denying the pro hac vice motion. The order needs to include the date signed by the judge and the case number(s). When the order is entered.
- A copy of the order, motion, application, and the \$250 check shall be forwarded as soon as possible to the Supreme Court of Virginia Clerk's Office, 100 N. 9th Street, 5th Floor, Richmond, VA 23219. See paragraph 3 above.
- Note: If your court holds the \$250 check past its "cash by" date, you are responsible for obtaining a new check to forward to the Supreme Court with the relevant papers. The Supreme Court Clerk's Office is required to deposit all fees within 48 hours of receipt. Therefore, the \$250 fee must be accompanied by the required paperwork so that the application can be processed by the Supreme Court staff.
- The original application and a copy of the order shall be filed in a separate pro hac vice file kept by your court for 3 years after completion of the case, including appeals.
- The original order shall be placed in the case file.
- If an order is later entered revoking an attorney's pro hac vice status, that order shall be placed in the case file, placed in the separate pro hac vice file, and sent to the Supreme Court clerk's office.
- If you have any questions, contact the Supreme court clerk's office at (804) 786-2251, asking for either Jody James-Wood or Lesley Smith. If neither is available, ask for the clerk of the supreme court.

The link to the application is below:

[http://www.vacourts.gov/courts/scv/forms/pro\\_hac\\_vice\\_form.pdf](http://www.vacourts.gov/courts/scv/forms/pro_hac_vice_form.pdf)

The address for Clerk of the Supreme Court is:

Clerk of the Court  
Supreme Court of Virginia  
100 North Ninth Street, 5th Floor  
Richmond, VA 23219  
Phone - (804) 786-2251

## Public Records

### Transparency

In general, general district court records are presumed to be open to the public. It is an accepted common-law concept that court records are open to public, and this concept has been upheld in Virginia case law. There is a statute for circuit court records (§ 17.1-208), which provides that the records and papers of every circuit court are open to the public and the clerk shall, when requested, furnish copies.

However, access cannot interfere with the business of your office. According to [Va. Code § 17.1-208](#), “No person shall be permitted to use the clerk’s office for the purpose of making copies of records in such a manner, or to such extent, as will interfere with the business of the office or with its reasonable use by the public.” It may be helpful to create a policy with the judges on any restrictions to be placed on viewing the documents, i.e., time limits, number of case limits, and how much, if any, notice should be given.

### Copies

The clerk of any district court may charge a fee for making a copy of any paper of record to go out of the clerk’s office which is not otherwise specifically provided for. The amount of this fee shall be set in the discretion of the clerk but shall not exceed \$1 for the first two pages and \$.50 for each page thereafter. [Va. Code 16.1-69.48:2](#) A written policy should be established documenting any local policy created as it pertains to the allotted completion time of the request.

## Strategic Planning

Maintaining the courts as a core function of our democratic form of government is critically important. In addition to carrying out the basic functions of the justice system, the courts must also be prepared to address special circumstances and needs, such as security and continuity of court services and personnel in the event of natural or man-made disaster. Both the governmental functions and basic operations of the justice system must be able to adapt to societal changes — the opportunities and threats they present and the expectations they create. To ensure that the court system performs its governmental role — its mission — effectively, the courts maintain an ongoing, comprehensive planning process that identifies the preferred course for meeting responsibilities and monitors progress toward identified ends.

### Pandemic Influenza Plan

The courts should plan to be able to maintain essential functions during a pandemic and recover promptly afterwards; protecting the health of Judicial Branch employees and those who utilize the services of the courts; promoting consistency across the Commonwealth relative to Judicial Branch pandemic response.

The courts have a vital function to play in maintaining the rule of law in the Commonwealth. The public relies on the courts to remain open to resolve disputes and protect the rights of people, while also protecting the health of its employees and those who visit the courthouse. The judiciary must do its best to ensure that the courts handle their essential functions to the greatest degree possible, even during the adverse situation a virulent pandemic would create.

The link below contains materials on communication, security, and human resources issues. There are also numerous planning worksheets that courts may utilize in creating their own individual pandemic influenza plans. Judges and clerks are encouraged to work together and in conjunction with local entities to create a plan that will help them address the challenges posed by a serious pandemic.

<https://www.vacourts.gov/programs/pfp/benchbook.pdf>

## Chapter 2 – The Court Process

### Case Initiation

A case may be initiated in several different ways depending upon the type of case such as:

- For civil disputes, a case is initiated when an individual files with the court a motion for judgment or a civil warrant or civil summons with the claims portions and certain other parts completed as described in the data elements. The clerk's office completes some other parts of the civil warrant and civil summons. These civil warrants, civil summonses, and motions for judgment are then issued to summon the parties to court.

**Note:** Upon approval of the clerk, a deputy clerk can sign any form that is designated to be signed by a clerk; however, it is recommended the deputy clerk sign the name and indicate "Dep" or "DC" in front of the clerk designation.

- For criminal and traffic offenses, a case is initiated either by a:
  - Law enforcement officer arresting the accused and either
  - Issuing the accused a Virginia Uniform Summons, or
  - Taking the accused to a magistrate for a probable cause hearing; if probable cause is found, a warrant or summons is issued, or
- A citizen complaint to the local law enforcement officials with a subsequent investigation, after which a law enforcement officer seeks a warrant or summons from a magistrate and, if probable cause is found, a warrant or summons is issued
- A citizen complaint directly to the magistrate

### Pre-Trial Process

After initiation of the case, the clerk's office performs several pre-trial processes to assure that each case is properly prepared for court. The following pre-trial processes are performed in the clerk's office by utilizing uniform docketing and case preparation.

The indexing, docketing, and filing procedures provide a basic knowledge of the docketing system and management tools.

#### Case Indexing

- Determine case category (civil, criminal, traffic).
- Assign case number.

The case number establishes a common link between all the papers and records pertaining to any one court case. It ties these case papers, such as warrants and summonses, to the docket, index, and the accounting system. Procedures for assigning case numbers include:

- Assign a unique case number in general district court to every warrant or summons.
- Show Causes and capiases against the same defendant are assigned a subsequent action suffix to the original case number of the case.
- There should be only one defendant and one charge on a warrant, summons or petition, with the exception of violations brought on district court forms DC-285: Summons for Toll Road or Designated Highway Violation and DC-287: Summons for High-Occupancy Toll (HOT) Lane Violation, which may contain multiple violations per summons.
- Record each case number on the original warrant, summons, or petition.
- Closed cases that are reopened should use the original case number.
- Formats for case numbers are:
  - Criminal Case Number = GC + Year + Sequential Number + [Suffix]
  - Traffic Case Number = GT + Year + Sequential Number + [Suffix]
  - Civil Case Number = GV + Year + Sequential Number + [Suffix]
  - Involuntary Civil Commitment = GM + Year + Sequential Number + [Suffix]
- Entry of case in General District Case Management System (GCMS), including defendant name, case number, complainant name (criminal or traffic) or plaintiff name (civil), and hearing date.

### File Cases

Documents that come to the clerk's office are assigned a case number and are indexed to help maintain control of the documents through the life of the case. Once the case papers have been indexed, the papers are filed in a pending case file by court date to await trial.

### Prepare Daily Docket Sheets

The docket sheet lists the cases scheduled to be tried on a given court date. The abbreviated docket should be used. The clerk's office will:

- Retrieve the case files for cases to appear on a given court date and match them to the docket printed from GCMS.
- Order cases in the sequence that they will appear on the docket.
- Distribute copies of the docket sheet as appropriate.

- By using the Uniform Docketing System, courts provide a management tool, the Monthly Summary (Statistical) Reports, for use by the courts, the Office of the Executive Secretary, and the Committee on District Courts for planning and personnel decisions.
- Prepare the case to include all case-related documents and attach the documents to the case papers.
- Issue witness subpoenas and subpoenas *duces tecum* in traffic/criminal matters, as well as in civil matters. An attorney who is an active member of the Virginia Bar may also issue subpoenas and subpoenas *duces tecum* in traffic, criminal, and civil matters.

**Note:** Upon approval of the clerk, a deputy clerk can sign any form that is designated to be signed by a clerk; however, it is recommended the deputy clerk sign the name and indicate “Dep” or “DC” in front of the clerk designation.

- Generate a docket of cases to be heard on each court date through the automated Case Management System.
- Accept and account for prepayments prior to court for certain cases.
- Respond to public inquiries concerning case status, court date, prepayment procedures, court procedures or other questions. With regard to a crime victim, the clerk must take care to assure that requests are honored for nondisclosure of residential address, telephone number, place of employment of victim and members of victim’s family [Va. Code § 19.2-11.2](#). A clerk must not disclose the residential address, telephone number, or place of employment of a person who is protected by a protective order issued for family abuse or any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury [Va. Code §§ 16.1-253.1, 16.1-253.4, 16.1-279.1, 19.2-152.7:1, 19.2-152.8](#) through [19.2-152.10](#). In addition, the clerk must be careful not to disclose location or contact information of a party in a support case where a protective order has been issued or a court finds that there is reason to believe the party is at risk of physical or emotional harm from the other party.
- Accept and process continuance requests according to the court’s policy.
- Advise the judge of cases which may need to be continued because of statutorily authorized late filing of pleadings or performance of acts required by pleadings.
- On the court date, the clerk’s office will:
  - Assure that cases assigned to the respective court date are on the docket.
  - Verify that all of the case materials for cases on the docket are in order and ready for court on the court date.
  - Deliver the case materials for all cases on the docket to the court.



## Case Hearing, Judgment

All parties or lawyers take turns pleading their respective sides of the case to the judge. There is not a jury. Witnesses may be called to testify for one or both sides. An audio recording of proceedings in a general district court may be made by a party or his counsel [Va. Code § 16.1-69.35:2](#).

After the judge has heard the case, the judge decides the case based on the applicable law and the evidence presented. The decision will be either “guilty” or “not guilty” for most criminal and traffic cases. Under certain circumstances, the court may defer a finding dependent upon the defendant fulfilling certain conditions. For civil cases, the decision will be a judgment for the plaintiff, the defendant, or partially for plaintiff and partially for defendant. Following the decision, the court determines the punishment or award that should be granted by the court:

- Criminal and Traffic Cases:
  - Fine
  - Incarceration
  - Restitution
  - Probation
  - Other punishment or remedial care
  - Costs
- Civil Cases:
  - Monetary awards
  - Possession of real and personal property
  - Determination of continuing rights and duties
  - Costs and (if applicable) judgment interest and attorney’s fees

The decision of the court and award or punishment is recorded on the case papers or in a separate order. The judge must sign the order in civil cases. Update the CAIS automated system with the disposition information.

The judge may also enter judgment against either party for the filing of a motion or other pleading that is frivolous or is filed for an improper purpose. [See Va. Code § 8.01-271.1](#).

## Dismissals Or Continuances

In court, a case may be continued to another date. A case may not be heard on the trial date for a variety of reasons, including:

- Dismissal because of:
  - Request by Commonwealth's Attorney to enter a nolle prosequi (requesting the court to permit the Commonwealth's Attorney to stop the prosecution of a criminal case in court); if this request is granted by the judge, a new prosecution may be brought on the same charges [Va. Code § 19.2-265.3](#).
  - Accord and satisfaction or compliance with the terms of a "deferred disposition" which results in the dismissal of a criminal charge. These options are set forth in statute only with reference to certain charges [Va. Code §§ 4.1-305, 19.2-151, 19.2-303.2](#).
  - Request by plaintiff in a civil suit where the parties reach an agreement to settle the dispute.
  - Request by plaintiff in a civil suit for entry of nonsuit.
- Continuance of the trial to a later date at the discretion of the judge because of:
  - Request of parties.
  - Failure of a party or his attorney to appear at trial.
  - Case scheduling problems in the court.
- Continuance of the trial to a later date required by statute because:
  - A party or attorney is a member, officer, or employee of the General Assembly or the Division of Legislative Services, and, pursuant to [Va. Code § 30-5](#).
  - The hearing is to be held within the period beginning thirty days prior to the commencement of a regular or special session of the General Assembly and ending within thirty days of its adjournment, or
  - The hearing is to be held within the period beginning on the day before the meeting date of any reconvened or veto session of the General Assembly or of any legislative commission, council, committee or subcommittee which such party or attorney is scheduled to attend and ending within one day after its adjournment, provided that the continuance is requested in writing and filed with the court at least three days prior to the first date of the desired continuance. The requesting party shall strive to notify all other parties of such a request.
  - A party or attorney has been ordered to participate in annual training, active duty or temporary active duty in the armed forces reserves, the National Guard or naval militia and the hearing is to be held within the period of such duty not to exceed three weeks, provided that the continuance is requested at least four days prior to the first date of the desired continuance [Va. Code § 44-97.1](#).

## Post-Trial Processes

The clerk's office also performs a number of post-trial functions including:

- Fine and court cost assessment and collection, where applicable.
- Bond forfeitures where bonded defendants fail to appear for trial.
- Notice and report generation to the other agencies regarding case status and disposition.
- Notice to parties involved, when applicable.
- Transferring appealed cases to circuit court.
- Ensuring a CCRE report has been completed by law enforcement and required information entered in GCMS in appropriate cases.
- Notifying [Board of Medicine](#) if health care practitioner or oral surgeon was convicted of certain crimes [Va. Code §§ 54.1-2709.4, 54.1-2909](#).

Upon certification by the general district court of any felony charge and ancillary misdemeanor charge or when an appeal of a conviction of an offense in general district court is noted, jurisdiction as to such charges shall vest in the circuit court, unless such case is reopened pursuant to [Va. Code § 16.1-133.1](#); a final judgment, order, or decree is modified, vacated, or suspended pursuant to Supreme Court of Virginia Rule 1:1, or the appeal has been withdrawn in the general district court within 10 days pursuant to [Va. Code § 16.1-133](#), and [Va. Code § 16.1-123.1](#).

## Execution of Judgments Or Enforcement of Verdicts

For many cases, the verdict or judgment of the court must be enforced or executed through separate proceedings because the verdict or judgment of the court is not satisfied (e.g., fine and costs are not paid, or a judgment granted in a civil suit is not paid). A substantial portion of the workload of the clerk's office centers on execution procedures for civil cases or enforcement procedures for criminal cases.

Execution of judgments in civil cases against the party who lost the case (judgment debtor) is the sole responsibility of the party in whose favor the judgment was granted (judgment creditor). The principal means available to the judgment creditor to collect the judgment include garnishment of money (such as wages) of the judgment debtor and levy on property owned by the judgment debtor. Following successful execution of the judgment, the judgment creditor enters a notice of satisfaction of the judgment.

Enforcement of guilty verdicts in criminal cases is the responsibility of the court. For example, where an accused is found guilty of a misdemeanor and is ordered to pay a fine but does not pay it as ordered, the court may issue a show cause summons or similar legal document to bring the accused back into court to obtain his compliance with the court order. Unpaid fines

that are classified as "delinquent" are handled through the Set-Off Debt Collection Act and through the Commonwealth's Attorney or his contractor (who may be a lawyer, a collection agency, [the Department of Taxation's Court Debt Collection Office](#), the local Treasurer's Office or the local governing body) [Va. Code § 19.2-349](#).

### Case Closing

When closing cases with final disposition, the general district court clerk's office will file them in the disposed trial date file or master file.

## Chapter 3 – Criminal Case Processing

### Introduction

Criminal cases are proceedings brought by the Commonwealth (or a locality) for offenses violating state law or local ordinances. The two categories of crimes are felonies and misdemeanors. Each general district court has the power to try misdemeanor offenses which originated as direct indictments or presentments when certified by the circuit court and transferred to the general district court for trial [Va. Code § 16.1-126](#). Felonies, which can only be tried in circuit court, are punishable by fine or imprisonment in a penitentiary for one year or more or both a fine and term of imprisonment. Examples of felonies include murder, malicious or unlawful wounding (felonious assault), grand larceny, and rape. The district courts do not have jurisdiction to adjudicate felony cases, but they do have jurisdiction to conduct preliminary hearings in felony cases, in order to determine whether there is sufficient evidence to justify holding the defendant for a grand jury hearing and trial in circuit court.

Misdemeanors are punishable by a fine of up to \$2,500 or a sentence not exceeding twelve months in jail, or a combination of a fine and a jail sentence. Examples of misdemeanors include simple assault, public intoxication, petit larceny, and shoplifting.

The burden of proof in all criminal cases is “beyond a reasonable doubt;” that is, the evidence must be so completely convincing toward the guilt of the defendant that there is no reasonable doubt of the defendant’s guilt.

The district courts do not conduct jury trials; a judge hears all cases. Jury trials are held only in circuit court, as provided by the Virginia Constitution.

These procedures apply to cases in which adults are charged with committing criminal offenses, regardless of whether the case is tried in a general district court or in a juvenile and domestic relations district court. Normally, these provisions do not govern trials of juveniles charged with being delinquent unless the juvenile was previously tried and convicted in a circuit court as an adult under [Va. Code § 16.1-269.1](#) et seq., and commits a subsequent criminal offense [Va. Code § 16.1-271](#).

Of special consideration in criminal cases are the defendant's rights under the Sixth Amendment to the Constitution of the United States. The Sixth Amendment ensures the right to a speedy trial, to trial by jury, to be informed of the charge, to confront one’s accuser, to subpoena witnesses in one’s favor, and to have the assistance of a lawyer.

The presentation of criminal case procedures begins with a narrative description of the basic criminal case process. The narrative describes the flowchart of the criminal case process. Following the narrative, the detailed procedures are presented beginning with case initiation and ending with case closure.

## Narrative Description

The criminal case process is generally initiated when a criminal offense is committed and reported to the police. The police or other law officer conducts an investigation to determine the facts of the case, identify likely suspects, and locate witnesses to the crime. In the course of the investigation, the officer may request issuance of district court form DC-339: Search Warrant by presenting a DC-338: [Affidavit for Search Warrant](#) to a judge, or magistrate, who then conducts a probable cause hearing on the request and will issue the search warrant if probable cause is found. A judge, magistrate, or person authorized to issue criminal warrants may also issue district court form DC-341: Search Warrant for Tracking Device, which is used to permit the installation and use of a tracking device by presenting district court form DC-340: [Affidavit for Search Warrant for Tracking Device](#). Search warrants are not docketed in the general district court. It is recommended that the clerk not retain a copy of either the affidavit or search warrant. The clerk should, seal the document in a confidential envelope and forward immediately to the circuit court.

Offenses for which a search warrant to withdraw blood may be issued is to be given priority over matters not involving imminent risk to another's health or safety before such judge or magistrate. These offenses include DUI's, commercial DUI's, watercraft DUI's, underage DUI's, and underage watercraft DUI's as well as offenses of [Va. Code § 18.2-272](#), driving after forfeiture of license.

When the officer has identified the probable offender(s), the officer either issues a Virginia Uniform Summons or requests a district court form DC-312: Warrant of Arrest - Felony, DC-314: Warrant of Arrest - Misdemeanor (State), DC-315: Warrant of Arrest – Misdemeanor (Local), or DC-319: Summons from a judicial officer, usually a magistrate. A Virginia Uniform Summons is issued whenever a criminal misdemeanor occurs in the officer's presence, unless the defendant is charged with a jailable misdemeanor and the arresting officer believes that the defendant will disregard the summons or is likely to cause harm to themselves or refuses to discontinue the unlawful act, or the defendant is charged with violating [Va. Code § 18.2-407](#) (failing to disperse at the scene of a riot), or [Va. Code § 18.2-388](#) (drunk in public). If a Virginia Uniform Summons is issued, the officer takes the defendant into custody. The officer will release the defendant if they sign the promise to appear section on the Virginia Uniform Summons. If a Virginia Uniform Summons is not issued or the defendant refuses to sign the promise to appear, the officer takes the defendant before the magistrate who determines whether there is probable cause to believe that the defendant committed the offense. The judicial officer determines whether there is probable cause to believe that the individual may have committed the offense before issuing a warrant or summons.

If probable cause is found, a district court form DC-312: Warrant of Arrest - Felony, DC-314: Warrant of Arrest - Misdemeanor (State), DC-315: Warrant of Arrest – Misdemeanor (Local), or in misdemeanor cases, a DC-319: Summons is issued by the magistrate, who then proceeds to set the date for the first court appearance. If not released on a summons, the magistrate determines bail, after which the defendant is released on recognizance, with or without

additional terms. If the defendant is unable to meet the terms set for release, the defendant is committed to jail, pending the first court appearance.

If a warrant was initially issued, the officer arrests the defendant and brings them before a magistrate to set the date for first court appearance and to determine bail, after which the defendant is released on bail or is committed to jail. If authorized by the magistrate issuing a misdemeanor warrant, the arresting officer may release the defendant pursuant to the summons section of a warrant or on a Virginia Uniform Summons. All case-related papers are sent to the clerk's office.

Processing by the clerk's office begins with the receipt of the Warrant of Arrest, Summons, or Virginia Uniform Summons. The clerk's office assigns a case number to the warrant or summons and indexes the case in the automated system. The clerk's office assembles all case-related documents, which are filed by court appearance date. Prior to the court date, the clerk's office retrieves all of the cases from the pending file for that court date and prints a docket via the case management system, which contains all cases scheduled for a given day. The docket and cases are sent to court on the scheduled trial date.

For any defendant held in jail, the district court conducts an arraignment hearing on the next court day after arrest. At the arraignment, the court determines the status of the defendant's right to representation by an attorney, calls the defendant by name, reads the charges, asks for the defendant's plea, reviews the bail determination, and sets the next court date, if the defendant is not tried after arraignment.

If two-way electronic video and audio communication is available for use by a district court for the conduct of a hearing to determine bail or to determine representation by counsel, the court shall use such communication in any such proceeding that would otherwise require the transportation of a person from outside the jurisdiction of the court in order to appear in person before the court.

For those not arraigned on the next court date, the court must determine the status of the defendant's right to representation by an attorney. If the defendant wishes the judge to appoint an attorney at public expense to represent them, the defendant must make a written request for such appointment and file district court form DC-333: [Financial Statement - Eligibility Determination for Indigent Defense Services](#) with such request. In the alternative, the defendant may hire their own attorney or waive their right to be represented by an attorney. The court may try the defendant even if the defendant has neither waived their right to legal representation nor hired an attorney, if the defendant is charged with a misdemeanor not punishable by a jail sentence, or if the judge states in writing before trial that, if the defendant is convicted, no jail sentence will be imposed. See district court form DC-328: Motion And Order To Try Defendant For A Misdemeanor Without Appointment Of Counsel.

Preliminary hearings are held in all cases where the defendant is charged with a felony unless the defendant waives the hearing. These hearings are conducted to determine if there is

probable cause to believe that the defendant committed the felony charged. If so, the case is certified to the grand jury. If probable cause is not found, but probable cause is found to believe that a misdemeanor, rather than a felony, has been committed, then the felony charges may be reduced to a misdemeanor and, after arraignment on the misdemeanor, may be disposed of in district court. If no probable cause is found, the case is dismissed.

On the scheduled trial date, the judge hears the case of the defendant who appears in court or, when permitted by law and the circumstances so warrant, tries the case in the absence of the defendant. Dispositions are reached based on the evidence presented and such dispositions are recorded on the summons, warrant, or in a separate order. Continuances may be granted, in the judge's discretion, for cases not ready for trial. Should a defendant fail to appear at trial, the judge may order the issuance of a DC-361: Capias, DC-360: Show Cause Summons (Criminal), DC-314: Warrant of Arrest – Misdemeanor (State), DC-312: Warrant of Arrest - Felony (if underlying charge is felony) for Failure to Appear. If released on bond, the judge may initiate bond forfeiture proceedings. See Miscellaneous Civil Case Procedures chapter for detailed instructions on bond forfeitures. Continued cases are returned to the clerk's office for filing by new appearance date. It is recommended that any document ordered for failure to appear should be issued immediately, but in all cases, no later than the end of the business day on which the order was entered.

The return of the case file from the court initiates the disposition activities of the clerk's office. The clerk's office collects all fines and court costs required and prepare district court form DC-356: Disposition Notice to be transmitted to the jail if a jail sentence is to be served. If the defendant is found guilty and is fined, but is unable to pay this fine, the court assessing the fine or costs against a person shall inform such person of the availability of earning credit toward discharge of the fine or costs through the performance of community service work under this program and provide such person with written notice of terms and conditions of this program. Community service work may be performed before or after imprisonment or during imprisonment. The court may place the defendant on a payment plan, installment payment plan or allow the defendant to discharge the fine or cost through the performance of community service work. The clerk may set the terms and conditions of installment or deferred payment plans, if authorized by and within guidelines set by the court [Va. Code § 19.2-354](#).

Alternatively, the judge may suspend the imposition of the sentence or fine in whole or in part, but he may also require the use of probation after serving a portion of the sentence. If the case is dismissed or the court finds the defendant not guilty, the defendant is released, and any bond security or other bail is returned.

For all disposed cases, the clerk's office updates the case management system, and enters the disposition in the automated system. Ensure that all required reports statutorily required to be sealed as confidential have been sealed and placed in an envelope in the file.

The case may be appealed within ten days as allowed by law. Appeals must be noted in writing. For appealed cases, all fines and court costs paid are refunded. The court shall not require any



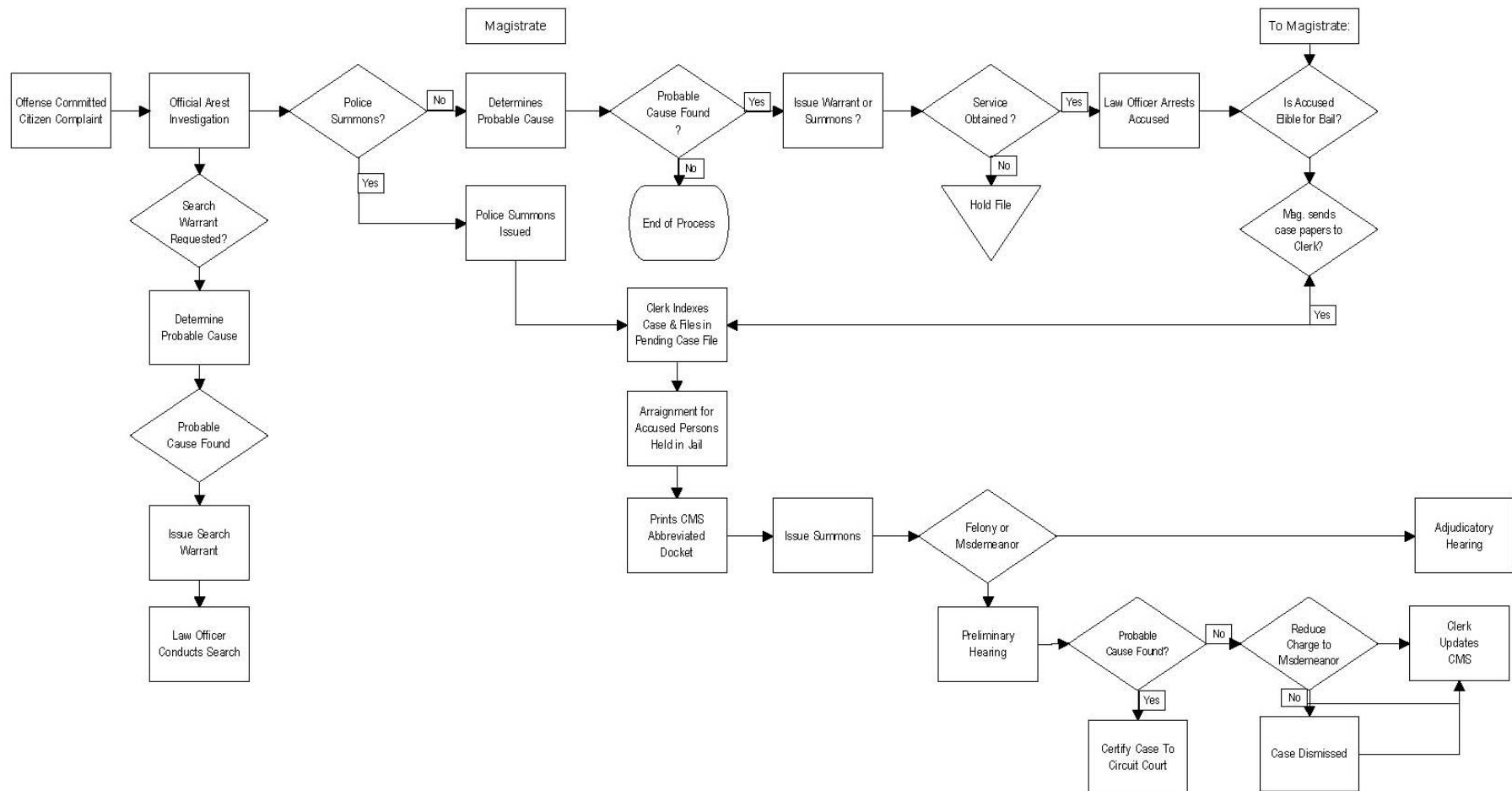
new bond for the release of a defendant pending the appeal [Va. Code § 19.2-125](#). The defendant is required to enter into an appearance or recognizance (continuation of earlier bail), and the CCRE and all case-related materials are sent to the circuit court after the expiration of the ten-day appeal period.

All case files are retained in the Court Date Disposed Filing System in the district court where the case was tried.

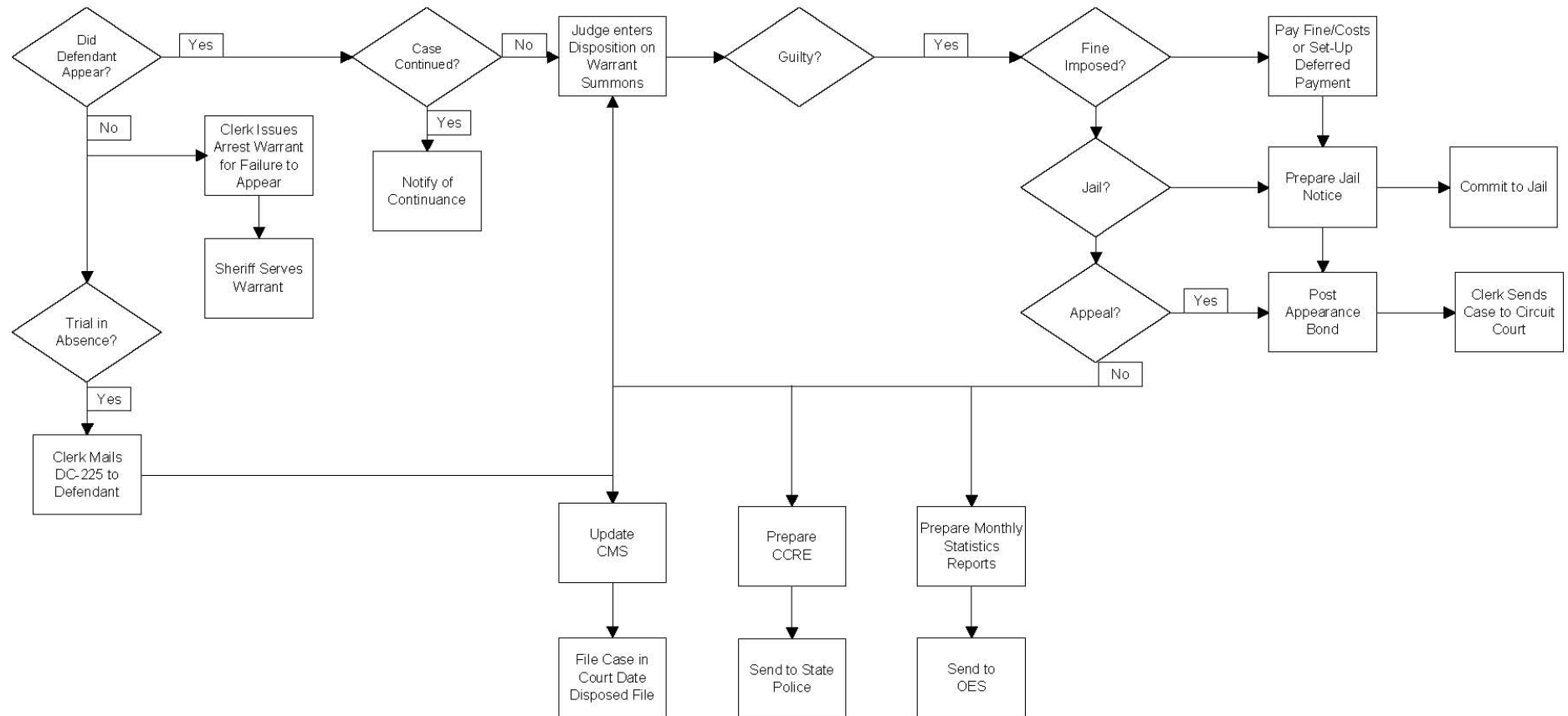
Copies of the forms and data elements are included in District Court Forms Manual.

The flow chart and remaining portions of this section describe the existing procedures used by the court for processing criminal cases.

## Pre-Court Procedures Flow Chart



## Post-Court Procedures Flow Chart



## Case Initiation

A criminal case is initiated by a citizen complaint of a criminal offense or by a law enforcement officer's observation of an offense in progress. As a result, there are two primary ways that a case is initiated in the court system:

1. Arrest prior to the filing of a complaint.
2. Pre-arrest issuance of a summons or warrant.

### Court-Initiated Capias/Warrant

The following is the recommended procedure for a court-initiated capias/warrant:

Step:	Description:
1.	<p>Court orders capias or warrant to be issued. The court should enter the case in GCMS (General District Case Management System) before printing the court-generated document. This will allow GCMS to assign the case number and unique OTN to the document. The court can then print the court-generated document via the district GCMS forms program, and the document will now contain all the necessary information for entry in the magistrate system.</p> <p><b>Comments:</b> When a court issues a capias or warrant the judge should provide the clerk with the code section for issuance.</p>
2.	<p>Recall of process:</p> <p>On occasion, it becomes necessary for the judge to order the immediate return of the process to the court even though the law enforcement entity possessing the document has not served it. For example:</p> <p>The defendant voluntarily appeared in court after a capias or failure to appear warrant had been issued.</p> <p>Promptly call the law enforcement agency to return the process without further attempt to serve it. The call should be documented with a subsequent written notification to protect the court from claims that notification was not given. To this end, district court form DC-323: Recall of Process should be used whenever process is recalled prior to its being served.</p> <p>When the judge orders a Recall of Process, "RC" is utilized in GCMS in the final disposition field.</p>

Step:	Description:
	<p><b>Comments:</b> If the defendant was arrested on a facsimile or “teletype” copy of the warrant and the original process was not returned to the court, promptly notify law enforcement, and follow up by issuing district court form DC-323: Recall of Process.</p> <p><b>Alternate:</b> If the court-issued process has not been served by the return date, the court may place the process in the fugitive file indicating “FF” in the final disposition field in GCMS. Also, place the underlying charge(s) in the fugitive file by updating GCMS with “F” and “FF.”</p>
3.	<p>The chief law-enforcement officer of the police department or sheriff's office, whichever is responsible for such service, shall submit quarterly reports to the attorney for the Commonwealth listing those existing felony arrest warrants in their possession that have not been executed within seven years of the date of issuance, those misdemeanor arrest warrants, summonses and capiases and other criminal processes in their possession that have not been executed within three years from the date of issuance. The chief law enforcement officer shall submit quarterly reports, together with the unexecuted warrants, to the Commonwealth's Attorney who shall petition circuit court for destruction of such unexecuted warrants <a href="#">Va. Code § 19.2-76.1</a>.</p> <p>After the warrant or capias has been destroyed, pursuant to circuit court order, delete the case from GCMS. You may wish to keep the court's copy in the file and write the date it was deleted from GCMS on the face of the warrant.</p> <p><b>Underlying warrant:</b> Place the underlying charge(s) back on the docket for the Commonwealth's Attorney office to review and make a recommendation as to disposition.</p> <p><b>Comments:</b> Statistical count: When the capias/warrant is initially entered in GCMS, the case counted as a new case. When a case is finalized with an "FF" the case is counted as a concluded case.</p>

### Unexecuted Warrants (Magistrate Issued)

An attorney for the commonwealth may move the court in which the warrant or summons would be returnable for the dismissal and/or destruction of any unexecuted warrant or summons issued by a magistrate. Dismissal would be without prejudice.

Step:	Description:
1.	<p>Clerk receives unexecuted warrant or summons issued by magistrate from Commonwealth's Attorney's office. Do not index warrant or summons in GCMS.</p> <p><b>Note:</b> See <a href="#">Va. Code § 19.2-76.1</a>. If the Commonwealth's Attorney's office submits a court order, the order should be treated as an administrative record and retained for three years. The order should not be disclosed.</p>
2.	Court dismisses warrant or summons and signs/dates.
3.	<p>If the court orders the warrant to be dismissed, but not destroyed:</p> <p>Clerk places original case papers in an envelope which is physically sealed and writes defendant's name, date of order on the outside of the envelope, and a notation, "To be destroyed 3 years from date of order." If envelope contains multiple warrants for the same individual, you may wish to make a notation as to how many warrants are contained therein.</p> <p><b>Note:</b> Stamp or print on the outside of the envelope, "Warrant dismissed - pursuant to <a href="#">Va. Code § 19.2-76.1</a> and the date. To be destroyed 3 years from date of order."</p> <p>If the court orders the warrant to be dismissed and destroyed:</p> <p>The clerk shreds the warrant or summons. No further action is required.</p> <p>Provide a copy of the court order to the chief magistrate, so that appropriate steps regarding the OTN can be taken within the magistrate system.</p>
4.	<p>If the court does not order the destruction of the unserved warrant, clerk places envelope in secure storage area not accessible to the public. <b>Note:</b> Case papers should not be disclosed except by court order.</p>

## Venue

Generally, a criminal case is prosecuted in the county or city in which the offense charged was committed. If an offense has been committed within the Commonwealth and it cannot readily be determined within which county or city the offense was committed, venue for the prosecution of the offense may be had in the county or city (i) in which the defendant resides or (ii) if the defendant is not a resident of the Commonwealth, in which the defendant is apprehended, or (iii) if the defendant is not a resident of the Commonwealth and is not apprehended in the Commonwealth, in which any related offense was committed [Va. Code § 19.2-244](#). Venue for the trial of a case may be changed upon motion of the accused or the Commonwealth based on a finding of good cause.

The courts of a locality have concurrent jurisdiction with the courts of any other locality adjoining such locality over criminal offenses committed in or upon the premises, buildings, rooms, or offices owned or occupied by such locality or any officer, agency, or department that are located in the adjoining locality [Va. Code § 19.2-244](#), [Va. Code § 19.2-251](#).

There are provisions creating special rules for venue for certain other offenses. For example, venue for trial of a person who is charged with committing or attempting to commit criminal assault (offenses contained in Article 7 or Chapter 4 of Title 18.2) against a person under the age of eighteen may be had in the county or city in which the offense is alleged to have occurred or if the place of occurrence cannot be determined, the county or city where the person under the age of eighteen resided at the time of the offense. In addition, venue for the trial of an offense under the Virginia Computer Crimes Act may be had in any number of jurisdictions based on the circumstances of the individual case [Va. Code § 19.2-249.2](#).

### **Arrest Prior to the Filing of a Complaint**

To initiate a criminal case prior to the filing of a complaint, the law enforcement officer will:

- Make an arrest.
- Issue a Virginia Uniform Summons, if the offense is committed in the law enforcement officer's presence or is for shoplifting. The Officer may also take the defendant before a judicial officer (usually a magistrate) for issuance of a DC-319: Summons, or DC-312: Warrant of Arrest – Felony; DC-314: Warrant of Arrest – Misdemeanor (State); or DC-315: Warrant of Arrest – Misdemeanor (Local).
- Return the executed summons to the clerk's office or return the executed warrant to the magistrate, who forwards it to the clerk's office after the bail hearing.

### **Pre-Arrest Issuance of a Summons or Warrant**

To initiate a criminal case by a summons or warrant prior to arrest:

- The complainant goes in person or pursuant to [Va. Code § 19.2-3.1](#), by two-way electronic video and audio communication, to a judicial officer (usually a magistrate) to swear out district court form DC-310: Criminal Complaint (Bad Check) or district court form DC-311: Criminal Complaint.
- The judicial officer conducts a probable cause hearing and, if probable cause is found, issues a summons, or warrant of arrest.
- District court form DC-319: Summons, is issued in misdemeanor cases when the judicial officer has no reason to believe that the defendant will not appear for trial or that they will cause harm to themselves or others. If a summons is issued, it must be served in person or by two-way electronic video and audio communication on the defendant.

- Summonses issued for photo red light violations, toll and HOT lanes violations, and certain local violations may be served by mail pursuant to the [Va. Code § 19.2-76.2](#). However, if the defendant does not appear for trial, the summons must be served by the sheriff or by private process server [Va. Code § 19.2-76.3](#).
- In certain counties, the county manager or the county manager's designee must send a specific type of notice by first class mail before a summons charging a violation of litter control ordinances may be issued [Va. Code § 15.2-733](#).
- An arrest warrant is mandatory in all felony cases and is issued in misdemeanor cases when a summons is not issued. If a warrant is issued, the officer arrests the defendant and takes them before a judicial officer to set bail (determine type of pre-trial release if eligible) or commit them to jail; if authorized by the magistrate issuing a misdemeanor warrant, the arresting officer may release the defendant on the summons section of a Warrant of Arrest.

**Note:** Following issuance of a warrant for stalking, a petitioner may seek a protective order. Since this order is a civil remedy, this process is described in the "Civil Case Procedures" chapter of this manual.

- Law enforcement officers may issue witness subpoenas in the investigation of Class 3 or Class 4 misdemeanors. The return of service shall be made within seventy-two hours after service to the appropriate court clerk [Va. Code § 19.2-73.2](#).

### **Unattended, or Immobile (Stolen) Vehicles [Va Code § 46.2-1209](#)**

See Chapter 4, Traffic Case Procedures, Unattended, or Immobile (Stolen) Vehicles.

### **Arrest of an Individual Who is not a Citizen or National of the United States**

Under [Va. Code § 19.2-82 \(B\)](#), an arrest warrant can be issued for an individual who is not a citizen or national of the United States who has been arrested under [Va. Code § 19.2-81.6](#), if the issuing authority finds probable cause that the person (i) is an individual who is not a citizen or national of the United States illegally present in the United States and (ii) has previously been convicted of a felony in the United States and deported or left the United States after such conviction. The warrant issued should cite [Va. Code § 19.2-81.6](#) and the applicable violation of federal criminal law. A warrant so issued will expire within seventy-two hours of issuance or when the person is taken into federal custody. Only one warrant for an individual may be issued under these circumstances in a six-month period. District court form DC-320: Warrant of Arrest – Individual who is not a citizen or national of the United States Pursuant to § 19.2-81.6 is available for use in these circumstances.



## Release on Bail

District court form DC-330: Recognizance should be used to admit a person to bail. A bail hearing is conducted before a judicial officer either in person or by two-way electronic video and audio communication.

In bail proceedings, the following definitions are used:

- “Bail” means the pretrial release of a person from custody upon those terms and conditions specified by order of an appropriate judicial officer.
- “Bond” means the posting by a person or their surety of a written promise to pay a specific sum, secured or unsecured, ordered by an appropriate judicial officer as a condition of bail to assure performance of the terms and conditions contained in the recognizance.
- “Criminal history” means records and data collected by criminal justice agencies or persons consisting of identifiable descriptions and notations of arrests, detentions, indictments, information’s or other formal charges, and any deposition arising there from.
- “Judicial Officer” means, unless otherwise indicated, any magistrate within their jurisdiction, any judge of a district court and the clerk or deputy clerk of any district court or circuit court within their respective cities and counties, any judge of a circuit court, any judge of the Court of Appeals and any justice of the Supreme Court of Virginia.
- “Person” means any accused, or any juvenile taken into custody pursuant to [Va. Code § 16.1-246](#).
- “Recognizance” means a signed commitment by a person to appear in court as directed and to adhere to any other terms ordered by an appropriate judicial officer as a condition of bail [Va. Code § 19.2-119](#).

Prior to conducting a bail hearing, the judicial officer shall obtain the person’s criminal history to the extent feasible. The defendant shall be admitted to bail unless there is probable cause to believe that:

- The defendant will not appear at trial or hearing, or such other time and place as directed.
- Or the defendant will constitute an unreasonable danger to themselves, family, or household members, or the public if released on bail.

If the person is denied bail, the judicial officer shall inform the person of their right to appeal from the order denying bail or fixing terms of bond or recognizance [Va. Code § 19.2-120](#).

If the defendant is eligible for bail, the judicial officer decides what terms are to be required which will be reasonably calculated to assure the presence of the defendant and to assure their good behavior pending trial.

In deciding the judicial officer shall consider all relevant information including:

- The nature and circumstances of the offense
- Whether a firearm is alleged to have been used in the commission of the offense;
- The weight of the evidence;
- The history of the accused or juvenile, including the accused's family ties or involvement in employment, education, or medical, mental health, or substance abuse treatment;
- The accused's length of residence in, or other ties to, the community;
- The accused's record of convictions;
- The accused's appearance at court proceedings or flight to avoid prosecution or convictions for failure to appear at court proceedings;
- Whether the person is likely to obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness, juror, victim, or family or household member as defined in [Va. Code § 16.1-228](#).
- Evidence the person is currently pregnant, has recently given birth or is currently nursing a child.
- A judicial officer who admits a person to bail who is charged with an act of violence as defined in Va. Code § 19.2-297.1 shall notify the attorney for the Commonwealth for the jurisdiction in which such person's case is filed contemporaneously with such person's grant of bail or release. Notice to the attorney for the Commonwealth may be made by facsimile or other electronic means.

If the person is admitted to bail, the judicial officer shall take into account the following factors specified in [Va. Code § 19.2-121](#):

- The nature and circumstances of the offense;
- Whether a firearm is alleged to have been used in the offense;
- The weight of the evidence;
- The financial resources of the accused or juvenile and their ability to pay bond;

- The character of the accused or juvenile including their family ties, employment, or involvement in education;
- The accused's record of convictions;
- The accused's appearance at prior court proceedings or flight to avoid prosecution or failure to appear at prior court proceedings;
- The accused's length of residence in the community;
- Whether the person is likely to obstruct or attempt to obstruct justice or threaten, injure, or intimidate or attempt to threaten, injure, or intimidate a prospective witness, juror, or victim; and
- Any other information available which the court considers is relevant to the determination of whether the accused or juvenile is unlikely to appear for court proceedings.

The judicial officer may impose one or more of the following conditions of release:

- Place the person in the custody and supervision of a designated person, organization, or pretrial services agency which, for the purposes of this section, shall not include a court services unit established pursuant to [Va. Code § 16.1-233](#), [Va. Code § 19.2-123](#).
- Place restrictions on the travel, association, or place of abode of the person during the period of release and restrict contacts with household members for a period not to exceed seventy-two hours.
- Require the execution of an unsecured bond.
- Require the execution of a secure bond, which, at the option of the accused, shall be satisfied with sufficient solvent sureties, or the deposit of cash in lieu thereof. Only the actual value of the interest in real or personal property owned by the proposed surety must be used in determining the surety's solvency. The surety is deemed to be solvent if the actual value of the surety's equity in real or personal property meets or exceeds the bond amount.
- Property Bail Bondsmen and Surety Bail Bondsmen (who charge fees for acting as sureties) must have a license issued from the [Department of Criminal Justice Services](#) (DCJS) to engage in the business of bail bonding and are authorized to conduct business in all the courts of the Commonwealth.
- If the person is arrested for a felony and (i) has been previously convicted of a felony, (ii) is on bond for an unrelated arrest in another jurisdiction or (iii) is on probation or parole, then the person may be released only on a secured bond. This requirement may be waived only with the concurrence of the Commonwealth's Attorney (or the city, town, or county attorney) and the judicial officer [Va. Code § 19.2-123](#).

- Require the accused to accompany the arresting officer to the jurisdiction's fingerprinting facility and submit to having their photograph and fingerprints taken prior to release [Va. Code § 19.2-123](#).
- Impose any other condition deemed reasonably necessary to assure appearance as required, and to assure the accused's good behavior prior to trial, including a condition requiring that the person return to custody after specified hours or be placed on home electronic incarceration pursuant to [Va. Code § 53.1-131.2](#) or, when the person is required to execute a secured bond, be subject to monitoring by a GPS (Global Positioning System) tracking device, or other similar device.

A judicial officer may set or admit such person to bail in accordance with [Va. Code § 19.2-120 \(B\) or \(C\)](#).

The bail provisions also apply to individuals arrested pursuant to district court form DC-361: Capias. The magistrate is required to set the terms of bail in accordance with terms set by court "unless circumstances exist that require the magistrate to set more restrictive terms" [Va. Code § 19.2-130.1](#).

If a person admitted to bail is currently in jail, then district court form DC-353: Release Order also should be issued and should be delivered to the jailer. Otherwise, upon satisfaction of the terms, the defendant shall be released forthwith.

Step:	Description:
1.	<p>The accused is arrested on a criminal process and brought before the court for arraignment on the first business day the court is in session after arrest.</p> <p><a href="#">Va. Code § 8.01-508</a>, <a href="#">Va. Code § 19.2-76</a>, <a href="#">Va. Code § 19.2-80</a>, <a href="#">Va. Code § 19.2-82</a>, <a href="#">Va. Code § 19.2-150</a>, <a href="#">Va. Code § 44-41.1</a>, and <a href="#">Va. Code § 19.2-234</a> direct when a person must be brought before a judicial officer for a bail hearing. There is a basic premise that runs through all of these statutes. Once the law enforcement officer has arrested the accused by executing a warrant or capias, the officer must bring the accused forthwith before a judicial officer who then must conduct a bail hearing. <a href="#">Va. Code § 19.2-76</a> and <a href="#">Va. Code § 19.2-80</a> set forth procedures for arrests pursuant to existing warrants and capiases.</p>
2.	<p>The judge conducts a bail hearing In the presence of the accused either in person or by two-way electronic video and audio communication to obtain information as to the factors specified in <a href="#">Va. Code § 19.2-121</a> for fixing the terms of bail.</p> <p>Effective July 1, 2009, the judge shall use two-way electronic video and audio communication in any pre-trial criminal proceeding to determine bail or representation by counsel. The court shall use such communication in any proceeding that would otherwise require the transportation of a person from</p>

Step:	Description:
	<p>outside the jurisdiction of the court in order to appear in person before the court <a href="#">Va. Code § 19.2-3.1</a>.</p> <p>The purpose of the bail hearing is to ask the accused questions to determine if the accused is eligible for bail and to give the accused the opportunity to ask questions.</p> <p>Factors and information may not be available at the time bail determination is made. Lack of information does not permit delay in conducting the bail hearing.</p> <p>No statute authorizes the magistrate, intake officer or judge to conduct a bail hearing over the telephone. Although not specifically required by statute, the judicial officer needs to administer an oath to the defendant and all others presenting testimony prior to conducting a bail hearing. When the judicial officer conducts the bail hearing under oath, the defendant is subject to a perjury prosecution for any false statements knowingly made in the hearing.</p>
3.	<p>After questioning, determine if the accused can be released on a recognizance. <a href="#">Va. Code § 19.2-123</a> requires the judicial officer to consider release on a recognizance.</p> <p>A recognizance is simply the defendant's written promise to appear and to abide by any terms ordered by the judicial officer as a condition of release. A release on a recognizance is not based on a monetary pledge or secured by cash deposit, real estate, or professional bondsman.</p>
4.	<p>If the judge determines that a Recognizance is adequate for release, the clerk's office completes only the top portion of district court form DC-330, RECOGNIZANCE that contains the recognizance and obtains the defendant's signature. Also issue district court form DC-353: Release Order for the jail.</p>
5.	<p>If a recognizance alone cannot reasonably ensure the future appearance of the accused, determine if one or more conditions of release should be imposed <a href="#">Va. Code § 19.2-123</a>.</p> <p>The judge may impose any one or more of the following conditions:</p> <ul style="list-style-type: none"> <li>Place the accused in the custody of a designated person, organization or pretrial services agency agreeing to supervise them (release to an adult family member, friend, or other responsible individual or, if in the military, to a superior officer).</li> <li>Place restrictions on travel, association, or place of abode or restrict contact with household members or complainant.</li> </ul>

Step:	Description:
	<ul style="list-style-type: none"> <li>• Maintain employment or if unemployed, actively seek employment.</li> <li>• Maintain or commence an educational program</li> <li>• Avoid all contact with an alleged victim of the crime and with any potential witness who may testify concerning the offense</li> <li>• Comply with a specified curfew</li> <li>• Refrain from possessing a firearm, destructive device, or other dangerous weapon</li> <li>• Refrain from excessive use of alcohol, or use of any illegal drug or any controlled substance not prescribed by a health care provider</li> <li>• Submit to testing for drugs and alcohol until the final disposition of the case</li> <li>• Impose any other condition deemed reasonably necessary to assure appearance as required, including a condition that the person return to custody after specified hours or be placed on home electronic incarceration</li> <li>• Require the execution of a bail bond with sufficient solvent securities or the deposit of cash.</li> </ul> <p><b>Note:</b> Whether to require a secured bond is the last condition of release to be considered by the judicial officer.</p>
6.	Determine if defendant can meet conditions of bail. See district court form DC-352: Commitment Order, or judge's notes on the case papers regarding bail conditions.
7.	<p><b>Unsecured Bond:</b> prepare district court form DC-330: Recognizance, pages one and two, listing the monetary amount and any other conditions as ordered by the judge. Obtain the signature of the defendant; distribute a copy to the defendant and retain the original (top copy) with the case file. Prepare district court form DC-353: Release Order to be sent with the defendant to the jail. Retain the original district court form DC-353: Release Order with the case file.</p> <p><b>Comments:</b> See district court form DC-330: Recognizance. In releasing a defendant on an unsecured bond, it is unnecessary to accept cash or require the surety to prove equity in any specific real or personal property. If the accused fails to appear in court, the monetary amount, or any part thereof may be forfeited.</p>
8.	<b>Cash Bond:</b> prepare all three pages of district court form DC-330: Recognizance, collect and issue receipt for cash deposit to secure bond, obtain appropriate signatures including page 3 titled Bond Secured with Cash which allows the court

Step:	Description:
	to take any fines and costs out of the cash bond; distribute copies to all parties who signed form and retain original (top copy) for case file. The defendant must sign on all three pages. Prepare district court form DC-353: Release Order to be sent with the defendant to the jail. Retain the original district court form DC-353: Release Order with the case file.
9.	<p><b>Secured Bond:</b> In lieu of cash, the accused may also have a third party to act as a surety on the bond. The surety can either be a bondsman or a person who owns real or personal property.</p> <p>Using real property by third-party surety requires proof that the actual value of the property is equal or exceeds the amount of the bond. Documents that may be used to determine actual value and ownership include a deed, a recent tax assessment and a recent mortgage statement for real property. To properly document ownership, value and encumbrances, the clerk must require all sureties to complete district court form DC-332: <a href="#">Affidavit of Surety</a>.</p> <p>Prepare district court form DC-330: Recognizance, pages one and two, listing the monetary amount, check the box ‘Other Solvent Surety(ies)’ and list any other conditions as ordered by the judge. Obtain the signatures of the defendant and all sureties; distribute a copy to all parties and retain the original (top copy) with the case file.</p>
10.	<p>Prepare district court form DC-353: Release Order to be sent with the defendant to the jail. Retain the original (top copy) with the case file.</p> <p>Using a Property or Surety Bail Bondsman requires the clerk to verify that the bondsman has a valid license issued by the <a href="#">Department of Criminal Justice Services</a> (DCJS).</p> <p>A Surety Bail Bondsman must file a qualifying Power of Attorney for each insurance company for which they act as an agent with DCJS. The clerk must ensure that the qualifying power of attorney authorizing the agent to enter into bonds is effective on the date the agent wishes to exercise the power. The qualifying power of attorney also notes the bonding limits for the agent.</p> <p>Each time the surety bail bondsman enters into a bond, however, the bondsman must present a certificate. These certificates are called “powers” and are not the same as a qualifying power of attorney. The clerk should review these certificates carefully. The clerk must require that the bondsman complete a certificate displaying an amount that either equals or exceeds the amount of the secured bond. The bondsman cannot use more than one of these certificates per bond.</p>

Step:	Description:
	<p>Prepare district court form DC-330: Recognizance pages one and two listing the monetary amount, check the box “Surety Bail Bondsman” and list any other conditions as ordered by the judge. Complete the surety information on page two listing the license number, insurance company and bonding company information. Obtain the signatures of the defendant and all sureties; distribute a copy to all parties and retain the original (top copy) with the case file.</p> <p>Prepare district court form DC-353: Release Order to be sent with the defendant to the jail. Retain the original (top copy) with the case file.</p> <p>A Property Bail Bondsman must obtain a revenue license prior to acting as a bail bondsman in any locality that requires a bondsman revenue license. One revenue license is valid statewide and must be renewed each year.</p> <p>The clerk must verify that the property bail bondsman has a valid license issued by DCJS and if required by the locality, a valid revenue license.</p> <p>Prepare district court form DC-330: Recognizance, pages one and two, listing the monetary amount, check the box “Property Bail Bondsman” and list any other conditions as ordered by the judge. Complete the surety information on page two listing the license number and if applicable, the bonding company information. Obtain the signatures of the defendant and all sureties; distribute a copy to all parties and retain the original (top copy) with the case file.</p> <p>Prepare district court form DC-353: Release Order to be sent with the defendant to the jail. Retain the original (top copy) with the case file.</p>
11.	<p>If defendant is denied bond or unable to meet the conditions of bail, complete district court form DC-355: Order for Continued Custody. Include on form the next hearing date for the accused, amount of bond set, if applicable and any other conditions set by the court.</p> <p>Retain the original district court form DC-355: Order for Continued Custody and send a copy to the jail.</p> <p>Note terms of bail on district court form DC-355: Order for Continued Custody. The decision to commit the accused to jail should be based on one or more of the following:</p> <ul style="list-style-type: none"> <li>• No conditions of release could be imposed that would reasonably ensure the accused's future appearance <a href="#">Va. Code § 19.2-120(1)</a>.</li> <li>• The accused might constitute an unreasonable danger to themselves or others <a href="#">Va. Code § 19.2-120(2)</a>.</li> </ul>



Step:	Description:
	<ul style="list-style-type: none"> <li>The accused is currently unable to meet the conditions of bail.</li> </ul>
12.	<p>Advise accused of their upcoming hearing date and of their right to appeal the bail decision, bond amount, or bond conditions. Absent good cause, motions relating to bail or conditions of release must be held as soon as practicable but not later than three calendar days following the making of the motion <a href="#">Va. Code § 19.2-158</a>.</p> <p>If the court's bail decision is appealed, the appealing party completes the DC-370: Notice of Appeal - Criminal. If a stay of the bail decision is requested, the DC-370: Notice of Appeal - Criminal should be presented to the court immediately for ruling. No stay may be granted after any person who has been granted bail has been released from custody on bail <a href="#">Va. Code §19.2-124</a>.</p> <p>If the stay is granted, the amount of the original bond set by the magistrate, if any, should be shown on the DC-355: Order for Continued Custody and a notation in the "Other" field to include when the stay expires. Attach a copy of the DC-370: Notice of Appeal - Criminal to the DC-355: Order for Continued Custody to provide information to the magistrate.</p> <p>If the stay is not granted, the amount of the bond set by the court should be shown on the DC-355: Order for Continued Custody. Make a notation in the "Other" field stating that the bail decision is appealed and attach a copy of the DC-370: Notice of Appeal - Criminal to the DC-355: Order for Continued Custody.</p> <p>The ten-day appeal period does not apply to bail decisions <a href="#">Va. Code § 19.2-124</a>. The bail decision of the higher court on such appeal shall be remanded to the court in which the case is pending for enforcement and modification unless the higher court orders otherwise. The court in which the case is pending shall not modify the bail decision of the higher court, except upon a change in the circumstances subsequent to the decision of the higher court <a href="#">Va. Code § 19.2-124</a>.</p>

A defendant previously admitted to bail shall not be required to be admitted to bail in any subsequent proceeding arising out of the initial arrest unless the court having jurisdiction of such subsequent proceedings deems that the initial amount of bond or security taken is inadequate or excessive. The court may change the amount of such bond or security, require new and additional sureties, or set other terms of bail as are appropriate to the case, including, but not limited to drug and alcohol monitoring. The court may, after notice to the parties, initiate a proceeding to alter the terms and conditions of bail on its own motion.

Any motion to alter the terms and conditions of bail where the initial bail decision is made by a judge or magistrate on any charge originally pending in that district court shall be filed in that district court unless:

- A bail decision is on appeal.
- The charge has been transferred to circuit court.
- The charge has been certified by a district court [Va. Code § 19.2-130](#).

If the amount of any bond fixed by a judicial officer is subsequently deemed insufficient, or the security taken inadequate, or if it appears that bail should have been denied or that the person has violated a term or condition of their release, or has been convicted of or arrested for a felony or misdemeanor, the attorney for the Commonwealth of the county or city in which the person is held for trial may, on reasonable notice to the person and, if such person has been admitted to bail, to any surety on the bond of such person, move the appropriate judicial officer to increase the amount of such bond or to revoke bail. The court may grant such motion to revoke bail or may increase the amount of such bond and/or add additional conditions. Any surety in a bond for the appearance of such person may take from their principal collateral or other security to indemnify such surety against liability. The failure to notify the surety will not prohibit the court from proceeding with the bond hearing.

The court ordering any increase in the amount of such bond, ordering new or additional sureties, or both, or revoking such bail may, upon appeal, and for good cause shown, stay execution of such order for so long as reasonably practicable for such person to obtain an expedited hearing before the court to which the order has been appealed.

Any motion filed where the initial bail decision is made by a judge or magistrate on any charge originally pending in that district court shall be filed in that district court unless

- A bail decision is on appeal.
- The charge has been transferred to circuit court.
- The charge has been certified by a district court [Va. Code § 19.2-132](#).

**Note:** A defendant generally may not be incarcerated for failure to meet bail terms, if charged only with offenses not punishable by incarceration. See *Pulliam v. Allen*, 466 U.S. 522 (1984).

The clerk or magistrate may issue a bail piece pursuant to [Va. Code § 19.2-134](#) to the defendant or to the sureties. In practice, the bail piece is almost always requested together with a surety's capias pursuant to [Va. Code § 19.2-149](#) so that the surety can surrender the defendant to the sheriff and be relieved from further liability. Upon application of the surety for a capias, the surety shall state the basis for which the capias is being requested. The

district court form DC-331: [Surety's Capias and Bailpiece Release](#) is prepared and issued. It is recommended that the clerk write the underlying Offense Tracking Number (OTN) on the DC-331: [Surety's Capias and Bailpiece Release](#).

If a bail bondsman on a bond in a recognizance surrenders their defendant, for any reason other than defendant's failure to appear in any court, the bondsman shall deposit with the clerk or magistrate the greater of 10 percent of the amount of the bond or \$50, which shall be made at such time the bondsman makes application for a capias. (This deposit requirement does not apply to a private citizen who posted cash or real estate to secure the release of a defendant).

The deposit is receipted to the underlying case number into Revenue Code: 501- Collection for Others; acceptable funds are cash or certified check.

The bondsman shall petition the court within 15 days from the surrender of the defendant to show cause, if any can be shown, why the bondsman is entitled to the amount deposited. The bondsman will file the DC-318: Petition for Return of Surety's Capias Deposit. The petition is not entered into the case management system; the petition will become part of the criminal file just as the Surety's Capias. The judge may rule on the petition administratively; however, if the judge requires a hearing, enter the hearing date in the case management system on the original criminal case with the hearing type RG or RP. If the court finds that there was sufficient cause to surrender the defendant, the court shall return the deposited funds to the bondsman. If the court finds that the surrender of the defendant by the bondsman was unreasonable, the deposited funds shall be returned to the payer. Funds shall not be remitted by the court until the sixteenth day after the finding.

**Note:** If the bondsman does not petition the court for the return of the deposited funds within 15 days from the surrender of the defendant, the deposited funds shall be paid into the state treasury to be credited to the Literary Fund.

The request to surrender the defendant can also be made to the magistrate. If the magistrate issues district court form DC-331: [Surety's Capias and Bailpiece Release](#), a copy shall be transmitted to the court before which such defendant's appearance is required by the close of business on the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed [Va. Code § 19.2-149](#).

Surety's Capias deposit funds from the magistrate must be receipted to the case with which it is associated. The deposit is receipted into revenue code 501-Collection for Others.

### **Commitment to Jail**

A person who is arrested may be committed to jail for any one of the following reasons:

- There is probable cause to believe the person will not appear for trial.

- The person's liberty is thought to constitute an unreasonable risk to themselves or the public.
- The person is unable either to provide surety for or post their bond, if a bond is required, or to meet other bail conditions.

District court form DC-352: Commitment Order should be used to commit a defendant to jail or home/electronic incarceration. The form contains a written order addressed to the jailer stating the date, name of the defendant, the offense charged, the amount of bail, if any, and should be signed by the judicial officer indicating their jurisdiction.

When requested by the chief judge of the circuit court, general district court, or juvenile and domestic relations district court, the sheriffs and jail superintendents are required to provide to all trial courts a semi-monthly list of jailed persons awaiting trial in that trial court. The list should be used to assist the trial court in expediting trials of persons in jail and in avoiding problems with speedy trial requirements.

### Search Warrants

In the process of investigating a case, law enforcement officers frequently must obtain district court form DC-339: Search Warrant to search for and seize specific physical evidence related to a criminal offense or to search for a defendant who is charged with an offense and who is hiding in a place controlled by a third party. Also, a law enforcement officer may obtain district court form DC-341: Search Warrant for Tracking Device to permit the installation and use of a tracking device on a vehicle, container, item, or object. Any magistrate or judge within the proper jurisdiction may be called on to issue a search warrant. The judge or magistrate when issuing a search warrant will:

Request that the officer seeking the warrant make a complaint under oath, stating the purpose of the search.

Request that the officer support the complaint with a written district court form DC-338: [Affidavit for Search Warrant](#) or a videotaped affidavit containing:

- A statement of the offense involved.
- Description of the place, thing, or person to be searched.
- Description of items or persons to be seized.
- Facts detailed to constitute probable cause.
- A statement that the object, thing, or person searched for constitutes evidence of the crime.

The statement of the offense involved must define a specific criminal offense and tell how the items to be seized (tool, weapon, instrumentality or evidence of the crime or stolen property or contraband) relate to the crime. The description of the place, thing, or persons to be searched must be detailed enough to provide the searching officer with sufficient information to specifically identify the place to be searched, without confusion or excessive effort. The description of items or persons to be searched for must identify all property (except contraband) and people to be seized as clearly and distinctly as possible, including serial numbers, identification marks or a general physical description when possible. The statement of facts detailed to constitute probable cause must set out facts (*not* opinions, conclusions, or suspicions) sufficient to establish probable cause (a reasonable determination that sizable items are located in the place to be searched). Absolute certainty is not required, only a reasonable belief is demanded.

**Note:** Offenses for which a search warrant to withdraw blood may be issued is to be given priority over matters not involving imminent risk to another's health or safety before such judge or magistrate. The offenses include DUI's, commercial DUI's, watercraft DUI's, underage DUI's, and underage watercraft DUI's as well as offenses of [Va. Code § 18.2-272](#), driving after forfeiture of license.

The United States Supreme Court has held that a determination of probable cause for issuance of a search warrant involves a two-step process with two distinct determinations:

1. That the facts in the affidavit logically indicate the presence of seizable items.
2. That the facts in the affidavit are reliable.

A determination of what facts indicate reliability will vary with each situation. The following factors correspond to general principles that are typically applied in a determination of reliability:

- The source (or observer) of the facts is a police officer.
- The source (or observer) of the facts has been reliable in the past.
- The source (or observer) of the facts has committed a crime and reveals their information in the form of a confession.
- The source (or observer) of the facts is an eyewitness of the crime.
- The source (or observer) of the facts personally appears before the judicial officer.
- The source (or observer) of the facts has been corroborated as to some of the facts they report.
- If the judicial officer has assured themselves that the affidavit contains all of the necessary information, then execution of the warrant should not require the setting forth of added details.

**Note:** Only a circuit court judge may issue a search warrant for the search of premises, or its contents, belonging to or under the control of any licensed attorney-at-law in order to search for evidence of a crime solely involving a client of such attorney [Va. Code § 19.2-56.1](#).

District Court form DC-339: Search Warrant must include:

- The name of the affiant
- The offense in relation to which the search is to be made
- The name or a description of the place to be searched.
- A description of the property or person to be searched for a recitation that the magistrate has found probable cause to believe that the property or person constitutes evidence of a crime (identified in the warrant) or tends to show that a person (named or described therein) has committed or is committing a crime
- Date and time of issuance

In addition, district court form DC-339: Search Warrant requires that an inventory of the property, persons and/or objects seized be filed in the circuit court of the county or city where the search was conducted. The officer, designee, or agent may file the warrant, inventory, and accompanying affidavit by delivering them in person, or by mailing them certified mail, return receipt requested, or delivering them by electronically transmitted facsimile process. Unlike district court form DC-336: [Subpoena Duces tecum](#) that may require that the items be delivered to the court or clerk's office and/or the custodian of such items appear before the court.

Any search warrant issued is not indexed in the case management system. The clerk must seal the affidavit and search warrant and file in circuit court.

Any search warrant not executed within fifteen days of issuance must be returned to and voided by the officer who issued the search warrant.

Under federal law, substance abuse treatment records are confidential and may not be disclosed except under certain circumstances. The four exceptions outlined in 42 U.S.C. 290dd-2 are (1) consent of the patient; (2) disclosure to medical personnel to the extent necessary to meet a bona fide medical emergency; (3) disclosure of records, with non-patient-identifying information to qualified personnel for the purpose of research, audits, or program evaluation; and (4) if authorized by an appropriate order of a court of competent jurisdiction, granted after application showing good cause therefore, including the need to avert a substantial risk of death or serious bodily harm. In deciding whether to authorize disclosure under exception (4), a court of competent jurisdiction must weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient

privilege, and to the treatment services. Further information on the requirements for disclosure can be found in 42 C.F.R. Part 2.

Although magistrates are authorized to issue search warrants, a magistrate does not qualify as a “court of competent jurisdiction” under 42 U.S.C. 290dd-2 to issue search warrants for substance abuse treatment records. Therefore, only a judge may issue a search warrant for these types of records.

The magistrate’s manual describes the procedures for the two-step determination described above and provides examples to illustrate the procedures. Clerks who issue search warrants should obtain a copy of this Magistrate Manual from the Office of the Executive Secretary.

Search Warrants can also be issued to obtain the contents of electronic communications or real-time location data or subscriber data [Va. Code § 19.2-70.3](#).

For fire inspection warrants and building inspection warrants see Civil Case Procedures.

### **Request for Victim Confidentiality**

For purposes of this chapter, "victim" means (i) a person who has suffered physical, psychological, or economic harm as a direct result of the commission of (a) a felony, (b) assault and battery in violation of [Va. Code § 18.2-57](#) or [Va. Code § 18.2-57.2](#), stalking in violation of [Va. Code § 18.2-60.3](#), a violation of a protective order in violation of [Va. Code § 16.1-253.2](#) or [Va. Code § 18.2-60.4](#), sexual battery in violation of [Va. Code § 18.2-67.4](#), attempted sexual battery in violation of [Va. Code § 18.2-67.5](#), or maiming or driving while intoxicated in violation of [Va. Code § 18.2-51.4](#) or [Va. Code § 18.2-266](#), or (c) a delinquent act that would be a felony or a misdemeanor violation of any offense enumerated in clause (b) if committed by an adult; (ii) a spouse or child of such a person;; (iii) a parent or legal guardian of such a person who is a minor; (iv) for the purposes of subdivision A 4 only, a current or former foster parent or other person who has or has had physical custody of such a person who is a minor, for six months or more or for the majority of the minor's life; or (v) a spouse, parent, sibling, or legal guardian of such a person who is physically or mentally incapacitated or was the victim of a homicide; however, "victim" does not mean a parent, child, spouse, sibling, or legal guardian who commits a felony or other enumerated criminal offense against a victim as defined in clause (i) [Va. Code § 19.2-11.01 \(B\)](#).

Crime victims have the right to request that law enforcement agencies, the [Department of Corrections](#), the Commonwealth’s Attorney and the court not disclose, except among themselves, the residential address, any telephone number, email address, or place of employment of the victim or a member of the victim’s family [Va. Code § 19.2-11.2](#). There are exceptions to this right of non-disclosure when the disclosure is (i) of the crime site, (ii) required by law or the Rules of the Supreme Court of Virginia, (iii) necessary for law-enforcement purposes or preparation for court proceedings, or (iv) permitted by the court for good cause. Witnesses in criminal prosecutions under [Va. Code § 18.2-46.2](#): Prohibited



criminal street gang participation, [VA. Code § 18.2-46.3: Recruitment of persons for criminal street gang](#), [Va. Code § 18.2-248](#): Manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute a controlled substance or an imitation controlled substance prohibited, or of any violent felony as defined by subsection C of [Va. Code § 17.1-805](#) are also entitled to request confidentiality under these provisions.

District court form DC-301: [Request for Confidentiality by Crime Victim](#) may be filed by a crime victim with either the magistrate or the clerk. If filed with the magistrate, the magistrate records the time/date filed, attaches district court DC-301: [Request for Confidentiality by Crime Victim](#) to the unexecuted warrant or summons to be delivered to the clerk when executed. If the district court form DC-301: [Request for Confidentiality by Crime Victim](#) is filed with the court, the clerk attaches it to the case papers and updates the case management system to indicate filing of district court form DC-301: [Request for Confidentiality by Crime Victim](#).

The clerk should place any court paper containing protected information regarding the crime victim or a member of the victim's family in a 7" x 10" envelope. It is recommended that the document placed in the envelope should be folded only once and the envelope attached to the warrant or summons.

It is extremely important that the clerk and the chief magistrate implement the following routine procedures in all cases:

Magistrate should not list residential address, telephone number, or place of employment of any victim on the Warrant of Arrest, Summons, or Criminal Complaint.

When a warrant or summons is issued, the Magistrate should request that the complainant complete (1) a district court form DC-325: [Request for Witness Subpoena](#) for the victim and any family member witnesses and (2) a separate district court form DC-325: [Request for Witness Subpoena](#) for all other witnesses.

All district court forms DC-325: [Request for Witness Subpoena](#) should be attached to the unexecuted warrant or summons and delivered to the clerk after the warrant or summons has been served on the defendant.

Clerks should issue separate district court forms DC-326: [Subpoena for Witnesses](#) processes for victim/family members and non-victim/non-family member witnesses. The reverse of the DC-326: [Subpoena for Witnesses](#) contains information about services that may be available to victims of certain crimes.

The clerk maintains the warrant/summons with an attached envelope containing any court documents with protected information itemized above in the:

- Pending Court Date Desk Top File System,



- General District Disposed Court Date Gusset/Lateral File System.

Once district court form DC-301: [Request for Confidentiality by Crime Victim](#) has been filed, the clerk shall not disclose the documents containing protected information, which are located in the envelope, except upon order of the court. The filing of district court form DC-301: [Request for Confidentiality by Crime Victim](#) is an administrative action by the clerk and is not docketed.

The clerk should stamp the front of the envelope as shown:

CONFIDENTIAL

“Pursuant to Va. Code § 19.2-11.2, the information contained herein is not subject to disclosure and you are therefore forbidden to inspect the contents contained herein.”

Date/time/signature

### Peace Bonds

Though not often issued by courts, the recognizance to keep the peace can be a useful process in certain situations. A recognizance to keep the peace is sometimes issued to diffuse a situation before it escalates to criminal behavior.

Only a court may require someone to give a recognizance to keep the peace. If at the hearing the court finds that the allegations of the complainant are correct, the court may require the defendant and the surety, if any, to sign a DC-364: Recognizance And Bond To Keep The Peace form. If the defendant is unable to meet the terms of the recognizance and/or bond required to keep the peace, the court may commit the defendant to jail pursuant to [Va. Code § 19.2-21](#).

A peace bond is entered in case management system using a new criminal number.

Continue the peace bond until the expiration date of the bond.

The DC-480: Case Disposition may be utilized for the disposition order.

### Individual Request for Access to Sealed Confidential Document

Once information that is to be sealed as confidential pursuant to statute has been filed with the clerk, any person requesting access to documents containing protected information may file a

request for release of information with the clerk of the court who acted upon the request and sealed the documents. Only a court order will allow such information to be released or inspected.

- In most cases in the general district courts and juvenile and domestic relations district courts, a request for information is not indexed. If a hearing on the request is necessary, it will be docketed as a hearing in the underlying case. No civil fees should be assessed for the filing of the case. Disposition of the request may be appealed pursuant to [Va. Code § 16.1-132](#).
- The clerk of the court wherein the request for information is filed should issue district court form DC-512, Notice of Hearing to the victim who filed district court form DC-301: [Request for Confidentiality by Crime Victim](#).

## Case Pre-Trial Procedures

This portion of the Criminal Case Procedures section describes functions or activities that are completed after case initiation, but before the actual trial date. Pre-trial proceedings in which the defendant is required to appear may be conducted either with the defendant appearing personally in court, or by two-way electronic video and audio communication [Va. Code § 19.2-3.1](#).

### Case Indexing and Filing

Upon receipt of the executed summons or warrant, the clerk's office of the district court must perform a number of functions prior to the court date to prepare the case for court. To prepare the case for court the clerk's office will:

- Assign a case number by utilizing a numbering stamp or automated case number generated through the case management system. Enter the number and the hearing date on the summons or warrant.
- File the case papers in a desktop file by hearing date (all case-related papers should be filed with the summons or warrant).
- Request printing of the docket of pending cases prior to the respective court date.

### Docket Preparation

In general, to prepare for a pending court date, the clerk's office will:

- Retrieve all cases from the files for a given hearing date.
- Request printing of docket via the case management system. Place the cases in the order in which they appear on the docket.

- Include additional cases on the docket as they come to the clerk's office.

### Prepayment Processing

For certain misdemeanors punishable by a fine not to exceed \$500 and which are not punishable by incarceration, or equivalent local offenses, a court appearance can be waived provided the defendant reads, or is read, and signs district court form DC-324: [Notice - Appearance, Waiver and Plea](#) or a similar waiver on the defendant's copy of the Virginia Uniform Summons and prepays the appropriate fine and costs. The list of applicable local offenses is prepared by the chief circuit court judge and a list of applicable state offenses is found in Supreme Court Rule 3C:2. The prepayment procedures described in the "Traffic Case Procedures – Prepayment of Fines and Court Costs" also apply to prepayment of criminal offenses, except that a different fine schedule applies: See "Fees and Prepayments". Localities may have their own prepayment schedules. [Va. Code § 3.2-6543](#), [Va. Code § 15.2-730](#), [Va. Code § 15.2-2209](#), [Va. Code § 36-106](#).

### Advisement of Right to Counsel/Review of Bail Determination

Whenever a person who is charged with an offense which may result in confinement is not free on bail, the person shall be brought before the judge of a court not of record on the next court date after the defendant is charged and held in jail unless the circuit court issues process commanding the presence of the person. In which case the person shall be brought before the circuit court on the first day on which the courts sits. If the court not of records sits on a day prior to the scheduled sitting of the circuit court that issued process, the person shall be brought before the court not of record. See "Crossover Arraignments" for details. At this hearing, the defendant is informed of the amount of their bail and their right to counsel [Va. Code § 19.2-158](#). Although a defendant may be represented by counsel whom they have chosen and paid whenever the defendant appears before a court, a defendant who is charged with an offense that may result in confinement has a legal right to representation. The defendant should be advised of this right the first time they appear in court if the defendant is not accompanied by counsel. Courts have implemented a number of different mechanisms for handling the advisement and appointment of counsel to avoid last minute postponement of trials due to the need to appoint an attorney. See Court-Appointed Counsel Guidelines & Procedures Manual.

Following advisement of the right to counsel, the defendant may:

- Hire their own attorney
- Waive their right to legal representation

have an attorney appointed by the judge to represent the defendant at public expense if:

- The defendant meets the statutory eligibility requirements, and

- The defendant files a written request together with a financial statement, and
- The judge has not decided to try the eligible defendant charged with a misdemeanor without an attorney by stating in writing prior to trial that, if convicted, no jail sentence will be imposed.

If the defendant expresses the desire to hire their own attorney, tell the defendant to have their attorney notify the clerk's office that the attorney will be representing the defendant. The defendant also should be told that if an attorney is not retained by a particular date (which should be before the trial date), the defendant should return to the court to tell the judge what efforts have been made to retain a lawyer so that the judge can decide what should be done regarding the defendant's right to counsel.

If the defendant wishes to waive the right to legal representation, the defendant and the judge execute the waiver section of district court form DC-335: Waiver Of Right To Representation By A Lawyer after conducting a hearing and making the findings required by the waiver form [Va. Code § 19.2-160](#).

A defendant who has neither retained counsel, requested the appointment of counsel nor waived counsel may nonetheless be tried for a misdemeanor punishable by incarceration if the court, upon the motion of the Commonwealth's Attorney or its own motion, states in writing prior to the commencement of the trial that a sentence of incarceration will not be imposed upon conviction [Va. Code § 19.2-160](#). The motion and order sections on district court form DC-328: Motion and Order to Try Defendant For a Misdemeanor Without Appointment of Counsel should be used to record this. In this context, the bar on the imposition of a jail sentence on this uncounseled defendant means that the court cannot impose either an active jail sentence or a suspended jail sentence. See *Alabama v. Shelton*, 122 S.Ct. 1764, 152 L.Ed. 2d 888, 2002 U.S. LEXIS 3564 (May 20, 2002).

In any case in which an indigent defendant is charged with a Class 1 felony or any felony punishable by a mandatory minimum term of confinement for life in a jurisdiction where a public defender office is established, the court shall, upon request for the appointment of counsel and when no conflict exists, appoint a public defender to represent the defendant. Upon motion of the attorney from a public defender office, the judge of the circuit court shall appoint an attorney from the list maintained by the Indigent Defense Commission to serve as co-counsel.

If the public defender notifies the court of a conflict and withdraws from representation, and the court has appointed one additional counsel to assist the public defender's office, then upon the withdrawal of the public defender's office the court shall appoint one additional attorney from the list maintained by the Indigent Defense Commission to serve as co-counsel for the defendant. In any case in which an indigent defendant is charged with a Class 1 felony or any felony punishable by a mandatory minimum term of confinement for life in a jurisdiction where there is no public defender, upon the request for the appointment of

counsel, the court shall appoint two attorneys from the list maintained by the Indigent Defense Commission to serve as co-counsels for the defendant [Va. Code § 19.2-160.1](#).

If the defendant asks for a court-appointed attorney determine if the defendant *may* be eligible for representation by a court-appointed attorney. To be potentially eligible for a court-appointed attorney, the defendant:

- Must be charged either with a felony or with a misdemeanor for which a jail sentence may be imposed, and
- must not have hired their own attorney, and
- has not waived their right to legal representation by an attorney, and
- is claiming to be indigent. An indigent person is one who, at the time of requesting a court-appointed attorney, is unable to provide for full payment of an attorney's fee without undue financial hardship.

**Note:** Some defendants may experience a measure of difficulty in completing the latter form. The chief judge should determine who will provide assistance to such defendants and how and when such assistance will be delivered. See Court Appointed Counsel Guidelines & Procedures Manual for details.

If potentially eligible, ask the defendant to prepare and sign:

- DC-334: Request for Appointment of a Lawyer and
- DC-333: Financial Statement – [Eligibility Determination for Indigent Defense Services](#)

Determine if the defendant meets statutory eligibility requirements through judicial review of:

- Documents provided by the defendant, and/or
- Information from other sources, including optional oral examination of the defendant. in-person examination is no longer mandatory [Va. Code § 19.2-159](#). See Court Appointed Counsel Guidelines & Procedures Manual for details.
- Decide whether to appoint counsel.

If “yes”, notify the defendant that counsel will be appointed and notify the attorney appointed. The defendant should also be advised that the costs of such court-appointed counsel may have to be paid by the defendant if convicted. After July 1, 2005, an attorney appointed to represent a defendant must be from the appropriate list of qualified attorneys maintained by the [Virginia Indigent Defense Commission](#). If no attorney who is on the list maintained by the Indigent Defense Commission is reasonably available, the court may

appoint as counsel an attorney not on the list who has otherwise demonstrated to the court's satisfaction an appropriate level of training and experience. The court shall provide notice to the Commission of such appointment by sending a copy of district court form DC-334: Request for Appointment of a Lawyer. There is no statutory requirement as to the frequency of mailing such notices, therefore: It is recommended to send in copies at least once a month. Copies may be mailed to:

Virginia Indigent Defense Commission  
Administration Office  
1604 Santa Rosa Road, Suite -200  
Richmond, VA 23229  
Attn: ATTORNEY CERTIFICATION SECTION

The defendant should be instructed to promptly contact their court-appointed attorney. A copy of district court form DC-334: Request for Appointment of a Lawyer with the order of appointment portion completed should be transmitted to the court-appointed counsel together with the forms that counsel will need to prepare (time sheet, etc.). Public defenders may be appointed only for cases in the courts of the jurisdictions set out in [Va. Code § 19.2-163.04](#).

If “no”, advise the defendant of the decision and allow the defendant to hire their own attorney or waive their right of legal representation.

If the defendant refuses to indicate whether they will hire an attorney, waives the right to representation, or ask the judge to appoint an attorney and, after being offered an opportunity to rescind the refusal, continues to do so, the judge then executes the “Certificate of Refusal” section of district court form DC-328: Motion and Order to Try Defendant for a Misdemeanor Without Appointment of Counsel.

On occasion, an attorney will be appointed to represent a defendant who claims to be indigent, and after the attorney is appointed, a change of circumstances will cause the defendant to be indigent no longer. The defendant should then notify the court of the change, whereupon the defendant will be granted a reasonable continuance to employ an attorney with private funds. Once an attorney has been retained, the court-appointed attorney is relieved of further responsibility and is compensated for their services, on a pro rata basis, according to the statutory allowance of costs of court-appointed attorneys.

### **Arraignment**

The arraignment hearing in district court is used to notify the defendant of the charges against them and to determine how the defendant will plead. The hearing must be held in open court. The Virginia Code does not require that this hearing be held at a particular time. Therefore, the time at which this hearing is held varies by court. The arraignment may be waived by:

- The defendant
- The defendant's counsel in misdemeanor cases
- Failure of the defendant to appear at the arraignment in misdemeanor cases.

## Crossover Arraignments

### *Overview*

[Va. Code § 19.2-158](#): When person not free on bail shall be informed of right to counsel and amount of bail.

Every person charged with an offense described in [Va. Code § 19.2-157](#), who is not free on bail or otherwise, shall be brought before the judge of a court not of record, unless the circuit court issues process commanding the presence of the person, in which case the person shall be brought before the circuit court, on the first day on which such court sits after the person is charged, at which time the judge shall inform the accused of the amount of their bail and the accused's right to counsel. The court shall also hear and consider motions by the person or Commonwealth relating to bail or conditions of release pursuant to Article 1, [Va. Code § 19.2-119](#) et seq., of Chapter 9 of this title. If the court not of record sits on a day prior to the scheduled sitting of the court which issued process, the person shall be brought before the court not of record.

No hearing on the charges against the accused shall be had until the foregoing conditions have been complied with, and the accused shall be allowed a reasonable opportunity to employ counsel of their own choice, or, if appropriate, the statement of indigence provided for in [Va. Code § 19.2-159](#) may be executed."

**Note:** Judicial designation is not required for crossover arraignments. A crossover arraignments should not be entered into the General District Case Management System.

## Preliminary Hearings

Preliminary hearings, unless waived, are held in all cases where the defendant is charged with a felony. In preliminary hearings for offenses charged under [Va. Code § 18.2-361](#), [Va. Code § 18.2-366](#), [Va. Code § 18.2-370](#) or [Va. Code § 18.2-370.1](#) (crimes involving sexual misbehavior with children), the court may, on its own motion or at the request of the Commonwealth, the complaining witness, the defendant, or their counsel, exclude from the courtroom all persons except officers of the court and persons whose presence, in the judgment of the court, would be supportive of the complaining witness or the defendant and would not impair the conduct of a fair hearing [Va. Code § 18.2-67.8](#).

Before conducting the hearing, the court must determine whether the defendant will be represented by an attorney. See Criminal Case Procedures - Right of Representation by an Attorney in this section. If charged with aggravated murder, see also the Court Appointed Counsel Guidelines & Procedures Manual and [Va. Code § 19.2-163.7](#) and [Va. Code § 19.2-163.8](#).

The preliminary hearing may be waived by the defendant in writing using the back of district court form DC-312: Warrant of Arrest - Felony. Preliminary hearings may also be continued to another date. At the preliminary hearing, the court will:

Determine if there is probable cause to believe the defendant committed the felony charged; if probable cause is found or if the defendant has waived the preliminary hearing, the case is then certified to the grand jury using the back of district court form DC-312: Warrant of Arrest - Felony. Any expenses incident to the prosecution shall be assessed on the back of the warrant to the defendant, including court-appointed attorney's fees, cost of the court reporter, and/or the costs of psychological evaluation.

Reduce the charge to a misdemeanor, if probable cause is not found on the felony charge but the evidence will support a probable cause finding on a misdemeanor.

Dismiss the case if probable cause is not found as to any charge.

### **Certification of Ancillary Misdemeanors**

If at a preliminary hearing, a district court certifies felony offenses to be tried in a circuit court, the court shall also certify any ancillary misdemeanor offense for trial in circuit court if the accused and the attorney for the Commonwealth consent to such certification. Any misdemeanor offense certified pursuant to this section shall proceed in the same manner as a misdemeanor appealed to circuit court pursuant to [Va. Code § 16.1-136](#). [Va. Code § 19.2-190.1](#).

Representation by a court appointed attorney of a defendant with regard to an ancillary misdemeanor certified to circuit court along with a felony is eligible for compensation of up to \$120 for each misdemeanor. Since the case has not reached conclusion, that portion of the representation for the ancillary misdemeanor is not eligible for further compensation under the waiver provisions of [Va. Code § 19.2-163](#). Further, no other costs should be assessed because the case has not reached conclusion.

### **Subpoenas, Witness Summoning**

The Sixth Amendment to the United States Constitution provides for the right to subpoena witnesses on one's behalf. The procedures used by the clerk's office for issuing and processing subpoenas for witnesses and other parties to a case are described below. When following the procedures described below, it is important to keep in mind the procedures



necessary when a crime victim has requested nondisclosure of certain protected information [Va. Code § 19.2-11.2](#). See Criminal Case Procedures - Request for Victim Confidentiality in this section.

In any proceeding before a general district court, the court may appoint a guardian *ad litem* to represent the interest of a minor who is called to testify. It shall be the duty of the court to ensure that the interests of a minor witness are represented and protected.

When the guardian ad litem has rendered substantial service, the court may allow reasonable compensation to be paid from the funds appropriated to pay for the compensation of court-appointed counsel [Va. Code § 8.01-396.2](#). If the defendant is found guilty or if the case is certified to circuit court, the cost of the guardian ad litem is assessed back to the defendant as part of court costs.

When the court determines it is appropriate to appoint a guardian *ad litem* for a minor, the DC-401, Order for Appointment of Guardian Ad Litem may be utilized. When reviewing district court form DC-325: [Request for Witness Subpoena](#) the clerk's office will:

- Verify that a form has been correctly completed for each action.
- Review district court form DC-325: [Request for Witness Subpoena](#) to assure that the proper court and court division is noted (i.e., the same as the court appearance location) and that the court date is correct.
- Obtain telephone numbers, where possible, to aid the clerk or parties in contacting witnesses in the event of a pre-trial resolution of the case or a continuance.
- Note date of filing of request and issuance of subpoenas. Rule 7A:12(a) provides that requests for subpoenas should be filed at least ten days prior to trial; requests not timely filed may not be honored except when authorized by the court for good cause. These rules impose time restrictions on filing requests for subpoenas and subpoena duces tecum. Clerks may not impose their own time restrictions on requests for witness subpoenas [Va. Code § 8.01-407](#). Magistrates receiving district court form DC-325: [Request for Witness Subpoena](#) may issue subpoenas or forward the district court form DC-325: [Request for Witness Subpoena](#) to the clerk's office for issuance.

Subpoenas can only be issued by a clerk or magistrate (or by a Commonwealth's Attorney, City or County Attorney, or defense attorney, in certain cases, by the arresting law enforcement officer in criminal cases), but district court form DC-326: [Subpoena for Witnesses](#) may be prepared for issuance by the party requesting issuance.

For issuance of a subpoena, the clerk's office will:

- Require that subpoenas be prepared as per instructions for completing district court form DC-326: [Subpoena for Witnesses](#) including requirement that a separate set of

forms for each witness be prepared unless the same officer will serve multiple witnesses living at the same address. See *District Court Forms Manual*.

- Distribute copies of the subpoenas to the sheriff for service with sufficient time being allowed for return of service of process.
- Attach copies of district court form DC-325: [Request for Witness Subpoena](#) (if used), and the return copy of district court form DC-326: [Subpoena for Witnesses](#) to the originating case papers.

### **Subpoena duces tecum**

A subpoena duces tecum orders a person who is not a party to the litigation to produce at the trial any evidence in the person's possession that is pertinent to the issues of a pending controversy. For issuance of district court form DC-336: [Subpoena duces tecum](#) the clerk's office will:

Require the person requesting the subpoena to complete, under oath, the request portion of district court form DC-336: [Subpoena Duces tecum](#) specifying the items to be produced pursuant to Supreme Court Rule 3A:12. See [Va. Code § 16.1-131](#).

Note date of filing the request and the issuance of the subpoena duces tecum. Supreme Court Rule 7A:12 (b) provides that requests for subpoena duces tecum should be filed at least fifteen days prior to trial.

Complete the remainder of the subpoena duces tecum following the instructions for completing the form in the District Court Forms Manual.

When a subpoena has been served on a non-party requiring the production of information stored in an electronic format, the subject of the subpoena shall produce a tangible copy of the information. If a tangible copy cannot be produced, then that person shall permit the parties to review the information on a computer or by electronic means during normal business hours, provided that the information can be accessed and isolated. If a tangible copy cannot reasonably be produced and the information is commingled with information other than that requested in the subpoena and cannot reasonably be isolated, that person may file a motion for a protective order or a motion to quash.

### **Subpoena Duces Tecum for Medical Records**

If the subpoena duces tecum is for medical records, please see Miscellaneous Civil Case Procedures - Discovery of Medical Records.

### Subpoena Duces Tecum for Financial Records

A subpoena duces tecum for the records of a financial institution or credit card issuer that is requested prior to the filing of criminal charges may be granted only by order of court [Va. Code § 19.2-10.1](#). The court may grant such a subpoena only if it finds probable cause to believe that a crime has been committed and that the records sought are relevant to that offense. Circuit Court form CC-1336: Subpoena Duces tecum—Financial Records has been produced for use in these proceedings.

### Subpoena Duces Tecum - Attorney Issued

In any criminal case a subpoena duces tecum may be issued by the attorney of record who is an active member of the Virginia State Bar at the time of issuance, as an officer of the court. The subpoena duces tecum shall be on DC-3000: Subpoena duces tecum- Attorney Issued, signed by the attorney of record, and shall include the attorney's address. A copy of the signed subpoena duces tecum, together with the attorney's certificate of service pursuant to Rule 1:12, shall be mailed or delivered to the adverse party and to the clerk's office of the court in which the case is pending on the day of issuance by the attorney. The law governing subpoenas duces tecum issued pursuant to Rule 3A:12(b) shall apply. A sheriff shall not be required to serve an attorney-issued subpoena duces tecum that is not issued at least five business days prior to the date production of evidence is desired. When an attorney transmits one or more subpoenas *duces tecum* to a sheriff to be served in the sheriff's jurisdiction, the provisions in [Va. Code § 8.01-407](#) regarding such transmittals shall apply.

If the recipient of a subpoena duces tecum has less than fourteen days following service to comply with the subpoena duces tecum, the recipient may serve a written objection on the party issuing the subpoena. Upon proper objection, the issuing party is not entitled to compliance, unless the issuing party moves the court to compel compliance, the issuing party gives notice of this motion to the person to whom the subpoena is directed, and the court grants the motion. If the motion to compel is timely, the court may quash, modify, or sustain the subpoena duces tecum.

Subpoenas duces tecum for medical records issued by an attorney shall be subject to the provisions of [Va. Code § 8.01-413](#) and [Va. Code § 32.1-127.1:03](#), except that no separate fee for issuance shall be imposed.

### Extradition Hearing

If a person is arrested on a warrant issued by a magistrate or judge in which the defendant is charged with being a fugitive from justice in another state, the person may be held for up to thirty days pending the arrival of a Governor's Warrant of Extradition requested through the judge by the Commonwealth's Attorney, warden, or sheriff. At arraignment, the defendant may be released on bail or kept in jail through the use of the same bail criteria that is applied in other criminal cases. In the event that the Governor's Warrant of Extradition does not

arrive within the time limit set in the warrant or bond (up to thirty days), the judge may discharge the defendant or either release the defendant on bail or recommit the defendant for up to sixty additional days pending the arrival of the Governor's Warrant of Extradition. Any electronically transmitted facsimile of a Governor's Warrant shall be treated as an original document provided the original is received within four days of receipt of the facsimile.

In all extradition cases, the defendant is brought before a judge for an arraignment hearing, even if the defendant wishes to waive the extradition proceedings. If the defendant wishes to waive the extradition proceedings as provided in [Va. Code § 19.2-114](#), the defendant must be advised by the district court judge prior to execution of the waiver that they have the right to the issuance and service of a Governor's Warrant of Extradition and a right to challenge extradition through a writ of habeas corpus. If the defendant still wishes to waive the extradition proceedings, then the waiver and consent to extradition on district court form DC-375: Waiver of Extradition Proceedings are executed before the judge, after which a copy of the waiver and consent to extradition is sent to the Governor, and the defendant is held for delivery to an authorized agent of the demanding state.

If the defendant does not waive extradition proceedings, the court advises the defendant of their right to counsel, their right to the issuance and service of a Governor's Warrant of Extradition, and the defendant's right to seek a Writ of Habeas Corpus to test the legality of the arrest (which is tried in circuit court). If the above rights are not exercised, the court shall re-bail or recommit the defendant pending arrival and service of the Governor's Warrant of Extradition.

Upon service of the Governor's Warrant of Extradition on the defendant, another hearing is held. If no Writ of Habeas Corpus is filed and the judge finds that the defendant is the person identified in the Governor's Warrant of Extradition, the judge orders that the defendant be held for delivery to the authorized officer from the demanding state.

The Virginia Extradition Manual is available from the Secretary of the Commonwealth and can be found at the following link:

[Virginia Extradition Manual](#)

### **Request for a Reduction or Change of Bail**

A defendant held in jail, or the defendant's attorney, may make a motion for reduction of the amount of bail set by the magistrate. The Commonwealth may request a change or revocation of bail and the Commonwealth (not the court) is required to notify the defendant and any surety on the bond of such a request (but failure to notify the surety will not prohibit the court from proceeding with the bond hearing). See [Va. Code § 19.2-132](#).

Any motion filed where the initial bail decision is made by a judge or by a magistrate on any charge originally pending in that district court shall be filed in that district court unless:

- A bail decision is on appeal
- The charge has been transferred to circuit court
- The charge has been certified by a district court [Va. Code § 19.2-132 \(B\)](#).

The judge considers the motion and may order that bail be reduced, increased (subject to limitations in [Va. Code § 19.2-132](#)) remain unchanged, or be revoked. After the judge's decision, if the defendant can immediately meet the terms of bail, the clerk's office (not the magistrate) should take the following action:

- If bail is reduced or changed and the defendant can meet its conditions, prepare district court form DC-330: Recognizance for completion by the defendant and the defendant's sureties. In addition, if the defendant was being held in jail, complete district court form DC-353: Release Order for the defendant to be taken back to jail to affect their release.
- If bail is changed and the defendant cannot meet its new conditions, return the defendant to jail using district court form DC-355: Continuance Order or, if the defendant was not in jail, commit the defendant to jail using district court form DC-352: Commitment Order. After district court form DC-352: Commitment Order is issued by the clerk and when the defendant is able to meet the bail terms, the magistrate should process the defendant's release. Subject to approval by the sheriff, the judge (but not the magistrate) may assign the defendant to home/electronic incarceration pending trial.
- If your court issues a warrant for defendants who fail to appear in your court, the issuance of a warrant with code section [Va. Code § 19.2-128](#) is appropriate. Issuance of a show cause or capias with code section [Va. Code § 19.2-128](#) however is not appropriate.
- When a court issues a show cause, capias or warrant the Judge should provide the Clerk with the appropriate code for issuance. The court will determine whether to forfeit the bond.
- Prior to trial, the bail decision may be appealed to circuit court. An appeal of a bail decision may be filed in the circuit court immediately. It is not necessary to hold for ten days. See Post-trial Procedures – Appeal.

**Request Appointment of a Qualified Expert for Indigent Defendant [Va. Code § 19.2-266.4](#)**

In any case in which a defendant is (i) charged with a felony offense or a Class 1 misdemeanor and (ii) determined to be indigent by the court pursuant to [Va. Code § 19.2-159](#), the defendant or defendant's attorney may, upon notice to the Commonwealth, move the circuit court to designate another judge in the same circuit to hear an ex parte request for appointment of a qualified expert to assist in the preparation of the defendant's defense. No ex parte proceeding, communication, or request may be considered unless the defendant or their attorney states under oath or in a sworn declaration that a need for confidentiality exists. A risk that trial strategy may be disclosed unless the hearing is ex parte shall be sufficient grounds to establish a need for confidentiality.

Upon receiving the defendant's or the defendant's attorney's declaration of need for confidentiality, the designated ex parte judge shall conduct an ex parte hearing on the request for authorization to obtain expert assistance. This hearing shall occur as soon as practicable. After a hearing upon the motion and upon a showing that the provision of the requested expert services would materially assist the defendant in preparing their defense and the denial of such services would result in a fundamentally unfair trial, the court shall order the appointment of a qualified expert. Any expert appointed pursuant to this subsection shall be compensated in accordance with [Va. Code § 19.2-332](#). The designated judge shall direct requests for scientific investigations to the Department of Forensic Science or Division of Consolidated Laboratory Services whenever practicable.

All ex parte hearings conducted under this section shall be initiated by written motion and shall be on the record. Except for the initial declaration of need for confidentiality, the record of the hearings, together with all papers filed and orders entered in connection with ex parte requests for expert assistance, all payment requests submitted by experts appointed, and the identity of all experts appointed, shall be kept under seal as part of the record of the case and shall not be disclosed. Following a decision on the motion, whether it is granted or denied, the motion, order or orders, and all other papers or information related to the proceedings or expert assistance sought shall remain under seal. On motion of any party, and for good cause shown, the court may unseal the foregoing records after the trial is concluded.

All ex parte proceedings, communications, or requests shall be transcribed and made part of the record available for appellate review or any other post-conviction review.

With the exception of the initial declaration of the need for confidentiality the following shall kept under seal, shall not be disclosed, and be placed in a DC-329: Sealed Envelope:

- The record of the hearings

- All papers filed and orders entered in connection with ex parte requests for expert assistance
- All payment requests submitted by experts appointed
- The Identity of all experts appointed

The motion, the decision on the motion, and orders shall remain under seal.

On motion of any party, and for good cause shown, the court may unseal the records after the trial is concluded.

If the defendant is found guilty or certified to the circuit court, the cost of the expert is assessed back to the defendant as part of the court costs under account code 113.

Important: The clerk shall provide a copy of the appointment order to the defendant or the defendant's attorney and other appointed expert.

#### **Request Allowance of a Certified Facility Dog to Accompany a Witness [Va. Code § 18.2-67.9:1](#)**

In any criminal proceeding, including preliminary hearings, the attorney for the Commonwealth or the defendant may apply for an order from the court allowing a certified facility dog to be present with a witness testifying before the court through in-person testimony or testimony televised by two-way closed-circuit television pursuant to [Va. Code § 18.2-67.9](#).

The party seeking such order shall apply for the order at least 14 days before the preliminary hearing, trial date, or other hearing to which the order is to apply.

The request or order should be presented to the court by the party.

Upon the receipt of the request the judge will sign the prepared order granting or denying this request. There is no DC form specific to this request.

#### **Request For Sexually Transmitted Infection Testing Pursuant to [Va. Code § 18.2-62.1](#)**

As soon as practicable following arrest, the attorney for the Commonwealth may request after consultation with a complaining witness, or upon the request of the complaining witness, shall request from any person charged with (i) any crime involving sexual assault (ii) any offense against children as prohibited by [Va. Code § 18.2-361](#), [Va. Code § 18.2-366](#), [Va. Code § 18.2-370](#), and [Va. Code § 18.2-370.1](#); or (iii) any assault and battery, and where the complaining witness was exposed to body fluids of the person so charged in a manner that may, according to the then-current guidelines of the Centers for Disease Control and



Prevention, transmit a sexually transmitted infection, be requested to submit to diagnostic testing for sexually transmitted infections and any follow-up testing as may be medically appropriate. The person so charged shall be counseled about the meaning of the tests and about the transmission, treatment, and prevention of sexually transmitted infections.

If the charged person refuses to submit to testing or the competency of the person to consent to testing is at issue, the court with jurisdiction of the case shall hold a hearing as soon as practicable, to determine whether there is probable cause that the individual has committed the crime with which he is charged and that the complaining witness was exposed to body fluids of the person so charged. If the court finds probable cause, the court shall order the person so charged to undergo testing for sexually transmitted infections. The court may enter an order in the absence of the person so charged if they are represented by counsel or a guardian ad litem. The court's findings shall be without prejudice to either the Commonwealth or the person charged and shall not be evidence in any proceeding, civil or criminal. At any hearing before the court, the person so charged, or their counsel may appear.

The following is the recommended procedure for a request for testing.

Step:	Description:
1.	The Commonwealth's Attorney files the DC-3010, Request For Sexually Transmitted Infection Testing.
2.	Add a hearing line to the criminal case associated with the request giving the hearing precedence on the docket.
3.	Notify parties of the hearing date and time. The DC-512: Notice of Hearing may be utilized. Attach a copy of the DC-3010: Request For Sexually Transmitted Infection Testing. The court may enter the order in the absence of the defendant if they are represented by counsel or a guardian <i>ad litem</i> .
4.	If the request is granted, utilize the <a href="#">CC-1390, Order for DNA or Sexually Transmitted Infection Testing and/or for Preparation of Reports to Central Criminal Records Exchange</a> for the entry of the order for testing.
5.	Provide a copy to the Commonwealth's Attorney, Attorney for the defendant, and defendant and to the jail, if the defendant is incarcerated. The defendant must submit to diagnostic testing for STI within 48 hours.
6.	The request and order are confidential and shall be sealed. Utilize the DC-392: Sealed Documents Envelope.  <b>Reminder:</b> Also seal documents as confidential in the General District Imaging System (GDIS).
7.	Continue the case to the next hearing date.



Step:	Description:
8.	Costs of the tests shall be paid by the Commonwealth and taxed as part of the costs of the criminal proceedings. Assess under Account Code 133- Blood Test.
9.	<p>The defendant subject to the testing order may appeal the order of the general district court to the circuit court of the same jurisdiction within 10 days of receiving notice of the order.</p> <p><b>Note:</b> For details and step-by-step instructions for handling appeals, refer to the appendix on <b>Appeals</b>.</p>

### Forms

DC-3010	Request for Sexually Transmitted Infection Testing
CC-1390	<a href="#">Order For DNA Or Sexually Transmitted Infection Testing And/Or For Preparation Of Reports To Central Criminal Records Exchange</a>

### References

<a href="#">Va. Code § 18.2-62.1</a>	Testing of certain persons for sexually transmitted infections.
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## Mental Condition of Defendant

The Code of Virginia provides for mental evaluation and/or treatment of the defendant, including:

### Evaluation of Competency to Stand Trial [Va. Code § 19.2-169.1](#)

If at any time after the attorney for the defendant has been retained or appointed, and before the end of trial, the court finds upon hearing evidence or representations of counsel for the defendant, or the attorney for the Commonwealth, that there is probable cause to believe that the defendant lacks substantial capacity to understand the proceedings against them or to assist their attorney in their own defense; the court shall order that a competency evaluation be performed by at least one psychiatrist or clinical psychologist who (i) has performed forensic evaluation evaluations; (ii) has successfully completed forensic evaluation training recognized by the Commissioner of Behavioral Health and Developmental Services; (iii) has demonstrated to the Commissioner competence to perform forensic evaluations; and (iv) is included on a list of approved evaluators maintained by the Commissioner:

- The evaluation shall be performed on an outpatient basis at a mental health facility or in jail unless an outpatient evaluation has been conducted and the outpatient

evaluator determines that a hospital-based evaluation is needed to reliably reach an opinion or unless the defendant is in the custody of the DBHDS.

- An evaluator should be selected from the Directory of Mental Health Professionals with Training in Forensic Evaluation that is distributed by the [Department of Behavioral Health and Developmental Services](#) (DBHDS). DBHDS sets qualifications for persons who conduct evaluations of criminal defendants where there is an issue of sanity or competency to stand trial.
- If inpatient evaluation is to be used, the evaluating facility is selected by the Commissioner of the [Department of Behavioral Health and Developmental Services](#) to ascertain to which hospital the defendant should be transported. The length of stay is determined by the director of the hospital based on the director's determination of the time necessary to perform an adequate evaluation, but not to exceed thirty days. See Coordination with DBHDS at end of this section.
- The judge shall require the Commonwealth's Attorney to provide the evaluator with (1) a copy of the warrant, (2) the names and addresses of the attorney for the Commonwealth, the attorney for the defendant and the judge ordering the evaluation, (3) information about the alleged crime, and (4) a summary of the reasons for the evaluation request. The defendant's attorney must provide the evaluator with any available psychiatric records or other information that is deemed relevant. The Commonwealth's Attorney and the defendant's attorney have ninety-six hours in which to submit information to a competency evaluator following the court order for evaluation.
- Upon the judge's entry of the DC-342: [Order for Psychological Evaluation](#), the clerk shall distribute the district court form DC-342: [Order for Psychological Evaluation](#), and if needed, prepare the district court form DC-354: [Custodial Transportation Order](#), after which the sheriff will be notified of the need for transporting the defendant.
- The clerk shall complete district court form DC-343: [Tracking Document for Sending or Receiving Evaluation or Treatment Order Upon Entry](#), attach a copy of district court form DC-342: [Order for Psychological Evaluation](#), and fax the order and tracking document to the evaluator or to the director of the community services board, or hospital, by close of business on the next business day after the order was entered. The evaluator or director shall acknowledge receipt of the order no later than close of business on the next business day after the order is received using district court form DC-343: [Tracking Document for Sending or Receiving Evaluation or Treatment Order Upon Entry](#).
- The clerk shall also provide a copy of the order to the Department of Behavioral Health and Developmental Services.
- Continue to the next court date using **Continuance Code MEP** (Mental Evaluation Pending.)

If the defendant is found guilty or if the case is certified to circuit court, the cost of the evaluation is assessed back to the defendant as part of court costs. The fee should also be assessed in the same manner when the case is deferred. The cost of the evaluation is assessed to revenue code 113.

Upon completion of the evaluation, the evaluators shall promptly submit a report in writing to the court and the attorneys of record concerning (i) the defendant's capacity to understand the proceedings against them; (ii) the defendant's ability to assist their attorney; (iii) the defendant's need for treatment in the event they are found incompetent but restorable, or incompetent for the foreseeable future; and (iv) if the defendant has been charged with a misdemeanor violation of Article 3 Va. Code § 18.2-95 et seq. of Chapter 5 of Title 18.2, Larceny and Receiving Stolen Goods, or a misdemeanor violation of [Va. Code § 18.2-119](#), Trespassing, [Va. Code § 18.2-137](#), Destruction of Property, [Va. Code § 18.2-388](#), Public Intoxication, [Va. Code § 18.2-415](#), Disorderly Conduct, or [Va. Code § 19.2-128](#), Failure to Appear, whether the defendant should be evaluated to determine whether they meet the criteria for temporary detention pursuant to [Va. Code § 37.2-809](#) in the event they are found incompetent but restorable or incompetent for the foreseeable future [Va Code § 19.2-169.1\(D\)](#).

If a need for restoration treatment is identified, the report shall state whether inpatient or outpatient treatment (community-based or jail-based) is recommended. Outpatient treatment may occur in a local correctional facility or at a location determined by the appropriate community services board or behavioral health authority.

In cases where a defendant is likely to remain incompetent for the foreseeable future due to an ongoing and irreversible medical condition, and where prior medical or educational records are available to support the diagnosis, or if the defendant was previously determined to be unrestorable incompetent in the past two years, the report may recommend that the court find the defendant unrestorably incompetent to stand trial and the court may proceed with the disposition of the case in accordance with [Va. Code § 19.2-169.3](#). [Va. Code 19.2-169.1 \(D\)](#)

- Upon the finding of the defendant likely to remain incompetent for the foreseeable future, the clerk of court shall certify and forward forthwith to [Virginia State Police](#) form SP237: [Notification of Involuntary Admission, Mental Incapacity, Mental Incompetence, and TDO with voluntary Admission](#) and a copy of the evaluation or order Va. Code § 19.2-169.2(E).

After receiving the evaluation report, the judge must determine whether the defendant is competent to stand trial. A hearing is not required unless the Commonwealth or the attorney for the defendant requests it or the court has reasonable cause to believe that the defendant will be hospitalized for treatment to restore their competency under [Va. Code § 19.2-169.2](#). If a hearing is held, the defendant has a right to notice of the hearing, the right

to counsel and the right to personally participate and introduce evidence. The party alleging that the defendant is incompetent bears the burden of proving by a preponderance of the evidence the defendant's incompetency [Va. Code § 19.2-169.1](#)(E):

- If the judge finds that the defendant is incompetent to stand trial and that treatment is required to restore the defendant to competency, then the judge shall enter district court form DC-345: [Order for Treatment of Incompetent Defendant](#).
- The clerk shall also complete district court form DC-343: [Tracking Document for Sending or Receiving Evaluation or Treatment Order Upon Entry](#), attach a copy of district court form DC-345: [Order for Treatment of Incompetent Defendant](#) and fax both orders to the evaluator or to the director of the community services board by close of business on the next business day after the order was entered. The evaluator or director shall acknowledge receipt of the order no later than close of business on the next business day after the order is received using district court form DC-343: [Tracking Document for Sending or Receiving Evaluation or Treatment Order Upon Entry](#).
- The clerk shall also provide a copy of the order to the Department of Behavioral Health and Developmental Services.
- Upon entry of the order to restore the defendant to competency, the clerk of court shall certify and forward forthwith to [Virginia State Police](#) form SP237: [Notification of Involuntary Admission, Mental Incapacity, Mental Incompetence, and TDO with voluntary Admission](#) and a copy of the DC-345: [Order for Treatment of Incompetent Defendant](#), [Va. Code § 19.2-169.2](#)(E).

If the court finds the defendant competent to stand trial, the case shall be set for trial or a preliminary hearing. If the court finds the defendant either incompetent but restorable or incompetent for the foreseeable future, the court shall proceed pursuant to [Va. Code § 19.2-169.2](#). [Va. Code § 19.2-169.1](#) (F).

Outpatient treatment may occur in a local correctional facility or at a location determined by the appropriate community services board or behavioral authority. If inpatient treatment is ordered and the defendant has not already been hospitalized, contact the [Department of Behavioral Health and Developmental Services](#) to ascertain to which hospital the defendant is to be transported, and accepted by the hospital as soon as practicable, but no later than 10 days, from the receipt of the court order requiring treatment to restore the defendant's competency, if the 10-day period expires on a Saturday, Sunday, or other legal holiday, the 10 days shall be extended to the next day that is not a Saturday or Sunday, or legal holiday, a district court form [DC-354: Custodial Transportation Order](#) is prepared, and the sheriff is notified of the need for transporting the defendant. See Coordination with DBHDS at end of this section.

In cases where a defendant has been charged with a misdemeanor violation of Article 3 [Va. Code § 18.2-95](#) et seq. of Chapter 5 of Title 18.2: Larceny and Receiving Stolen Goods, or a misdemeanor violation of [Va. Code § 18.2-119](#): Trespassing, [Va. Code § 18.2-137](#): Destruction of Property, [Va. Code § 18.2-388](#): Public Intoxication, [Va. Code § 18.2-415](#): Disorderly Conduct, or [Va. Code § 19.2-128](#): Failure to Appear, and the defendant has been found to be incompetent pursuant to subsection E or F of [Va. Code § 19.2-169.1](#); and the competency report recommends that the defendant be evaluated to determine whether they meet the criteria for temporary detention pursuant to [Va. Code § 37.2-809](#), the court may order the community services board or behavioral health authority conduct an evaluation of the defendant and if the community services board or behavioral health authority determines that the defendant meets the criteria for temporary detention, file a petition for the issuance of an order for temporary detention pursuant to [Va. Code § 37.2-809](#).

If the court finds pursuant to [Va. Code § 19.2-169.2 \(C\)](#):

- The defendant is charged with a misdemeanor violation of Article 3, [Va. Code § 18.2-95](#) et seq. of Chapter 5 of Title 18.2, or a misdemeanor violation of [Va. Code § 18.2-119](#), [Va. Code § 18.2-137](#), [Va. Code § 18.2-388](#), [Va. Code § 18.2-415](#), or [Va. Code § 19.2-128](#).
- The defendant is incompetent pursuant to [Va. Code § 19.2-169.1](#) (E) or (F), and
- The competency report described in [Va. Code § 19.2-169.1](#) (D) recommends that the defendant be evaluated to determine whether they meet the criteria for temporary detention pursuant to [Va. Code § 37.2-809](#).

The court may order the following:

- The court may enter a DC-3025: Evaluation Order For Incompetent Defendant Pursuant to [Va. Code § 19.2-169.2](#).
- The clerk shall also complete district court form DC-343: [Tracking Document for Sending or Receiving Evaluation or Treatment Order Upon Entry](#), attach a copy of district court form DC-3025: Order for Evaluation of an Incompetent Defendant Pursuant to [Va. Code § 19.2-169.2](#) and send both orders to the community services board or the behavioral health authority by close of business on the next business day after the order was entered. The community services board or the behavioral health authority shall acknowledge receipt of the order no later than close of business on the next business day after the order is received using district court form DC-343: [Tracking Document for Sending or Receiving Evaluation or Treatment Order Upon Entry](#).
- The community services board or behavioral health authority shall notify the court, in writing, within 72 hours of the completion of the evaluation and, if appropriate, file a petition for issuance of an order for temporary detention.

- Upon receipt of such notice, the court may dismiss the charges without prejudice against the defendant. However, the court shall not enter an order or dismiss charges against a defendant if the attorney for the Commonwealth is involved in the prosecution of the case and does not concur in the motion.
- If a defendant for whom an evaluation has been ordered, fails, or refuses to appear for the evaluation, the community services board or behavioral health authority shall notify the court and the court shall issue a DC-3026: Mandatory Examination Order And Capias To Transport Of Incompetent Defendant Pursuant to [Va. Code § 19.2-169.2 \(C\)](#) directing the primary law-enforcement agency for the jurisdiction in which the defendant resides to transport the defendant to the location designated by the community services board or behavioral health authority for examination:
  - The DC-3026: Mandatory Examination Order And Capias To Transport Of Incompetent Defendant Pursuant to [Va. Code § 19.2-169.2 \(C\)](#), is not entered into the case management system. Produce the document using the case number associated with the evaluation.

If the defendant has been charged with a misdemeanor under Article 3, [Va. Code § 18.2-95](#) et seq. of Chapter 5 of Title 18.2 Larceny and Receiving Stolen Goods, Article 5 [Va. Code § 18.2-119](#) et seq. of Chapter 5 of Title 18.2 Trespass to Realty, except an offense under [Va. Code § 18.2-130](#) Peeping or Spying Into Dwelling or Enclosure, or Article 2, [Va. Code § 18.2-415](#) et seq. of Chapter 9 of Title 18.2 Disorderly Conduct, and is being treated in an effort to restore their capacity, then after forty-five days, if the defendant's capacity has not been restored, the court shall decide whether they should be released, committed, or certified and the court may dismiss the charges [Va. Code § 19.2-169.3 \(C\)](#).

### **Sanity at the Time of the Offense [Va. Code § 19.2-169.5](#)**

Prior to trial, on motion of the defendant's attorney, the court may hear evidence to determine if there is probable cause to believe that the sanity of the defendant at the time of the offense may be a significant factor in the defendant's defense and that the defendant is financially unable to pay for expert assistance. If probable cause is found, then the judge shall appoint one or more qualified mental health experts to evaluate the defendant's sanity at the time of the offense and to assist in developing the defendant's insanity defense. The mental health expert appointed shall be:

- A psychiatrist, a clinical psychologist, or an individual with a doctorate degree in clinical psychology who has successfully completed forensic evaluation training as approved by the Commissioner of the [Department of Behavioral Health and Developmental Services](#), and
- Qualified by training and experience to perform forensic evaluations.

The procedures for evaluation of the defendant, the orders required to be issued and the information to be provided to the evaluator, are the same as those used in ordering a competency evaluation, see discussion above.

The report is submitted only to the attorney for the defendant and is protected by the attorney-client privilege. However, in all felony cases, once the attorney for the defendant gives notice of an intent to present psychiatric or psychological evidence pursuant to [Va. Code § 19.2-168](#), the report, the results of any other evaluation of the defendant's sanity at the time of the offense, and copies of psychiatric, psychological, medical or other records obtained during the course of any evaluation must be provided to the Commonwealth. These disclosure provisions also apply when the defendant obtains their own expert to evaluate the defendant's sanity. See discussion of the insanity defense below.

### **Evidence Of Defendant's Mental Condition Admissible [VA. Code § 19.2-271.6](#)**

In any criminal case, evidence offered by the defendant concerning the defendant's mental condition at the time of the offense, including expert testimony, is relevant, is not evidence concerning an ultimate issue of fact, and shall be admitted if such evidence:

- Tends to show the defendant did not have the intent required for the offense charged and
- Is otherwise admissible pursuant to the general rules of evidence.

To establish the underlying mental condition the defendant must show that their condition existed at the time of the offense and that the condition satisfies the diagnostic criteria for:

- A mental illness
- A developmental disability or intellectual disability, or
- Autism spectrum disorder.

If a defendant intends to introduce evidence, the defendant, or their counsel, shall give notice in writing to the attorney for the Commonwealth, at least 60 days prior to their trial in circuit court, or at least 21 days prior to trial in general district court or juvenile and domestic relations district court, or at least 14 days if the trial date is set within 21 days of last court appearance of the defendant's intention to present such evidence. In the event that such notice is not given, and the person proffers such evidence at their trial as a defense, then the court may in its discretion either allow the Commonwealth a continuance or, under appropriate circumstances, bar the defendant from presenting such evidence. The period of any such continuance shall not be counted for speedy trial purposes under [Va. Code § 19.2-243](#).

If a defendant intends to introduce expert testimony, the defendant shall provide the Commonwealth with:



- Any written report of the expert witness setting forth the witness's opinions and the bases and reasons for those opinions, or, if there is no such report, a written summary of the expected expert testimony setting forth the witness's opinions and bases and reasons for those opinions, and
- The witness's qualifications and contact information.

The defendant, when introducing evidence pursuant to this section, shall permit the Commonwealth to inspect, copy, or photograph any written reports of any physical or mental examination of the accused made in connection with the case, provided that no statement made by the accused in the course of such an examination disclosed pursuant to this subsection shall be used by the Commonwealth in its case in chief, whether the examination was conducted with or without the consent of the accused.

- Nothing shall prevent the Commonwealth from introducing relevant, admissible evidence, including expert testimony, in rebuttal to evidence introduced by the defendant pursuant to this section.
- Nothing shall be construed as limiting the authority of the court from entering an emergency custody order pursuant to subsection A of [Va. Code § 37.2-808](#).
- Nothing shall be construed to affect the requirements for a defense of insanity pursuant to Chapter 11, [Va. Code § 19.2-167](#) et seq.
- Nothing in this section shall be construed as permitting the introduction of evidence of voluntary intoxication.
- In any case in which a defendant is found not guilty of any offense after a trial in which evidence of the defendant's mental condition at the time of the alleged offense was introduced in accordance with [Va. Code § 19.2-271.6](#), the court shall make available to the defendant information provided by the community services board in accordance with [Va. Code § 37.2-513](#) regarding services provided by the community services board and how such services may be accessed.

If it is the court's decision to issue an Emergency Custody Order pursuant to [Va. Code § 19.2-271.6](#), finalize criminal cases as ordered by the court.

See Chapter 8, Civil Commitments for issuance of the Emergency Custody Order pursuant to [Va. Code § 19.2-271.6](#).

**Note:** Due to the confidentiality of the Emergency Custody Order, no reference to the ECO should be made on the criminal documents or in the Case Management System (GCMS).



**Insanity Defense [Va. Code § 19.2-168](#) and [Va. Code § 19.2-168.1](#)**

The defendant, pursuant to [Va. Code § 19.2-168](#), is required to give notice at least twenty-one days prior to trial of an intent to assert a defense of insanity or mental retardation; otherwise, the judge may allow the Commonwealth a continuance or, under appropriate circumstances, bar the defendant from presenting such evidence. Such a continuance period shall not be counted against the speedy trial limits of [Va. Code § 19.2-243](#) Felonies, but shall be counted against the speedy trial limits of [Va. Code § 19.2-8](#) Misdemeanors.

Should the Commonwealth subsequently request its own evaluation of the defendant's sanity, the court shall order such evaluation and advise the defendant in open court that if he fails to cooperate with the Commonwealth's expert, the defendant's expert evidence may be excluded [Va. Code § 19.2-168.1](#).

The procedures for evaluation of the defendant, i.e., whether the evaluation should be outpatient or inpatient, the orders required to be issued and the information to be provided to the evaluator are the same as those used in ordering a competency evaluation. See discussion above.

If the defendant refuses to cooperate with such evaluators, the court may admit evidence of the refusal or bar the defendant's presentation of certain expert evidence at trial on the issue of sanity at the time of the offense.

The evaluators must provide copies of their evaluation with its findings and opinions plus copies of the psychiatric, psychological, medical, and other records obtained during the evaluation to the attorneys for both the Commonwealth and the defendant.

**Inpatient psychiatric hospital admission from local correctional facility [Va. Code § 19.2-169.6](#)**

Prior to trial, the court with jurisdiction over the inmate's case, if it is still pending, on the petition of the person having custody over an inmate or on its own motion, holds a hearing at which the inmate is represented by counsel and orders hospitalized for psychiatric treatment for up to thirty days pursuant to [Va. Code § 19.2-169.6](#). If previously found incompetent to stand trial, see Competency to Stand Trial Evaluation below.

The judge will hold a hearing in which the inmate is represented by counsel and find by clear and convincing evidence that:

- The inmate has a mental illness.
- There exists a substantial likelihood that, as a result of a mental illness, the inmate will, in the near future, cause serious physical harm to themselves or others as

evidenced by recent behavior causing, attempting, or threatening harm and other relevant information.

- The inmate requires treatment in a hospital rather than the local correctional facility.

Prior to making this determination the court shall consider the examination conducted in accordance with [Va. Code § 37.2-815](#) and the preadmission screening report prepared in accordance with [Va. Code § 37.2-816](#) and conducted in-person or by means of a two-way electronic video and audio communication system as authorized in [Va. Code § 37.2-804.1](#) by an employee or designee of the local community services board or behavioral health authority who is skilled in the assessment and treatment of mental illness, who is not providing treatment to the inmate.

When the hearing is held outside the service area of the CSB or behavioral health authority that prepared the preadmission screening report, and it is not practicable for a representative of the board or authority to attend or participate in the hearing, arrangements shall be made by the board or authority for an employee or designee of the board or authority serving the area, in which the hearing is held, to attend or participate on behalf of the board or authority that prepared the preadmission screening report.

- The [Department of Behavioral Health and Developmental Services](#) will determine to which facility the defendant should be transported. See Coordination with DBHDS at end of this section.
- The judge will conduct the hearing and complete district court form DC-4003: Order for Treatment of Inmate, and attach the report of the mental health professional and, if applicable, if the inmate is hospitalized pursuant to this section and their case is still pending the court having jurisdiction over the inmate's case may order that the admitting hospital evaluate the inmate's competency to stand trial and the inmate's mental state of mind at the time of offense by completing district court form DC-342: [Order for Psychological Evaluation](#), which is described below.

Important: The clerk shall also complete district court form DC-343: Tracking Document for Sending or Receiving Evaluation or Treatment Order Upon Entry, attach a copy of district court form DC-4003: Order for Treatment of Inmate, and a copy of district court form DC-342: [Order for Psychological Evaluation](#), if entered, and fax all orders to the evaluator or to the director of the community services board by close of business on the next business day after the order was entered. The evaluator or director shall acknowledge receipt of the order no later than close of business on the next business day after the order is received using district court form DC-343: Tracking Document for Sending or Receiving Evaluation or Treatment Order Upon Entry.

The clerk shall also provide a copy of the order to the Department of Behavioral Health and Developmental Services.

- The clerk prepares the district court form DC-354: Custodial Transportation Order
- Arranges for sheriff or other official to pick up the court documents and to transport the defendant. The following documents and information should be provided:
  1. The commitment order.
  2. The names and addresses of the attorneys and the judge
  3. A copy of the warrant or indictment and
  4. The criminal incident information, the arrest report, or a summary of the facts relating to the crime [Va. Code § 19.2-174.1](#).

Alternatively, the magistrate may order the temporary commitment of the inmate pursuant to [Va. Code § 19.2-169.6\(2\)](#) if the person having custody over an inmate awaiting trial has reasonable cause to believe that:

- The inmate has a mental illness.
- There exists a substantial likelihood that, as a result of a mental illness, the inmate will, in the near future, cause serious physical harm to themselves or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information.
- The inmate requires treatment in a hospital rather than the local correctional facility.

Prior to the filing of the petition, the person having custody shall arrange for an evaluation of the inmate conducted in-person or by means of a two-way electronic video and audio communication system, as authorized by [Va. Code §37.2-804.1](#), by an employee or designee of the local CSB or behavioral health authority. A magistrate may then determine if probable cause exists for the issuance of district court form DC-894A: Temporary Detention Order-Magistrate, in the same manner as proceedings for involuntary civil mental commitments. [Va. Code §§ 19.2-169.6 \(A\)\(2\)](#) and [Va. Code 37.2-809](#) through [Va. Code 37.2-813](#). See also, Procedures in Involuntary Admissions Of Mentally Ill/Intellectually Disabled Person.

If probable cause is found, then:

- The [Department of Behavioral Health and Developmental Services](#) is contacted to determine to which facility the defendant is to be transported. See Coordination with DBHDS at end of this section.
- The magistrate prepares and issues district court form DC-894A: Temporary Detention Order-Magistrate

- The sheriff or other transporting official is contacted to pick up district court form DC-894A: Temporary Detention Order-Magistrate and transport the defendant to the hospital.
- A hearing must be held, following notice to the defendant's attorney, before the court having jurisdiction over the defendant's case or before a judge or special justice in the county or city in which the institution is located. The defendant must be represented by counsel, and the judge must make the findings specified in subsection A-1 of [Va. Code § 19.2-169.6](#) detailed above, based upon clear and convincing evidence. The hearing must be held:
  - Within 72 hours of execution of district court form DC-894A: Temporary Detention Order-Magistrate
  - If 72 hours terminates on a Saturday, Sunday, or legal holiday, the next day which is not a Saturday, Sunday, or legal holiday.
  - The judge or special justice will conduct the hearing and complete the DC4003: Order for Treatment for Inmate.

### **Coordination with DBHDS (Department of Behavioral Health and Developmental Services)**

Whenever the court has ordered the admission of an defendant into a DBHDS hospital pursuant to [Va. Code § 19.2-169.1](#), [Va. Code § 19.2-169.2](#), [Va. Code § 19.2-169.6](#), or [Va. Code § 19.2-168.1](#), the clerk should contact the forensic coordinator at the state hospital that routinely provides services to individuals within the court's region. The forensic coordinator will triage the case and determine the most appropriate placement for the individual. For defendants charged with significant offenses i.e., aggravated murder, murder, malicious wounding, or rape. The clerk should make the referral directly to the maximum-security unit at Central State Hospital. For defendants age 65 or older, the clerk should make the referral to the geriatric state facility that generally provides services to older adults in the court's region. The four geriatric state operated facilities are: Piedmont Geriatric Hospital, Catawba Hospital, Southwestern Virginia Mental Health Institute or Eastern State Hospital – Hancock Geriatric. Finally, if the defendant is under age 18, the clerk should make the referral to the Commonwealth Center for Children and Adolescents:

Name of Facility:	Forensic Coordinator:	Phone #:
Catawba Hospital	Walton Mitchell, MSW	(540) 375-4201
Central State Hospital	Kristie Hansen, Psy.D. or Jamillah Harris	(804) 524-7054 (804)-518-3754

Commonwealth Center for Children & Adolescents	Gary Pelton, Ph.D.	(540) 332-2170
Eastern State Hospital	Michael Kohn, Psy.D.	(757) 208-7609
Northern Virginia Mental Health Institute	Megan Hencinski, Psy.D.	(703) 207-7161
Piedmont Geriatric Hospital	Emma Lowry, Psy.D.	(434) 767-4582
Southern Virginia Mental Health Institute	Clinton S. Comer, Ph.D.	(434) 773-4237
Southwestern Virginia Mental Health Institute	Colin Barrom, Ph. D.	(276) 783-0805
Western State Hospital	Christy McFarland, Ph. D.	(540) 332-8074

### Interpreters for the Deaf

If a defendant is deaf, the defendant is entitled to a court-appointed interpreter at state expense, regardless of financial status. If the victim or a witness is deaf, an interpreter shall be appointed by the trial judge unless the court finds that the victim or witness does not require the services of a court-appointed interpreter, and that the deaf person has waived their right to an interpreter [Va. Code § 19.2-164.1](#). If a deaf person wishes to retain their own interpreter at their own expense, court approval of the interpreter is not required. A deaf person may waive the appointment of an interpreter. Interpreters for the deaf shall be procured through the [Virginia Department for the Deaf and Hard of Hearing](#). If the Department cannot procure such services, then the court may appoint a readily available interpreter with full certification from the [Registry of Interpreters for the Deaf, Inc.](#), or an equivalent national certification. Such court-appointed interpreter's qualifications are subject to review and approval by the [Virginia Department for the Deaf and Hard-of-Hearing](#).

An information sheet addressing common ADA accommodations within the court system, to include communication services provided by interpreters for the deaf can be found at this link:

[https://www.vacourts.gov/courtadmin/aoc/djs/programs/interpreters/resources/ada\\_resource\\_card.pdf](https://www.vacourts.gov/courtadmin/aoc/djs/programs/interpreters/resources/ada_resource_card.pdf)

## Interpreters for Non-English-Speaking Persons

If a defendant does not speak English, the defendant is entitled to a court-appointed interpreter at state expense, regardless of financial status. If the victim or a witness does not speak English, an interpreter shall be appointed by the trial judge unless the court finds that the victim or witness does not require the services of a court appointed interpreter [Va. Code § 19.2-164](#). If the non-English speaking defendant, victim, or witness wishes to retain an interpreter at state expense, the court must determine that such interpreter is competent.

The compensation of an interpreter shall be fixed by the court in accordance with the guidelines established by the Judicial Council of Virginia [Va. Code § 19.2-164](#). The guidelines can be found on the court system's website at:

<https://www.courts.state.va.us/courtadmin/aoc/djs/programs/interpreters/guidelines.pdf>

The interpreter should submit district court form DC-44: List of Allowances - Interpreter to claim compensation.

In some courts, there are staff foreign language interpreters who provide direct interpretation to the court and coordinate coverage by contracted vendors. All other foreign language interpreters must be located by the court directly. The Office of the Executive Secretary of the Supreme Court of Virginia offers a voluntary program to certify Korean, Spanish, Vietnamese, Arabic, Russian, and Mandarin language interpreters. A list of certified interpreters is provided to all courts and is available on the Virginia judiciary's Intranet at:

<http://oesinet/courtadmin/interpreters/flilist.html>

The Office of the Executive Secretary provides training to any foreign language interpreters in addition to those tested and certified for Korean, Spanish, Vietnamese, Arabic, Russian and Mandarin language interpretation. Suggested resources for locating interpreters include foreign language departments of colleges and universities, Federal courts, or private sector interpreter firms. When utilizing interpreters from such sources, the judge should determine the competency of the person to interpret court proceedings.

While all courts are encouraged to utilize certified interpreters, who have proven competencies and skill levels, there is no requirement that only certified interpreters be used in courts. However, judges are encouraged to inquire about the qualifications of an interpreter to perform such services in a court environment. This is particularly important given the experience of courts in recent years that mere fluency in a foreign language does not equate to competence in court interpretation. Inquiry may take the form of the suggested "voir dire" of foreign language interpreters which can be found in Appendix C of Serving Non-English Speakers in the Virginia Court System: Guidelines for Policy and Best Practice, and can also be found the court system's website at:

<http://www.courts.state.va.us/courtadmin/aoc/djs/programs/interpreters/guidelines.pdf>

when qualifying non-certified interpreters of any language.

### **Certificate of Analysis**

The court can admit as evidence properly certified certificates of analysis of any examination or analysis performed by certain testing facilities without requiring the person performing the test or analysis to appear and testify. Notice must be given to the defendant or the defendant's counsel at least 28 days prior to trial. Defendant may object to the admissibility of certificate without testimony of the person performing the analysis or examination. Analyst may testify via two-way video conferencing. If the Commonwealth plans to have the analyst testify via video conferencing, notice must be given to the defendant or the defendant's counsel at least 28 days prior to trial. Defendant may also object to use of video testimony. Defendant objects to either admission of certificate of analysis or use of video testimony by timely filing district court form DC-305: [Objection to Admission of Certificate of Analysis/Video Testimony](#). If the accused demands, at hearing or trial, the presence of the person who performed the analysis or examination and the accused is thereafter found guilty of the charge or charges for which they demanded the presence of such witness, \$50 for expenses related to the witness's appearance at hearing or trial shall be charged to the accused as court costs using revenue code 113 [Va. Code § 19.2-187](#). These testing facilities are:

- Laboratories operated by the [Division of Consolidated Laboratory Services](#) or the [Department of Forensic Science](#) or authorized by such Department to conduct such examinations or analyses.
- [Federal Bureau of Investigation](#)
- [Federal Postal Inspection Service](#)
- Federal Bureau of Alcohol, Tobacco, Firearms and Explosives
- [Naval Criminal Investigative Service](#)
- [Federal Drug Enforcement Administration](#)
- [National Fish and Wildlife Forensics Laboratory](#)
- [United States Secret Service Laboratory](#)

Before such certificates of analysis may be admitted as evidence pursuant to [Va. Code § 19.2-187](#), the following events must occur:

The certificate must be received and filed at least seven (7) days prior to the hearing or trial date. "Filed" should be stamped or written on the certificate of analysis, along with the name of the court and date and time of filing. The person who received and dated the

certificate of analysis should then authenticate the date stamp by entering the term “TESTE,” signing, inserting their title, and dating the authentication.

Examples of the date and authentication stamp include:

FILED/2:30 p.m./September 9, 1998/ Powhatan Circuit Court/TESTE/ ( <i>Signature</i> )/Deputy Clerk/October 9, 2006
RECEIVED AND FILED/9:30 a.m./September 10, 2006/Henrico General District Court/TESTE/ ( <i>Signature</i> )/Clerk/October 10, 2006

Some certificates may be received electronically. If so, please print and follow authentication procedure above.

If requested by counsel of record for the defendant, the clerk or Commonwealth’s Attorney must mail or deliver a copy of the certificate to such attorney at least seven days prior to the hearing or trial date [Va. Code § 19.2-187](#). The request must be made in writing on a form prescribed by the Supreme Court at least ten days before trial. District court form DC-302: [Request for Copy of Certificate of Analysis](#) has been created for use in requesting a copy of the certificate of analysis.

When a request for a copy of the certificate of analysis is made to the clerk, a copy of the request must be sent to the Commonwealth’s Attorney. The date of receipt of the request must be documented. A notation should be placed on the written request documenting date of delivery or mailing. If a request is filed in a case that is not yet before the court, the clerk shall advise the requester that they must resubmit the request once the case is properly before the court. District court form DC-302: [Request for Copy of Certificate of Analysis](#) can be used for this purpose. If upon proper request made by counsel of record for the accused, a copy of such certificate is not mailed or delivered by the clerk or attorney for the Commonwealth to counsel of record for the accused in a timely manner in accordance with [Va. Code § 19.2-187](#), the defendant shall be entitled to continue the hearing or trial.

The Commonwealth’s Attorney may later request by motion that the original certificate of analysis for drugs prepared pursuant to [Va. Code § 19.2-187](#) be sent to the circuit court for use in forfeiture cases in which the original certificate must be filed in order to be introduced into evidence. If so requested, the following steps should be taken:

- Accept the motion.
- If the motion is granted by the judge, the clerk should:
  - Complete form district court form DC-372: Authentication of Record [Va. Code § 8.01-391 \(C\)](#).



- Make a copy for the district court records and authenticate it. See “Case Post Trial Procedures - Records Management” regarding the authentication of copies of records.
- Create a certificate authenticating and certifying the original certificate as a “true record.” [Va. Code § 8.01-389 \(A\)](#). An example of such a certificate would be:

Authentication of Order-Attach DC-372: Authentication of Record to Order

or

Stamp on copy of order as follows:

*(Court Name)*

I, the undersigned clerk, or deputy clerk of the above-named court, authenticate pursuant to Va. Code § 8.01-391(C), on this date that the document to which this authentication is affixed is a true copy of a record in the above-named court, made in performance of my official duties.

\_\_\_\_\_  
DATE

*(Do not use the term “Combined Court”-use specific court type-General District or JDR)*

1. Attach the original certificate of analysis to your executed certificate.
2. Prepare a transmittal “cover.”
3. Transmit the papers to the circuit court, retaining a copy of the transmittal “cover,” signed by the circuit court indicating receipt of the certificate for the district court files.

## Admissibility of Affidavits

### ***Sex Offender***

In a prosecution for failing to register or re-register as a sex offender, the [Virginia State Police](#) may issue an affidavit signed by the custodian of records that such person failed to comply with the duty to register or re-register. In a preliminary hearing, that affidavit shall be admitted into evidence. In a trial or hearing other than a preliminary hearing, that affidavit may be admitted into evidence if the procedures of [Va. Code § 18.2-472.1 \(G\)](#) have been followed and the accused has not objected pursuant to the procedures of [Va. Code § 18.2-472.1 \(H\)](#). The Commonwealth’s Attorney will first send a copy of the affidavit as well as a notice of the right to object to the admission of the affidavit in lieu of testimony at least 28 days prior to trial. The Commonwealth’s Attorney will also file a copy of the affidavit and notice with the court. The clerk should time/date stamp and file

the affidavit and notice upon receipt. The accused or their counsel then has the right to object to the admission of the affidavit in lieu of testimony. The accused or their counsel will file district court form DC-306: [Objection to Admission of Affidavit](#). The clerk should time/date stamp and file the DC-306 upon receipt [Va. Code § 18.2-472.1](#).

### ***By Government Official Regarding Search of Government Records***

On occasion the lack of a record is what is necessary to be proved. [Virginia Code § 19.2-188.3](#) now allows an affidavit signed by a government official, who is competent to testify, deemed to have custody of an official record, or signed by the official's designee, stating that after a diligent search, no record or entry of such record is found to exist among the records in their custody to be admitted into evidence. This "no records found" affidavit may be admitted in any hearing or trial provided the procedures of [Va. Code § 18.2-472.1 \(G\)](#) have been followed and the accused has not objected pursuant to the procedures [of Va. Code § 18.2-472.1 \(H\)](#). The Commonwealth's Attorney will first send a copy of the affidavit as well as a notice of the right to object to the admission of the affidavit in lieu of testimony at least 28 days prior to trial. The Commonwealth's Attorney will also file a copy of the affidavit and notice with the court. The clerk should time/date stamp and file the affidavit and notice upon receipt. The accused or the accused's counsel then has the right to object to the admission of the affidavit in lieu of testimony. The accused or their counsel will file district court form DC-306: [Objection to Admission of Affidavit](#). The clerk should time/date stamp and file the DC-306: [Objection to Admission of Affidavit](#) upon receipt [Va. Code § 19.2-188.3](#).

### **Notice, Motion and Order for Chemical Analysis of Alleged Plant Material**

Pursuant to [Va. Code § 19.2-188.1](#), a law enforcement officer shall be permitted to testify as to the results of any field test approved by the [Department of Forensic Science](#) regarding whether or not any plant material, the identity of which is at issue, is marijuana. The bill also provides an opportunity for defense counsel to require full laboratory analysis. It is suggested that district court form DC-304: [Notice, Motion and Order for Chemical Analysis of Alleged Plant Material](#) be given to the defendant at time of arraignment, and if the defendant or their counsel wish to file district court form DC-304: [Notice, Motion and Order for Chemical Analysis of Alleged Plant Material](#) it should be filed prior to trial before the court in which the charge is pending.

### **Possession or distribution of marijuana for medical purposes**

A practitioner of medicine or osteopathy licensed by the Board of Medicine in the course of their professional practice may issue a written certification for the use of cannabis oil for treatment or to alleviate the symptoms of the individual's diagnosed condition or disease determined by the practitioner to benefit from such use. The written certification may be provided to a patient, a minor patient's parent or guardian, or a parent or guardian of a vulnerable adult.

[Va. Code § 54.1-3408.3](#) provides an affirmative defense in a prosecution for the possession of marijuana if the marijuana is in the form of cannabis oil possessed pursuant to a valid written certification issued by a practitioner of medicine or osteopathy licensed by the Board of Medicine, a physician assistant licensed by the Board of Medicine, or a nurse practitioner jointly licensed by the Board of Medicine and the Board of Nursing for purposes of treating or alleviating a patient's symptoms of a diagnosed condition or disease determined by the practitioner to benefit from such use. The Certification for the Use of Cannabidiol Products has been created for use in this situation. The Certification for the Use of Cannabidiol Products is posted on the Board of Medicine website for use by doctors.

### **Custody of Evidence**

While the parties to the case or the appropriate law-enforcement entity usually have custody of evidence, clerk's offices sometimes become a repository for evidence in a criminal case either through the voluntary deposit of evidence by a party or a law-enforcement entity or upon production of evidence in the clerk's office for examination as required by a subpoena duces tecum [Va. Code § 16.1-89](#) and [Va. Code § 16.1-131](#) Supreme Court Rule 3A:12(b). The judge may order the appropriate law enforcement entity to take into custody or maintain custody of substantial quantities of any controlled substances, imitation controlled substances, chemicals, marijuana, or paraphernalia used or to be used in a criminal case [Va. Code § 19.2-386.25](#). The order may make provisions for ensuring the integrity of these items until further order of the judge.

### **Recall of Process**

On occasion, it becomes necessary for the judge to order the immediate return of process to the court even though the law enforcement entity possessing the document has not served it. Examples include:

- The defendant was arrested on a facsimile or "teletype" copy of the warrant.
- The defendant voluntarily appeared in court after a capias for contempt or for failure to appear had been issued.

In every such instance, the law enforcement entity possessing the document must be telephoned promptly to return the process without further attempt to serve it. This call should be documented with a subsequent written notification to protect the court from claims that notification was not given. To this end, district court form DC-323: Recall of Process should be used whenever process is recalled prior to its being served

## Photographing and Broadcasting Judicial Proceedings

A court, solely in its discretion, may permit many, but not all, types of judicial proceedings to be photographed or broadcast. Such coverage is governed and limited by the provisions of [Va. Code § 19.2-266](#).

## Transfer of Jurisdiction

On occasion, the judge determines that a case being handled in general district court actually should be tried in juvenile and domestic relations district court, or vice versa. Once such a determination is made, the following steps should be taken:

- Upon receipt of the case papers that require transfer to a court of another jurisdiction, the case papers should be given to the judge to sign district court form DC-322: Order - Transfer of Jurisdiction to include all charges being transferred.
- If the defendant is in custody or incarcerated, in addition to district court form DC-322: Order - Transfer of Jurisdiction, the clerk prepares district court form DC-355: Order for Continued Custody with the bold notation “**Transfer Case**” next to the name of the defendant and showing the name of the transferee court as the court for which the case is continued.
- The clerk attaches all case papers to district court form DC-322: ORDER - Transfer of Jurisdiction and issues a check for any cash bond to the transfer court.
- The clerk transmits the case to the transfer court and retains a copy of district court form DC-322: Order - Transfer of Jurisdiction.
- The clerk updates the case in the case management system with an **F** in **Hearing Result** field and **TR** (transfer) in the final disposition field.

**Note:** If a General District Court receives a case which involves a juvenile, the general district court should make sure the name of the juvenile and address of the juvenile are altered in case management system to protect the identity of the juvenile. It is recommended that the name of the case simply state “**juvenile**” and enter “**Confidential**” in the address fields to protect the identity of the juvenile. These steps are recommended as General District cases appear on the Internet for public viewing. It is not recommended that the clerk’s office retain a copy of the DC-322: Order - Transfer Of Jurisdiction or any copies of the juvenile case papers.

## Confidentiality of Local Community-Based Probation Agency Reports

Any investigation report, including a presentencing investigation report, prepared by a local community-based probation officer is confidential and is exempt from the Virginia Freedom of Information Act [Va. Code § 2.2-3700](#) et seq. Such reports shall be filed as a part of the case record. Such reports shall be made available only by court order and shall be sealed as

confidential upon final order by the court; except that such reports shall be available upon request to (i) any criminal justice agency, as defined in [Va. Code § 9.1-101](#), of this or any other state or of the United States; (ii) any agency where the accused is referred for assessment or treatment; (iii) counsel for the person who is the subject of the report; or (iv) counsel who represents the person in pursuit of a post-conviction remedy, subject to the limitations set forth in [Va. Code § 37.2-901](#). These documents should be placed in the DC-392, Sealed Documents envelope.

Any report on the progress of an offender under the supervision of a local community-based probation agency and any information relative to the identity of or inferring personal characteristics of an accused, including demographic information, diagnostic summaries, records of office visits, medical, substance abuse, psychiatric or psychological records or information, substance abuse screening, assessment and testing information, and other sensitive information not explicitly classified as criminal history record information, is exempt from the Virginia Freedom of Information Act [Va. Code § 2.2-3700](#) et seq. However, such information may be disseminated to criminal justice agencies as defined in [Va. Code § 9.1-101](#) in the discretion of the custodian of these records.

The **Trial Procedures** portion of the Criminal Case Process section describes the functions or activities performed at trial and the procedures for processing and completing these activities.

### **Transport of Incarcerated Defendant**

Upon request of, and receipt of all necessary information from, the attorney for the Commonwealth or counsel for the defendant, a court shall issue all orders needed to transport any defendant incarcerated in the state or local correctional facility to the court [Va. Code § 19.2-240](#).

## **Case Trial Procedures**

### **Adjudicatory Hearing**

Pursuant to [Va. Code § 19.2-3.1](#) with the consent of the court and all parties, an appearance in a court may be made by two-way electronic video and audio communication for the purpose of:

- Entry of a plea of guilty or nolo contendere and the related sentencing of the defendant charged with a misdemeanor or felony
- Entry of a nolle prosequi or dismissal or
- A revocation proceeding
- Waiver of a preliminary hearing

For cases heard in court, the clerk's office must perform several functions to assure that cases are processed efficiently. The clerk's office is responsible for assuring that:

- All case-related paperwork is complete and accounted for in the case files, which may include:
  - Original summons or warrant
  - Either the defendant's copy of the Virginia Uniform Summons or district court form DC-324: [Notice - Appearance, Waiver and Plea](#) if prepayment has been made
  - Original complaint
  - DC-325: [Request for Witness Subpoena](#) and subsequent DC-326: [Subpoena for Witnesses](#)
  - DC-329: Recognizance (Witness)
  - Other pleadings and documentary evidence filed with the court

Prepayments are recorded on the docket:

- The docket and all of the case papers for the cases on the docket are transferred to the judge on the morning of trial.
- If there is a continuance or pretrial resolution of a case, witnesses should be notified. If a case is continued, several different mechanisms exist for notifying and/or reminding witnesses and the parties of the continuance date.
  - If all parties have consented to the continuance, the moving party should be reminded that they are responsible for assuring that the witnesses are notified of the continuance in the manner provided in Rule 7A:14 of the Rules of the Virginia Supreme Court.
  - If a party is represented by an attorney, then the attorney, including the Commonwealth's Attorney, should be required to notify their client and witnesses.
  - Parties not represented by a lawyer and their witnesses should be notified in court, if they are in court. Otherwise, the clerk or judge may require the party to notify their witness(es) of the continuance date, or the clerk may complete and mail a district court form DC-346: Notice of New Trial Date to such party and their witnesses. If the witnesses are in court, the judge may use an oral recognizance of the witnesses or a written DC-329: Recognizance (Witness).
- The disposition is recorded in the case management and on the back of the warrant, except on the Virginia Uniform Summons, where it is recorded on the front. The original charge from the charging document should always remain in the case

management system as the original charge. If the charge is modified or amended for any reason; the case management system should be updated to reflect the amendment or modification in the amended charge field.

- All other court actions are recorded in the case management system and on the warrant or summons, such as:
  - Dismissal on “accord and satisfaction” conditioned on payment of costs [Va. Code § 19.2-151](#).
  - Deferred disposition in drug cases, criminal cases, domestic violence cases property, larceny, receiving stolen goods offenses and in cases of autism spectrum disorder or intellectual disability [Va. Code § 4.1-1120](#), [Va. Code § 18.2-251](#), [Va. Code § 19.2-298.02](#), [Va. Code § 18.2-57.3](#), [Va. Code § 19.2-303.2](#), and [Va. Code § 19.2-303.6](#).
  - Guilty plea to reduced charges
  - Continuance
  - Waiver of court appearance, guilty plea, and prepayment of fine/costs.

### Failure to Appear and Bond Forfeiture

When a defendant fails to appear in court on a traffic misdemeanor or criminal case, the court may conduct a trial in the defendant’s absence or continue the case and issue district court form DC-360: Show Cause Summons or district court form DC-361: Capias if the defendant is to be charged with contempt; or a DC-312: Warrant of Arrest - Felony, or DC-314: Warrant of Arrest – Misdemeanor (State) if the defendant is to be charged with failure to appear. If the court orders a district court form DC-361: Capias be issued and sets the terms of bail, the terms set by the court are to be honored by the magistrate [Va. Code § 19.2-130.1](#). A trial in the defendant’s absence may be conducted for misdemeanors when no jail sentence is possible or when the court notes beforehand that no jail sentence will be imposed upon conviction. Following the entry of a judgment in a trial in absentia, the clerk’s office will:

- Record the disposition in the case management system
- Ensure that the judge has recorded the disposition on the summons or warrant
- Issue district court form DC-482: Order and Notice for Bond Forfeiture for the surety or sureties.
- Apply cash posted by the defendant to secure bail as payment of fine and costs.
- Prepare district court form DC-225: Notice to Pay as per the instructions in the District Court Forms Manual and send it to the defendant, if the defendant was tried in the defendant’s absence and convicted.

A case will be continued when the defendant fails to appear, if a jail sentence is possible, and the judge does not wish to restrict the maximum sentence to a fine, should the defendant be found guilty. The judge may order issuance of district court form DC-360: Show Cause Summons (Criminal), or DC-361: Capias if the defendant is to be charged with contempt; or a DC-312: Warrant of Arrest - Felony, or DC-314: Warrant of Arrest - Misdemeanor (State) if the defendant is to be charged with failure to appear.

If the defendant is returned to custody prior to commencement of bond forfeiture proceedings, the surety is discharged from liability on the bond and is entitled to a return of their security if the bail bond was secured.

However, if the defendant posted a cash bond and failed to appear and:

- Was tried in the defendant's absence and is convicted; the cash bond is applied first to any fine or cost imposed, with the balance forfeited without further notice. If a rehearing is granted, the court, for good cause shown, may remit part or all of such bond not applied ultimately to fine and costs and order a refund by the local Treasurer/Director of Finance.
- Was not tried in the defendant's absence, the cash bond shall be forfeited promptly without further notice. If the defendant appears in court within sixty days of forfeiture, the judge may remit all or part of the bond and order a refund by the local Treasurer/Director of Finance.

**Note:** Bond Forfeitures are civil in nature; please see Civil Proceedings for detailed procedures on bond forfeitures.

### **Trial Provisions**

Both the prosecuting attorney and the defendant's attorney (or, if unrepresented, the defendant) may make opening statements. A nolle prosequi is a request by the prosecution not to try the case; it is entered, in the judge's discretion, only for good cause shown [Va. Code § 19.2-265.3](#).

"Exclusion of witnesses" pursuant to [Va. Code § 19.2-265.1](#) is the process by which all witnesses in a case, including but not limited to police officers and other investigators, must leave the courtroom, and may return only while testifying. The judge may exclude witnesses on the judge's own motion and must do so if requested by the prosecuting attorney or the defendant's attorney (or, if unrepresented, by the defendant).

This provision does not apply to:

- A defendant.



- One officer or agent of any defendant that is a corporation or association [Va. Code § 19.2-265.1](#).
- The complaining witness, if there is no prosecuting attorney and if necessary for the orderly presentation of prosecution witness.
- The victim, unless the court determines that the presence of the victim would substantially impair the conduct of a fair trial.
- Any minor victim and an adult chosen by the minor in addition to or in lieu of the minor's parent or guardian [Va. Code § 19.2-265.1](#).

The judge, pursuant to [Va. Code § 19.2-269.2](#), on motion of the defendant or the Commonwealth's Attorney, may prohibit testimony as to the current residential or business address, any telephone number, or email address of a victim or witness, if it is not material in the case. See also [Va. Code § 19.2-11.2](#).

If the charge is dismissed because the court finds that the person arrested or charged is not the person named in the warrant or summons, the court shall, upon motion of the person improperly arrested or charged, enter district court form DC-365: Expungement Order requiring expungement of the police and court record relating to the charge and stating that dismissal and expungement are conducted pursuant to [Va. Code § 19.2-392.2](#). The motion is treated as a subsequent action of the underlying case, and the motion and Expungement Order should be attached to the original case. See Expungement Procedures in this manual.

### **Pre-Conviction Probation for, "First-Time Offenders"**

In cases involving certain offenses, a person who is deemed by statute to be a "first-time" offender may be eligible for probation and, if probation is successfully completed, dismissal of the case. The situations involve a person who pleads guilty or not guilty to:

- Possession of a controlled substance [Va. Code § 18.2-250](#), and who has never been convicted of drug offenses, [with the exception of any misdemeanor conviction for possession of marijuana](#), and who has not had a proceeding dismissed against them except a dismissal of a misdemeanor offense for possession of marijuana under the first offender statute [Va. Code § 18.2-251](#), or
- Misdemeanor crime against property under article 3 [Va. Code § 18.2-95](#) et seq. Grand Larceny, article 5 [Va. Code § 18.2-119](#) et seq. Trespass, except for a violation of [Va. Code § 18.2-130](#) or [Va. Code § 18.2-130.1](#) Peeping Crimes, article 6 [Va. Code § 18.2-137](#) et seq. Injuring any property, monument, etc., article 7 [Va. Code § 18.2-144](#) et seq. Maiming, killing or poisoning animals, fowl, etc., and article 8 [Va. Code § 18.2-153](#) et seq. Obstructing or injuring canal, railroad, power line etc. of chapter 5 of Title 18.2 and who has not previously been convicted of a felony. See [Va. Code § 19.2-303.2](#), or

- Assault and battery against a family or household member under [Va. Code § 18.2-57.2](#) and who (i) has not been previously convicted of any offense of assault or bodily wounding under Article 4 of Chapter 4 of Title 18.2 [Va. Code §§ 18.2-51](#) through [18.2-57.3](#), or under any statute of the United States or of any state or any ordinance relating to assault and battery against a family or household member or (ii) has not had a proceeding against them for such offense dismissed under the first offender statute [Va. Code § 18.2-57.3](#), or
- Underage possession or purchase of alcohol [Va. Code § 4.1-305 \(F\)](#). This provision is directly applicable to adults under 21. For a juvenile who has violated [Va. Code § 4.1-305](#), see [Va. Code § 16.1-278.9](#).
- Deferral of adult proceedings if no prior convictions under Cannabis Control Act, [Va. Code § 4.1-1120](#).

In each of these situations, the judge must first find facts sufficient to justify a finding of guilt (to avoid retrial of the case if the defendant fails to successfully complete probation). If the judge chooses this option, then the consenting defendant is placed on probation without the entry of a judgment of guilt. Costs are assessed, if applicable, when the defendant is placed on probation.

Some specific statutory provisions apply to each type of probation:

- In a domestic violence case, as a condition of probation, the court may order that the defendant be evaluated and enter an appropriate treatment and/or education program, if available. The court shall, unless done at arrest, order the accused to report to the original arresting law-enforcement agency to submit to fingerprinting [Va. Code § 18.2-57.3](#).
- For probation under [Va. Code § 18.2-251](#), the court shall, unless done at arrest, order the accused to report to the original arresting law-enforcement agency to submit to fingerprinting.
- Upon fulfillment of the terms and conditions, and upon determining that the clerk of court has been provided with the fingerprint identification information or fingerprints of such person for an offense that is required to be reported to the Central Criminal Records Exchange, the court shall discharge the person and dismiss the proceedings against them. For step-by-step direction for criminal drug deferrals pursuant [Va. Code § 4.1-1120](#) or [Va. Code 18.2-251](#). See Trial Procedures for Misdemeanor Drug Cases; Pre-Conviction Probation for “First-Time Offenders” Drug Charges in this chapter.
- For probation under [Va. Code § 19.2-303.2](#) if the court defers further proceedings for an offense that is required to be reported to the Central Criminal Records Exchange, upon deferral the court shall determine whether the clerk of court has been provided with the fingerprint identification information or fingerprints of the accused, and if not, shall order that the fingerprints and photograph of the accused be taken by a

law-enforcement officer. Upon fulfillment of the terms and conditions, and upon determining that the clerk of court has been provided with the fingerprint identification information or fingerprints of such person for an offense that is required to be reported to the Central Criminal Records Exchange, the court shall discharge the person and dismiss the proceedings against them.

- In cases involving possession or purchase of alcohol by an adult under twenty-one, the court must require the defendant to enter a treatment or education program, or both, which the court determines best suits the needs of the defendant. The defendant may be granted a restricted license.

### **Deferred Disposition in a Criminal Case; Person with Autism or Intellectual Disabilities [Va. Code § 19.2-303.6](#)**

In any criminal case, except a violation of [Va. Code § 18.2-31](#), an act of violence as defined in [Va. Code § 19.2-297.1](#), or any crime for which a deferred disposition is provided for by statute, upon a plea of guilty, or after a plea of not guilty, and the facts found by the court would justify a finding of guilt, the court may, if the defendant has been diagnosed by a psychiatrist or clinical psychologist with (i) an autism spectrum disorder as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association or (ii) an intellectual disability as defined in [Va. Code § 37.2-100](#) and the court finds by clear and convincing evidence that the criminal conduct was caused by or had a direct and substantial relationship to the person's disorder or disability, without entering a judgment of guilt and with the consent of the accused, after giving due consideration to the position of the attorney for the Commonwealth and the views of the victim, defer further proceedings and place the accused on probation subject to terms and conditions set by the court. Upon violation of a term or condition, the court may enter an adjudication of guilt; or upon fulfillment of the terms and conditions, the court may discharge the person and dismiss the proceedings against them without an adjudication of guilt.

Deferred disposition shall be available to the defendant even though they have previously been convicted of a criminal offense, been adjudicated delinquent as a juvenile, or had proceedings deferred and dismissed under this section or under any other provision of law, unless, after having considered the position of the attorney for the Commonwealth, the views of the victims, and any evidence offered by the defendant, the court finds that deferred disposition is inconsistent with the interests of justice.

Court costs at the time of deferral are authorized pursuant to [Va. Code § 19.2-303.4](#). Deferral pursuant to [Va. Code § 19.2-303.6](#) does not require the defendant be fingerprinted at deferral, however if the final disposition results in conviction and the offense is reportable to the Virginia State Police, fingerprints would be required.

**Deferred Disposition in a Criminal Case Pursuant to [VA. Code § 19.2-298.02](#)**

A trial court presiding in a criminal case may, with the agreement of the defendant and the Commonwealth, after any plea or trial, with or without a determination, finding, or pronouncement of guilt, and notwithstanding the entry of a conviction order, upon consideration of the facts and circumstances of the case, including (i) mitigating factors relating to the defendant or the offense, (ii) the request of the victim, or (iii) any other appropriate factors, defer proceedings, defer entry of a conviction order, if none, or defer entry of a final order, and continue the case for final disposition, on such reasonable terms and conditions as may be agreed upon by the parties and placed on the record, or if there is no agreement, as may be imposed by the court. Final disposition may include (a) conviction of the original charge, (b) conviction of an alternative charge, or (c) dismissal of the proceedings.

By consenting to and receiving a deferral of proceedings or a deferral of entry of a final order of guilt and fulfilling the conditions specified by the court, the defendant waives their right to appeal such entry of a final order of guilt. The court must notify the defendant that they would be waiving their rights to appeal prior to granting a deferral of proceedings or deferral of entry of a conviction order.

Upon agreement of all parties, a charge that is dismissed pursuant to [Va. Code § 19.2-298.02](#), including an original charge that was reduced or a charge that is dismissed after a plea or stipulation of the facts that would justify a finding of guilt, may be considered as otherwise dismissed for purposes of expungement of police and court records in accordance with [Va. Code § 19.2-392.2](#), and such agreement of all parties and expungement eligibility may be indicated in the final disposition order.

When a criminal case is deferred pursuant to [Va. Code § 19.2-298.02](#), completion of the DC-3015: Order for Deferral of Proceedings Pursuant to [Va. Code § 19.2-298.02](#) is recommended. Court costs at the time of deferral are authorized pursuant to [Va. Code § 19.2-303.4](#).

When a case is deferred pursuant to [Va. Code § 19.2-298.02](#) involving a license suspension, prepare a manual Abstract of Conviction, and send manually to Department of Motor Vehicles both the manual Abstract of Conviction and the DC-3015: Order of Deferral of Proceedings Pursuant to [Va. Code § 19.2-298.02](#), or other deferral order if the DC-3015 is not used, to notify the DMV of the suspension. When a Restricted Driver's License is granted by the court, the DMV copy of the Restricted Driver's License must also be manually transmitted to the DMV with the abstract.

**Accord and Satisfaction**

When a defendant is charged with assault and battery, or another misdemeanor not specifically excluded by statute, for which there is a civil remedy, the judge has the

discretion to dismiss the case conditioned upon the defendant's payment of costs when the injured party appears in court and acknowledges in writing that the injured party has received satisfaction for the injury. See [Va. Code § 19.2-151](#). The charges cannot be dismissed upon a satisfaction and discharge if the offenses were committed by or upon a law enforcement officer, riotously in violation of [Va. Code §§ 18.2-404](#), [Va. Code § 18.2-405](#), [Va. Code § 18.2-406](#), and [Va. Code § 18.2-407](#), against a family or household member in violation of [Va. Code § 18.2-57.2](#), or with the intent to commit a felony.

## Sentencing

The maximum punishment in district court for misdemeanors is confinement in jail for twelve months and/or a \$2,500 fine. In addition, the sentencing judge has certain statutory sentencing alternatives including:

- Suspension of imposition of sentence or fine or suspension of all or part of sentence or fine, including requirement of probation after serving a portion of the sentence, paying at least partial restitution, or performance of community service to discharge the fine and/or sentence [Va. Code § 18.2-163](#), [Va. Code § 18.2-187.1](#); [Va. Code § 19.2-303](#) and [Va. Code § 19.2-354](#). See also restitution for investigative costs under [Va. Code § 18.2-163](#) and [Va. Code § 18.2-187.1](#).
- After convicting the defendant of any offense for which a report to the Central Criminal Records Exchange is required, the judge shall determine whether a copy of the defendant's fingerprints or fingerprint identification information has been provided by a law-enforcement officer to the clerk of court for each offense. If the required CCRE information is not on file, the judge shall require that fingerprints and a photograph be taken by a law-enforcement officer as a condition of probation or of the suspension of the imposition or execution of any sentence for such offense.
- Probation [Va. Code § 19.2-303](#), [Va. Code § 19.2-305](#).
- Placement in a local community-based probation program [Va. Code § 19.2-303.3](#).
- Placement on probation or suspension of imposition or execution of "sentence" (incarceration) conditioned upon payment of fines and/or costs either on a date certain or on an installment plan [Va. Code § 19.2-356](#).
- Commitment to the [Department of Corrections](#), only for certain offenses or contagious diseases, [Va. Code § 53.1-21](#), [Va. Code § 53.1-22](#).
- Jails or jail farms. [Va. Code § 53.1-105](#).
- Local government work force [Va. Code § 53.1-128](#) and [Va. Code § 53.1-129](#). If the defendant was permitted to participate in the jail work force prior to trial, the defendant gets credit towards completing their sentence for such work. A specific order authorizing participation in a local government work force must be entered for each individual defendant. An entry for this order has been placed on the reverse of the warrants.

- Work/Education/Rehabilitation treatment release [Va. Code § 53.1-131](#). This option is available for any person who has been convicted and (i) sentenced to jail or (ii) is being held pending completion of a pre-sentence report pursuant to [Va. Code § 19.2-299](#). If placed on work release under [Va. Code § 53.1-131](#) and the defendant is to serve time on weekends or on nonconsecutive days to permit the defendant to retain gainful employment, the judge shall require the defendant to pay the clerk an amount to defray the defendant's jail costs which shall not exceed the amount specified by the Compensation Board [Va. Code § 53.1-131.1](#). If the defendant fails to report at the times specified by the judge, the sentence imposed pursuant to [Va. Code § 53.1-131.1](#) shall be revoked and a "straight" jail sentence imposed.
- Home electronic incarceration program [Va. Code § 53.1-131.2](#). The court may assign the defendant to such a program as a condition of probation.
- Referral to community-based probation program. See [Va. Code § 9.1-174](#) et seq. Any city, county, or combination thereof may develop, establish, and maintain policies, procedures, and treatment services for veterans and active military service members who are convicted and sentenced for misdemeanors or felonies that are not felony acts of violence [Va. Code 2.2-2001](#) & [Va. Code § 2.2-2001.1](#).
- Commitment for treatment of drug or alcohol abuse [Va. Code § 18.2-254](#).
- Posting of district court form DC-364, Recognizance and Bond to Keep the Peace if the judge finds good cause for the complaint that the defendant breached the peace.
- Order to defendant not to operate a motorboat or watercraft after conviction for boating while intoxicated [Va. Code § 29.1-738.4](#), and to participate in VASAP, [Va. Code § 29.1-738.5](#).
- Order the defendant's license to drive a motor vehicle suspended for the unlawful purchase or possession of alcohol beverages [Va. Code § 4.1-305](#).

### **Substance Abuse Screening, Assessment and Treatment**

In cases involving drug offenses committed after January 1, 2000, the court is required to order persons to undergo a substance abuse screening and, based on the results possibly an assessment and treatment. This process is discretionary for other types of misdemeanors. Specifically, if a person is:

- Convicted of a drug offense under Article 1 or Article 1.1 of Chapter 7, Title 18.2 [Va. Code § 18.2-247](#) through [Va. Code § 18.2-265.5](#), and
- The offense was committed on or after January 1, 2000, and
- The offense is Class 1 misdemeanor, or
- The conviction is for a second offense of petit larceny, and
- The defendant's sentence includes:

- Probation supervision by a community corrections program, or
- Participation in a local alcohol safety action program

The court must order that the person undergo a substance abuse screening as part of the sentence. The court may order a substance abuse screening upon conviction as part of the sentence if:

- The offense is a Class 1 misdemeanor, and
- The court has reason to believe that the defendant has a substance abuse or dependence problem, and
- The defendant's sentence includes:
  - Probation supervision by a community corrections program, or
  - Participation in a local alcohol safety action program, or
  - Any other sanction.

If the person is ordered to enter a program administered under the community corrections program, the local community corrections program is responsible for conducting the screening. Otherwise, the local alcohol safety action program shall conduct the screening.

If the screening indicates that the person has a substance abuse or dependence problem, an assessment shall be completed by the program that conducted the screening. If the assessment confirms that the person has a substance abuse or dependence problem, the court shall order, as a condition of a suspended sentence or probation, that the person complete a substance abuse education and intervention component of the local alcohol safety action program or such other available treatment program that in the opinion of the court would be best suited to the needs of the person. If the person is referred to the local alcohol safety action program, the program may charge a fee not to exceed \$300 based on the person's ability to pay.

## **Restitution**

When a defendant is convicted of committing certain crimes that result in property damage or loss, the defendant must enter into a restitution plan if their sentence is suspended, or the defendant is placed on probation. The court shall enter the amount of restitution to be repaid by the defendant, the date by which all restitution is to be paid, and the terms and conditions of such repayment on the DC-317: Order For Restitution. If the attorney for the Commonwealth participated in the prosecution of the defendant, the attorney or designee shall complete, to the extent possible, all portions of the form excluding the amount of restitution to be repaid by the defendant and the terms and conditions such repayment and the victim's name and contact information, including the victim's home address, telephone



number, and email address. Except as provided in [Va. Code § 19.2-305.1](#) or otherwise required by law, the victim's contact information shall be confidential, and the clerk shall not disclose such confidential information to any person. If the attorney for the Commonwealth did not participate in the prosecution of the defendant, the court or the clerk shall complete the form. A copy of the form, excluding contact information for the victim shall be provided to the defendant at trial.

A copy of the form shall be provided to the attorney for the Commonwealth and to the victim, their agent, or their estate upon request and free of charge. The plan shall include the defendant's home address, place of employment and address, social security number and bank information [Va. Code § 19.2-305.1](#). Restitution also may be used in other instances as a part of the sentence. See [Va. Code § 18.2-163](#), [Va. Code § 18.2-187.1](#), [Va. Code § 19.2-303.2](#), [Va. Code § 19.2-305.1](#), and [Va. Code § 19.2-305.2](#). Where property damage, loss or destruction occurred, the court may require the return of the property; if return is impractical or impossible, then payment equal to the greater of the value of the property at the time of the offense or of sentencing may be ordered.

Local community-based probation officers will monitor the collection of payment of restitution to the victims of crime for offenders placed on local supervised probation [Va. Code § 9.1-176.1](#)

### ***Restitution Review Hearings***

When a defendant is ordered to pay restitution and placed on active supervision, the probation agency shall notify the court and the Commonwealth attorney of the amount of any unpaid restitution and the last known address of the defendant, 60 days prior to the defendant's release from supervised probation. This notice shall be in writing, if practicable a copy of this notice is to be provided to the victim.

The court shall conduct a hearing prior to the release of the defendant. The court may (a) release the defendant from supervision, (b) modify the period of or terms of supervision, (c) revoke some or all of the suspended sentence or probation, or (d) proceed in accordance with E of [Va. Code § 19.2-358](#).

The court shall also docket the restitution order as a civil judgment, provided the order has not been previously docketed.

If any amount of restitution remains unsatisfied at the time of the hearing conducted the court shall continue to schedule hearings to review the defendant's compliance with the restitution order until the amount is satisfied. Notice of such hearing is to be provided to the defendant. The court shall follow these procedures of reviewing compliance with a restitution order by a defendant, until the amount has been satisfied or if any amount of the restitution remains unsatisfied, for the longer, 10 years from the date of the hearing held or the period of probation ordered by the court.



At every hearing conducted where the defendant was convicted of an offense for which a report to the Central Criminal Records Exchange is required, if the court has not previously verified that the conviction for such offense appears on the criminal history record of the defendant, the court shall review the criminal history record of the defendant and determine whether the present conviction appears on that record.

The following procedures are recommended when the defendant is placed on probation with active supervision:

Step:	Description:
1.	Court receives notice from local community probation, 60 days prior to release, regarding the defendant's release from active supervision and non-compliance with restitution payments as ordered.
2.	Enter an AH hearing type in GCMS on the original case where restitution was ordered.  Index in GCMS using the following codes: <ul style="list-style-type: none"><li>• HEARING TYPE: <b>AH</b> – Administrative Hearing</li><li>• CONT CODE: <b>RR</b> – Restitution Review</li></ul>
3.	Prepare a DC-512: Notice of Hearing for defendant and send out of service on the defendant.
4.	Document restitution hearing date and time on the original case papers.
5.	If any amount of restitution remains unpaid after the hearing, docket the restitution ordered as a civil judgment, provided it has not been previously docketed. Prepare the DC-466: Abstract of Judgement for Order of Restitution and take to the Circuit Court. See Recommended Procedures - Circuit Court below.

Step:	Description:
6.	If the court has not previously verified that the conviction for such offense appears on the criminal history record of the defendant, the court shall review the criminal history record of the defendant and determine whether the present conviction appears on that record. The probation officer for the defendant shall provide the criminal history record to the court at such hearing. If the present conviction does not appear on the criminal history record, the court shall order that the fingerprints and photograph of the defendant be taken by a law-enforcement officer and submitted to the Central Criminal Records Exchange. Prepare the CC-1390: <a href="#">Order for DNA or Sexually Transmitted Infection Testing and/or for Preparation of Reports to Central Criminal Records Exchange</a> , and attach a copy of the charging document(s) to facilitate fingerprinting and photographing of the defendant.
7.	Schedule the next restitution review hearing as directed in Step 2 above.

When a defendant is ordered to pay restitution and placed on probation without active supervision, the court shall include in the order for restitution a date, not to exceed 2 years from the date of entry of the restitution order, that the defendant's compliance with the restitution shall be reviewed and the court shall schedule a hearing for such date. If the court has sentenced the defendant to an active jail sentence, the date should not exceed 2 years from the release date of incarceration.

If at the hearing the court finds the defendant is not in compliance with the restitution order, the court may (i) modify the terms of probation, (ii) revoke some or all of the suspended sentence or probation, or (d) proceed in accordance with E of §19.2-358.

The court shall also docket the restitution order as a civil judgment, provided the order has not been previously docketed.

If any amount of restitution remains unsatisfied at the time of the hearing conducted the court shall continue to schedule hearings to review the defendant's compliance with the restitution order until the amount is satisfied. Notice of such hearing is to be provided to the defendant. The court shall follow these procedures of reviewing compliance with a restitution order by a defendant, until the amount has been satisfied or if any amount of the restitution remains unsatisfied, for the longer, 10 years from the date of the hearing held or the period of probation ordered by the court.

At every hearing conducted where the attorney for the Commonwealth participated in the prosecution and the defendant was convicted of an offense for which a report to the Central Criminal Records Exchange is required, if the court has not previously verified that the conviction for such offense appears on the criminal history record of the defendant, the court shall review the criminal history record of the defendant and determine whether the present conviction appears on that record.

The following procedures are recommended when the defendant is placed on probation without active supervision:

Step:	Description:
1.	The court enters an order of restitution on the DC-317: Order for Restitution. The order shall include a restitution review hearing date not to exceed 2 years from the date of entry of the restitution order.
2.	<p>Enter an AH hearing type in GCMS on the original case where restitution was ordered.</p> <p>Index in GCMS using the following codes:</p> <ul style="list-style-type: none"> <li>• HEARING TYPE: <b>AH</b> – Administrative Hearing</li> <li>• CONT CODE: <b>RR</b> – Restitution Review</li> </ul>
3.	Document restitution hearing date and time on the original case papers.
4.	Prepare a DC-512: Notice of Hearing for the defendant or recognize the defendant back for the next hearing in accordance with your local practice.
5.	If any amount of restitution remains unpaid after the hearing, docket the restitution ordered as a civil judgment, provided it has not been previously docketed. Prepare the DC-466: Abstract of Judgment for Order of Restitution and take to the Circuit Court. See Recommended Procedures - Circuit Court below.
6.	<p>If the court has not previously verified that the conviction for such offense appears on the criminal history record of the defendant, the court shall review the criminal history record of the defendant and determine whether the present conviction appears on that record. If the attorney for the Commonwealth participated in the prosecution of the offense, the attorney for the Commonwealth shall provide the criminal history record to the court at such hearing. If the present conviction does not appear on the criminal history record, the court shall order that the fingerprints and photograph of the defendant be taken by a law-enforcement officer and submitted to the Central Criminal Records Exchange. Prepare the CC-1390: <a href="#">Order for DNA or Sexually Transmitted Infection Testing and/or for Preparation of Reports to Central Criminal Records Exchange</a>, and attach a copy of the charging document(s) to facilitate fingerprinting and photographing of the defendant.</p>
7.	Schedule the next restitution review hearing as directed in Step 2 above.

If at any restitution review hearing the court determines the defendant is unable to pay restitution or will remain unable pay restitution for the duration of the review period, 10 years from the date of the hearing held or the period of probation ordered by the court, the court may discontinue any further hearings to review the defendant's compliance with the restitution order.

If the court determines that a defendant is incarcerated on the date of any review hearing scheduled, the court may remove the case from the docket, reschedule the review hearing to a date after the defendant's release of incarceration, and provide notice of the hearing to the defendant and attorney for the Commonwealth. If the defendant is on probation and this probation includes active supervision, the probation agency supervising the defendant shall notify the court when the defendant has been released from incarceration.

When an individual obligated to pay restitution defaults in the payment or any installment payment, the court may on its own motion or upon a motion for the Commonwealth or attorney for a locality, conduct a restitution review hearing. If the court finds that the defendant is not in compliance with the restitution order, the court may order the defendant confined for contempt for a term not to exceed 60 days unless the defendant was able to show that:

- The default was not attributable to an intentional refusal to obey the order;
- The default was not attributable to a failure to make a good faith effort to obtain the necessary funds; or
- Any failure to appear was not attributable to an intentional refusal to obey the order of the court.

The court may provide in its order that payment or satisfaction of the amounts in default at any time will entitle the defendant to their release from confinement or may at any time reduce the sentence for good cause shown, including payment or satisfaction of amounts.

The following procedures are recommended when the defendant defaults in the payment or installment payment of restitution:

Step:	Description:
1.	Upon motion of the court or upon motion of the Commonwealth or attorney for the locality, the court shall conduct a restitution review hearing.
2.	Upon motion of the court enter an AH hearing type in GCMS on the original case where restitution was ordered when acting up motion of the court.

Step:	Description:
	Index in GCMS using the following codes: <ul style="list-style-type: none"> <li>• HEARING TYPE: <b>AH</b> – Administrative Hearing</li> <li>• CONT CODE: <b>RR</b> – Restitution Review</li> </ul>
3.	Should the court receive an order for show cause, enter in GCMS a subsequent action to the original case where the restitution was order. Provide notice to the defendant of scheduled hearing via DC-512: Notice of Hearing or via service of the Show Cause. Update the subsequent action in accordance with judge's order: <ul style="list-style-type: none"> <li>• CASE TYPE: <b>SC</b> – Show cause</li> <li>• HEARING TYPE: <b>RR</b> – Restitution Review</li> </ul>
4.	At the conclusion of the hearing, if the defendant is ordered to confinement, prepare the DC-356: Disposition Notice, and include any order of the court regarding the satisfaction of the amounts in default that will entitle the defendant to release from confinement.
5.	If any amount of restitution remains unpaid after the hearing, docket the restitution ordered as a civil judgment, provided it has not been previously docketed. Prepare the DC-466: Abstract of Judgment for Order of Restitution and take to the Circuit Court. See Recommended Procedures- Circuit Court below.

If it appears the defendant's default for the payment of restitution is excusable under the standards set forth, the court may modify the terms of the payment of restitution, except that the court may not modify the amount of restitution owed by the defendant [Va. Code 19.2-358 E](#).

These provisions shall not be construed to prohibit the court from exercising any authority otherwise granted by law over the defendant during any period of probation order by the court.

The court can pursue a revocation hearing for failure to pay restitution within three years after the expiration of the defendant's suspended sentence or probation [Va. Code § 19.2-306](#).

The victim may enforce the restitution order in the same manner as a civil judgment. The court, when ordering restitution pursuant to [Va. Code § 19.2-305](#) or [Va. Code § 19.2-305.1](#), may provide that interest on the amount so ordered shall accrue at the rate

specified in [Va. Code § 6.1-330.54](#), [Va. Code § 19.2-305.4](#). If the order requires interest, it shall accrue from the date of loss or damage unless otherwise specified in the order. The District Court Financial Management System (FMS) User's Guide describes the clerical procedures for handling funds collected through restitution.

### ***Collecting Restitution Civilly***

General District Court ordered restitution may be civilly enforced in the General District Court or an abstract of ordered restitution may be recorded in the Circuit Court.

An order of restitution shall be docketed, in the name of the Commonwealth, or a locality if applicable, on behalf of the victim, as provided in [Va. Code § 8.01-446](#) when so ordered by the court unless the victim named in the order of restitution requests in writing that the order be docketed in the name of the victim. An order of restitution docketed in the name of the victim shall be enforced by the victim as a civil judgment.

At any time before a judgment for restitution docketed in the name of the Commonwealth or a locality is satisfied, upon written request of the victim, the court shall order the circuit court clerk to execute and docket an assignment of the judgment to the victim.

The district court clerk shall remove its automated financial system the amount of unpaid restitution upon sending the order to the circuit court clerk.

If the victim request that the order of restitution be docketed in the name of the victim or that a judgment for restitution previously docketed in the name of the Commonwealth or a locality be assigned to the victim, the victim shall provide the court an address where the defendant can mail payment for the amount due, and the address shall not be confidential. The court shall provide notice of the order to the defendant at the defendant's last known address and shall include the mailing address provided by the victim. (See Recommended Procedures- Circuit Court below)

Such docketing shall not be construed to prohibit the court of exercising any authority otherwise available to enforce the order of restitution. Enforcement by a victim of any order of restitution docketed as provided in [Va. Code § 8.01-446](#) is not subject to any statute of limitations [Va. Code § 19.2-305.2](#).

### ***Recommended Procedure – General District Court***

The statute provides that the restitution order may be enforced by the victim in the same manner as a judgment in a civil action. The victim may issue garnishments, etc. for the civil enforcement.

If the victim pursues the order for restitution civilly in the General District Court:

- Use the case management system for new case entry to issue judgment enforcement action requested, i.e., garnishment or interrogatory.
- It is not necessary to establish a new civil case in the civil division using the abstract process since the restitution order is with the criminal case; establish it with the first garnishment or interrogatory proceeding. Insert a reference on the garnishment or interrogatory and in case management system to the criminal case number.
- It is not necessary to zero out the restitution amount owed on the individual account.

### ***Recommended Procedure - Circuit Court***

Court orders restitution docketed in Circuit Court:

- Prepare district court form, DC-466: Abstract of Judgment For Order of Restitution:
  - **Commonwealth** or **Locality** (if applicable) vs. **Defendant** – Do not include the victim address on DC-466: Abstract of Judgment for Order of Restitution.
  - The amount entered on the abstract is total amount of restitution that is due at the time of the issuance of abstract.
- Attach a certified copy of the DC-317: Order of Restitution, first page only, to the abstract of judgment.

If the defendant is ordered to pay restitution to a crime victim and that victim cannot be located or identified, the clerk shall deposit the restitution collected in the Criminal Injuries Compensation Fund.

Restitution Docketed by Victim:

- Victim files completed DC-313: Request and Order for Restitution to be Docketed in Victim's Name:
  - Requires address for mailing restitution payments
  - Requires victim's signature
- Clerk signs Notice to the Defendant, and mails copy to defendant at the last known address.
- Prepare DC-466: Abstract of Judgment for Order of Restitution:
  - Utilize check box ☐ The court ordered that the order of restitution be docketed in the name of the victim as requested in writing by the victim pursuant to [Va. Code § 19.2-305.2\(B\)](#).
  - Retain copy with file

- o Send abstract to circuit court
- If restitution is recorded in the Financial Accounting System (FAS), and the defendant has not paid any monies toward the restitution:
  - o Remove the assessed amount of the restitution.
  - o Remove the recipient information on the account.
- If restitution is recorded in (FAS), and the defendant has paid monies toward the restitution:
  - o The assessed amount must be equal to the amount paid. The court may wish to contact the General District Team for assistance if adjusting the balance in restitution.

Restitution assigned to the victim previously docketed in the name of the Commonwealth or locality:

- Victim files completed DC-313: Request and Order for Restitution to be Docketed in Victim's Name, requesting the abstract be assigned to victim.
- Judge orders assignment.
- Clerk signs Notice to the Defendant, and mails copy to defendant at last known address.
- Send original to circuit court; retain copy in file.
- If restitution is recorded in the Financial Accounting System (FAS), and the defendant has not paid any monies toward the restitution:
  - o Remove the assessed amount of the restitution.
  - o Remove the recipient information on the account
- If restitution is recorded in (FAS), and the defendant has paid monies toward the restitution:
  - o The assessed amount must be equal to the amount paid. The court may wish to contact the General District Team for assistance if adjusting the balance in restitution.

## Costs

Costs are automatically imposed by statute upon conviction in any case and also on dismissal of a case under [Va. Code § 16.1-69.48:1](#) Fixed fee for misdemeanors, traffic infractions and other violations in district court, [Va. Code § 19.2-151](#) Satisfaction and discharge of assault and similar charges, [Va. Code § 18.2-57.3](#) Persons charged with first offense of assault and battery against a family or household member may be placed on local community-based probation, [Va. Code § 18.2-251](#) Persons charged with first offense may be placed on probation, [Va. Code § 19.2-303.2](#) Persons charged with first offense may be placed on



probation, and pursuant to [Va. Code § 19.2-303.4](#) deferred dispositions under [Va. Code § 4.1-305](#), [Va. Code § 18.2-57.3](#), [Va. Code § 18.2-61](#), [Va. Code § 18.2-67.1](#), [Va. Code § 18.2-67.2](#), [Va. Code § 18.2-251](#), [Va. Code § 19.2-303.2](#), and [Va. Code § 19.2-303.6](#), [Va. Code 19.2-298.02](#).

When the defendant is represented by an attorney appointed by the court or by the Public Defender's office, the same procedures apply other than the Public Defender's office is not entitled to fees, only to payment of expenses. The court must:

- Determine the appropriate fee, including submission of time sheets, and expenses incurred in defending the defendant. Court-appointed counsel should make a written request within thirty days of trial or preliminary hearing for payment of fees.
- Collect the fee and expenses from the appropriate locality for local offenses.
- Tax the fee and expenses as costs in the case.
- Collect the fee and expenses from the defendant and, for local offenses, reimburse the locality for fees and expenses recovered on local cases.

If an appeal is withdrawn after ten days from the date of conviction in district court, the judgment is affirmed in circuit court as a judgment of the circuit court and the circuit court clerk collects all fines and costs imposed in the case. If an appeal is withdrawn within ten days from the date of conviction in district court, the sentence is reinstated in district court and the district court clerk collects all fines and costs imposed on the case. Therefore, an appeal on a conviction should be held by the district court until the ten-day appeal period has run.

See the District Court Financial Management System (FMS) User's Guide for type and assessment of costs. The imposition of costs may not be suspended, or the amount reduced, since costs are to reimburse the public treasury for the expenses of prosecution and are not a part of the penalty.

Localities may adopt an ordinance authorizing a processing fee not to exceed \$25 to be charged as part of court costs for any individual admitted to jail following conviction. The fee is collected only once for an admission to jail, even if admission is for multiple convictions [Va. Code § 15.2-1613.1](#). This fee is sent to the locality.

In addition to the fees provided for by [Va. Code § 16.1-69.48:1](#), upon a finding of guilty of any charge or charges in which any computer forensic analysis revealed evidence used at trial of a defendant, the defendant may be assessed costs in an amount equal to the actual cost of the computer forensic analysis not to exceed \$100 for each computer analyzed by any state or local law-enforcement agency. Upon motion and submission to the court of an affidavit by the law-enforcement agency setting forth the number of computers analyzed, and the total amount of costs requested, the court shall determine the appropriate amount

to be assessed and order such amount paid to the law-enforcement agency. District court form DC-362: Motion and Affidavit Requesting Costs for Computer Forensic Analysis may be used for this purpose.

### **Cash Bond Used to Pay Fines and Costs**

Cash bonds cannot be applied to fines and costs, without the consent of the person who posted the cash bond; however, if the defendant posted the cash and is tried in their absence and convicted, the cash bond shall be applied to fines and costs [Va. Code § 19.2-143](#), [Va. Code § 19.2-121](#). If a third-party surety consents to the cash bond being applied to fines and costs, such consent should be written and should be signed by such surety.

### **Central Criminal Records Exchange (CCRE) Procedures**

All duly constituted police authorities having the power of arrest shall take fingerprints and photographs of any adult who is taken into custody and charged with an act for which is required to be reported to the [Central Criminal Records Exchange](#) (CCRE), pursuant to subsection A of [Va. Code § 19.2-390](#). The preparation of fingerprint forms is done on all felonies, treason, Title 54.1 violations punishable as a misdemeanor, and any misdemeanors punishable by confinement in jail under Title 18.2, Title 19.2, or similar local ordinances. Any offense in violation of [Va. Code § 3.2-6570](#) Cruelty to Animals, [Va. Code § 4.1-309.1](#) Possess/Consume alcoholic beverage while operating a school bus, [Va. Code § 5.1-13](#) Operation of aircraft while under influence of liquors or drugs, [Va. Code § 15.2-1612](#) Wearing of same or similar uniforms by unauthorized persons, [Va. Code § 46.2-339](#) Qualifications of school bus operator, [Va. Code § 46.2-341.21](#) Driving while disqualified, [Va. Code § 46.2-341.24](#) Driving a CMV while intoxicated, [Va. Code § 46.2-341.26:3](#) Refusal of tests, [Va. Code § 46.2-817](#) Disregard and eluding police, [Va. Code § 58.1-3141](#) Treasurer or other shall not misuse public money, [Va. Code § 58.1-4018.1](#) Larceny of lottery tickets, [Va. Code § 60.2-632](#) False statement, etc. to obtain or increase benefits, [Va. Code § 63.2-1509](#) Require physicians, nurses, teachers to report injuries to children, [Va. Code § 22.1-289.041](#) Sex offender or child abuser prohibit from operate or residing in family day home.

This preparation is the responsibility of the chief law enforcement officer or designee, who may be the arresting officer. It is the court's responsibility to inform the appropriate law enforcement officer, upon conviction of applicable charges, that fingerprinting, and photographs are required.

Law-enforcement and clerks of court shall only submit reports for offense that are reportable to the Central Criminal Records Exchange.

The following procedures are recommended when the fingerprint form is received at the time of the charging documents.

Step:	Description:
1.	<p>If fingerprint form is attached to the charging document, enter fingerprint form number in GCMS in <b>Document Control #</b> field upon data entry of charge.</p> <p>For manual fingerprint forms, court should receive entire State Police form SP180.</p> <p><b>Note:</b> If the offense is not State Police Reportable, remove the Document Control Number from the <b>Document Control #</b> field, record on the fingerprint document <b>Non-Reportable</b>, and file the document with the case.</p>
2.	<p>Upon adjudication, of an adult whose case is being transferred to another court for disposition, the clerk enters the appropriate disposition code, and forwards the fingerprint form with the case papers.</p> <p>Clerk enters <b>TR</b> for transfers to another court or <b>GJ</b> for cases where the defendant's case is to be tried in Circuit Court.</p>
3.	<p>After 15 days, any reportable offense with a valid disposition and a valid document control number will transmit electronically to Virginia State Police <a href="#">Va. Code § 19.2-390</a>.</p> <p>For finalized cases transferred as part of disposition to another court, clerk shall forward fingerprint form with transferred case papers.</p>
4.	<p>For an adult case that has a "fugitive" status, the clerk enters an <b>FF</b> disposition code, and retains the fingerprint form with the case papers. If defendant does not appear on charge, no further action is required.</p>

The following procedures are recommended when the fingerprint form is not received at the time of the charging documents. In cases where **Document Control #** and **AGENCY #** are required for case entry, then clerk may use "999999" until fingerprint form is received:

Step:	Description:
1.	<p>Upon adjudication of guilt of the charge, the clerk may issue the CC-1390: <a href="#">Order for DNA or Sexually Transmitted Infection Testing and/or for Preparation of Reports to Central Criminal Records Exchange</a>, and attach a copy of the charging document(s) and attach a copy of the charging document(s) to facilitate fingerprinting and photographing of the defendant.</p> <p>Defendants who were released on a summons shall be fingerprinted in the following situations: a finding of guilt, acquittal (not guilty by reason of insanity), and the court defers or dismisses the proceeding pursuant first offender <a href="#">Va. Code § 18.2-251</a> or <a href="#">Va. Code § 19.2-303.2</a>.</p>

Step:	Description:
	<p>The recommended procedure is to issue the CC-1390: <a href="#">Order for DNA or Sexually Transmitted Infection Testing and/or for Preparation of Reports to Central Criminal Records Exchange</a>, and attach a copy of the charging document(s) and attach a copy of the charging document(s) to facilitate fingerprinting and photographing of adults; however, courts may have developed other locally used forms or procedures to facilitate fingerprinting and photographing.</p>
2.	<p>Upon receipt of the CC-1390: <a href="#">Order for DNA or Sexually Transmitted Infection Testing and/or for Preparation of Reports to Central Criminal Records Exchange</a> showing compliance with court order, the clerk shall enter the document control number in GCMS. Upon notice of noncompliance with court order, the clerk shall notify the judge for further action required.</p> <p>If upon the request of the Judge, the clerk shall issue a district court form DC-360: Show Cause (Criminal) against the defendant for non-compliance with a court order under the summary contempt section, <a href="#">Va. Code § 18.2-456</a>.</p>
3.	<p>Upon adjudication, for an adult whose case is being transferred to another court for disposition, the clerk enters the appropriate disposition code, and forwards the fingerprint form with the case papers.</p> <p>Clerk enters <b>TR</b> for transfers to another court or <b>GJ</b> for cases where the defendant's case is to be tried in Circuit Court.</p>
4.	<p>After 15 days, any reportable offense with a valid disposition and a valid document control number will transmit electronically to Virginia State Police. Cases with final disposition of <b>OT</b> will not transmit to CCRE.</p> <p>For finalized cases transferred as part of disposition to another court, clerk shall complete and forward fingerprint form to CCRE before transferring case papers.</p>

Each Friday, the Office of the Executive Secretary of the Supreme Court of Virginia compiles and extracts eligible records and electronically processes them for the Interface. Reports are generated and placed in the courts print file. The GT28 report has three parts: the Preview Report, Transmit Report, and Hold Report. The GT37 report is a listing of all cases rejected by the State Police. The TR72 Report matches offense tracking numbers (OTN's) with the DCN, which has been entered by the arresting agency at the time of fingerprinting and the Document Control Number (DOC) entered into the General District Case Management System (GCMS).

### ***Preview Report***

Cases are listed on this report when the Hearing/Disposition Update screen has been completed to show a case has been finalized. All cases appear on this report before transmission to state police to allow the court to compare the 30-byte case management system charge description with the 48-byte State Police description of each charge. A discrepancy in the descriptions will alert the clerk an error has occurred and should be corrected before the case transmits to the State Police. The case management system will insert a **B** in the Document Control # field on the Hearing/Disposition Update screen, to show the case appeared on the Preview Report. The date of the report will also display.

### ***Hold Report***

Cases are listed on this report after they have printed on the Preview Report and have “9999999” in the **Document Control #** field. This is indicated with a “0” in the **HLD** field on the report. If possible, the cases should be updated with a valid DOC. The following week if the case still has “9s” in the **Document Control #** field it will appear on the report again, as indicated with a “1” in the **HLD** field. If not updated with a valid DOC by the next week, the case will appear on the report a final time, as indicated with a “2” in the **HLD** field. If the case is updated during this process, it will be removed from the Hold Report. If not updated with a valid DOC, it will be transmitted to State Police with the 9’s. State Police will send a letter to the appropriate agency, using the agency number supplied by the court on the Hearing/Disposition Update screen. The letter will advise the arresting agency a CCRE is needed for the case. If no valid agency number was supplied by the court, State Police will send the record to the court on the Exceptions Report, requiring the court to send a manual CCRE.

**Note:** If the yellow copy of the fingerprint form is not available, no further action is required of the court.

The arresting agency may be given a copy of the Hold report. If possible, the CCRE should be completed by the arresting agency and yellow copy given to the Clerk’s office. The case should be updated in the case management system with a valid **Document Control #** which will be transmitted via the interface to State Police.

### ***Transmit Report***

Cases listed on this report have been transmitted to State Police. The case management system will insert a **T** in the **Document Control #** field on the Hearing/Disposition Update screen, to show the transmission has occurred. The date of transmission will also display. The cases listed on this report with all 9’s in the document control number have been on the Hold report for two weeks prior to being transmitted. They may appear on the Exceptions report in a few weeks. If this is the case, and the court has received the CCRE form in the interim, it should be completed and sent to State Police in the designated envelopes provided by State Police. If the court has not received the CCRE form, no further action is required.

***State Police Exceptions Report***

It will be necessary to forward the completed “yellow” copy of the CCRE (if available) of all cases listed on the Exceptions Report. Court personnel should make a photocopy of the fingerprint form and send the original to State Police in the specially designated envelope within five days. If no fingerprint form is received from the arresting agency, State Police will assume no fingerprint form exists (this would be the case if “9999999” were originally entered in the **Document Control #** field on a reportable offense and a fingerprint form has not been received by the court).

***The TR72 Report - State Police DCN Interface Error***

The TR72 Report is the DCN Interface with State Police Activation & new State Police DCN Interface Error Report – The Document Control Number (DCN) Interface matches offense tracking numbers (OTN's) with the DCN, which has been entered by the arresting agency at the time of fingerprinting and the Document Control Number (DOC) entered into the General District Case Management System (GCMS). This interface will run each Friday night. When a DCN from the interface does not match the **DOC** in the case management system, the DCN from the State Police will overwrite the **DOC** entered in the case management system. Additionally, if the OFFDT, DOB, Race or Sex does not match the case management system, the case will appear on the State Police DCN Interface Error Report (TR72) to be reviewed and corrected by the court.

***Forms***

CC-1390	<a href="#">Order for DNA or Sexually Transmitted Infection Testing and/or for Preparation of Reports to Central Criminal Records Exchange</a>
SP 180	Manual fingerprint form
SP 222	Automated fingerprint form
Optional	DC-360: Show Cause Summons
Reference DMV/State Police pre-payable table	

***References***

<a href="#">Va. Code § 19.2-390</a>	Reports to be made by local law-enforcement officers when authorized to take prints
<a href="#">Va. Code § 19.2-392.01</a>	Judges may require taking of fingerprints and photographs in certain misdemeanor cases.

**Not Guilty by Reason of Insanity (NGRI)**

A defendant who is found not guilty of a misdemeanor by reason of insanity on or after July 1, 2002, shall remain in the custody of the [Department of Behavioral Health and Developmental Services](#) (DBHDS) for a period not to exceed one year from the date of acquittal. During that year, if it is determined that the person meets the criteria for conditional release or release without conditions [Va. Code § 19.2-182.7](#), Emergency custody [Va. Code § 37.2-808](#), Temporary detention [Va. Code § 37.2-809](#), or Involuntary commitment [Va. Code § 37.2-814](#), [Va. Code § 37.2-815](#), [Va. Code § 37.2-816](#), [Va. Code § 37.2-817](#), [Va. Code § 37.2-818](#), [Va. Code § 37.2-819](#) and [Va. Code § 37.2-820](#), the [Department of Behavioral Health and Developmental Services](#) shall petition the court which committed the person. The Department's duty to file a petition during that year shall not preclude the ability of any other person meeting the requirements of [Va. Code § 37.2-808](#) to file such a petition [Va. Code § 19.2-182.5](#).

Court enters finding of **NGRI** for misdemeanor charge on or after July 1, 2002:

- Update the case management system with **F** and **NI**.
- Upon a finding of not guilty by reason of insanity, the clerk of court shall forward forthwith to [Virginia State Police](#) form SP237: Notification of Involuntary Admission, Mental Incapacity, Mental Incompetence, and TDO with voluntary Admission.
- If the defendant is convicted of an offense and also acquitted by reason of insanity of another offense, in the same proceeding, the defendant must first complete any sentence imposed for the conviction before being placed in the custody of the Department of Behavioral Health and Developmental Services (DBHDS).
- If the defendant has been previously committed by reason of insanity and then receives a period of incarceration in another proceeding conducted while committed, the defendant shall be transferred to the correctional facility where the defendant will serve the sentence. Upon completion of the sentence the defendant will be placed in the custody of the Department of Behavioral Health and Developmental Services (DBHDS). This transfer of custody from correctional facility to DBHDS should be noted on the DC-356: Disposition Notice.
- Defendant is placed in the temporary custody of the Commissioner of the [Department of Behavioral Health and Developmental Services](#) (DBHDS) for the 45-day evaluation period as to whether the acquittee may be released with or without conditions or requires commitment. [Va. Code § 19.2-182.2](#) Pursuant to [Va. Code § 19.2-182.5 \(D\)](#), the period of custody shall not exceed one year from the date of acquittal.
- Clerk contacts the Admissions Director for the Forensic Unit of the Hospital where the acquittee will be transferred, or the Admission Director's designee for an admission date and time.

Example:

Central State Hospital

Jamillah Harris

Chief Forensic Admissions Coordinator

Telephone: 804-518-3754

Fax: 804-524-7440

Email: [jamillah.harris@dbhds.virginia.gov](mailto:jamillah.harris@dbhds.virginia.gov)

Judge prepares Order for Temporary Custody. [Model Order for Temporary Custody](#) available through [Department of Behavioral Health and Developmental Services](#) beginning on page 2.7 of the Temporary Custody For Evaluation document:

- Set a hearing date no sooner than forty-five days from the date the [DBHDS](#) assumes custody of the acquittee. Update the case management system as AH.
- Prepare district court form DC-356: Disposition Notice if defendant is in custody. Prepare district court form DC-352: Commitment Order if defendant has been on bond and is remanded to custody. Court may allow person to remain on bond until arrangements are made with the Forensic Intake Coordinator. The court may allow the acquittee to self-transport to Central State Hospital or may have the acquittee report to the Sheriff's Department to be transported to Central State Hospital.
- Distribute copies of the Order to the Commonwealth's Attorney, Acquittee's Attorney, the local Community Services Board, the Commissioner of [DBHDS](#), and the Sheriff's Department.
- Prepare district court form DC-354: Custodial Transportation Order requiring the Sheriff's Department or Sheriff's designee to transport the acquittee to the Central State Hospital on the agreed upon date and time.
- Attach copies of the Order for Temporary Custody, the reports regarding the sanity of the acquittee as well as the names and addresses for the attorney for the Commonwealth, the attorney for the acquittee and the judge holding jurisdiction over the acquittee for delivery to the Commissioner. Additionally, [Va. Code § 19.2-174.1](#) requires the following documentation must be provided to the Commissioner within ninety-six hours of the assumption of custody of the acquittee:
  - A copy of the warrant or indictment
  - A copy of the criminal incident information as defined in [Va. Code § 2.2-3701](#) or a copy of the arrest report or a summary of the facts relating to the crime.
  - If the information is not available at the hearing, it shall be provided by the party requesting placement or the person having custody directly to the Commissioner within ninety-six hours of the person being placed into the Commissioner's



custody. If the ninety-six-hour period expires on a Saturday, Sunday or legal holiday, the ninety-six hours shall be extended to the next day that is not a Saturday, Sunday, or legal holiday.

- File case papers in the pending court date file for the next hearing date.
- After an acquittee is placed in temporary custody of the Commissioner, the Director of Forensic Services, acting for the Commissioner, shall appoint as soon as possible two evaluators to perform the evaluations.
- The evaluation shall assess:
  - Whether the acquittee is currently mentally ill or intellectually disabled,
  - The acquittee's condition, and
  - The acquittee's need for hospitalization based upon factors set forth in [Va. Code § 19.2-182.3](#).
- The evaluators shall make a report to the court within forty-five days of the Commissioner's assumption of temporary custody. Copies of the report shall be sent to:
  - Judge having jurisdiction
  - Acquittee's attorney
  - Attorney for the Commonwealth for the jurisdiction where the person was acquitted
  - NGRJ Coordinator of the community services board serving the locality where the acquittee was acquitted
- Upon receipt of the evaluation report and, if applicable, a conditional release or discharge plan, the court shall schedule the matter for hearing on an expedited basis, giving the matter priority over other civil matters before the court, to determine the appropriate disposition of the acquittee. Except as otherwise ordered by the court, the attorney who represented the defendant at the criminal proceedings shall represent the acquittee through the proceedings pursuant to this section. The matter may be continued on motion of either party for good cause shown. The acquittee shall be provided with adequate notice of the hearing, of the right to be present at the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the right to introduce evidence and cross-examine witnesses at the hearing. The hearing is a civil proceeding and may be conducted using a two-way electronic video and audio communication system that meets the standards set forth in subsection B of [Va. Code § 19.2-3.1](#), unless objected to by the acquittee, the acquittee's attorney, or the attorney for the Commonwealth.
- Should the court allow remote testimony, the clerk's office will:
  - Notify the hospital that the acquittee will participate via remote testimony;

- inform the hospital which platform will be utilized;
  - and provide a date and time for the hearing.
- When the clerk’s office issues a subpoena for hospital staff to participate the subpoena will state the following:
  - Testimony will occur remotely;
  - the platform that will be utilized;
  - and the date and time for the hearing.

The courts can coordinate these details with the forensic coordinator at the state hospital:

- The hearing is to determine whether or not the acquittee should be committed to the custody of the Commissioner, conditionally released, or released without conditions. Sample orders can be found on the [Department of Behavioral Health and Developmental Services](#) website.
- When the civil proceeding results in commitment of an acquittee to the custody of the Commissioner for inpatient hospitalization pursuant to [Va. Code § 19.2-182.3](#), the clerk shall prepare form SP237: Notification of Involuntary Admission, Mental Incapacity, Mental Incompetence, and TDO with voluntary Admission to accompany the commitment order and forward the form and order to the Virginia State Police. See [Va. Code § 18.2-308.1:1](#), [Va. Code § 19.2-390](#).
- File case papers back in original court date.

### **Inpatient Psychiatric Hospital Admission from Local Correctional Facility**

Any inmate of a local correctional facility who is not subject to provisions of [Virginia Code § 19.2-169.2](#) may be hospitalized for psychiatric treatment at a hospital designated by the Commissioner of Behavioral Health and Developmental Services as appropriate for treatment of person under criminal charge.

The court with jurisdiction over the inmate’s case, if it is still pending, on the petition of the person having custody over an inmate or on its own motion, holds a hearing at which at the inmate is represented by counsel and find by clear and convincing evidence that (i) the inmate has a mental illness, (ii) there exists a substantial likelihood that, as a result of a mental illness the inmate will, in the near future, cause serious physical harm to themselves or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information if any and (iii) the inmate requires treatment in a hospital rather than the local correctional facility. The court would order such treatment on the DC-4003: Order For Treatment Of Inmate.

**Important:** If the court enters district court form, DC-4003: Order For Treatment Of Inmate, the clerk shall also complete district court form DC-343: Tracking Document for Sending or Receiving Evaluation or Treatment Order Upon Entry, attaching a copy of district court form DC-4003: Order For Treatment Of Inmate and fax both orders to the evaluator or to the director of the community services board by close of business on the next business day after the order was entered. The evaluator or director shall acknowledge receipt of the order no later than close of business on the next business day after the order is received using district court form DC-343: Tracking Document for Sending or Receiving Evaluation or Treatment Order Upon Entry.

Prior to making this determination, the court shall consider the examination conducted in accordance with [Va. Code § 37.2-815](#) and the preadmission screening report prepared in accordance with [Va. Code § 37.2-816](#) by an employee or designee of the local community services board or behavioral health authority who is not providing treatment to the inmate.

If an inmate is hospitalized pursuant to [Va. Code § 19.2-169.6](#) and the inmate's criminal case is still pending, the court having jurisdiction over the inmate's case may order that the admitting hospital evaluate the inmate's competency to stand trial and their mental state at the time of the offense pursuant to [Va. Code § 19.2-169.1](#) and [Va. Code § 19.2-169.5](#).

It may also be appropriate that upon petition by the person having custody over an inmate, a magistrate finds probable cause to believe that (i) the inmate has a mental illness, (ii) there exists a substantial likelihood that, as a result of a mental illness the inmate will, in the near future, cause serious physical harm to themselves or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information if any and (iii) the inmate requires treatment in a hospital rather than the local correctional facility, and the magistrate issues a temporary detention order for the inmate.

Prior to the filing of the petition, the person having custody shall arrange for an evaluation of the inmate conducted in-person or by means of two-way electronic video and audio communication as authorized by [Va. Code § 37.2-804.1](#) by an employee or designee of the local community services board or behavioral health authority. The person having custody over the inmate shall notify the court having jurisdiction over the inmate's case, if it is still pending, and the inmate's attorney prior to the detention pursuant to the temporary detention orders or as soon thereafter as is possible.

Upon detention a hearing shall be held; either (a) before the court having jurisdiction over the inmate's case or (b) before the district court judge or a special justice in accordance with the provisions of [Va. Code § 37.2-815](#) through [Va. Code § 37.2-821](#), in which the inmate shall be represented by counsel as specified in [Va. Code § 37.1-814](#). The hearing shall be held within 72 hours of the execution of the temporary detention order. If the 72-hour period terminates on a Saturday, Sunday, legal holiday, or a day on which the court is lawfully closed, the inmate may be detained until the close of business the next day that is not a Saturday, Sunday, legal holiday, or a day on which the court is lawfully closed.

In no event shall an inmate have the right to make application for involuntary admission or be subject to an order for mandatory outpatient treatment.

An inmate may not be hospitalized for more than 30 days under [Va. Code § 19.2-169.2](#) subsection A unless the court which has criminal jurisdiction over them or a district court judge or a special justice, holds a hearing and orders the inmate's continued hospitalization in accordance with [Va. Code § 19.2-169.2 \(A\)2](#). If the inmate's hospitalization is continued under this subsection by a court other than the court which has jurisdiction over the inmate's criminal case, the facility at which the inmate is hospitalized shall notify the court with jurisdiction over the inmate's criminal case and the inmate's attorney in the criminal case, if the case is still pending.

Hospitalization may be extended in accordance with [Va. Code § 19.2-169.2\(D\)](#) for periods of 60 days for inmates awaiting trial, but in no event may such hospitalization be continued beyond trial, nor shall such hospitalization act to delay trial, as long as the inmate remains competent to stand trial.

Hospitalization may be extended for periods of 180 days for an inmate who has been convicted and not yet sentenced, or for an inmate who has been convicted of a crime and is in the custody of a local correctional facility after sentencing, but in no event may such hospitalization be continued beyond the date upon which the inmate's sentence would have expired had they received the maximum sentence for the crime charged. Any inmate who has not completed service of their sentence upon discharge from the hospital shall serve the remainder of their sentence.

For any inmate who has been convicted and not yet sentenced, or who has been convicted of a crime and is in custody of a local correctional facility after sentencing, the time the inmate is confined in the hospital for psychiatric treatment shall be deducted from any term for which they may be sentenced to any penal institution, reformatory or elsewhere.

When the clerk's office receives paperwork in conjunction with an inmate's committal, the clerk shall enter the temporary detention order and or the order for treatment in the involuntary civil commitment division of case management. The clerk's office will utilize the case type and hearing results as established for the entry of mental commitment hearings.

A different procedure applies to prisoners in state correctional facilities, such as a prison or camp operated by the [Virginia Department of Corrections](#), under [Va. Code § 53.1-40.2](#) to [Va. Code § 53.1-40.8](#). A temporary detention order is not specifically required by statute; however, a petition is filed with the court for a commitment proceeding. The case shall be scheduled as soon as possible in any available courtroom in the prisoner's locality or in a facility provided by the Department of Corrections and approved by the judge. These statutes provide in detail the pre-hearing notice requirements, the procedure required for examination of the prisoner, the findings required for commitment, and other similar details.

## Revocation of Driver's License

For certain convictions, a revocation of a defendant's driver's license is required, including:

- Alcohol violations— if convicted of refusing to submit to a breath test, the defendant will lose their driver's license for one year [Va. Code § 18.2-268.3](#), [Va. Code § 18.2-268.4](#), and if convicted of driving while intoxicated, the defendant will lose their driver's license for at least one year [Va. Code § 18.2-271](#).
- Underage alcohol consumption -- There are also situations in which a defendant's driver's license may be revoked. For example, the defendant may lose their driver's license for one year and may receive a restricted driver's license if convicted of the illegal consumption, purchase, or possession of alcohol [Va. Code § 4.1-305](#). The court may require that the defendant be monitored by Alcohol Safety Action Program (ASAP) or supervised by a local community-based probation program during the period of license suspension. ASAP or the local community-based probation program shall report any violation of the conditions of the restricted permit. In that instance, one may use district court forms DC-576: [Driver's License Denial Order \(Juvenile\)/Driver's License Suspension Order \(Underage Alcohol Violations\)](#) and DC-261: Restricted License Order, second page to DC-576, to report the license suspension or terms of restricted driver's license, if applicable, to the [Department of Motor Vehicles](#). If the underage alcohol violation case is indexed and docketed in the case management system Traffic Division, and the defendant is convicted, a copy of DC-576 is not required for DMV. If there is a deferred disposition and the court suspends the defendant's license and/or issues a restricted license, a copy of DC-576 must be provided to DMV.
- Alcohol purchase for persons who may not purchase alcohol -- The driver's license of a person convicted under [Va. Code § 4.1-306](#) of purchasing alcohol for someone who is under the age of twenty-one, interdicted, or intoxicated may be suspended for up to one year. In this instance, the court may authorize a restricted driver's license. One may use district court forms DC-576: [Driver's License Denial Order \(Juvenile\)/Driver's License Suspension Order \(Underage Alcohol Violations\)](#) and DC-261: Restricted License Order, second page to DC-576, to report the license suspension or terms of restricted driver's license, if applicable, to the [Department of Motor Vehicles](#).

## Revocation of Other Licenses and Permits

### *Concealed Handgun Permit*

[Va. Code § 18.2-308\(J1\)](#): Revocation of concealed handgun permit when permit holder is convicted of carrying a concealed handgun in public while under the influence of alcohol or illegal drugs. The circuit court that issued the permit must be promptly notified of the revocation.

***Hunting or trapping license***

[Va. Code § 18.2-56.1](#): Revocation of hunting or trapping license for reckless handling of a firearm while hunting. If hunting or trapping license is revoked, clerk shall forward to the [Department Wildlife Resources](#), along with a notice of the length of revocation, once the ten-day appeal period has run.

***Hunting, trapping, and fishing licenses***

[Va. Code § 29.1-338](#): Revocation of hunting, trapping, and fishing licenses is required upon conviction for certain offenses. If hunting, trapping, or fishing license is revoked, clerk shall forward to the [Department Wildlife Resources](#), along with a notice of the length of revocation, once the ten-day appeal period has run.

***License for stationary blind***

[Va. Code § 29.1-349](#): Revocation of blind owner's license for stationary blind when blind erected within 50 yards of any other licensed blind without consent.

***Hunting license***

[Va. Code § 29.1-521.2](#): Revocation of hunting license if licensee hunts game in a manner that violates [Va. Code § 18.2-286](#): Shooting in or across road or in street. [Va. Code § 29.1-523](#) and [Va. Code § 29.1-525](#): Revocation of hunting license of person convicted of killing or attempting to kill deer by use of certain lights and of employment of certain lights upon places used by deer. If hunting license is revoked, clerk shall forward to the [Department of Wildlife Resources](#), along with a notice of the length of revocation, once the ten-day appeal period has run.

***Pawnbroker's license***

[Va. Code § 54.1-4014](#): Revocation of pawnbroker's license for second or subsequent violation of Chapter 40 of Title 54.1, the chapter regulating pawnbrokers.

***Business license***

[Va. Code § 18.2-246.2](#): Revocation of business license of a person, firm or corporation upon conviction of a violation of [Va. Code § 18.2-248](#) relating to imitation controlled substances, or [Va. Code § 18.2-246.2](#) relating to money laundering.

**Constitutionality of Statutes**

[Va. Code § 16.1-131.1](#): In any criminal or traffic case in a court not of record, if the court rules that a statute or local ordinance is unconstitutional, it shall upon motion of the

Commonwealth, stay the proceedings and issue a written statement of its findings of law and relevant facts, if any, in support of its ruling, and shall transmit the case, together with all papers, documents and evidence connected therewith, to the circuit court for a determination of constitutionality. If the Circuit court rules that the statute or local ordinance is constitutional; it shall remand the case to the court not of record for trial.

### ***Case Management System Update***

The Clerk should update the case using **F** as hearing result and **TR** as final disposition. In remarks it is suggested to put “appealed pursuant to Va. Code § 16.1-131.1”. Do not put date in the **appeal date** field. Keep copy of the original summons or warrant. Immediately transfer original to Circuit court along with district court form DC-322: Order - Transfer of Jurisdiction.

## **Trial Procedures for Misdemeanor Drug Cases**

### **Pre-Conviction Probation for “First-Time Offenders” Drug Charges or Marijuana Offenses**

In cases involving possession of a controlled substance, [Va. Code § 18.2-250](#), or illegal possession of marijuana, [Va. Code § 4.1-1100](#) et seq, a person who is deemed by statute to be a “first-time” offender may be eligible for probation if the defendant has not previously been convicted of drug offenses, with the exception of any misdemeanor conviction for possession of marijuana, or any offense under [Va. Code § 4.1-1100](#) and has not had a proceeding dismissed against them under the first offender statute, [Va. Code § 18.2-251](#) drug offenses, or [Va. Code § 4.1-1120](#) marijuana offenses, If probation is successfully completed in this type of case, the case may be dismissed.

The judge must first find facts sufficient to justify a finding of guilt (to avoid retrial of the case if the defendant fails to successfully complete probation). If the judge chooses this option, then the consenting defendant is placed on probation without the entry of a judgment of guilt. Costs are assessed, if applicable, when the defendant is placed on probation. At deferral the court shall determine whether the clerk of court has been provided with the fingerprint identification and if not, verify that the charge is reportable to the Central Criminal Records Exchange (CCRE). If the charge is CCRE reportable, the court shall order that the fingerprints and photograph of the person be taken by a law-enforcement officer.

The court must order the accused to undergo a substance abuse assessment and enter a treatment and/or education program.



### Convictions on Drug Cases

The court may require community service and/or order the accused to undergo a substance abuse assessment and enter a treatment and/or education program.

### Deferred Disposition

The following procedures are recommended in processing a drug case resulting in the first offender deferred disposition in the General District Court:

Step:	Description:
1.	The Clerk's office receives a summons or warrant.
2.	<p>Enter the summons or warrant as a new case number in GCMS in the criminal division and schedule the attorney advisement.</p> <p>Index in GCMS using the following codes:</p> <ul style="list-style-type: none"> <li>• CASE TYPE: <b>M</b> – criminal misdemeanor</li> <li>• HEARING TYPES: <b>AA</b> – advisement</li> </ul>
3.	<p>After arraignment, set the case for trial. Update the trial date and time in GCMS, along with the attorney or waiver information. All witnesses should be subpoenaed. Use DC-334: Request for Appointment of a Lawyer, or DC-335: Waiver of Rights to Representation by a Lawyer</p>
4.	<p>On the trial date:</p> <p>If the defendant is given first-offender status, continue the case in GCMS for the amount of time of probation based on local policy and recognized the defendant back for the review date if the defendant is required to appear.</p> <p>The local policy may be to prepare a separate order or note the conditions of probation on the back of the warrant. The defendant should be required:</p> <ul style="list-style-type: none"> <li>• To successfully complete the treatment or education program</li> <li>• To remain drug and alcohol free during the period of probation and submit to such tests during that period as may be necessary and appropriate to determine if the accused is drug and alcohol free</li> <li>• To make reasonable efforts to secure and maintain employment</li> <li>• To comply with a plan of at least 24 hours of community service</li> </ul>



Step:	Description:
	<ul style="list-style-type: none"> <li>The court shall, unless done at arrest, order the accused to report to submit to fingerprinting</li> </ul> <p><b>Note:</b> There should also be an endorsement or notation on the order or warrant that the defendant is requesting probation.</p>
5.	<p>Write the court costs on the summons or warrant, see the fee schedule for the amount that should be charged for Acct. 462 and Acct. 244, plus the court-appointed attorney's fee, if applicable. If the costs are not paid on the trial date, use district court form DC-210: Fines and Costs Payment Agreement/Acknowledgment of Driver's License Status to acknowledge the agreed upon due date.</p> <p><b>Note:</b> Advise the defendant that they must report to the probation agency within fifteen days.</p>
6.	<p>When updating the case in GCMS, enter the following information:</p> <ul style="list-style-type: none"> <li>The CCRE number in the <b>Document Control #</b> field, if not previously entered</li> <li>Check the <b>Defendant Present</b> field</li> <li>Place a <b>C</b> in the <b>Hearing Result</b> field and <b>DD</b> in the <b>Continuance Code</b> field on the trial date line</li> <li>Enter the new court date and time, at the end of the probation period, on the next line</li> <li>Check the appropriate boxes for the costs, Acct. 462, and Acct. 244, plus the court appointed attorney's fee, if applicable</li> <li>Check the <b>DC210</b> field</li> <li>Place a <b>Y</b> in the <b>VASAP</b> field</li> <li>Based on local policy, type an <b>S</b> in the <b>Probation Type</b> field if the probation is supervised or a <b>U</b> if the probation is unsupervised</li> <li>Type <b>12M</b> or the amount of the time ordered in the <b>Length</b> field</li> <li>The amount of community service hours required in the <b>Remarks</b> field.</li> </ul>
7.	<p>If the defendant decides to appeal after the case has been deferred, the defendant should be sentenced and then the appeal can be noted. <b>Note:</b> If the costs have been paid, a refund must be issued to the defendant.</p>

Step:	Description:
8.	<p>At the end of the probation period, the probation agency should report on the defendant's status:</p> <ul style="list-style-type: none"> <li>• If probation is successfully completed, fingerprints have been obtained and the costs are paid, the case should be dismissed.</li> <li>• If probation is not successfully completed, fingerprints have not been obtained and/or the costs are not paid, the case should not be dismissed.</li> </ul> <p>Upon fulfillment of the terms and conditions, and upon determination that the clerk of court has been provided with the fingerprint identification information or fingerprints of the defendant the court shall dismiss the proceedings against them.</p> <p>When the case is dismissed after the probation period, it will not be eligible for expungement, <a href="#">Va. Code § 19.2-392.2</a>, pursuant to Commonwealth vs. Jackson 255 VA 552, which states, "A person against whom judgment is deferred after a determination that the evidence is sufficient to support conviction is not "innocent" of the offense regardless of the pleas entered, and hence an order of the trial court directing expungement of court records is reversed."</p> <p>During the probation period, if the probation agency reports that the defendant has a violation, the court may issue a show cause for the defendant to show cause why they should not be sentenced on the drug offense charge.</p>
9.	<p>If the defendant is convicted, update GCMS with the fine amount, jail sentenced imposed, etc.</p>

### Conviction

The following procedures are recommended in processing a drug offense case resulting in conviction in the General District Court.

Step:	Description:
1.	<p>The Clerk's office receives a summons or warrant. Enter in the criminal division as a misdemeanor with an arraignment date.</p> <p>Index in GCMS using the following codes:</p> <ul style="list-style-type: none"> <li>• CASE TYPE: <b>M</b> – criminal misdemeanor</li> <li>• HEARING TYPES: <b>AA</b> – advisement</li> </ul>

Step:	Description:
2.	After arraignment, set the case for trial. Update the trial date and time in GCMS, along with the attorney or waiver information. All witnesses should be subpoenaed. Use district court form DC-334: Request for Appointment of a Lawyer or district court form DC-335: Waiver of Right to Representation by a Lawyer.
3.	On the trial date:  If the defendant is found guilty, finalize the GCMS. Prepare a disposition notice if jail time is ordered.
4.	Advise the defendant that they must report to the probation agency within 15 days.
5.	Write the fine and court costs on the summons or warrant, see the fee schedule for the correct amount that should be charged for Acct. 462, Acct. 001, and Acct. 244, use Acct. 110 or local account for the fine amount, plus the court-appointed attorney's fee and sentencing fee, if applicable. If the costs are not paid on the court date, follow the court's time-to-pay policy and use district court form DC-210: Fines and Costs Payment Agreement/Acknowledgment of Driver's License Status to acknowledge this also.
6.	<p>When updating the case in GCMS, enter the following information</p> <p>The CCRE number in the <b>DOC</b> field, if not previously entered:</p> <ul style="list-style-type: none"> <li>• A <b>Y</b> in the <b>PRSNT</b> field</li> <li>• An <b>F</b> in the <b>Hearing Result</b> field on the trial date line (this will allow the abstract to transmit correctly to DMV)</li> <li>• If community service is ordered, put the review date and time that the community service is to be completed by on the next line. On this same line, enter an <b>AH</b> in the <b>TYPE</b> field</li> <li>• A <b>G</b> in the <b>F Case Disposition</b> field</li> <li>• An <b>X</b> in the appropriate boxes for the costs (Acct. 462, Acct. 001, and Acct. 244), plus the court-appointed attorney's fee, if applicable, and the fine amount in Acct. 110 or correct local account</li> <li>• Enter any jail time ordered in the <b>SENTENCE</b> field and any jail time suspended in the <b>SENT SUSP</b> field</li> <li>• Check the <b>DC210</b> space</li> <li>• A <b>Y</b> in the <b>VASAP</b> field if <b>VASAP</b> or a local program is used.</li> </ul>

Step:	Description:
7.	Upon conviction, the defendant may note an appeal within ten (10) calendar days of the trial. If the costs have been paid, a refund must be issued to the defendant.

**References:**

<a href="#">Va. Code § 18.2-251:</a>	Persons charged with first offense may be placed on probation; conditions; screening, assessment, and education programs; drug tests; costs and fees; violations; discharge
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**Payment Procedures**

A defendant convicted of a criminal offense is normally required to pay the fines and court costs at conviction. A defendant may also be required to pay costs when the defendant is placed on probation with further proceedings deferred [Va. Code § 19.2-303.4](#). When a defendant has been charged with multiple offenses arising out to the same incident, the defendant pays the fixed fee only once. However, if a defendant has been assessed a fixed fee after conviction for one offense and is then convicted of a second offense that has a higher fixed fee, the defendant will be required to pay the difference between the two fees upon conviction for the second offense [Va. Code § 16.1-69.48:1](#).

If the defendant is unable to make payment, the court shall place the defendant on a written installment or deferred payment plan using a DC-210: Fines and Costs Payment Agreement/Acknowledgment of Driver's License Status.

The court shall establish a program and may provide an option for the defendant to discharge some or all of the fine and costs owed by earning credits for the performance of community service work (i) before or after imprisonment or (ii) in accordance with the provisions of [Va. Code § 19.2-316.4](#), [Va. Code § 53.1-59](#), [Va. Code § 53.1-60](#), [Va. Code § 53.1-128](#), [Va. Code § 53.1-129](#), or [Va. Code § 53.1-131](#) during imprisonment. The program shall specify the rate at which credits are earned and provide for the manner of applying earned credits against the fine and costs. The court assessing the fine or cost against a person shall inform such person of the availability of earning credit toward discharge of the fine or costs through the performance of community service work under this program and provide such person with written notice of terms and conditions of this program [Va. Code § 19.2-354](#).

Interest will be imposed on unpaid fines beginning on the 181<sup>st</sup> day after final judgment, except while the defendant is making full and timely payments on a deferred or installment payment plan pursuant to an order of the court. No interest will accrue during any period the defendant is incarcerated and for a period of 180 days following the date of the defendant's release from incarceration.

A defendant may move any court in which they owe fines and costs imposed in a criminal case to waive any interest that accrued on such fines and costs during any term of incarceration and that such waiver shall be granted upon certification of the person's incarceration by the official in charge of the facility where such person was incarcerated. Interest on any unpaid fines or costs shall accrue at the judgment rate [Va. Code § 19.2-353.5](#).

The District Court Financial Management System (FMS) User's Guide and the [General District Court Manual Appendix B- Criminal Traffic Fines and Fees](#) describes detailed procedures for assessing and collecting the fines and costs ordered by the court and should be referred to for answers to questions concerning specific procedures.

For those convicted of criminal offenses who desire to pay fines and costs immediately, or the clerk's office will:

- Determine the amount of fine and costs from the case papers.
- Determine if there are restrictions on personal checks or credit cards/debit cards established by the court, such as:
  - Personal checks not taken for certain offenses (e.g., passing worthless checks).
  - Only certain credit cards/debit cards may be accepted.
- If restriction applies, require cash, a money order, or a cashier's check.
- Collect fines and court costs.
- Prepare and issue a receipt and record payment on appropriate form.
- Deposit and account for money collected. See [District Court Financial Management System \(FMS\) User's Guide](#) for details.

In addition, for those who desire to pay, but not immediately, notice must be given to the defendant of the total amount due. Such notice is to be given:

- At the time of trial by completing Section I of district court form DC-210: Fines and Costs Payment Agreement/Acknowledgement of Driver's License Status and providing a copy of the form including the reverse side, to the defendant when present;
- And by sending of DC-225: Notice to Pay by first-class mail, on the date of the sentencing or within five days thereof, to the defendant's current mailing address.

### **Deferred, Modified Deferred or Installment Payment [Va. Code § 19.2-354.1](#)**

Where the defendant is unable to make payment, an installment payment plan, deferred payment plan or community service is required [Va. Code § 19.2-354](#). If the court allows a

deferred payment plan, the defendant must pay the fine and court fees and costs by a certain date. In an installment payment plan, the defendant pays a portion of the total of fine and court fees and costs on a periodic basis, e.g. weekly or bi-weekly, until the total is paid.

Frequently, the defendant alleges after being convicted and fined or put on probation that he is unable to pay the fine and costs. In such cases, the court should:

- Inform the defendant of the amount they owe. Also, that if their sole financial resource is a social security benefit or supplemental security income, they are not required to pay until they have another resource or income. As long as their sole income remains unchanged, their account will not go to collections.
- It is important to inform the defendant that any restitution that they have been ordered to pay is not included in this exemption of payment and is due as the court has ordered.
- Require the defendant to execute district court form DC-210: Fines and Costs Payment Agreement/Acknowledgment of Driver's License Status if defendant qualifies for the exemption or if they wish to pay the entire sum on a later date, or for installment payments.
- When determining length of time to pay under a deferred, modified deferred, or installment payment agreement, the court shall review the defendant's financial resources and obligations. If the defendant requests to enter into an installment agreement, the court may offer installment payments of \$25.00 per month, or a higher amount depending on the defendants' ability to pay or less than \$25.00 per month if the defendant is determined to be indigent by the court pursuant to [Va. Code § 19.2-159](#). The court shall utilize the DC-211: Petition for Payment Agreement for Fines and Costs or Request To Modify Existing Agreement, to document the financial resources and obligations or conduct and oral examination. The defendant's social security number, if not previously provided, must be obtained in all cases in the event that it becomes necessary to use the Set-Off Debt Collection Act.
- No court shall require a defendant to make a down payment upon entering a deferred, modified deferred, or installment payment, other than on a subsequent payment agreement.
- Each defendant will receive district court form DC-225: Notice to Pay on cases with installment or deferred payments ten days before the due date.
- A defendant who has defaulted on a payment agreement may petition the court for a subsequent payment agreement. The court may require a down payment to enter the subsequent payment plan. The down payment required shall not exceed 10% of fines and costs owed when the amount due is \$500 or less. If the fines and costs owed are more than \$500, 5% of such amount or \$50, whichever is greater may be required as down payment.

If the defendant is unable to make payment within 90 days of sentencing, the court may assess a one-time fee not to exceed \$10 to cover the cost of managing the defendant's account until such account is paid in full.

In deferred or installment payment cases, the court may impose additional terms and conditions as may enable the defendant to pay their fine and costs. The clerical procedures for establishing and maintaining deferred and installment payment systems are:

- Assist the defendant in preparing district court form DC-210: Fines and Costs Payment Agreement/Acknowledgment of Driver's License Status including the section Order for Payment Agreement for installment, deferred, or modified deferred, payments.
- Set up account receivable for deferred or installment payments.
- Issue a receipt when payments are received.

**Note:** If a check used for prepayment "bounced" and full payment was not made prior to trial date, the judge may have imposed a fine different from the prepayable fine on the Uniform Fine Schedule. If the difference between the prepayable fine and the court-imposed fine at trial is not significant, the judge may, in their sole discretion, amend and initial their order so as not to cause an underpayment.

If the defendant's unpaid fines and cost account has already been classified as delinquent and referred to the [Department of Taxation](#) or a private collection agent/attorney, the court should notify the collection entity that the defendant has established a payment plan with the court. The collection entity will still be entitled to its commissions for any and all payments receipted by the court, in the same manner as those defendants who elect to pay their debt directly to the court in response to an enforcement action initiated by the collection entity.

Interest does not accrue on the account following the approval of the new time to pay agreement unless the account once again becomes delinquent as a result of a subsequent failure to comply with the deferral or installment agreement.

### Community Service

Another option for satisfying the fine and costs is for the defendant to perform community service. The court assessing the fine or costs against a person shall inform such person of the availability of earning credit toward discharge of the fine or costs through the performance of community service work before or after imprisonment or during imprisonment; under this program and provide such person with written notice of terms and conditions of this program pursuant to [Va. Code § 19.2-354](#).

In placing a defendant into a community service program, the court's records should show:

- The name of the entity for whom the service is to be performed
- The type of service to be performed if specified by the judge.
- The number of hours of service to be performed.
- The hourly rate at which credits will be earned for discharging fines and costs.

When the defendant completes their service, the entity for which the services were performed must report to the court that the defendant has completed their community service, and the number of hours worked. Make correct accounting entries. See District Court Financial Management System User's Guide. For auditing purposes, the clerk should file the report with the case papers.

### **Unpaid ("Bounced") Checks or Dishonored Credit Card/Debit Card Payments**

If a check tendered for payment of fines and costs is returned unpaid by the bank or notice is received from the credit card or debit card issuer that payment will not be made on a credit or debit card charge, the following steps are to be taken:

**Note:** Following a dishonored check or credit card/debit card charge, payment shall be made by cash, certified check, cashier's check or money order only.

- Send district court form DC-215, Notice of Dishonored Check or Credit Card Charge, to the defendant to notify him of dishonored payment and to assess penalty of \$50 for the return of the check or unpaid credit card/debit card charge.
- Make correct accounting entries, See District Financial Management System User's Guide.
- If full payment, including the penalty, is received within ten days after notice, treat it in same manner as other payments received after trial.

### **Nondisclosure**

The court clerk or agency shall not disclose the SSN or other ID numbers appearing on driver's licenses or information appearing on credit cards, debit cards, bank accounts or other electronic billing and payment systems that was supplied to a court clerk for the purposes of paying fees, fines, taxes, or other charges collected by a court clerk, unless required to complete transaction or by other law as court order.



## Bankruptcy

The court clerk may receive a notice of filing Bankruptcy petition. Notice may be in the form of a bankruptcy court form notice or petitioner or petitioner's counsel may tell the clerk verbally about the filing. If verbal notice is received, the clerk should require the petitioner to provide a copy of the bankruptcy.

For step-by-step procedures on how Bankruptcy is to be handled, see **Miscellaneous Civil Case Procedures**.

## Claims of Inability to Pay Fines and Costs

If the defendant claims to be unable to pay fines and costs in court, the judge shall:

- Advise the defendant that failure to pay as required on time and in full may result in:
  - The defendant being sentenced to jail for up to sixty days and/or fined up to \$500 and being forced to work in the local work force [Va. Code §§ 19.2-358](#) and [Va. Code § 53.1-128](#).
  - Suspension of vehicle registration and license plates by DMV for unpaid HOT lane and toll violations [Va. Code § 46.2-819.9](#).

Require an indigent defendant, as a condition of suspension of sentence, to perform community service work [Va. Code § 19.2-354](#)

## Case Post-Trial Procedures

The Post-trial Procedures portion of the Criminal Case Process section describes the functions performed after trial and the procedures for processing and completing these activities.

### Failure to Pay Fines and Costs

When a defendant sets up a deferred or installment agreement to pay the fine and costs ordered by the court but then does not meet the terms of the agreement, the court may issue district court form DC-360: Show Cause Summons (Criminal), or district court form DC-361: Capias to obtain the defendant's compliance with the court order. Procedures for issuance of the respective process and for the subsequent treatment of the case are as follows:

- The court orders issuance of district court form DC-360: Show Cause Summons (Criminal) or DC-361: Capias. A show cause proceeding shall not be required prior to issuance of a capias if an order to appear on a date certain in the event of nonpayment was issued pursuant to subsection A of [Va. Code § 19.2-354](#) and the defendant failed to appear [Va. Code § 19.2-358](#).

- The clerk's office prepares and issues the show cause summons or capias, enters the process in the case management system, and sets an initial court date for return of the process.
- The sheriff or police officer serves the process on the defendant.
- For district court form DC-360: Show Cause Summons (Criminal), the sheriff or police officer serves it as a summons is served.
- For district court form DC-361: Capias the sheriff or police officer takes the defendant into custody and takes the defendant before a magistrate for a bail hearing.

**Note:** If brought before the court promptly after arrest on a capias, the defendant must be granted a bail hearing or, if the defendant charged with misdemeanor consents and the Commonwealth does not object, the defendant may be tried at once.

- The court holds a hearing on the allegation of the failure of the defendant to make payment as scheduled. Because of a potential jail sentence, the defendant may need a court-appointed lawyer.
- If excusable, the court may grant further extension or reduce the amount of the fine or remit the unpaid portion of the fine.
- If default is due to intentional refusal to pay the fine, the court may order imprisonment for contempt of court for up to sixty days or impose a fine not to exceed \$500. The court may provide for release from jail upon satisfaction of fines.

An alternative procedure which may be utilized by the court to obtain payment of unpaid criminal fines and costs is to use the civil enforcement procedures presented in the "Civil Case Procedures" section of this manual, such as a lien on the defendant's property. This action is handled by the Commonwealth's Attorney, who may request assistance from the Attorney General or who may contract with a lawyer, a collection agency, or a local treasurer to collect such unpaid fines and costs pursuant to guidelines developed by the Office of the Executive Secretary and the Attorney General. Another alternative procedure is to use the "Set-Off Debt Collection Act," as described in the District Court Financial Management System (FMS) User's Guide.

### **Failure to Comply with Terms of Probation or Suspended Sentence**

When a defendant willfully fails to comply with terms of probation or a suspended sentence entered by the court, the court may order issuance of district court form DC-360: Show Cause Summons (Criminal) or district court form DC-361: Capias to the defendant to show cause why they should not be ordered to serve the original sentence imposed by the court. In such cases, the clerk's office prepares the show cause summons or capias, and the sheriff serves the respective process on the defendant for return on the date specified on the summons or capias. Subsequent procedures are the same as for failure to pay fine and costs,

except that the objective is not to collect fines but rather to obtain compliance with the court order or to punish the defendant for failing to comply with the order.

### Notices to Jail

There are several situations where the jail must be notified when a defendant is to be incarcerated or is being held in jail pending further action:

- The defendant has been sentenced to jail as a result of a conviction.
- The defendant is incarcerated pending trial or an appeal because they cannot meet bond.
- The defendant is incarcerated because they cannot obtain bail after being taken into custody on district court form DC-331: [Surety's Capias and Bailpiece Release](#) that may be issued by a clerk or magistrate.
- The defendant is not eligible for bail, pending trial or appeal.

District court form DC-352: Commitment Order may be prepared by a clerk, magistrate, or judge when a defendant is to be incarcerated prior to the defendant's first appearance in court. If the defendant is returned to jail prior to trial in this case, use district court form DC-355: Continuance Order. If the defendant is incarcerated after conviction in district court, use district court form DC-356: Disposition Notice. Instructions for preparing these forms are given in the District Court Forms Manual.

District court form DC-353: Release Order is prepared by a clerk, magistrate, or judge when a defendant is to be released. Situations where this may occur include:

- A defendant, who was initially committed to jail because they were unable to make bail, later secures bail.
- The sentence shown on district court form DC-356: Disposition Notice is reduced by the judge, and the defendant has served the reduced sentence.
- Defendant, held in jail for willful failure to pay a fine, pays the fine.
- A defendant, held in jail pending trial, is released when found not guilty.

Details of how and when to prepare district court form DC-353: Release Order are given in the [District Court Forms Manual](#).

District court form DC-354: Custodial Transportation Order is used to instruct the sheriff or jailor to transport a defendant in custody to court. A clerk or judge may complete the form. The form instructions in the [District Court Forms Manual](#) describe procedures for preparing district court form DC-354: Custodial Transportation Order.

The sheriff or jail superintendent or their designee, upon the discovery of an improper release or discharge of a prisoner from custody, shall report the release to the sentencing court, which shall issue a writ of habeas corpus for the arrest of the prisoner, upon good cause shown [Va. Code § 53.1-116.3](#).

## Appeals

A person convicted of a misdemeanor in district court may appeal the conviction to the circuit court within ten days of the conviction date [Va. Code § 16.1-132](#). The ten-day period begins to run on the day following the conviction. If the tenth day falls on a Saturday, Sunday or legal holiday or any day on which the clerk's office is closed as authorized by statute, the appeal may be noted on the next day that the clerk's office is authorized to be open. See [Va. Code § 1-210](#). The defendant or the defendant's attorney may note the appeal. [Va. Code § 1-210](#) also provides that when a court is closed for any reason other than an approved holiday or legislative order, the filing deadline is extended to the next business day on which the court is open. Once an appeal has been received, it should be held by the clerk's office until the expiration of the ten-day appeal period.

Two exceptions to this ten-day limitation apply. First, it does not apply to pre-trial appeals of bail decisions pursuant to [Va. Code § 19.2-124](#). Second, if a defendant prepays the fine and costs on a pre-payable misdemeanor and then advises the court of a desire to "appeal" prior to the return day, date of court appearance on summons, the request should be treated as a request to withdraw the guilty plea and is tried as if there had been no prepayment.

**Note:** For details and step-by-step instructions for handling appeals, refer to the appendix on "Appeals".

## Motion to Rehear

A defendant convicted of a criminal offense may file district court form DC-368: [Motion to Reopen \(Criminal/Traffic\)/Motion to Rehear \(Civil\)/Motion for New Trial \(Civil\)](#) in district court, within sixty days of the conviction date. There is no refund of fines or court costs as there is for an appeal. When a motion to rehear is accepted by the clerk's office an abstract to DMV changing the conviction/suspension **is not required until after the case** is reheard and the original adjudication has been modified or vacated.

A request to reopen does not have the same effect as the defendant noting an appeal. There is no right to reopen a case. If the motion is granted by the judge, the clerk's office reopens the case removing all final disposition codes in the case management system, inserts the court date, prepares the Notice of Hearing portion of the district court form DC-368: [Motion to Reopen \(Criminal/Traffic\)/Motion to Rehear \(Civil\)/Motion for New Trial \(Civil\)](#), and attaches the motion to the original case.

When the original adjudication is modified or vacated at the re-hearing send an amended abstract to the DMV indicating the “conviction was vacated” or indicate the modifications to the original conviction.

Do not zero out the fine and costs in the individual account. Update the **FAS** record with **REV** in the action field. This will prevent the account from being reported for outside collection action. Once the court has ruled on the Motion to Rehear, it will be necessary to remove the REV from the action field [Va. Code § 16.1-133.1](#).

An exception to this might be if your judge indicates the original case adjudication is vacated when the motion is granted. Appropriate language to include on the abstract sent to the DMV when the original charge is vacated once the motion is granted would be “Vacated per Judge’s Order”.

### Testing for Sexually Transmitted Infection

Following a conviction of any person for violation of [Va. Code § 18.2-346](#) or [Va. Code § 18.2-361](#), any violation of Article 1 [Va. Code § 18.2-247](#) et seq. or 1.1 [Va. Code § 18.2-265.1](#) et seq. of Chapter 7 involving the possession, sale, or use of a controlled substance in a form amenable to intravenous use, or the possession, sale, or use of hypodermic syringes, needles, or other objects designed or intended for use in injecting controlled substances into the human body, such person shall be provided the option to submit to testing for a sexually transmitted infection. The convicted person shall receive counseling from personnel of the Department of Health concerning the meaning of the test, sexually transmitted infections, and the transmission and prevention of sexually transmitted infections [Va. Code § 18.2-346.1](#).

The court may use the circuit court form CC-1390: [Order for DNA or Sexually Transmitted Infection Testing and/or for Preparation of Reports to Central Criminal Records Exchange](#) for this purpose.

A person who is a victim of or witness to a crime may later petition the court for testing of an individual for HIV or hepatitis B or C virus. See “Civil Case Procedures”.

### Motion for Reduction of Sentence

The attorney for the Commonwealth can motion to reduce a convicted person's sentence if such person provides substantial assistance in the investigation or prosecution of another person engaged in an act of violence or for offenses involving the manufacture or distribution of controlled substances [Va. Code § 19.2-303.01](#). You may receive this in the form of a Motion.

If the attorney for the Commonwealth files a Motion for the reduction:

- Enter the motion with the case type **MO** as a subsequent action.
- Enter § 19.2-303.01 in the code section. The charge description will populate “Reduction of Sentence.”
- Finalize with O and O.
- Prepare a DC-356: Disposition Notice for the jail from the original case number

The clerk’s office should keep all original copies of the motion and order and provide copies to the Commonwealth’s attorney and defense attorney if defendant is represented.

### **DNA Samples Taken at Arrest and Upon Conviction**

Every person who is convicted of a misdemeanor violation of [Va. Code § 16.1-253.2](#): Violation of provisions of protective order, [Va. Code § 18.2-57](#): Assault and battery, [Va. Code § 18.2-60.3](#) Stalking, [Va. Code § 18.2-60.4](#): Violation of protective order, [Va. Code § 18.2-67.4](#) Sexual battery, [Va. Code § 18.2-67.4:1](#): Infected sexual battery, [Va. Code § 18.2-67.4:2](#): Sexual abuse of a child under 15 years of age, [Va. Code § 18.2-67.5](#): Attempted rape, forcible sodomy, object sexual penetration, aggravated sexual battery, and sexual battery, [Va. Code § 18.2-102](#) Unauthorized use of animal, aircraft, vehicle or boat valued less than \$1,000, [Va. Code § 18.2-119](#) Trespass, [Va. Code § 18.2-121](#): Entering property of another for purpose of damaging it, [Va. Code § 18.2-130](#) Peeping, [Va. Code § 18.2-370.6](#) Penetration of mouth of child with lascivious intent, [Va. Code § 18.2-387](#): Indecent exposure, [Va. Code § 18.2-387.1](#): Obscene sexual display, or [Va. Code § 18.2-460\(E\)](#): Fleeing from law-enforcement, or of any similar ordinance of any locality, shall have a sample of the person’s blood, saliva or tissue taken for DNA analysis. If a sample has been previously taken from the person as indicated by the Data Bank Sample Tracking System (DBSATS), no additional sample shall be taken. The Department of Forensic Science shall provide to DBSATS the most current information submitted to the DNA data bank on a weekly basis and shall remove from DBSATS and the data bank persons no longer eligible to be in the data bank. A fee of \$53 shall be charged for the withdrawal of this sample. The fee shall be taxed as part of the costs of the criminal case resulting in the conviction and \$15 of the fee shall be paid into the general fund of the locality where the sample was taken and \$38 of the fee shall be paid into the general fund of the state treasury. See the Criminal and Traffic Fines and Fees appendix of this manual for more information. This fee shall only be taxed one time regardless of the number of samples taken. The assessment provided for herein shall be in addition to any other fees prescribed by law. The analysis shall be performed by the Department of Forensic Science or other entity designated by the Department. The identification characteristics of the profile resulting from the DNA analysis shall be stored and maintained by the Department in a DNA data bank and shall be made available only as provided in [Va. Code § 19.2-310.5](#).

Upon updating the case management system with F and G on any of the violations listed above, whether original or amended, the user will receive a message “DNA FEES SHOULD BE ASSESSED”. In order to determine if there is a DNA sample currently on file, the user will

need to access the [DBSATS DNA Data Bank Sample Tracking System](#) database. Please review the CMS User's Guide, Code Tables Appendix for log on information. Once you have logged in, you may search by name, social security number or SIDS number. Once you have made a determination whether a DNA sample is on file, complete your case management system update by placing X in the DNA field, only if there is no sample currently on file. You may bypass the message if no sample is needed, and the fee should not be assessed.

If you determine that no sample is on file, complete the [CC-1390: Order for DNA or Sexually Transmitted Infection Testing And/Or for Preparation of Reports to Central Criminal Records Exchange](#) and attach a copy of the charging document(s) to the order to facilitate in the collection.

**Caution:** The DNA database may only be used for its intended purpose. [Va. Code § 19.2-310.6](#). Unauthorized uses of DNA data bank. Any person who, without authority, disseminates information contained in the data bank shall be guilty of a Class 3 misdemeanor. Any person who disseminates, receives, or otherwise uses or attempts to so use information in the data bank, knowing that such dissemination, receipt, or other use is for a purpose other than as authorized by law, shall be guilty of a Class 1 misdemeanor. Except as authorized by law, any person who, for purposes of having DNA analysis performed, obtains, or attempts to obtain any sample submitted to the Division of Forensic Science for analysis shall be guilty of a Class 5 felony.

For persons sampled upon arrest, the clerk of the court shall notify the Department if the charge for which the sample was taken is dismissed or the defendant is acquitted at trial, and the Department shall destroy the sample and all records thereof, provided there is no other pending qualifying warrant or capias for an arrest or conviction that would otherwise require that the sample remain in the data bank [Va. Code 19.2-310.2:1](#). According to [Va. Code § 6VAC40-40-110](#), "timely submission of the final disposition of a qualifying offense to CCRE by the clerk shall satisfy the requirement that the clerk notifies the department of final disposition of the criminal proceedings under [Va. Code § 19.2-310.2:1](#) of the Code of Virginia" [Va. Code § 6VAC40-40-110](#).

### Administrative Procedures

As criminal cases are completed in district court, certain administrative tasks must be completed to assure that cases are properly recorded and disposed of. The administrative tasks that the clerk's office performs include:

- Record the disposition on the back of the summons or warrant in the space provided.
- Update the case management system as appropriate.
- The CCRE report transmits electronically to the [Department of State Police](#), [Va. Code § 19.2-390](#). See offenses for which reporting is required in "Case Trial Procedures" above.



- For game and fish violations, if the arresting officer is a state game warden, that officer reports directly to the [Department of Wildlife Resources](#), or
- if the arresting officer is not a state game warden, send abstract directly to the [Department of Wildlife Resources](#).
- If the court revokes any hunting, trapping, or fishing license, the clerk shall forward the revoked license, along with a notice of the length of revocation, to the [Department of Wildlife Resources](#) once the ten-day appeal period has run.
- Prepare and send to [State Board of Medicine](#) information concerning conviction of health care practitioners for any misdemeanor involving a controlled substance, marijuana or substance abuse or involving an act of moral turpitude [Va. Code § 54.1-2909](#).
- Prepare and send to [State Board of Medicine](#) information concerning the conviction of any oral and maxillofacial surgeon known by such clerk to be licensed under this chapter of any (i) misdemeanor involving a controlled substance, marijuana or substance abuse or involving an act of moral turpitude or (ii) felony [Va. Code § 54.1-2709.4](#).
- Promptly prepare and send to [State Board of Medicine](#) information concerning the conviction or adjudication of incompetence or incapacity of any practitioner of the healing arts known by such clerk of any felony conviction or to have been found to be incapacitated or incompetent [Va. Code § 54.1-2917](#).
- Promptly prepare and send to the [Superintendent of Public Instruction](#) and the division superintendent of any employing school division the conviction of any person, known by such clerk to hold a license issued by the [Board of Education](#), for any felony involving the sexual molestation, physical or sexual abuse, or rape of a child or involving drugs pursuant to Article 1, [Va. Code § 18.2-247](#) et seq., of Chapter 7 of Title 18.2, [Va. Code § 19.2-291.1](#).
- Promptly prepare and send to the [Superintendent of Public Instruction](#) and the division superintendent of any employing school division the conviction of any person, known by such clerk to hold a license issued by the [Board of Education](#), for any felony involving the sexual molestation, physical or sexual abuse, or rape of a child or involving drugs pursuant to Article 1, [Va. Code § 18.2-247](#) et seq., of Chapter 7 of Title 18.2, report to the [Board of Optometry](#), [Va. Code § 54.1-3206](#).
- Promptly prepare and send to [Board of Veterinary Medicine](#) a report concerning a person convicted of a violation of this chapter or enjoined from practicing veterinary medicine to report the same to the Board. Report of conviction or injunction to Board, [Va. Code § 54.1-3810](#).
- When ordered by the court, prepare and send to the [Director of the Department of Health Professions](#) or to the [Commissioner of Behavioral Health and Developmental Services](#) certified copies of the sentencing documents of an individual registered, certified, or licensed by a health regulatory board, or holds a multistate licensure



privilege, or is licensed by the Department of Behavioral Health and Developmental Services and is convicted of a felony, crime involving moral turpitude, or crime that occurred during the course of practice for which the practitioner or person is licensed. Such certified copies of sentencing documents shall be transmitted within 30 days after the sentencing hearing.

### Records Management

The records of a case must be properly handled after close of court and all orders issued as a result of jurisdiction in the case must be maintained with the case initiation document. To properly prepare the case records, the clerk's office will:

- Prepare orders committing a defendant to jail, where applicable, and forward them to the jail.
- Determine witness expenses and send information on district court form DC-40: [List of Allowances](#) to the Office of the Executive Secretary of the Supreme Court.
- Provide certified copies of sentencing documents without charge to the [Department of Corrections](#) within thirty days after request [Va. Code § 19.2-310.01](#). A clerk or deputy clerk may do so by making an authenticated copy pursuant to [Va. Code § 8.01-391 \(C\)](#) and may use district court form DC-372: Authentication of Record for this purpose, as discussed above.

On occasion, a request will be received to provide an authenticated copy of a case record. The following procedure should be employed:

- Make a copy of the entire document or documents requested. Include copies of backs of documents if the back is not blank.
- Prepare and execute a district court form DC-372: Authentication of Record (In-State Usage) if being used in Virginia or stamp the back of each copy with authentication language. Otherwise, prepare and execute district court form DC-619: [Exemplification of Record](#).

### Disposition of Property

As criminal cases are completed in district court, controlled substances, trial exhibits and weapons must be properly disposed of. The following describes each method:

### Destruction of Controlled Substances

District court form DC-367: [Order and Certificate of Destruction of Controlled/Confiscated Items](#) should be used to dispose of drugs or drug paraphernalia, which have come into the

custody of a peace officer or have been seized in connection with violations of Chapter 7 [Va. Code § 18.2-247](#) et seq. of Title 18.2. After the destruction, the party destroying the items shall make return under oath to the Court indicating the time, place, and manner of destruction. No such substance or paraphernalia used or to be used in a criminal prosecution under Chapter 7, [Va. Code § 18.2-247](#) et seq., of Title 18.2 shall be disposed of as provided by this section until all rights of appeal have been exhausted, except as provided in [Va. Code § 19.2-386.24](#). **Note:** Controlled substances should be retained until after final disposition in a first offender drug case [Va. Code § 19.2-386.23](#).

### Disposition of Trial Exhibits

Pursuant to [Va. Code § 19.2-270.4](#), unless objection with sufficient cause is made, the trial court in any criminal case may order the donation or destruction of any or all exhibits received in evidence during the course of the trial (i) at any time after the expiration of the time for filing an appeal from the final judgment of the court if no appeal is taken or (ii) if an appeal is taken, at any time after exhaustion of all appellate remedies.

The order of donation or destruction may require that photographs be made of all exhibits ordered to be donated or destroyed and that such photographs be appropriately labeled for future identification. In addition, the order shall state the nature of the exhibit subject to donation or destruction, identify the case in which such exhibit was received and from whom such exhibit was received, if known, and the manner by which the exhibit is to be destroyed or to whom donated.

Any photographs taken pursuant to an order of donation or destruction or an order returning exhibits to the owners shall be retained with the record in the case and, if necessary, shall be admissible in any subsequent trial of the same cause, subject to all other rules of evidence.

Upon petition of any organization that is exempt from taxation under [§ 501\(c\)\(3\)](#) of the Internal Revenue Code, the court in its sound discretion may order the donation of an exhibit to such charitable organization.

### Weapons

Pursuant to [Va. Code § 19.2-386.29](#), all pistols, shotguns, rifles, dirks, bowie knives, switchblade knives, ballistic knives, razors, slingshots, brass or metal knucks, blackjacks, stun weapons, and other weapons used by any person in the commission of a criminal offense, shall, upon conviction of such person, be forfeited to the Commonwealth by order of the court trying the case. The court shall dispose of such weapons as it deems proper by entry of an order of record. Such disposition may include the destruction of the weapons or, subject to any registration requirements of federal law, sale of the firearms to a licensed dealer in such firearms in accordance with the provisions of Chapter 22.1, [Va. Code § 19.2-386.1](#) et seq., regarding sale of property forfeited to the Commonwealth.

The court may authorize the seizing law-enforcement agency to use the weapon for a period of time as specified in the order. When the seizing agency ceases to so use the weapon, it shall be disposed of as otherwise provided in this section.

However, upon petition to the court and notice to the attorney for the Commonwealth, the court, upon good cause shown, shall return any such weapon to its lawful owner after conclusion of all relevant proceedings if such owner (i) did not know and had no reason to know of the conduct giving rise to the forfeiture and (ii) is not otherwise prohibited by law from possessing the weapon. The owner shall acknowledge in a sworn affidavit to be filed with the record in the case or cases that they have retaken possession of the weapon involved.

## Miscellaneous Case Types

### Possession of Marijuana- Civil

A person 21 years of age or older may lawfully possess on their person or in any public place not more than one ounce of marijuana or an equivalent amount of marijuana product.

Any person who possesses marijuana or marijuana products in any public place in excess of one ounce is subject to a civil penalty of no more than \$25. The penalty for any violation of [Va. Code § 4.1-1100\(B\)](#) by an adult shall be prepayable according to the procedures in [Va. Code § 16.1-69.40:2](#).

The following procedures are recommended in processing a marijuana civil offense.

Step:	Description:
1.	The Clerk's office receives a summons or warrant.
2.	<p>Enter the summons as a new case number in GCMS in the criminal division and schedule the hearing.</p> <p>Index in GCMS using the following codes:</p> <ul style="list-style-type: none"> <li>CASE TYPE: <b>CV</b> — Civil Violation</li> <li>HEARING TYPE: <a href="#">Va. Code § 4.1-1100(B)</a>, Marijuana: Possess 1 OZ- or <a href="#">Va. Code § 46.2-341.20:7</a>, Marijuana in CMV</li> </ul> <p><b>Note:</b> If the summons indicates the individual was charged while operating a commercial motor vehicle, utilize the <b>Commercial Vehicle</b> field in GCMS. This will trigger the conviction to transmit to the Department of Motor Vehicles pursuant to <a href="#">Va. Code § 46.2-341.20:7</a>.</p>

Step:	Description:
3.	<p>At hearing, the judge will record the final disposition or deferral information directly on charging document.</p> <p>If guilty, the judge will assess civil penalty as statute applies.</p> <p>The clerk finalizes the case with the appropriate disposition code. If found guilty the civil penalty is assessed under account code 107 - Drug Offender Assessment and Treatment Fund. No court costs are assessed, civil penalty only.</p>
4.	<p>If the case is to be deferred enter the following information:</p> <ul style="list-style-type: none"> <li>• If the defendant is present, check the <b>Defendant Present</b> box</li> <li>• Place a <b>C</b> in the <b>Hearing Result</b> field and <b>DD</b> in the <b>Continuance Code</b> field on the trial date line.</li> <li>• Enter the new court date and time (at the end of the probation period) on the next line.</li> <li>• If VASAP is ordered as a condition of probation, place a <b>Y</b> in the <b>VASAP</b> field.</li> <li>• Based on local policy, type an <b>S</b> in the <b>Probation/Community Service Ordered</b> field if the probation is supervised or a <b>U</b> if the probation is unsupervised.</li> <li>• Type <b>12M</b> or the amount of the time ordered in the <b>Probation/Community Service Ordered</b> field.</li> </ul> <p>The amount of community service hours required in the <b>Additional Information</b> field.</p>
5.	<p>Process as criminal appeal. Use DC-370: Notice of Appeal - Criminal, see step-by-step procedure in Appendix C- Appeals of this manual.</p>

## References

[Va. Code § 4.1-1100](#): Marijuana: Possess 1 OZ, [Va. Code § 4.1-1120](#): Person charged with first offense may be placed on probation; conditions; substance abuse screening, assessment treatment, and education programs or services; drug tests; costs and fees; violations; discharge.

## Animal Violations

Several sections of the Code of Virginia relate to the control and care of animals. This section provides recommended clerk's office procedures for handling cases filed pursuant to the

statutes below. Although these violations are civil in nature, it is recommended that they be handled administratively in the clerk's office as criminal. Because these cases are being handled as criminal, to address any concerns with public access, the General District Case Management System (GCMS) will automatically preface the charge description field with the word "Civil", i.e., Civil – Animal Sterilization. [Virginia Code § 3.2-6543](#) establishes local authority to adopt ordinances which parallel the relevant "animal violation" code sections, including [Va. Code § 3.2-6537](#), [Va. Code § 3.2-6538](#), [Va. Code § 3.2-6539](#), through [Va. Code § 3.2-6555](#), [Va. Code § 3.2-6569](#), through [Va. Code § 3.2-6562](#), [Va. Code § 3.2-6554](#), [Va. Code § 3.2-6570](#), [Va. Code § 3.2-6574](#), through [Va. Code § 3.2-6580](#), and [Va. Code § 3.2-6585](#), through [Va. Code § 3.2-6590](#).

Because [Va. Code § 3.2-6543](#) specifies that it not "be construed so as to prevent or restrict any local governing body from adopting local animal control ordinances which are more stringent" than those sections of the Virginia Code, it is possible that a case involving an "animal violation" may be filed under a local ordinance, with requirements that may be different from and may be more stringent than those of the specified state statutes and may result in different procedures in the clerk's office. In the absence of a local ordinance adopted pursuant to [Va. Code § 3.2-6543](#), a violation of an "animal violation" statute is considered a "state violation."

### Jurisdiction

The code sections listed below reflect the proper court jurisdiction:

<a href="#">Va. Code § 3.2-6540:</a>	General District ONLY (includes juveniles)
<a href="#">Va. Code § 3.2-6540.1:</a>	General District ONLY (includes juveniles)
<a href="#">Va. Code § 3.2-6552:</a>	General District ONLY (includes juveniles)
<a href="#">Va. Code § 3.2-6569:</a>	General District ONLY (includes juveniles)
<a href="#">Va. Code § 3.2-6574:</a>	General District & JDR
<a href="#">Va. Code § 3.2-6576:</a>	General District & JDR
<a href="#">Va. Code § 3.2-6577:</a>	General District & JDR

Declaration of Dog as Dangerous, [Va. Code § 3.2-6540](#), or Declaration of Dog as Vicious, [Va. Code § 3.2-6540.1](#).

**Note:** Case is filed in the General District Court only, even if the owner/defendant is a juvenile.

Step:	Description:
1.	Complaint is filed with the Magistrate. Clerk's Office receives from the DC-396: Summons – Dangerous Dog, or the DC-3020: Summons for Vicious Dog. The clerk's office may receive DC-395: <a href="#">Affidavit for Summons for Dangerous Dog</a> along with the summons.

Step:	Description:
	<p>The hearing on the Dangerous Dog Summons shall be within 30 days or as soon as practicable from the issuance of the summons unless good cause is determined by the court.</p> <p>The hearing on a Vicious Dog Summons shall be held not more than 30 days from the issuance of the summons.</p> <p>The statute indicates that the procedure for appeal and trial shall be the same as provided by law for misdemeanors. Declaration of a dog as dangerous or vicious is civil in nature but will be handled administratively as criminal. No fine, civil penalty or court costs are authorized by statute.</p>
2.	<p>Case entry in GCMS: assign criminal case number and enter case in GCMS in the Criminal Division. When entering summons for <a href="#">Va. Code § 3.2-6540</a>, enter as:</p> <ul style="list-style-type: none"> <li>• CASE TYPE: <b>CV</b> (Civil Violation)</li> <li>• CHARGE: <b>Civil</b>; Dangerous Dog</li> </ul> <p>When entering summons for <a href="#">Va. Code § 3.2-6540.1</a>, enter as:</p> <ul style="list-style-type: none"> <li>• CASE TYPE: <b>CV</b> (Civil Violation)</li> <li>• CHARGE: <b>Civil</b>; Vicious Dog</li> </ul> <p>Enter subsequent action numbers for any additional defendants/owners listed on summons. Make a copy of the case for the subsequent parties, number them and highlight the name that coincides with the case number. Defendant/owner may be an adult or a juvenile:</p> <p><b>Defendant Status:</b></p> <ul style="list-style-type: none"> <li>• <b>A</b> (Adult) or</li> <li>• <b>M</b> (Minor)</li> </ul> <p>Not reportable to State Police or DMV as a conviction. Juvenile defendant/owner:</p> <ul style="list-style-type: none"> <li>• Entry of <b>M</b> in GCMS</li> </ul> <p>Enter the juvenile's name as "Juvenile" and the address as "Confidential."</p>

Step:	Description:
	<p><b>Note:</b> It is important to index cases properly to ensure confidentiality is maintained when a minor is involved. When the DC-3020: Summons for Vicious Dog contains a juvenile's name and address the document should also be sealed in General District Imaging System (GDIS).</p>
3.	<p>Following hearing, update criminal H/D screen in GCMS:</p> <ul style="list-style-type: none"> <li>• HEARING RESULT: <b>F</b> (Finalized)</li> <li>• CASE DISPOSITION: <b>O</b> (Other) or <b>D</b> (Dismissed)</li> </ul> <p>Enter in "Remarks" the disposition of the case.</p> <p>Disposition is to determine whether the dog is dangerous or vicious; or neither dangerous nor vicious. No fine, civil penalty or court costs are authorized by statute. However, the court, upon finding the animal to be a dangerous or vicious dog, may order the owner, custodian, or harbinger thereof to pay restitution for actual damages to any person injured by the animal or whose companion animal was injured or killed by the animal. Also, the court may order the owner to pay for the cost of confining the animal pending the hearing. The court, through its contempt powers, may issue a criminal or civil show cause to compel the owner, custodian or harbinger of the animal to produce the animal at a specific location and/or a specific time.</p> <p>If, after hearing the evidence, the court decides to defer further proceedings without entering an adjudication that the animal is a dangerous dog, it may do so. A court that defers further proceedings shall place specific conditions upon the owner of the dog. If the owner violates any of the conditions, the court may enter an adjudication that the animal is a dangerous dog and proceed as otherwise provided. Upon fulfillment of the conditions, the court shall dismiss the proceedings against the animal and the owner without an adjudication that the animal is a dangerous dog.</p>
4.	<p>Process as criminal appeal. Use DC-370: Notice of Appeal — Criminal, see step-by-step procedure in Appeals Appendix of this manual.</p> <p><b>Note:</b> Unless good cause is determined by the court, the appeal of a dangerous dog or vicious dog finding shall be heard within 30 days.</p>

### Seizure and Impoundment of Animals [Va. Code § 3.2-6569](#)

**Note:** Case is filed in the General District only, even if the owner/defendant is a juvenile.

Step:	Description:
1.	<p>Upon seizing or impounding an animal, a humane investigator, law-enforcement officer, or animal control officer shall petition the general district court in the city or county wherein the animal is seized for a hearing.</p> <p>The hearing shall be not more than <b>ten</b> business days from the date of the seizure of the animal.</p> <p>The humane investigator, law-enforcement officer, or animal control officer shall cause to be served upon the owner/custodian notice of the hearing at least five days prior to the hearing.</p> <p>If the owner/custodian is known but residing out of the jurisdiction where such animal is seized, written notice by any method or service of process as is provided by the Code of Virginia shall be given.</p> <p>If the owner/custodian is not known, service may be affected by the humane investigator, law-enforcement officer, or animal control officer through an order of publication procedure.</p> <p>The statute directs that the procedure for appeal and trial shall be the same as provided by law for misdemeanors. Clerk's office receives petition or local form prepared by the locality. Magistrate not involved. Service of process is issued by officer, not the Clerk's Office. If the owner of the animal or the custodian is not known, the locality is responsible for order of publication and posting of the publication, not the clerk's office. Any locality may, by separate ordinance, require the owner of any animal held pursuant to this subsection for more than thirty days to post a bond in surety with the locality, not the clerk's office, for the amount of the cost of boarding the animal.</p>
2.	<p>Case entry in GCMS: assign criminal case number and enter case in GCMS in the Criminal Division:</p> <ul style="list-style-type: none"> <li>• CASE TYPE: <b>CV</b> (Civil Violation)</li> <li>• CHARGE: <b>Civil</b>; Seize/Impound Animal</li> </ul> <p>Enter subsequent action numbers for any additional defendants/owners listed on petition. Make a copy of the case for the subsequent parties, number them and highlight the name that coincides with the case number.</p> <p>Defendant/owner may be an adult or a juvenile:</p>



Step:	Description:
	<p><b>Defendant Status:</b></p> <ul style="list-style-type: none"> <li>• <b>A</b> (Adult) or</li> <li>• <b>M</b> (Minor)</li> </ul> <p>Not transmittable to State Police or DMV as a conviction.</p> <p>Juvenile defendant/owner:</p> <p>When a juvenile is listed on the petition, enter the name as “Juvenile” and the address as “Confidential.”</p> <p><b>Note:</b> It is important to index cases properly to ensure confidentiality is maintained when a minor is involved. When the petition contains a juvenile’s name and address the document should also be sealed in General District Imaging System (GDIS).</p>
3.	<p>Following hearing, update criminal H/D screen in GCMS:</p> <ul style="list-style-type: none"> <li>• Hearing Result: <b>F</b> (Finalized)</li> <li>• Case Disposition: <b>O</b> (Other)</li> </ul> <p>Enter in “Remarks” the disposition of the case.</p> <p>While the locality may adopt an ordinance that parallels the state statute, the state statute does not provide for a civil penalty or court costs.</p> <p>The court shall order the owner to pay all reasonable expenses incurred in caring and providing for the animal following seizure directly to the provider of such care.</p>
4.	<p>Handle appeal as a criminal case. Use DC-370: Notice of Appeal — Criminal. See step-by-step procedure in the appendix on Appeals.</p>

### Dogs Killing, Injuring or Chasing Livestock or Poultry [Va. Code § 3.2-6552](#)

**Note:** Case is filed in the General District only, even if the owner/defendant is a juvenile.

Step:	Description:
1.	<p>Complaint filed with Magistrate. Clerk's Office receives DC-398: Warrant – Depredation by Dog and may also receive DC-397: <a href="#">Affidavit for Warrant for Depredation By Dog</a>.</p>
2.	<p>Case entry in GCMS: assign criminal case number and enter case in GCMS in the Criminal Division:</p> <ul style="list-style-type: none"> <li>• Case Type: <b>CV</b> (Civil Violation)</li> <li>• Charge: <b>Civil</b>; Dogs/Livestock</li> </ul> <p>Enter subsequent action numbers for any additional defendants/owners listed on warrant. Make a copy of the case for the subsequent parties, number them and highlight the name that coincides with the case number.</p> <p>Defendant/owner may be an adult or a juvenile:</p> <ul style="list-style-type: none"> <li>• <b>Def St</b> (Defendant Status)</li> <li>• <b>A</b> (Adult) or <b>M</b> (Minor)</li> </ul> <p>Not reportable to State Police or DMV as a conviction. Juvenile defendant/owner:</p> <p>When a juvenile is listed on the petition, enter the name as "Juvenile" and the address as "Confidential."</p> <p><b>Note:</b> It is important to index cases properly to ensure confidentiality is maintained when a minor is involved. When the DC-398: Warrant – Depredation by Dog or DC-397: <a href="#">Affidavit for Warrant for Depredation By Dog</a> contains a juvenile's name and address the document should also be sealed in General District Imaging System (GDIS).</p>
3.	<p>Following hearing, update H/D Screen in GCMS:</p> <ul style="list-style-type: none"> <li>• Hearing Result: <b>F</b> (Finalized)</li> <li>• Case Disposition: <b>O</b> (Other)</li> </ul> <p>Enter in "Remarks" the disposition of the case.</p>

Step:	Description:
	While the locality may adopt an ordinance that parallels the state statute, the state statute does not provide for a civil penalty or court costs. The court, through its contempt powers, may issue a criminal or civil show cause to compel the owner, custodian, or harbinger of the dog to produce the dog to a specific location and/or a specific time.
4.	If an appeal is noted, handle appeal as a criminal appeal. Use DC-370: Notice of Appeal – Criminal. See step-by-step procedure in the appendix on Appeals.

### Sterilization of Animals

The following procedures are recommended for cases in violation of:

<a href="#">Va. Code § 3.2-6574:</a>	Sterilization of Adopted Dogs and Cats	Enforcement – Civil penalty up to \$250.
<a href="#">Va. Code § 3.2-6576:</a>	Sterilization confirmation	Enforcement – Civil penalty up to \$150.
<a href="#">Va. Code § 3.2-6577:</a>	Notification concerning lost, stolen, or dead adopted dogs or cats	Enforcement – Civil penalty up to \$25.

**Note:** Locality may adopt more stringent ordinance with civil penalty up to \$150 pursuant to [Va. Code § 3.2-6543](#).

Step:	Description:
1.	Clerk's Office receives Virginia Uniform Summons filed by officer, or Local summons or ticket. Violation of these statutes may result in a civil penalty. Additionally, pursuant to <a href="#">Va. Code § 3.2-6576</a> , the clerk's office may receive a separate petition filed by an animal control officer, humane investigator, the State Veterinarian, or representative for enforcement. At that time the court may order the new owner to take any steps necessary to comply. This remedy would be exclusive of and in addition to any civil penalty that may have already been imposed and would be handled separately.
2.	Case entry in GCMS: assign criminal case number and enter case in GCMS in the Criminal Division: <ul style="list-style-type: none"> <li>Case Type: <b>CV</b> (Civil Violation)</li> <li>Charge: <b>Civil</b>; Animal Sterilization</li> </ul>

Step:	Description:
	Not reportable to State Police or DMV as a conviction.
3.	<p>Following hearing, update criminal H/D Screen in GCMS, assessing civil penalty and no costs, which will automatically set up an individual account in FAS.</p> <ul style="list-style-type: none"> <li>Hearing Result: <b>F</b> (Finalized)</li> <li>Case Disposition: <b>O</b> (Other)</li> </ul> <p><b>FAS account codes:</b></p> <ul style="list-style-type: none"> <li><b>239</b> (primary locality) or</li> <li><b>240</b> (secondary locality)</li> </ul> <p>Any and all civil penalties assessed shall be paid into the treasury of the city or county in which the civil action is brought regardless of who initiates the case.  <a href="#">Va. Code § 3.2-6580.</a></p>
4.	Handle appeal as criminal case. Use DC-370: Notice Of Appeal – Criminal. See step-by-step procedure in the appendix on Appeals.

### Forms

DC-370:	Notice of Appeal – Criminal
DC-395:	<a href="#">Affidavit for Summons for Dangerous Dog</a>
DC-396:	Summons - Dangerous Dog
DC-397	<a href="#">Affidavit for Warrant for Depredation by Dog</a>
DC-398	Warrant - Depredation by Dog
DC-3020	Summons For Vicious Dog
	Virginia Uniform Summons

### References

<a href="#">Va. Code § 3.2-6540:</a>	Control of dangerous or vicious dogs; penalties.
<a href="#">Va. Code § 3.2-6543:</a>	Governing body of county, city, or town may adopt certain ordinances.
<a href="#">Va. Code § 3.2-6569:</a>	Seizure and impoundment of animals; notice and hearing; disposition of animal; disposition of proceeds upon sale.
<a href="#">Va. Code § 3.2-6574:</a>	Sterilization of adopted dogs and cats; enforcement; civil penalty
<a href="#">Va. Code § 3.2-6576:</a>	Sterilization confirmation; civil penalty
<a href="#">Va. Code § 3.2-6577:</a>	Notification concerning lost, stolen, or dead dogs or cats; civil penalty.

[Va. Code §3.2-6580:](#)

Civil penalties.

### Summary Contempt

Summary contempt is a proceeding to adjudicate contempt which occurred in the immediate presence of the court. There is no district court form available for use in summary contempt. The court may wish to write a memorandum to the file to document the contempt finding. The judge shall indicate in writing, under which subdivision a person is being charged for contempt when issued under [Va. Code § 18.2-456](#). Summary contempt is entered in the criminal division of case management system using a new criminal case number. Any person charged with a felony offense, misdemeanor offense, or released on a summons who fails to appear before any court or judicial officer as required shall not be punished for contempt under [Va. Code § 16.1-69.24](#) but may be punished for such contempt under subdivision A 6 of [Va. Code § 18.2-456](#).

### Underage Purchase/Possession of Alcohol

[Va. Code § 4.1-305](#): No person under the age of 21 shall consume purchase or possess, or attempt to consume, purchase, or possess, any alcoholic beverage. This code allows for deferred proceedings, without entering the judgment of guilt.

The following procedures are recommended when processing a case against an adult under the age of 21 for alcohol related offenses:

Step:	Description:
1.	The clerk's office receives a charging document. Case is entered in GCMS, index in criminal. Case type <b>M</b> , class <b>1</b> . If received on a warrant utilize the offense tracking number (OTN).
2.	Set case for arraignment as prescribed by your local policy. Some courts may not arraign on this offense as it does not carry a possible jail sentence.
3.	If the defendant is found guilty and is not adjudicated as first offender, fine and costs (misdemeanor) to be imposed or the defendant, may be ordered to perform a mandatory minimum of 50 hours of community service as a condition of probation supervision. Mandatory license suspension is imposed, and option of restricted operator's license may be issued.
4.	Clerk updates case in GCMS and enters <b>F</b> in the <b>Hearing Result</b> field, <b>G</b> in the disposition, costs (misdemeanor), fine and/or community service. Clerk prepares district court form DC-210: Fines and Costs Payment Agreement/Acknowledgment of Driver's License Status if requested. If time to pay is requested clerk must check the <b>Time To Pay</b> field and appropriate date in the <b>Fines &amp; Costs Due</b> field. Clerk should forward appropriate document to community service agency.

Step:	Description:
5.	<p>Clerk accepts district court form DC-263: <a href="#">Application for Restricted Driver's License</a>. The clerk then prepares and issues district court form DC-576: Driver's License Denial Order (Juvenile)/Driver's License Suspension Order (Underage Alcohol Violations) using visual basic forms.</p> <p>Once the order is prepared, the Judge should sign it. Disperse copies as designated by the form. The defendant's license is surrendered to the court.</p> <p>The DC-263 application may be accepted or refer to your local procedure for application.</p> <p>Clerk's office is to send the surrendered license to <a href="#">DMV</a>, after the appropriate appeal time has expired, in an envelope marked "To be destroyed."</p> <p>ASAP may be ordered due to issuance of restricted operator's license.</p>
6.	<p>Optional deferred dispositions:</p> <p>If the defendant qualifies for first offender status, the case is continued in GCMS or a minimum of six months but no longer than one year as ordered by the Judge.</p> <p>GCMS is updated with a <b>C</b> in the <b>Hearing Result</b> field, <b>DD</b> is entered in the continuance field, and case is updated with the next court date, along with hearing type <b>DS</b> (optional). Enter costs (misdemeanor) and license suspension. Issue restricted license as described above. The clerk issues district court form DC-576: Driver's License Denial Order (Juvenile)/Driver's License Suspension Order (Underage Alcohol Violations) using visual basic forms.</p> <p>Defendant is ordered to attend ASAP or other local community-based program or possibly both.</p> <p><b>Comments:</b> Clerk should forward appropriate documents to the agency.</p> <p><b>Note:</b> Upon notice of violation from the agency, the court may enter a subsequent action, show cause or capias. The original charging document should be advanced on the docket with the show cause or capias. The court may proceed with a finding of guilt or may dismiss or defer the proceeding again.</p>
7.	<p>Case may be appealed within ten calendar days of final judgment upon a finding of guilt. <b>Note:</b> Deferred cases may not be appealed.</p> <p>Forward case papers to Circuit Court.</p>

Step:	Description:
	Clerk prepares district court form DC-370: Notice Of Appeal - Criminal.

**Forms**

DC-210	Fines and Costs Payment Agreement/Acknowledgement of Driver's License Status
DC-263	<a href="#">Application for Restricted Driver's License</a>
DC-360	Show Cause Summons (Criminal)
DC-361	Capias: Attachment of the Body
DC-370	Notice of Appeal – Criminal
DC-576	<a href="#">Driver's License Denial Order (Juvenile)/Driver's License Suspension Order (Underage Alcohol Violations)</a>

**References**

<a href="#">Va. Code § 4.1-305:</a>	Purchasing or possessing alcoholic beverages unlawful in certain cases; venue; exceptions; penalty; forfeiture; deferred proceedings; treatment and education programs and services.
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**Purchase Alcohol for Underage**

[Va. Code § 4.1-306:](#) Any person who purchases alcoholic beverages for another person, and at the time of such purchase knows or has reason to believe that the person for whom the alcoholic beverage was purchased was (i) interdicted, or (ii) intoxicated, is guilty of a Class 1 misdemeanor.

The following procedures are recommended when processing a case against an adult under the age of 21 for alcohol related offenses.

Step:	Description:
1.	The clerk's office receives a charging document. Case is entered in GCMS in the criminal division. Case type <b>M</b> , class <b>1</b> .  If received on a warrant utilize the offense tracking number (OTN).
2.	Set case for arraignment as prescribed by your local policy.  Some courts may not arraign on this offense as it does not carry a possible jail sentence.
3.	If the defendant is found guilty, mandatory license suspension is imposed and option of restricted operator's license may be issued.

Step:	Description:
4.	<p>Clerk updates case in GCMS and enters <b>F</b> in the <b>Hearing Result</b> field, <b>G</b> in the disposition, costs (misdemeanor), fine and/or community service. Clerk prepares district court form DC-210: Fines and Costs Payment Agreement/Acknowledgment of Driver's License Status if requested. If time to pay is requested clerk must check the <b>Time To Pay</b> field and appropriate date in the <b>Fines &amp; Costs Due</b> field.</p> <p>Clerk should forward appropriate document to community service agency.</p>
5.	<p>Clerk accepts district court form DC-263: <a href="#">Application for Restricted Driver's License</a>. The clerk then prepares and issues district court form DC-576: <a href="#">Driver's License Denial Order (Juvenile)/Driver's License Suspension Order (Underage Alcohol Violations)</a> using visual basic forms.</p> <p>Once the order is prepared, the Judge should sign it. Disperse copies as designated by the form. The defendant's license is surrendered to the court. District court form DC-263 application may be accepted or refer to your local procedure for application.</p> <p>Clerk's office is to send the surrendered license to <a href="#">DMV</a>, after the appropriate appeal time has expired, in an envelope marked "To be destroyed."</p> <p>ASAP may be ordered due to issuance of restricted operator's license.</p>
6.	<p>Case may be appealed within ten calendar days of final judgment upon a finding of guilt.</p> <p>Forward case papers to Circuit Court; retain copies for files as required by local policy.</p> <p>Clerk prepares District court form DC-370: Notice of Appeal (Criminal).</p>

### Forms

DC-210	Fines and Costs Payment Agreement/Acknowledgment of Driver's License Status
DC-263	<a href="#">Application for Restricted Driver's License</a>
DC-360	Show Cause Summons (Criminal)
DC-361	Capias: Attachment of The Body
DC-370	Notice of Appeal – Criminal
DC-576	<a href="#">Driver's License Denial Order (Juvenile)/Driver's License Suspension Order (Underage Alcohol Violations)</a>



*References*

<a href="#">Va. Code § 4.1-306:</a>	Any person who purchases alcoholic beverages for another person and at the time of such purchase knows or has reason to believe that the person for whom the alcoholic beverage was purchased was (i) interdicted, or (ii) intoxicated, is guilty of a Class 1 misdemeanor.
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**Prohibiting the Purchase of Retail Tobacco Products**

There are several possible violations of [Va. Code § 18.2-371.2](#) in the General District court, involving both individuals and establishments. They may include:

- Sell to, distribute to, or purchase for, or knowingly permit the purchase any retail tobacco product or hemp product intended for smoking to individuals under the age of 21,
- No person shall sell retail tobacco products or hemp products intended for smoking from a vending machine,
- Sell a retail tobacco product, or hemp product intended for smoking to any individual without proper identification,
- Sell of cigarettes and hemp products other than in sealed packages with health warnings; without signs indicating law prohibits the sale of tobacco products to individuals under the age of 21.

These proceedings are civil in nature and will carry penalties based on number of prior violations. Depending on the subsection cited, the penalty may be paid into the [State Treasury](#) or the local treasury.

There is no filing fee or other costs charged to the county, city or town that instituted the action.

Depending on the subsection cited; violations may be initiated by any attorney for the Commonwealth of the city, county, or town in which the alleged violation occurred; or a law enforcement officer of the same; or agents of the [Virginia Alcoholic Beverage Control Board](#).

The following procedures are recommended when processing a case against an adult under the age of 21 for tobacco related offenses.

Step:	Description:
1.	The clerk receives the charge on a Virginia Uniform Summons
2.	The clerk enters the case into the Criminal Division of GCMS, with Case type CV – Civil Violation.

Step:	Description:
	Plaintiff is Commonwealth of Virginia or Locality Name. Defendant is individual or establishment being charged.
3.	<p>At hearing, the judge will record final disposition directly on the Virginia Uniform Summons.</p> <p>If guilty, the judge will assess civil penalty as statute applies; these cases are also prepayable prior to trial.</p> <p>The clerk finalizes the case with the appropriate disposition code. If found guilty of <a href="#">Va. Code § 18.2-371.2</a> (A) or (B) the civil penalty is assessed under account code 129 (Safety &amp; Health.) No court costs are assessed.</p> <p>If found guilty of <a href="#">Va. Code § 18.2-371.2 (D)</a>, the civil penalty is assessed under account code 237 (local civil penalty.) No court costs are assessed.</p>
4.	The case may be appealed within ten calendar days of judgment; use District court form DC-370: Notice of Appeal - Criminal. See appendix on Appeals.

### ***Fees and Costs***

There are no fees or costs associated with the filing of these civil charges.

### ***Forms***

DC-225:	Notice To Pay
DC-370:	Notice of Appeal - Criminal
	Virginia Uniform Summons

### ***References***

<a href="#">Va. Code § 18.2-371.2:</a>	Prohibiting purchase of retail tobacco products and hemp products by persons under the age of 21 or sale of retail tobacco products to persons under 21 years of age.
<a href="#">Va. Code § 16.1-132:</a>	Right of appeal
<a href="#">Rule 3C:2:</a>	Uniform Fine Schedule

### **Virginia Indoor Clean Air Act**

[Va. Code § 15.2-2824](#), [Va. Code § 15.2-2825](#), and [Va. Code § 15.2-2826](#) – Effective December 1, 2009, smoking is prohibited in all indoor restaurants, bars and lounge areas in the Commonwealth and establishes local smoking regulations. Requires the posting of “No

Smoking” signs and provides for a civil penalty of no more than \$25 for a violation of these provisions. Civil penalties assessed will be deposited into the Virginia Health Care Fund.

These proceedings are civil in nature and will carry civil penalties. Depending on the subsection cited, the penalty may be paid into the [State Treasury](#) or the local treasury.

There is no filing fee or other costs charged to the county, city or town that instituted the action.

Depending on the subsection cited; violations may be initiated by any attorney for the Commonwealth of the city, county, or town in which the alleged violation occurred; or a law enforcement officer of the same; or agents of the [Virginia Department of Health](#) (VDH.)

The following procedures are recommended when processing a case against an adult for a violation of the Clean Air Act.

Step:	Description:
1.	<p>The clerk’s office receives a charging document. Case is entered in GCMS, index in criminal division. Case type <b>CV</b>.</p> <p>Plaintiff is Commonwealth of Virginia or Locality Name. Defendant is individual or establishment being charged.</p>
2.	<p>At hearing, the judge will record final disposition directly on the Virginia Uniform Summons.</p> <p>If guilty, the judge will assess civil penalty as statute applies.</p> <p>The clerk finalizes the case with the appropriate disposition code. If found guilty the civil penalty is assessed under account code 108 (Virginia Health Care Fund.) No court costs are assessed.</p> <p>If found guilty under a local violation, the civil penalty is assessed under account code 248 (local civil penalty.) No court costs are assessed.</p>
3.	<p>The case may be appealed within ten calendar days of judgment; use district court form DC-370: Notice of Appeal - Criminal. See appendix on Appeals.</p>

### ***Fees and Costs***

There are no fees or costs associated with the filing of these civil charges.

### ***Forms***

DC-225	Notice to Pay
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DC-370	Notice Of Appeal - Criminal
	Virginia Uniform Summons

***References***

<a href="#">Va. Code § 15.2-2820</a> through <a href="#">Va. Code § 15.2-2833:</a>	Prohibiting smoking in all indoor restaurants, bars and lounge areas in the Commonwealth and establishes local smoking regulations. Requires the posting of “No Smoking” signs and provides for a civil penalty of no more than \$25 for a violation of these provisions.
<a href="#">Va. Code § 16.1-132:</a>	Right of appeal.

## Chapter 4 – Traffic Case Procedures

### Introduction

In Virginia, most traffic offenses are classified as “traffic infractions” rather than as criminal offenses because of the relatively minor nature of most traffic violations. This classification simplifies processing minor offenses and allows the court to focus on the more serious traffic offenses. Many traffic infractions can be prepaid. For those cases, the court appearance can be waived; that is, the defendant may choose to pay their fine and court costs in person or by mail prior to the court date and does not need to appear in court. For more serious traffic offenses, the court appearance may not be waived and prepayment of a fine is not an option. Each general district court has the power to try misdemeanor offenses which originated as direct indictments or presentments when certified by the circuit court and transferred to the general district court for trial [Va. Code § 16.1-126](#).

This section of the manual presents a narrative description of the basic traffic case process. The sections following the narrative description present, in more detail, the major steps in processing a traffic case such as case initiation, pre-trial procedures, court processing, disposition, case closure, and disposition reporting.

Because many of the provisions of Virginia criminal procedure apply to traffic cases as well as other cases, only those provisions unique to traffic cases are contained here. See [Criminal Case Procedures](#) in this manual for criminal procedures applicable to traffic cases.

### Narrative Description

The traffic case process is initiated when an officer cites a motorist for a traffic violation. For traffic infractions or misdemeanors, the officer will either issue a summons or, if the officer believes the defendant will not appear for trial or if the defendant is arrested for a serious offense, the officer will take the defendant before a magistrate to obtain an arrest warrant and for bail. If the officer seeks a warrant, the magistrate conducts a probable cause hearing and, if probable cause is found, issues a warrant or summons. If a summons is issued, the defendant is released on their written promise to appear. If a warrant is issued, the defendant can be released on personal recognizance or is admitted to bail and required to post a bond (secured or unsecured), a cash deposit in lieu of bond with surety, or a guaranteed arrest bond certificate in order to assure their appearance in court; otherwise, the defendant is committed to jail. The court appearance date is usually determined simply by the officer’s next scheduled court day.

After these initial case actions have been completed, the summons or warrant is forwarded to the appropriate district court clerk’s office for case processing. A clerk assigns a case number, indexes the case, and files the case papers by court date.

For prepayable traffic infractions, the defendant may choose to waive trial, enter a guilty plea and pay the fine and court costs prior to their scheduled court date. See General District Court Manual Fees and Prepayments. To waive the court appearance and prepay the fine, the defendant may prepay over the Internet, call the clerk or appear in person in the clerk's office or before a magistrate and request information on the amount of fines and costs to be paid. The clerk or magistrate verifies that the offense allows waiver of court appearance and determines the appropriate fines and costs. The defendant, if present, signs a waiver of court appearance and guilty plea and pays the fines and costs. The clerk or magistrate collects the fines and costs and issues a receipt. If the transaction is handled by mail, the defendant must send the appropriate amount for fines and costs; adult defendants also should include a properly executed waiver of court appearance and guilty plea.

Prior to a court date, the clerk retrieves all of the cases from the file for that court date and prepares the docket. Prepaid cases are entered on the docket with the disposition and fines and costs paid. On the trial day, the case files and the docket are sent to court.

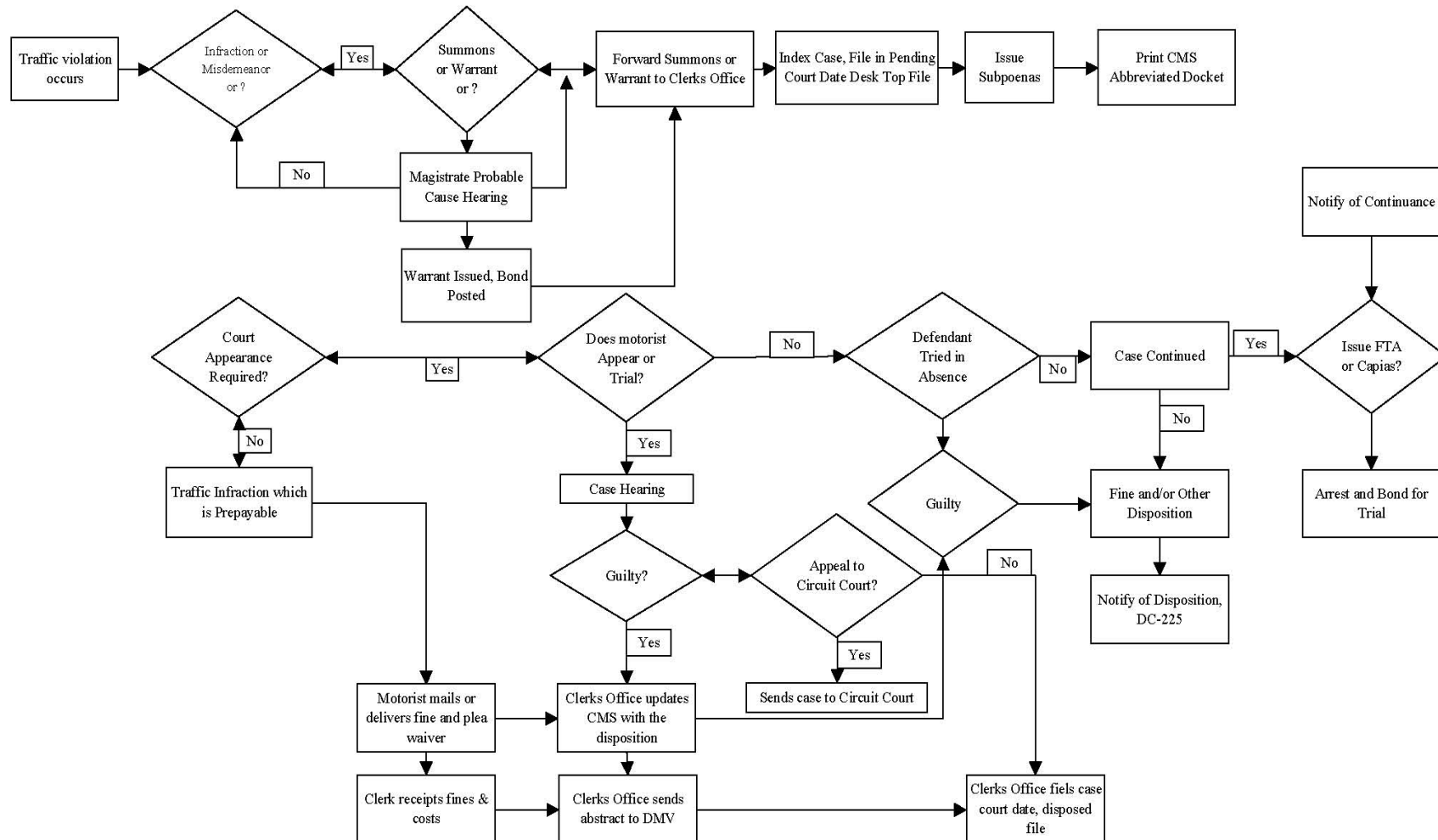
In court, all court actions are recorded in GCMS and on the summons or warrant. Those defendants charged with traffic infractions that do not prepay and who fail to appear for court are tried in their absence and a notice of the verdict and the fine and costs imposed is sent to their residence. Those charged with traffic misdemeanors may be tried in their absence at the judge's discretion and the notice is sent to them as above; if there is no trial in absentia, a "failure to appear" warrant, bench warrant, or rule to show cause may be issued. These may also be issued when the defendant is tried in absentia.

The obligation for payment of fines and costs to the court accrues upon conviction, the court shall establish installment payment agreements for those unable to make immediate payment. Each district court must accept payment by personal checks, credit cards, debit cards, cash, money orders, or cashier's checks. If a defendant who has posted bond for a prepayable traffic infraction later pays the fine and costs with cash, certified check or money order before trial, the bond is returned; if paid by personal check, the bond is held until trial or until the check clears, whichever occurs first.

The defendant is allowed ten days from the conviction date in which to file an appeal to the circuit court. Upon appeal, the clerk refunds any fines or costs paid to the court, requires the defendant to post bail as set by the court, if any, and transfers the case papers to the circuit court. The case papers may not be transferred to circuit court until the expiration of the ten-day appeal period. If there is no appeal, the record of conviction is transmitted electronically to the [Department of Motor Vehicles](#).

At the end of the month, data concerning the types of cases and dispositions are compiled and a caseload report of monthly court statistics is electronically transmitted to the Office of the Executive Secretary.

## Traffic Case Process Flow Chart



## Pre-Trial Processing

### General Provisions

Upon receipt of the summons or warrant from the officer or magistrate, the clerk in the traffic court must perform several functions prior to the court date to prepare the case for court. To complete the case indexing and filing functions, the clerk's office will:

- Assign a sequential case number and enter the number and the court date on the summons or warrant (court date usually determined by the arresting officer's next scheduled court date).
- Enter case in the automated system.
- File the case by court date prior to the court date. Staple to the case papers any driver's license seized by the arresting officer and surrendered to the court pursuant to [Va. Code § 46.2-346](#).
- Issue DC-326: [Subpoena for Witnesses](#) in cases where an accident occurred and the defendant has returned the DC-217: Virginia Prepayment Information Sheet, informing the court of the defendant's intent to plead not guilty.
- In any proceeding before a general district court, the court may appoint a guardian *ad litem* to represent the interest of a minor who is called to testify. It shall be the duty of the court to ensure that the interests of a minor witness are represented and protected. When the guardian *ad litem* has rendered substantial service, the court may allow reasonable compensation to be paid from the funds appropriated to pay for the compensation of court-appointed counsel [Va. Code § 8.01-396.2](#). When the court determines it is appropriate to appoint a guardian *ad litem* for a minor, the DC-401: Order for Appointment of Guardian *Ad Litem* may be utilized. If the defendant is found guilty or if the case is certified to circuit court, the costs of the guardian *ad litem* is assessed back to the defendant as part of court costs.
- Include witness subpoena returns of service, if any, See e.g. [Va. Code § 19.2-73.2](#).

The clerk's office will normally prepare the docket as follows:

- Retrieve all cases from the files for a given court date.
- Arrange the cases in the order preferred by the court, e.g., by arresting officer, by case number or alphabetically by defendant's name.
- Print docket via GCMS.
- Add additional cases to the docket as they come to the clerk's office.
- Distribute and post copies of the docket.



### Prepayable Offenses That Involve an Accident

In order to avoid inconveniencing those who will be subpoenaed as witnesses to an accident, it is important to determine, if possible, prior to the date set for hearing the offense whether the person charged intends to plead not guilty thereby requiring the presence of witnesses for a trial. To further this goal, the following procedures are recommended for use when a district court processes prepayable violations that result in accidents.

- Local law enforcement and state police should give any driver involved in an accident, where a summons is being issued for prepayable offenses, a copy of the DC-217: Virginia Prepayable Offenses Information Sheet that includes a check box for the defendant to indicate that they intend to plead guilty.
- If there are witnesses to the accident, the law enforcement officers should complete but not issue, a DC-326: [Subpoena for Witnesses](#) in triplicate for each witness leaving the court date and signature line blank. The officer should retain one copy of the partially completed subpoenas and attach the original and one copy to the court's copy of the defendant's Virginia Uniform Summons. The court should encourage law enforcement officers to consider their evidence and only utilize DC-326: [Subpoena For Witnesses](#) in those cases where witnesses are essential to the case.
- When the clerk receives the DC-217: Virginia Prepayable Offenses Information Sheet from the defendant with the block marked indicating that they intend to plead not guilty, the clerk's office would then:
  - Retrieve the DC-326: [Subpoena for Witnesses](#) form which the officer had attached to the defendant's Virginia Uniform Summons, enter the court date and sign the DC-326: [Subpoena for Witnesses](#) form and forward to law enforcement for service on the witnesses; or
  - If there is not sufficient time to allow for reasonable notice by mail to the witnesses, the clerk would reschedule the defendant's case for the next available date of the charging officer, enter the new date on the DC-326: [Subpoena for Witnesses](#) and mail it to the witnesses. The clerk would also generate from the General District Case Management System (GCMS) a DC-346: Notice of New Trial Date that would advise the defendant of the new court date. The clerk would also notify the charging law enforcement officer of the new court date when a continuance is required.

On the original court date, if the defendant has not sent in the DC-217: Virginia Prepayable Offenses Information Sheet indicating their intent to appear and plead not guilty, one of the following courses should occur:

- The defendant has prepaid their charge and the case is completed.

- The defendant does not appear; the court tries the defendant in their absence based on the law enforcement officer's testimony and evidence.
- The defendant appears and pleads guilty; the case is tried and concluded.
- The defendant appears and pleads not guilty.
- The court should encourage law enforcement officers to set accident cases far enough in the future to allow for the defendant to respond within seven days of receiving the Virginia Uniform Summons regarding their intent to enter and give the witnesses adequate notice of the court date. It is suggested that thirty days should be sufficient time to accommodate these actions.

### Dismissal by Compliance with Law Prior to Trial

#### *General*

A defendant may avoid conviction for the traffic violations listed below by providing proof of compliance to the court on or before the scheduled court date. Upon presentation of appropriate documentation, the clerk may complete Form DC-216: Compliance with Law Certificate and attach it to the charging document. The judge may then dismiss the case by entering "complied with law" on the summons.

If the defendant is charged with [Va. Code § 46.2-104](#): failing to have a driver's license or vehicle registration card with them while driving, the judge may dismiss the case by entering on the summons "complied with law" if the defendant presents before the return date of the summons the missing operator's or chauffeur's license or vehicle registration card, such document bearing an issuance date prior to the arrest.

If the defendant is charged with Va. Code § [46.2-300](#): driving without license the judge may dismiss the case by entering on the summons or warrant "complied with law" if the defendant produces proof of compliance to the court on or before the court date, unless such person was operating a commercial motor vehicle.

If the defendant is charged with Va. Code § [46.2-301](#): driving while license, permit, or privilege to drive suspended or revoked and there have been no prior violations or convictions in the past 10 years, the judge may dismiss the case by entering on the summons or warrant "complied with law" if the defendant produces proof of compliance to the court on or before the court date, unless such person (i) possesses a commercial driver's or commercial learner's permit or (ii) was operating a commercial motor vehicle. If the defendant has a prior violation(s), the judge may dismiss or amend the summons or warrant, where proof of substantial compliance has been provided.

If the defendant is charged with [Va. Code § 46.2-324](#): fail to notify DMV of change of address, [Va. Code § 46.2-613](#): infraction relating to registration, licensing and certificates

of title, [Va. Code § 46.2-646](#): expired registration, [Va. Code § 46.2-711](#): improper display of plates, [Va. Code § 46.2-715](#): fail to display license plates, [Va. Code § 46.2-716](#): improperly mounted license plates, or [Va. Code § 46.2-1052](#): no county or city tag, the judge may dismiss the case by entering on the summons “complied with law” if the defendant produces proof of compliance to the court on or before the court date.

Also, if a defendant is charged with a violation of Va. Code § 46.2-1158.02: fail to have vehicle inspected, [Va. Code § 46.2-1000](#): drive without required safety equipment, [Va. Code § 46.2-1003](#): defective equipment, [Va. Code § 46.2-1052](#): operate with tint/signs/decals on windows, [Va. Code § 46.2-1053](#): sunshield windows, the judge may dismiss the case by entering on the summons “complied with law” if the defendant produces proof of compliance on or before the court date:

- provides proof of compliance with law prior to trial
- pays all required court costs.

### ***Procedure***

The presentation of the license, permit, registration card, or documentation relating to inspection violations to the clerk should be recorded in writing for verification by the court; also, the required court costs must be receipted. While no statutory procedure has been specified, it is recommended that:

- The clerk has the defendant hand the defendant’s copy of the Virginia Uniform Summons together with the license, permit or registration card to minimize the amount of forms preparation needed. If the defendant does not have their copy of the summons and appears before the clerk, the clerk should locate the court’s copy in the case files.
- Either the district court form DC-216: Compliance with Law Certificate or a photocopy of the permit is attached to the case papers.
- If payment for court costs is tendered, collect and record the costs and issue a receipt. See the District Court Financial Management System User’s Guide for financial procedures.
- Do not use this procedure if a copy of the summons, either the defendant’s or court, is not available for verification purposes.

### ***Unattended, or Immobile (Stolen) Vehicles*** [Va. Code § 46.2-1209](#)

Where it is shown that the vehicle was abandoned by the owner or is stolen or illegally used by a person other than the owner, the costs for removal/storage is taxed against the convicted defendant/owner. In this instance, the Commonwealth is not responsible for the cost of towing/storage.

If the identity of the owner cannot be determined or the owner was not the violator, or if the owner/defendant is found not guilty, the cost for removal/storage is paid by the Commonwealth. In this instance, the vendor (towing company) may submit a bill accompanied by a completed DC-40: List of Allowances, for submission to the Office of the Executive Secretary for further processing. The vendor is subsequently reimbursed by the Commonwealth, State Treasurer.

### **Administrative Impoundment of a Motor Vehicle When Charged with Second/Subsequent Offense of [Va. Code § 46.2-300](#)**

Information regarding impoundments when a person whose driver's license has been suspended for an alcohol-related conviction can be found in the chapter titled **DUI Case Processing and Restricted Driver's Licenses**.

A motor vehicle being driven by any person charged with a second or subsequent offense of driving without an operator's license in violation of [Va. Code § 46.2-300](#) shall be impounded or immobilized upon the driver's arrest. The impoundment or immobilization for a violation of the offense described above shall be until the offender obtains a valid operator's license pursuant to [Va. Code § 46.2-300](#) or three days, whichever is less. The provisions of this section as to the offense described in clause (iv) of subsection A shall not apply to a person who drives a motor vehicle with no operator's license (i) whose license has been expired for less than one year prior to the offense or (ii) who is under 18 years of age at the time of the offense [Va. Code § 46.2-301.1](#).

The arresting officer shall serve a Notice of Vehicle Impoundment/ Immobilization upon the driver. A copy of this notice shall be delivered to the magistrate and forwarded promptly by the magistrate to the clerk of the general district court in the locality where the arrest was made. Unlike an administrative license suspension, administrative impoundments are always processed through the general district court. Administrative impoundments are processed as civil proceedings. Normally, the clerk provides the offender with information on the location of the motor vehicle and when the vehicle will be released; however, for a violation of clause (iv), such information shall be provided at the time of arrest.

The following procedures are recommended when processing an administrative impoundment:

Step:	Description:
1.	The clerk receives the Notice of Vehicle Impoundment, which may be attached to the Virginia Uniform Summons, Warrant of Arrest or Summons for the arresting charge.

	<p>Care must be given when receiving traffic charges, as this notice may be attached to arresting case(s). This should be separated from the traffic cases and processed as a civil case. It is suggested that a copy of the Notice Of Vehicle Impoundment be attached to the underlying charge.</p>
2.	<p>The case is numbered and entered into the CIVIL division, V, for civil case, case type IM for impoundment:</p> <ul style="list-style-type: none"> <li>• Plaintiff: Commonwealth/Locality</li> <li>• Defendant: Driver</li> </ul> <p>Vehicles are impounded/immobilized for three days or until the offender obtains a valid operator's license, whichever is less. Prior to release of the vehicle, the offender/driver shall pay all costs of the impoundment.</p>
3.	<p>Hearing date and time: same as filing date.</p> <p>Finalize case immediately using code O for disposition.</p>
4.	<p>Any driver owner may file a DC-499: Motion and Order for Release of Vehicle. An owner or co-owner, who was not the driver at the time, may also file. This asks the court to review the impoundment.</p> <p>There are no fees for filing this motion. By statute, the court must review the motion within the same time period as the court hears a bond appeal or bond hearing and must give precedence over all other matters on the docket.</p> <p>This is entered as a subsequent action using the original impoundment number. It will need to be manually entered on the Civil Case Entry Screen with the appropriate subsequent number:</p> <ul style="list-style-type: none"> <li>• Case type: OT</li> <li>• Plaintiff: Commonwealth</li> <li>• Defendant: Name of offender</li> <li>• Hearing type: MO</li> </ul> <p>Once the Court has signed order, close the case with an O for both hearing and case disposition.</p> <p>Remarks-outcome of hearing: motion granted, vehicle released and notice of release given to petitioner; or motion denied.</p> <p>If motion granted, the vehicle shall be immediately released.</p>

	<p>If motion granted, the petitioner should be given a copy of the completed DC-499: Motion and Order for Release of Vehicle to take to the garage/storage facility.</p> <p>The clerk will submit a DC-40 to OES for reimbursement of expenses incurred only if the Court makes a no probable cause finding at the hearing. The following documentation must accompany the DC-40: List of Allowances:</p> <ul style="list-style-type: none"> <li>• A bill from the storage company or a receipt from the person who incurred the costs of the impoundment, and</li> <li>• A copy of the DC-499: Motion and Order for Release of Vehicle with the “no probable cause for arrest or warrant” checked.</li> </ul> <p>If the person requesting the motion to review fails to appear, their right of review shall be waived.</p>
5.	<p>If The Charge Is Dismissed Or Accused Is Acquitted:</p> <ul style="list-style-type: none"> <li>• The vehicle shall be immediately released, and Commonwealth shall pay/or reimburse the individual for all reasonable costs of impoundment, including removal or storage costs.</li> </ul> <p>The clerk will submit a DC-40: List of Allowances to OES for reimbursement of expenses incurred. The following documentation must accompany the DC-40: List of Allowances:</p> <ul style="list-style-type: none"> <li>• A bill from the storage company or a receipt from the person who incurred the costs of the impoundment, and</li> <li>• A copy of the underlying charge reflecting dismissal or acquittal.</li> </ul> <p><b>Note:</b> Under this code section, steps 5 and 6 are the only situations in which there is statutory authorization for reimbursement by the Commonwealth.</p>
6.	<p>To appeal the decision of the court on a motion for release of vehicle, the petitioner should fill out DC-475: Notice of Appeal - Civil.</p> <p>A DC-460: Civil Appeal Bond is required within thirty days of judgment, and circuit court appellate costs required to perfect the appeal.</p> <p><b>Note:</b> Once perfected, no statutory authority for withdrawal in district Court. For further information on processing the appeal, see Appeals appendix.</p>

### Interpreters for the Deaf

If a defendant is deaf, they are entitled to a court-appointed interpreter at state expense, regardless of financial status. If the victim or a witness is deaf, an interpreter shall be appointed by the trial judge unless the court finds that the victim or witness does not require the services of a court-appointed interpreter, and that the deaf person has waived their right to an interpreter [Va. Code § 19.2-164.1](#).

If a deaf person wishes to retain their own interpreter at their own expense, court approval of the interpreter is not required. A deaf person may waive the appointment of an interpreter. Interpreters for the deaf shall be procured through the [Virginia Department for the Deaf and Hard of Hearing](#).

If the Department cannot procure such services, then the court may appoint a readily available interpreter with full certification from the [Registry of Interpreters for the Deaf, Inc.](#), or an equivalent national certification. Such court-appointed interpreter's qualifications are subject to review and approval by the [Virginia Department for the Deaf and Hard-of-Hearing](#). An information sheet addressing common ADA accommodations within the court system, to include communication services provided by interpreters for the deaf can be found at this link:

[https://www.vacourts.gov/courtadmin/aoc/djs/programs/interpreters/resources/ada\\_resource\\_card.pdf](https://www.vacourts.gov/courtadmin/aoc/djs/programs/interpreters/resources/ada_resource_card.pdf)

### Interpreters for Non-English-Speaking Persons

If a defendant does not speak English, they are entitled to a court-appointed interpreter at state expense, regardless of financial status. If the victim or a witness does not speak English, an interpreter shall be appointed by the trial judge unless the court finds that the victim or witness does not require the services of a court appointed interpreter [Va. Code § 19.2-164](#). If the non-English speaking defendant, victim, or witness wishes to retain an interpreter at state expense, the court must determine that such interpreter is competent.

The compensation of an interpreter shall be fixed by the court in accordance with the guidelines established by the Judicial Council of Virginia [Va. Code § 19.2-164](#). The guidelines can be found on the court system's website at:

<https://www.courts.state.va.us/courtadmin/aoc/djs/programs/interpreters/guidelines.pdf>

The interpreter should submit district court form DC-44: List of Allowances - Interpreter to claim compensation.

In some courts, there are staff foreign language interpreters who provide direct interpretation to the court and coordinate coverage by contracted vendors. All other foreign language interpreters must be located by the court directly. The Office of the Executive Secretary of the Supreme Court of Virginia offers a voluntary program to certify Korean, Spanish, Vietnamese, Arabic, Russian, and Mandarin language interpreters. A list of certified interpreters is provided to all courts and is available on the Virginia judiciary's Intranet at:

<http://oesinet/courtadmin/interpreters/flilist.html>

The Office of the Executive Secretary provides training to any foreign language interpreters in addition to those tested and certified for Korean, Spanish, Vietnamese, Arabic, Russian and Mandarin language interpretation. Suggested resources for locating interpreters include foreign language departments of colleges and universities, Federal courts, or private sector interpreter firms. When utilizing interpreters from such sources, the judge should determine the competency of the person to interpret court proceedings.

While all courts are encouraged to utilize certified interpreters, who have proven competencies and skill levels, there is no requirement that only certified interpreters be used in courts. However, judges are encouraged to inquire about the qualifications of an interpreter to perform such services in a court environment. This is particularly important given the experience of courts in recent years that mere fluency in a foreign language does not equate to competence in court interpretation. Inquiry may take the form of the suggested "voir dire" of foreign language interpreters which can be found in Appendix C of Serving Non-English Speakers in the Virginia Court System: Guidelines for Policy and Best Practice, and can also be found the court system's website at:

<http://www.courts.state.va.us/courtadmin/aoc/djs/programs/interpreters/guidelines.pdf>

when qualifying non-certified interpreters of any language.

## **Prepayment of Fines and Court Costs**

A major function performed by clerks or magistrates prior to trial of a case is the collection and recording of prepayments. The Supreme Court designates by rule the traffic infractions for which a pre-trial waiver of appearance, plea of guilty, and fine/costs payment can be accepted. The prepayable offenses are listed in the [Rules of Supreme Court](#), Rule 3B:2, the Uniform Fine Schedule.

### **In Person or by Telephone**

Upon receiving an inquiry about the waiver of trial and prepayment or receipt of a completed waiver and prepayment either in person or by telephone, the clerk or magistrate will:



- Determine the proper jurisdiction, court type and locality where case will be tried, from the warrant or summons.
- Determine whether the defendant is an adult or a juvenile. Adults may prepay any traffic infraction listed in Rule 3B:2 of the [Rules of Supreme Court](#).
- Determine whether the fine may be prepaid for the offense charged. See Fees and Prepayments in this manual for a link to prepayable offenses and amounts.
- If the defendant is inquiring in person in the clerk's office, examine the charge described in defendant's copy of warrant or summons; if defendant's copy is not available, examine court copy in case files.
- If the defendant is inquiring by telephone, have defendant read charges on the warrant or summons verbatim, including statutory citations.
- Do not proceed with inquiry if exact description of offense on the warrant or summons is not available.
- If any of the following offenses are charged, the violation is not prepayable, and a court appearance is required. Indictable offenses include:
  - Driving while intoxicated
  - Reckless driving
  - Leaving the scene of an accident
  - Driving while driver's licenses are suspended or revoked
  - Driving without being licensed to drive
- Determine if the case has been tried by ascertaining the return date. If so, advise the defendant of the judgment of the court. If not, continue with this process.
- Instruct the defendant to read the "Waiver of Trial" on the front and the "Notice" section on the back of the defendant's copy of the Virginia Uniform Summons. Then the defendant, if they wish to plead guilty and prepay, should sign the "Waiver of Trial" section.
  - If the defendant's copy is not available, use district court form DC-324: [Notice - Appearance, Waiver and Plea](#).
  - Written waiver of trial and plea of guilty is not mandatory when payment is tendered [Va. Code § 19.2-254.1](#).
- Advise the defendant that payment by personal checks or charge cards is acceptable.
  - The clerk may refuse acceptance of checks or charge cards of individuals (i) convicted of a violation of Chapter 6, [Va. Code § 18.2-168](#) et seq, of Title 18.2 in which a check, charge card, or charge card information was used to commit the offense, (ii) who previously tendered to the court a check which was not ultimately honored or a credit card, debit card or charge card.

- Information which did not ultimately result in payment by the charge card issuer, (iii) if authorization of payment is not given by the bank or credit or debit card issuer, (iv) if the validity of the check or credit or debit card cannot be verified, or (v) if the payee of the check is other than the court.
  - If a personal check or a charge card is not to be accepted, require payment by cash, U.S. Postal Service money order, or cashier's check. **Note:** Court personnel are not liable for any sums that are uncollected due to a returned check or an invalid credit card or debit card payment.
- Determine prepayment deadline
  - Persons planning to prepay by mail should be told that the prepayment is effective only on the date of receipt by the clerk's office, not the date of mailing by the defendant, and that the defendant assumes the risk in using the mail for delivery.
  - Determine the amount of prepayable fine and costs from the Uniform Fine Schedule, Rule 3B:2 of the [Rules of Supreme Court](#). Advise the defendant that this amount will constitute full payment only if received in the clerk's office prior to trial, to encourage timely prepayment.
- If prepayment is tendered, collect, and record the fines and costs and issue a receipt. See the District Court Financial Management System User's Guide for financial procedures. Mail the receipt if the defendant requests mailing.
- Overpayments, in person
  - Certified check or money order - Refund by court check is permitted where an overpayment is made by certified check or money order.
  - Personal check - Immediate refund not permitted. Refund may be sent only after defendant's personal check clears the bank. However, the defendant should be required to write a check for the correct amount. Third-party checks should not be accepted.
- Underpayment, in person
  - Partial prepayments should not be accepted. Instead, the defendant should be requested to mail or deliver the proper amount together with the signed guilty plea and waiver of trial before the cut-off date for accepting prepayments.
  - Make credit card or debit card payments only for the correct fine and costs.

### By Mail

- Inquiries concerning prepayments.

- If prepayable, use same steps for this determination as described above, provide the appropriate information, including cut-off dates, by letter or note.
- If not prepayable, send inquiry back with a pre-printed letter that the offense is not prepayable, and that the defendant must appear in court.
- Prepayment by mail - Upon receipt by mail of a prepayment
  - Determine if prepayment has been sent to the right court. If not, return to sender.
  - Determine if the case has been tried. If so, apply payment to fine and costs imposed by the court, see below. If not, continue to the next step.
  - Apply payment to the prepayable fine and costs.
  - Apply payment to the fine and costs indicated by Rule 3B:2 of the [Rules of Supreme Court](#), Uniform Fine Schedule. If there is an overpayment after paying the fine and costs, issue the receipt, and then issue a refund only if the amount paid exceeds the amount due by \$5. Receipt amounts under \$5 to Revenue Code 442. Refunds under \$5 should be issued upon the defendant's request. If payment by the defendant is by personal check, hold the court's refund check until the defendant's payment check clears the bank.
  - All prepayments should pay the account in full. If a partial prepayment is received by the court and time permits, send a notice to the defendant stating the additional amount due and a notation that it must be received by the court date. If time does not permit, attach payment to the summons for trial in absentia. After trial receipt the payment and send a DC-225, NOTICE TO PAY FOR the balance due. Please ensure that any pre-payments not receipted immediately are kept secure.
  - If payment is correct, issue receipt.
- Non-standard prepayments:
  - Guilty plea is not signed but payment is tendered, and a copy of the arrest document is included accept as valid prepayment. Tender of prepayment without execution of waiver and plea is deemed by [Va. Code § 19.2-254.1](#) to be an appearance, waiver and plea.
  - Payment is sent, but no arrest document and no guilty plea is signed match payment to summons, allowing a few days to see if the summons is received. If not, return the payment to the sender with a note or letter.
  - Signed guilty plea but no payment is sent return to the sender with a note that prepayment is required to accompany a written plea.
  - Unsigned guilty plea without payment is sent return to the sender with an explanation that the form was returned for lack of payment.

### By VIPNET

Prepayments will be accepted for certain traffic offenses online via the court's website at [www.vacourts.gov](http://www.vacourts.gov). Payments are accepted until 3:30 p.m. Eastern Time, on the last business day before the court date. Note: Pre-court payments are deemed a waiver of a court hearing and entry of a guilty plea.

### Overweight Vehicles

The table of liquidated damages in the chapter on **Fees and Prepayments** provides a schedule for determining the amount to be assessed. Liquidated damages may be prepaid along with the fine for an overweight traffic infraction. Almost all overweight violations are charged on a Virginia Overweight Citation, which is processed through the [Virginia Department of Motor Vehicles](#), rather than on a Virginia Uniform Summons, which is processed through a general district court.

Contested cases originating on a Virginia Overweight Citation are sent by the [Virginia Department of Motor Vehicles](#) to the general district court for trial as a civil case. See **Civil Case Procedures**.

### Bond Return Requests

A defendant released on bail when charged with having committed a traffic violation may later desire to plead guilty and pay the fine and costs prior to trial. In such instances, the defendant may wish to obtain cancellation of their bond, and a return of the cash or other collateral posted to secure the bond. Magistrates cannot make bond refunds once the bond is accepted. The clerk's office can handle bond refunds in the following manner:

- Determine that the offense is a prepayable traffic infraction.
- Follow prepayment of fine and costs procedures for collection of payment described earlier in this section.
- Return to the defendant the bond posted, hold refunds for prepayments made by personal check until the check has cleared the bank.
- Note guilty plea and prepayment on the summons.

Clerks must not return security for bail when the bond was used to secure the release of the defendant on additional charges that are either not prepaid or are not prepayable.

Refund of bail security upon prepayment of fine and costs with a written or deemed plea is permitted on the theory that the defendant has entered a written appearance through this written or deemed guilty plea (the bond having been given to secure the appearance of the

defendant) and the defendant has prepaid the fine, fees and costs established by the Rules of Court.

### **Withdrawal of Guilty Plea**

Three basic situations permit a defendant to withdraw a guilty plea entered prior to trial. Procedures for withdrawal vary with each situation:

Procedures for a defendant arrested on a summons and released on a written promise to appear who has prepaid the fine and costs; the clerk's office will:

- Require the defendant to provide the court with a written statement withdrawing the guilty plea.
- Refund the fine and costs, hold refunds on personal checks until the check clears.
- Inform the defendant to appear on their original trial date.

For a defendant arrested on a warrant and released on bail who prepaid the fine and costs, the clerk's office will:

- Require the defendant to provide the court with a written statement withdrawing the guilty plea.
- Require the defendant to post a new bail if the original cash deposit was refunded.
- Refund the fine and costs. If prepayment made by personal check, hold refunds until the check clears.
- Inform the defendant that they must appear on their original trial date.

For a defendant arrested on a summons who did not or was not entitled to sign the promise to appear to secure their release, but was released by executing a written guilty plea and prepaying the fine and costs, the clerk's office will:

- Require the defendant to post bail to ensure their appearance at trial.
- Follow the procedures listed above for a motorist arrested on a summons.

In all cases, advise the defendant withdrawing a guilty plea that they must appear at trial as originally scheduled. Note that magistrates cannot accept a withdrawal of a guilty plea but must refer all withdrawal of guilty pleas to the clerk's office of the court where the case is scheduled for trial.

## Case Disposition

If prepayment is made, then the disposition section should be marked to show that the case was handled as a prepayment with a guilty plea and finding of guilt. If the summons or warrant charges the defendant with driving a “commercial motor vehicle” as defined in [Va. Code § 46.2-341.4](#) or a “commercial motor vehicle” hauling hazardous materials, then such information should also be noted in the disposition section of the warrant or summons and in the appropriate field in GCMS.

## Bankruptcy

The court clerk may receive a notice of filing Bankruptcy petition. Notice may also be in the form of a bankruptcy court form notice or the petitioner or the petitioner’s counsel may tell the Clerk verbally about the filing. If verbal notice is received, the clerk should require the petitioner to provide a copy of the bankruptcy.

For step-by-step procedures on how Bankruptcy is to be handled, see **Miscellaneous Civil Case Procedures**.

## Trial Procedures

The discussion of trial procedures to follow includes traffic infractions and some misdemeanors but does not cover all procedures for traffic cases. To the extent that they do not conflict with traffic procedures, the procedures used in criminal cases are also used in traffic cases. See the chapter on **Criminal Case Procedures** in this manual for additional trial procedures.

Traffic offenses are classified generally as either traffic infractions (which are treated as misdemeanors for arrest purposes and most trial procedural purposes, but not for punishment purposes) or as criminal violations (which are tried in the same manner generally as other criminal cases). A defendant charged with a traffic infraction may plead guilty, not guilty, or nolo contendere (no contest). In all cases, the burden of proof is beyond a reasonable doubt.

The following additional information about the trial should be noted on the warrant or summons so that the abstract of conviction may be completed properly as required by Va. Code § 46.2-386:

- Was the defendant present or absent at trial?
- What was the defendant’s “right to counsel” status?
  - Waived counsel, includes “certificate of refusal” cases Represented by privately retained counsel
  - Represented by public defender
  - Represented by other court-appointed lawyer

- Not represented and did not waive counsel

### **Trial in Defendant's Absence**

**Note:** The DC-360: Show Cause Summons – Criminal, or DC-361: Capias – Attachment Of The Body may not be used to charge offenses of failure to appear for a traffic infraction pursuant to [Va. Code § 19.2-128](#).

#### ***Traffic Infractions:***

A defendant, arrested or summoned for a traffic infraction, may be tried in their absence, and notified by first class mail of the fine and costs to be paid. An additional fee of \$35 is charged when the defendant is tried in absentia for a traffic or criminal offense, unless the trial in absentia was by request of the defendant. This fee is not assessed against a defendant who requests trial in absentia in writing prior to their court date. A warrant of arrest cannot be issued for the defendant's failure to appear for trial on a traffic infraction.

#### ***Traffic Misdemeanors:***

For traffic violations punishable as misdemeanor, the judge may choose to try the defendant in their absence if there is no potential for a jail sentence, or if the court determines that a jail sentence will not be imposed. Otherwise, district court form DC-314: Warrant Of Arrest – Misdemeanor (State) charging the defendant with failure to appear pursuant to [Va. Code § 19.2-128](#) or a DC-360: Show Cause Summons (Criminal) or district court form DC-361: CAPIAS charging contempt for failure to appear may be issued. It is recommended that any document ordered for failure to appear should be issued immediately, but in all cases, no later than the end of the business day on which the order was entered.

Whenever the defendant is convicted in their absence, the clerk shall mail district court form DC-225: Notice to Pay to the defendant within five business days. Certification of the mailing is required. District court form DC-225 informs the defendant that they were found guilty, indicates the fine and costs, provides information for payment of the fine and costs by check, credit card or debit card.

#### ***Parking Violations:***

Two methods are available for the issuance of a district court form DC-319: Summons for parking violations pursuant to [Va. Code § 19.2-76.2](#) and [Va. Code 19.2-76.3](#). One method is to give district court form DC-319: Summons to the local law-enforcement agency for personal service of process; upon service of process, the defendant may be tried whether or not they appear at trial. The second method may require multiple issuances of the summons:

- The summons is prepared, and a copy is mailed to the defendant.
- If the defendant fails to appear at the trial, another summons is prepared with the new trial date and is served by the sheriff or other authorized process server as set out in [Va. Code § 8.01-296](#) for service of process in civil cases.
- If the defendant fails to appear at trial after service by the sheriff or other authorized process server, another summons may be prepared with a new trial date and served in the manner set out in [Va. Code § 19.2-76](#).
- If the case is processed by way of this method, the defendant cannot be charged with contempt unless the defendant was personally served with a summons and failed to appear on the return date contained therein.

### **Commercial Motor Vehicles Violations**

If the warrant or summons charges the defendant with driving a “commercial motor vehicle” as defined in [Va. Code § 46.2-341.4](#) or a “commercial motor vehicle” hauling hazardous materials, and the judge finds that such allegations are true, then such findings are noted on the conviction record as provided in [Va. Code § 46.2-382.1](#) and electronically forwarded to the Department of Motor Vehicles.

### **Order to Complete Traffic School, Driver Improvement Clinic, or Mature Driver Motor Vehicle Crash Prevention Course**

If the judge orders the defendant to successfully complete a traffic school, a driver improvement clinic, or a mature driver motor vehicle crash prevention course in lieu of a finding of guilt, no fine is imposed but all other costs are charged even though the case will be dismissed without adjudication of guilt [Va. Code § 16.1-69.48:1](#). If this procedure is used, the warrant or summons should be marked either “Dismissed--traffic school—[Va. Code § 16.1-69.48:1](#)” or “Dismissed--driver improvement clinic—[Va. Code § 16.1-69.48:1](#).” All applicable costs should be assessed at time of deferral.

Commercial driver’s license holders cannot have a charge dismissed by attending a driver improvement clinic, even if the offense is committed while operating a noncommercial motor vehicle.

### **Suspension of License**

#### ***Misdemeanors***

The court may suspend the defendant’s operator’s or commercial driver’s license for misdemeanors where suspension is part of the sentence as permitted by statute.



When the judge suspends or revokes a defendant's operator's or chauffeur's license, steps should be taken to ensure that the defendant has adequate legal notice of the suspension or revocation, which is a required element to be proven if the defendant is later prosecuted for driving on a suspended or revoked license. To avoid duplicate suspension by the courts and DMV and to provide adequate documentation of the fact that the defendant received actual notice of the suspension, the following procedures should be followed:

- If the defendant appears at trial and is convicted, the judge should require the defendant to execute district court form DC-210: Fines and Costs Payment Agreement/Acknowledgment of Driver's License Status with the judge or clerk and return a copy to the defendant.
- If the defendant is tried in absentia, then the clerk must mail a district court form DC-225: Notice to Pay to the defendant within five business days of the conviction.
- If the suspension is for thirty days or less, the clerk will hold the license in the file and return to the defendant once the suspension ends. If the revocation or suspension period exceeds thirty days, the clerk will mark surrendered in Case Management System and will hold the license for the ten-day appeal period. If no appeal is noted, the clerk will send license to DMV in an envelope marked for destruction. If suspension of any length is appealed within the ten-day time period, the clerk will return the license to the defendant.
- In some cases, the court is informed that the driver's license of the defendant has been suspended or revoked in connection with some other case in the trial court or some other court or by DMV administrative action, but that notice of the suspension or revocation has not been properly served on the defendant. In such situations, the Court may require the defendant to execute district court form DC210: Fines and Costs Payment Agreement/Acknowledgment of Driver's License Status with an authenticated copy being sent to DMV.

***Restricted Driver's License (RDL) Upon a Conviction of Reckless Driving or Aggressive Driving***

See chapter on **DUI Case Processing and Restricted Driver's License**.

**Overweight Vehicles**

See **Miscellaneous Civil Case Processing** for overweight cases originating on a Virginia Overweight Citation.

Upon conviction for an overweight vehicle violation, liquidated damages are assessed for violations of the statutory weight limits except on a first offense involving less than 2500 pounds overweight. The table of liquidated damages, found in the chapter on **Fees and Prepayments**, and provides a schedule for determining the amount to be assessed.

If the driver was convicted of refusing to drive the truck either to a permanent weighing station or upon the scales or the wheel load weighers, [Va. Code § 46.2-1137](#): the court may also tax as costs the expenses incurred in getting the truck weighed, including reloading expenses if the load is intentionally dumped.

### **Dismissal by Compliance with Law at Trial**

If the defendant is charged with [Va. Code § 46.2-104](#): failing to have a driver's license or vehicle registration card with them while driving, the judge may dismiss the case by entering on the summons "complied with law" if the defendant presents before the return date of the summons the missing operator's or chauffeur's license or vehicle registration card, such document bearing an issuance date prior to the arrest.

If the defendant is charged with [Va. Code § 46.2-300](#): driving without license the judge may dismiss the case by entering on the summons or warrant "complied with law" if the defendant produces proof of compliance to the court on or before the court date, unless such person was operating a commercial motor vehicle.

If the defendant is charged with [Va. Code § 46.2-301](#): driving while license, permit, or privilege to drive suspended or revoked and there have been no prior violations or convictions in the past 10 years, the judge may dismiss the case by entering on the summons or warrant "complied with law" if the defendant produces proof of compliance to the court on or before the court date, unless such person (i) possesses a commercial driver's or commercial learner's permit or (ii) was operating a commercial motor vehicle. If the defendant has a prior violation(s), the judge may dismiss or amend the summons or warrant, where proof of substantial compliance has been provided.

If the defendant is charged with [Va. Code § 46.2-324](#): fail to notify DMV of change of address, [Va. Code § 46.2-613](#): infraction relating to registration, licensing and certificates of title, [Va. Code § 46.2-646](#): expired registration, [Va. Code § 46.2-711](#): improper display of plates, [Va. Code § 46.2-715](#): fail to display license plates, [Va. Code § 46.2-716](#): improperly mounted license plates, or [Va. Code § 46.2-1052](#): no county or city tag, the judge may dismiss the case by entering on the summons "complied with law" if the defendant produces proof of compliance to the court on or before the court date.

Also, if a defendant is charged with a violation of [Va. Code § 46.2-1158.02](#): fail to have vehicle inspected, [Va. Code § 46.2-1000](#): drive without required safety equipment, [Va. Code § 46.2-1003](#): defective equipment, [Va. Code § 46.2-1052](#): operate with tint/signs/decals on windows, [Va. Code § 46.2-1053](#): sunshield windows, the judge may dismiss the case by entering on the summons "complied with law" if the defendant produces proof of compliance on or before the court date:

- provides proof of compliance with law prior to trial

- pays all required court costs.

### Local License Violations

If the defendant is convicted of violating a local license tag ordinance and, by its own terms, the local ordinance requires proof of obtaining a local tag before discharging the violation the defendant should be so notified in court at the time of conviction. See Payment Procedures above.

### Photo Red Light

Summonses issued for photo red light violations may be served by mail pursuant to the [Va. Code § 19.2-76.2](#). However, if the defendant does not appear for trial, the summons must be served by the sheriff or other authorized process server [Va. Code § 19.2-76.3](#).

No monetary penalty imposed under this section shall exceed \$50. Court costs are not assessed. Any conviction under this section does not become part of the violator's driving record.

The following procedures are recommended when processing a photo enforcement of red-light summons:

Step:	Description:
1.	The clerk receives the paper summons.
2.	Clerk will manually enter case in GCMS using "local code cites" and L in the bypass field.
3.	If the case has not been prepaid at docket preparation, the clerk prints DC-286: Disposition Order from the addendum docket for all outstanding summonses.
4.	After the hearing, the disposition will be recorded on the DC-286: Disposition Order. The clerk will update GCMS as appropriate.  <b>Note:</b> If the court enters judgment, update GCMS with <b>F</b> and <b>G</b> ; however, do not enter the fine. Place the fine in the remarks section. The fine is paid directly to the vendor.
5.	Any finding that an operator has violated an ordinance shall be appealable to the circuit court in a civil proceeding.  <b>Note:</b> Complete the DC-370: Notice of Appeal – Criminal. Do not collect writ tax or costs.

[Va. Code § 15.2-968.1](#), Use of photo-monitoring systems to enforce traffic light signals.

### Photo Speed Monitor Device

Photo speed monitor device summonses for a violation of [Va. Code § 46.2-873](#) Maximum speed limits at school crossings, and [Va. Code § 46.2-878.1\(P\)](#), Maximum speed limits in highway work zones may be served by mail pursuant to the [Va. Code § 19.2-76.2](#) However, if the defendant does not appear for trial, the summons must be served by the sheriff or other authorized process server [Va. Code § 19.2-76.3](#).

The civil penalty imposed under this section shall not exceed \$100 and any prosecution shall be conducted in the same manner as the prosecution for traffic infractions, therefore all court costs are assessed. Any conviction under [Va. Code § 46.2-882.1](#) by mailing a summons shall not be deemed a conviction as an operator and does not become part of the violator's driving history.

The following procedures are recommended when processing a photo speed monitoring device summons:

Step:	Description:
1.	The clerk receives the paper summons.
2.	<p>Clerk will manually enter case in GCMS using code cite with suffix <b>(P)</b> and State/Locality Code per issuing agency.</p> <p><b>Example:</b></p> <p><a href="#">Va. Code § 46.2-873(P)</a> for summons issued by photo speed monitor device in a school zone.</p> <p><a href="#">Va. Code § 46.2-878.1(P)</a> for summons issued by photo speed monitor device in a highway work zone.</p> <p><b>Note:</b> If a law-enforcement officer uses a photo speed monitoring device to record a violation of <a href="#">Va. Code § 46.2-873</a> or <a href="#">Va. Code § 46.2-878.1</a> and personally issues a summons at the time of the violation, the conviction that results shall be made a part of the individual's driving history and shall transmit to the DMV. A personally issued summons should be entered with the <b>CASE TYPE "I"</b> (Infraction). Do not utilize the suffix <b>(P)</b> when personally served.</p>
3.	If the case has not been prepaid at docket preparation, the clerk prints DC-286: Disposition Order from the addendum docket for all outstanding summonses.

Step:	Description:
4.	After the hearing, the disposition will be recorded on the DC-286: Disposition Order. The clerk will update GCMS as appropriate.
5.	Any finding that an operator has violated an ordinance shall be appealable to the circuit court.  <b>Note:</b> Complete the DC-370: Notice of Appeal – Criminal. Do not collect writ tax or costs.

[Va. Code § 46.2-882.1](#): use of photo speed monitoring devices in highway work zones and school crossing zones; civil penalty.

### Right to Counsel

See [Criminal Case Procedures – Right to Representation by a Lawyer](#)

### Return of Vehicle - Parking in a Space Reserved for Persons with Disabilities

The owner or agent of a parking space designated as reserved for the use of persons with disabilities may have towed any unauthorized vehicle which parks in the space [Va. Code § 46.2-1246 \(A\)](#). The owner of the vehicle, on notice, may petition the general district court in the jurisdiction where the parking occurred for the return of the vehicle, and for an immediate determination as to whether the removal of the vehicle was lawful. If the court finds that the towing was unlawful, it may award the costs of removal to the owner of the vehicle, as well as ordering its return.

### Appeals

The appeal process for traffic cases is the same as for criminal cases, and the procedures as outlined in the [Appeals](#) appendix should be followed. In addition, if the defendant, as part of the sentence, surrendered their driver's license and there is no other license suspension or revocation in effect which required the defendant to surrender their driver's license, then the driver's license is returned upon the noting of the appeal. If the appeal is withdrawn and the driver's license was suspended originally, have the defendant surrender their driver's license and execute a new DC-210: Fines and Costs Payment Agreement/Acknowledgment of Driver's License Status together with the defendant's written notice withdrawing their appeal.

If a defendant prepays the fine and costs on a traffic infraction and then advises the court of a desire to "appeal" prior to the return day, the request should be treated as a request to withdraw a guilty plea and the collected funds refunded, if paid. See Withdrawal of Guilty Plea in this section of the manual.

The case papers should not be transferred to the circuit court until after the expiration of the ten-day appeal period.

All CMV offenses transmit to the Department Motor Vehicles on the day of conviction. A conviction is considered a commercial driver offense when any of the following fields in GCMS have been checked: **CDL** (Commercial Drivers' License), **CMV** (Commercial Motor Vehicle), or **HAZ MAT** (Hazardous Materials). When an appeal is noted on a Commercial Motor Vehicle conviction, an amended abstract should be sent to the DMV to notify them of the appeal. The amended abstract should contain the language "Please vacate this CMV conviction, transmitted upon conviction, as the defendant has now noted an appeal."

### Motion to Rehear

A defendant convicted of a traffic offense may file district court form DC-368: [Motion to Reopen \(Criminal/Traffic\)/Motion to Rehear \(Civil\)/Motion For New Trial \(Civil\)](#) in district court, within sixty days of the conviction date. There is no refund of fines or court costs as there is for an appeal. When a motion to rehear is accepted by the clerk's office an abstract to DMV changing the conviction/suspension is **not required until after the case** is reheard and the original adjudication has been modified or vacated.

A request to reopen does not have the same effect as the defendant noting an appeal. There is no right to reopen a case. If the motion is granted by the judge, the clerk's office reopens the case removing all final disposition codes in the case management system, inserts the court date, prepares the Notice of Hearing portion of the district court form DC-368: [Motion To Reopen \(Criminal/Traffic\)/Motion To Rehear \(Civil\)/Motion For New Trial \(Civil\)](#), and attaches the motion to the original case.

When the original adjudication is modified or vacated at the re-hearing send an amended abstract to the DMV indicating the "conviction was vacated" or indicate the modifications to the original conviction.

Do not zero out the fine and costs in the individual account. Update the FAS record with REV in the action field. This will prevent the account from being reported for outside collection action. Once the court has ruled on the Motion to Rehear, it will be necessary to remove the REV from the action field [Va. Code § 16.1-133.1](#).

An exception to this might be if your judge indicates the original case adjudication is vacated when the motion is granted. Appropriate language to include on the abstract sent to the DMV when the original charge is vacated once the motion is granted would be "Vacated per Judge's Order".

**Constitutionality of Statutes [Va. Code § 16.1-131.1](#)**

In any criminal or traffic case in a court not of record, if the court rules that a statute or local ordinance is unconstitutional, it shall upon motion of the Commonwealth or County/City Attorney, stay the proceedings and issue a written statement of its findings of law and relevant facts, if any, in support of its ruling, and shall transmit the case, together with all papers, documents and evidence connected therewith, to the circuit court for a determination of constitutionality. If the Circuit court rules that the statute or local ordinance is constitutional; it shall remand the case to the court not of record for trial.

***GCMS Update***

The Clerk should update the case using **F** as hearing result and **TR** as the final disposition. In remarks it is suggested to put “appealed pursuant to [Va. Code § 16.1-131.1](#)”. **Do not put date in the appeal date field.** Keep copy of the original summons or warrant. Immediately transfer original to Circuit court along with district court form DC-322: Order - Transfer Of Jurisdiction.

**Payment Procedures**

A defendant convicted of a traffic violation is normally required to pay the fine and court costs at conviction. A defendant may also be required to pay costs when the defendant is placed on probation with further proceedings deferred [Va. Code § 19.2-303.4](#). When a defendant has been charged with multiple offenses arising out to the same incident, the defendant pays the fixed fee only once. However, if a defendant has been assessed a fixed fee after conviction for one offense and is then convicted of a second offense that has a higher fixed fee, the defendant will be required to pay the difference between the two fees upon conviction for the second offense [Va. Code § 16.1-69.48:1](#).

If the defendant is unable to make payment, the court shall place the defendant on a written installment or deferred payment plan using a DC-210: Fines and Costs Payment Agreement/Acknowledgment of Driver’s License Status.

The court shall establish a program and may provide an option for the defendant to discharge some or all of the fine and costs owed by earning credits for the performance of community service work (i) before or after imprisonment or (ii) in accordance with the provisions of [Va. Code § 19.2-316.4](#), [Va. Code § 53.1-59](#), [Va. Code § 53.1-60](#), [Va. Code § 53.1-128](#), [Va. Code § 53.1-129](#), or [Va. Code § 53.1-131](#) during imprisonment. The program shall specify the rate at which credits are earned and provide for the manner of applying earned credits against the fine and costs. The court assessing the fine or cost against a person shall inform such person of the availability of earning credit toward discharge of the fine or costs through the performance of community service work under this program and provide such person with written notice of terms and conditions of this program [Va. Code 19.2-354](#).

Interest will be imposed on unpaid fines beginning on the 181<sup>st</sup> day after final judgment, except while the defendant is making full and timely payments on a deferred or installment payment plan pursuant to an order of the court. No interest will accrue during any period the defendant is incarcerated and for a period of 180 days following the date of the defendant's release from incarceration.

A defendant may move any court in which they owe fines and costs imposed in a criminal case to waive any interest that accrued on such fines and costs during any term of incarceration and that such waiver shall be granted upon certification of the person's incarceration by the official in charge of the facility where such person was incarcerated. Interest on any unpaid fines or costs shall accrue at the judgment rate [Va. Code § 19.2-353.5](#).

The District Court Financial Management System (FMS) User's Guide and the [General District Court Manual Appendix B- Criminal Traffic Fines and Fees](#) describes detailed procedures for assessing and collecting the fines and costs ordered by the court and should be referred to for answers to questions concerning specific procedures.

For those convicted of traffic offenses who desire to pay fines and costs immediately, or the clerk's office will:

- Determine amount of fine and costs from case papers.
- Determine if there are restrictions on personal checks or credit cards/debit cards established by the court, such as:
  - Personal checks not taken for certain offenses, e.g., passing worthless checks.
  - Only certain credit cards/debit cards may be accepted.
- If restriction applies, require cash, a money order, or a cashier's check.
- Collect fines and court costs.
- Prepare and issue a receipt and record payment on appropriate form.
- Deposit and account for money collected. See [District Court Financial Management System User's Guide](#) for details.

In addition, for those who desire to pay, but not immediately, notice must be given to the defendant of the total amount due. Such notice is to be given:

- At the time of trial by completing Section I of district court form DC-210: Fines and Costs Payment Agreement/Acknowledgment of Driver's License Status and providing a copy of the form including the reverse side, to the defendant when present.
- and by sending of DC-225: Notice to Pay by first-class mail, on the date of the sentencing or within five days thereof, to the defendant's current mailing address.



### Deferred or Installment Payments or Community Service

Where the defendant is unable to make payment, an installment payment plan, deferred payment plan or community service is required [Va. Code § 19.2-354](#). If the court allows a deferred payment plan, the defendant must pay the fine and court fees and costs in a lump sum by a certain date. In an installment payment plan, the defendant pays a portion of the total of fine and court fees and costs on a periodic basis, e.g. weekly or bi-weekly, until the total is paid. The procedures for establishing and maintaining partial payment agreements require that the clerk's office will:

- Establish an installment or deferred plan if the defendant cannot make a complete payment.
  - If non-payment, the defendant may be required to show cause.
  - If excusable, the defendant may be granted further extension of time for payment.
- Complete district court form DC-210: Fines and Costs Payment Agreement/Acknowledgment of Driver's License Status with a payment schedule established by the judge or by the clerk, if the court has authorized the clerk to establish deferred and installment payment plans [Va. Code § 19.2-354](#).
- Each defendant will receive district court form DC-225: Notice to Pay on a delayed or partial payment plan ten days before the due date of their final payment as an early reminder notice.

The court should, pursuant to the policy of the Committee on District Courts, assess a one-time fee of ten dollars to cover the costs of management of the defendant's account, pursuant to [Va. Code § 19.2-354 \(A\)](#) for all agreements to pay exceeding ninety days.

Another option for satisfying the fine and costs is for the defendant to perform community service. The court assessing the fine or costs against a person shall inform such person of the availability of earning credit toward discharge of the fine or costs through the performance of community service work before or after imprisonment or during imprisonment; under this program and provide such person with written notice of terms and conditions of this program pursuant to [Va. Code § 19.2-354](#). In placing a defendant into a community service program, the court's records should show:

- The name of the entity for whom the service is to be performed
- The type of service to be performed if specified by the judge.
- The number of hours of service to be performed.
- The hourly rate at which credits will be earned for discharging fines and costs.

When the defendant completes their service, the entity for which the services were performed must report to the court that the defendant has completed their community service, and the number of hours worked. Make correct accounting entries. See District Court Financial Management System User's Guide. For auditing purposes, the clerk should file the report with the case papers.

### **Claims of Inability to Pay Fines and Costs**

If the defendant claims to be unable to pay fines and costs in court, the judge shall:

- Require those not indigent to enter into an installment payment plan. The court may also authorize a deferred payment agreement. The defendant should be advised that failure to pay as required on time and in full may result in:
  - The defendant being sentenced to jail for up to sixty days and/or fined up to \$500 and being forced to work in the local work force [Va. Code §§ 19.2-358](#) and [Va. Code § 53.1-128](#).
  - Suspension of vehicle registration and license plates by DMV for unpaid HOT lane and toll violations [Va. Code § 46.2-819.9](#).
- Require an indigent defendant, as a condition of suspension of sentence, to perform community service work [Va. Code § 19.2-354](#).

### **Local License Violations - Special Conditions**

Local motor vehicle license ordinances may provide that violations may not be discharged by payment of a fine except upon presentation of satisfactory evidence that the required local license has been obtained [Va. Code § 46.2-752 \(G\)](#). However, clerks should accept payments tendered for fines and costs for such violations, even in the absence of proof of obtaining the required local license. Defendants may not have their driver's license suspended solely for failure to obtain the locally required license. See Attorney General Opinion to Morrison, dated 11/20/96, General district court clerk must accept fines and costs paid in full by registered vehicle owner convicted of violating ordinance of locality participating in regional compact for cross-jurisdictional enforcement of local motor vehicle licensing requirements, but may not discharge violation until evidence is presented that owner has obtained required license. Suspension of driving privileges of person who has not provided proof of local license purchase, is not penalty court may impose. If a state trooper charges a defendant with a local license ordinance, fifty percent of the fine is remitted to the Commonwealth.

## Post-Trial Procedures

### Notices to the Department of Motor Vehicles (DMV)

The [Department of Motor Vehicles](#), because of its power to revoke, suspend, or restrict motor vehicle registrations or operator's licenses, receives notices from the district court clerk's office concerning traffic cases.

- Convictions are reported to DMV by GCMS/DMV interface. The abstract of conviction provides disposition information to DMV on disposed traffic cases.
- If there is a finding by the court that the offense involved a "commercial motor vehicle" or a "commercial motor vehicle" hauling hazardous materials or the prepaid offense contains such allegations in the charge portion of the summons, then such information should be included in GCMS.
- Amended Abstract of Conviction--Amended abstracts, Form DI-18c, should be sent to DMV to report changes in conviction data.
- Corrected abstracts should be made to report:
  - Correction of errors in the original abstract.
  - Court verdict on rehearing a case after the original abstract has been sent, including changes in the sentence.
  - Appeal of Commercial Motor Vehicle Conviction.

Unpaid toll and all penalties, administrative fees, and costs for delinquent HOT lane and toll violations are transmitted to DMV. Therefore, the clerk's office should advise the defendant to take the receipt to DMV to obtain reinstatement of their vehicle registration and license plates.

**Note:**

- Payment of delinquent HOT lane and toll violations are transmitted electronically to the Department of Motor Vehicles via the GCMS/DMV interface.
- The PCR receipt also serves as notice of payment.

### Unpaid ("Bounced") Checks or Dishonored Credit Card/Debit Card Payments

If a check tendered for payment of fines and costs is returned unpaid by the bank or notice is received from the credit card or debit card issuer that payment will not be made on a credit or debit card charge, the following steps are to be taken:

**Note:** Following a dishonored check or credit card/debit card charge, payment shall be made by cash, certified check, cashier's check or money order only.

- Send district court form DC-215, Notice of Dishonored Check or Credit Card Charge, to the defendant to notify him of dishonored payment and to assess penalty of \$50 for the return of the check or unpaid credit card/debit card charge.
- Make correct accounting entries, See District Financial Management System User's Guide.
- If full payment, including the penalty, is received within ten days after notice, treat it in same manner as other payments received after trial.

### Entering into an Installment or Deferred Payment Agreement

A defendant may request to enter into a deferred or installment payment agreement. The request should be considered and processed based on the same criteria the court has established for any defendant requesting time to pay in accordance with [Va. Code § 19.2-354](#). If a "time-to-pay" agreement is approved, both sections of district court form DC-210: Fines and Costs Payment Agreement/Acknowledgment of Driver's License Status and Order for Payment Agreement should be completed.

**Note:** If a check used for prepayment "bounced" and full payment was not made prior to trial date, the judge may have imposed a fine different from the prepayable fine on the Uniform Fine Schedule. If the difference between the prepayable fine and the court-imposed fine at trial is not significant, the judge may, in their sole discretion, amend and initial their order so as not to cause an underpayment.

If the defendant's unpaid fines and cost account has already been classified as delinquent and referred to the [Department of Taxation](#) or a private collection agent/attorney, the court should notify the collection entity that the defendant has established a payment plan with the court. The collection entity will still be entitled to its commissions for any and all payments receipted by the court, in the same manner as those defendants who elect to pay their debt directly to the court in response to an enforcement action initiated by the collection entity.

Interest does not accrue on the account following the approval of the new time to pay agreement unless the account once again becomes delinquent as a result of a subsequent failure to comply with the deferral or installment agreement.

### Records Management

As cases are closed in traffic court, certain administrative tasks must be completed to assure that cases are properly recorded. Upon disposing of a case, the clerk's office will:

- Record the disposition in CMS on the Hearing/Disposition Update Screen.

- Ensure that the judge has recorded the disposition on the summons or warrant.
- Abstract of conviction will be sent via interface to DMV.
- For traffic proceedings in general district court, file case papers, with all documents attached in the date certain Court Date Disposed File in numerical order.

## Chapter 5 – DUI Case Processing and Restricted Driver’s License

### Introduction

Driving Under the Influence (DUI) is a specific sub-category of criminal offenses. Driving under the influence is not limited to being under the influence of alcohol; it may also include being under influence of drugs or drugs and alcohol.

A first or second offense of DUI within a period of 10 years is punishable as a class one misdemeanor with a fine of up to \$2,500 or a sentence not exceeding twelve months in jail, or a combination of a fine and a jail sentence. Depending on the number of the offense and the Blood Alcohol Concentration (BAC) a mandatory minimum sentence (i.e., one that may not be suspended) may be required. A third or subsequent offense is punishable as a class 6 felony. Therefore, the court’s jurisdiction will be limited a determination of probable cause through a preliminary hearing.

Because many of the provisions of Virginia criminal procedure apply to DUI case as well, only those provisions unique to DUI are contained herein; see Criminal Case Procedures, for criminal procedures applicable to DUI cases.

Also, covered in this chapter are restricted licenses. Most DUI conviction will result in the granting of a restricted driver’s license (RDL). In addition, several other offenses including reckless driving, and failing to pay child support will result in the issuance of an RDL.

Any person who is otherwise eligible to receive a restricted license issued in accordance with [Va. Code § 18.2-271.1](#) or as otherwise provided by law, shall not be required to pay in full their fines and costs, as defined in [Va. Code § 19.2-354.1](#), before being issued such restricted license [Va. Code § 18.2-271.1](#).

### Pre-Trial Processing

#### General Provisions

Upon receipt of the summons or warrant from the officer or magistrate, the clerk must perform several functions prior to the court date to prepare the case for court. To complete the case indexing and filing functions, the clerk’s office will:

- Assign a sequential case number and enter the number and the court date on the summons or warrant, court date usually determined by the arresting officer’s next scheduled court date.
- Enter case in the automated system in the criminal division.
- File the case by court date prior to the court date.

- Issue district court form DC-326: [Subpoena for Witnesses](#) if requested by the officer or prosecutor or accused or the accused's counsel.
- Include witness subpoena returns of service, if any, See e.g. [Va. Code § 19.2-73.2](#).

The clerk's office will normally prepare the docket as follows:

- Retrieve all cases from the files for a given court date.
- Arrange the cases in the order preferred by the court, e.g. by arresting officer, by case number or alphabetically by defendant's name.
- Print docket via GCMS.
- Add additional cases to the docket as they come to the clerk's office.
- Distribute and post copies of the docket.
- Properly file certificates of analysis of the blood sample [Va. Code § 18.2-268.7](#) and [Va. Code § 46.2-341.26:7](#).

**Note:** In accordance with [Va. Code § 19.2-187](#) and [Va. Code § 19.2-187.1](#) the certificate is served on the defendant and filed with the clerk before trial in order to be admissible. The certificate becomes part of the case file and is thus presumptively open to the public.

### Testing of Blood Samples

Generally, intoxication is established by blood or breath samples taken from the accused. Blood tests are used only when a breath test is unavailable, the suspect is incapable of giving a breath sample, or the suspect is suspected of driving under the influence of narcotics [Va. Code § 18.2-268.2\(B\)](#) and [Va. Code § 18.2-268.2\(C\)](#).

One sample of blood is drawn and retained in two vials. The accused may, within 90 days after the blood sample is taken, move the court before which the case is pending for an order directing the Division of Forensic Science to transmit the remainder of the sample (the second vial) to an independent laboratory retained by the defendant for analysis. The defendant or their counsel generally files district court form [DC-303: Motion for Transmission of Blood Sample](#) to accomplish this motion.

Since the defendant "retains" the independent laboratory, they would directly bear the costs for the testing, as well as bearing the responsibility for choosing the laboratory. However, if the defendant is indigent and petitions the court before trial for authorization for the costs of the blood test to be paid out of the Criminal Fund and the court approves payment of the testing fees, the defendant's private court-appointed counsel will pay the testing fees and submit the testing as an expense on DC-40: List of Allowances for state cases and local

voucher for locality cases. The fee is assessed back to the defendant as part of expenses upon conviction or deferred disposition.

## Trial Procedures

To the extent that they do not conflict with criminal procedures, the procedures used in DUI cases are also used in criminal cases. See the chapter on “Criminal Case Procedures” in this manual for additional trial procedures.

The following additional information about the trial should be noted on the warrant or summons so that the conviction information may be entered in GCMS and transmit properly to the Department of Motor Vehicles as required by [Va. Code § 46.2-386](#):

- Was the defendant present or absent at trial?
- What was the defendant’s “right to counsel” status?
  - Waived counsel, includes “certificate of refusal” cases
  - Represented by privately retained counsel
  - Represented by public defender
  - Represented by other court-appointed lawyer
  - Not represented and did not waive counsel

## Right to Counsel

See [Criminal Case Procedures](#) – Right to Representation by a Lawyer.

## Appeals

The appeal process for DUI cases is the same as for criminal cases, and the procedures as outlined in the [Appeals](#) appendix should be followed. In addition, if the defendant, as part of the sentence, surrendered their driver’s license and there is no other license suspension or revocation in effect which required the defendant to surrender their driver’s license, then the driver’s license is returned upon the noting of the appeal. If the appeal is withdrawn and the driver’s license was suspended originally, have the defendant surrender their driver’s license and execute a new district court form DC-210: Fines and Costs Payment Agreement/Acknowledgment of Driver’s License Status together with the defendant’s written notice withdrawing their appeal.

The case papers may not be transferred to the circuit court until after the expiration of the ten-day appeal period.



## Payment Procedures

A defendant convicted of a DUI is normally required to pay the fine and court costs at conviction. A defendant may also be required to pay costs when the defendant is placed on probation with further proceedings deferred [Va. Code § 19.2-303.4](#). When a defendant has been charged with multiple offenses arising out to the same incident, they pay the fixed fee only once. However, if a defendant has been assessed a fixed fee after conviction for one offense and is then convicted of a second offense that has a higher fixed fee, the defendant will be required to pay the difference between the two fees upon conviction for the second offense [Va. Code § 16.1-69.48:1](#).

If the defendant is unable to make payment, the court shall place the defendant on a written installment or deferred payment plan using district court form DC-210: Fines and Costs Payment Agreement/ Acknowledgment of Driver's License Status.

The court shall establish a program and may provide an option for the defendant to discharge some or all of the fine and costs owed by earning credits for the performance of community service work (i) before or after imprisonment or (ii) in accordance with the provisions of [Va. Code § 19.2-316.4](#), [Va. Code § 53.1-59](#), [Va. Code § 53.1-60](#), [Va. Code § 53.1-128](#), [Va. Code § 53.1-129](#), or [Va. Code § 53.1-131](#) during imprisonment. The program shall specify the rate at which credits are earned and provide for the manner of applying earned credits against the fine and costs. The court assessing the fine or cost against a person shall inform such person of the availability of earning credit toward discharge of the fine or costs through the performance of community service work under this program and provide such person with written notice of terms and conditions of this program [Va. Code 19.2-354](#).

Interest will be imposed on unpaid fines beginning on the 181<sup>st</sup> day after final judgment, except while the defendant is making full and timely payments on a deferred or installment payment plan pursuant to an order of the court. No interest will accrue during any period the defendant is incarcerated and for a period of 180 days following the date of the defendant's release from incarceration.

A defendant may move any court in which they owe fines and costs imposed in a criminal case to waive any interest that accrued on such fines and costs during any term of incarceration and that such waiver shall be granted upon certification of the person's incarceration by the official in charge of the facility where such person was incarcerated. Interest on any unpaid fines or costs shall accrue at the judgment rate [Va. Code § 19.2-353.5](#).

The District Court Financial Management System (FMS) User's Guide and the [General District Court Manual Appendix B - Criminal Traffic Fines and Fees](#) describes detailed procedures for assessing and collecting the fines and costs ordered by the court and should be referred to for answers to questions concerning specific procedures.

For those convicted of traffic or criminal offenses who desire to pay fines and costs immediately, the clerk's office will:

- Determine amount of fine and costs from case papers.
- Determine if there are restrictions on personal checks or credit cards/debit cards established by the court, such as:
  - Personal checks not taken for certain offenses, e.g. passing worthless checks.
  - Only certain credit cards/debit cards may be accepted.
- If restriction applies, require cash, a money order, or a cashier's check.
- Collect fines and court costs.
- Issue a receipt and record payment on appropriate form.
- Deposit and account for money collected. See [District Court Financial Management System User's Guide](#) for details.

In addition, for those who desire to pay but not immediately, notice must be given to the defendant of total amount due. Such notice is to be given:

- At the time of trial by completing Section I of district court form DC-210: Acknowledgement of Suspension or Revocation of Driver's License and providing a copy of the form including the reverse side, to the defendant and/or
- By sending of district court form DC-225: Notice to Pay by first-class mail, on the date of the sentencing or within five days thereof, to the defendant's current mailing address.

### **Deferred or Installment Payments or Community Service**

Where the defendant is unable to make payment, an installment payment plan or deferred payment plan is required [Va. Code § 19.2-354](#). If the court allows a deferred payment plan, the defendant must pay the fine and court fees and costs in a lump sum by a certain date. In an installment payment plan, the defendant pays a portion of the total of fine and court fees and costs on a periodic basis, e.g., weekly, or bi-weekly, until the total is paid. The procedures for establishing and maintaining partial payment agreements require that the clerk's office will:

- Establish a deferred, modified deferred or installment plan if the defendant cannot make a complete payment:
  - If non-payment, the defendant may be required to show cause.
  - If appropriate, the defendant may be granted further extension of time for payment.

- Complete district court form DC-210: Fines and Costs Payment Agreement/Acknowledgment of Driver's License Status with a payment schedule established by the judge or by the clerk, if the court has authorized the clerk to establish deferred, modified deferred and installment payment plans Va. Code 19.2-354.1.
- District court form DC-225: Notice to Pay will also be sent to a defendant on a delayed or partial payment plan ten days before the due date of the defendant's final payment as an early reminder notice.

If the defendant is unable to make payment within 90 days of sentencing, the court may assess a one-time fee not to exceed \$10 to cover the cost of managing the defendant's account until such account is paid in full.

Another option for satisfying the fine and costs is for the defendant to perform community service. The court assessing the fine or costs against a person shall inform such person of the availability of earning credit toward discharge of the fine or costs through the performance of community service work before or after imprisonment or during imprisonment; under this program and provide such person with written notice of terms and conditions of this program pursuant to [Va. Code § 19.2-354](#).

In placing a defendant into a community service program, the court's records should show:

- The name of the entity for whom the service is to be performed
- The type of service to be performed if specified by the judge.
- The number of hours of service to be performed.
- The hourly rate at which credits will be earned for discharging fines and costs.

When the defendant completes their service, the entity for which the services were performed must report to the court that the defendant has completed their community service, and the number of hours worked. Make correct accounting entries. See District Court Financial Management System User's Guide. For auditing purposes, the clerk should file the report with the case papers.

### **Claims of Inability to Pay Fines and Costs**

If the defendant claims to be unable to pay fines and costs in court, the judge shall:

- Require those not indigent to enter into an installment payment plan. The court may also authorize a deferred or modified deferred payment agreement. The defendant should be advised that failure to pay as required on time and in full may result in:

- Being sentenced to jail for up to sixty days and/or fined up to \$500 and being forced to work in the local work force [Va. Code § 19.2-358](#) and [Va. Code § 53.1-128](#).
- Suspension of vehicle registration and license plates by DMV for unpaid HOT lane and toll violations.
- Require an indigent defendant, as a condition of suspension of sentence, to perform community service work [Va. Code § 19.2-354](#).

## Post-Trial Procedures

### Notices to the Department of Motor Vehicles (DMV)

The [Department of Motor Vehicles](#), because of its power to revoke, suspend, or restrict motor vehicle registrations or operator's licenses, receives notices from the district court clerk's office concerning traffic cases.

Abstract of Conviction reported to DMV by GCMS/DMV interface provides information to DMV on disposed traffic cases. The Clerk's office will update all information in GCMS as required by [Va. Code § 46.2-386](#):

- Parties to the case
- Nature and date of the offense
- Date of conviction
- Plea
- Judgment
- Penalty or forfeiture as the case may be
- Driver's license number, if any, of defendant
- Month, day, and year of birth of defendant
- Gender
- Residential address of defendant
- Whether defendant appeared at trial
- Whether defendant was represented by or waived counsel

If there is a finding by the court that the offense involved a "commercial motor vehicle" or a "commercial motor vehicle" hauling hazardous materials or the prepaid offense contains such allegations in the charge portion of the summons, then such information must be included in GCMS.

- If the defendant's driver's license is suspended, the court should take the driver's license (Virginia driver's license only) and forward to the Department of Motor Vehicles once the ten-day appeal period has run. It is not necessary to include conviction/suspension information as this information transmits via the GCMS/DMV interface. All Virginia drivers' licenses are forwarded in an envelope marked on the outside of the envelope "to be destroyed." The court does not have the authority to take an out-of-state driver's license on any conviction [Va. Code § 46.2-398](#).
- Amended Abstract of Conviction--Amended Abstracts (Form DI-18c) should be sent to DMV to report changes in conviction data.
- Corrected abstracts should be made to report:
  - Correction of errors in the original abstract.
  - Court verdict on rehearing a case after the original abstract has been sent, including changes in the sentence.
- Form DI-437: Notice of Failure to Comply with Citation (Reciprocal State Motorist), See Suspension of License above. The arresting officer, who may send it to DMV directly or through the clerk's office, completes this form.
- Form DI-19: Failure to Appear Warrant Report, the failure to appear warrant report is certified and sent to DMV by the clerk after a failure to appear warrant remains unserved or the defendant fails to appear after being served with such warrant.

## Records Management

As cases are closed in traffic court, certain administrative tasks must be completed to assure that cases are properly recorded. Upon disposing of a case, the clerk's office will:

- Record the disposition in GCMS on the Hearing/Disposition Update Screen.
- Ensure that the judge has recorded the disposition on the summons or warrant.
- Abstract of conviction will be sent via interface to DMV.
- For traffic proceedings in general district court, file case papers, with all documents attached in the date certain Court Date Disposed File in numerical order.

## Driving Under the Influence (DUI)

### Administrative Suspension of Driver's License

If a driver submits to a breath test which shows an alcohol concentration of 0.08%, or more, if the driver refuses to submit to a blood or breath test, or if a driver under twenty-one years of age submits to a breath test which shows an alcohol concentration between 0.02% and

0.08%, they are subject to an immediate administrative suspension of their driver’s license [Va. Code § 46.2-391.2](#). Upon issuance of a warrant by a magistrate or issuance of a summons by the law enforcement officer at a medical facility pursuant to [Va. Code § 18.2-268.3](#), the arresting officer shall take possession of any Virginia driver’s license held by the driver. If the driver does not have a Virginia driver’s license, that person’s privilege to drive in the Commonwealth shall be suspended. The period of suspension is seven days for a first offense; sixty days, or until the trial, whichever is first, if charged with a second offense; or until trial if charged with a third or subsequent offense.

After the magistrate issues a warrant or the issuance of a summons by the law enforcement officer at a medical facility pursuant to [Va. Code § 18.2-268.3](#), the arresting law enforcement officer shall personally serve district court form DC-201: Notice of Administrative Suspension of Driver’s License/Driving Privilege on the defendant. The officer shall then take possession of any Virginia driver’s license held by the driver and deliver it to the magistrate. The magistrate shall forward to the clerk of the general district court the driver’s license, district court form DC-201: Notice of Administrative Suspension of Driver’s License/Driving Privilege and a sworn report by the officer identifying the driver and stating the basis for the arrest, along with the warrant (or petition or summons) and breath test results. This report may be prepared using district court form DC-311: Criminal Complaint.

The officer will transmit a copy of district court form DC-201: Notice of Administrative Suspension of Driver’s License/Driving Privilege to the [Department of Motor Vehicles](#). This transmission may be done by electronic means.

The Department of Judicial Services of the Office of the Executive Secretary recommends:

- Immediately upon receipt of the license and accompanying information, the clerk of the court shall enter the district court form DC-201: Notice of Administrative Suspension of Driver’s License/Driving Privilege into the civil division using a Case Type of **AL**.
- Set a “hearing” date upon which the first business day after the applicable period expires, even though no hearing may be held. The court date will signify the date the license is returned to the defendant.

If the driver is charged with a third or subsequent offense which is a felony:

- Enter the district court form DC-201: Notice of Administrative Suspension of Driver’s License/Driving Privilege into the civil division using the Case Type of **AL** and finalize with “**O**” and “**O**” since the trial date in circuit court will not be known.

The notice and the driver’s license should be forwarded to the circuit court with the other papers upon certification.

The suspension period is calculated from the date and time noted by the law enforcement officer on district court form DC-201: Notice of Administrative Suspension of Driver’s License/Driving Privilege. The driver is entitled to the return of their license upon the expiration of the applicable suspension period. Therefore, if a license is administratively suspended on Monday October 1, at 10:00 a.m., a seven-day suspension period would end on the next Monday, October 8, at 10:00 a.m. Should the suspension period end on a holiday, weekend, or after business hours, the person is entitled to have their license returned when the clerk’s office is next open for regular business.

The suspended license shall be returned in person to the driver, or the driver may request that the license be returned through the mail. On the reverse of district court form DC-201: Notice of Administrative Suspension of Driver’s License/Driving Privilege there is a space for the driver to note their election to have the license returned by mail and to indicate the address to which the license shall be mailed. If the license administratively suspended and taken into possession has been otherwise suspended or revoked, the clerk will not return the license.

Any person whose license or privilege to drive has been administratively suspended may request that the general district court review the suspension. The driver shall file district court form DC-202: Motion for Review of Administrative Suspension of Driver’s License/Driving Privilege with the clerk of the appropriate court:

- The motion is entered as a subsequent action to the administrative suspension using case type **OT**.
- No fee shall be assessed for the motion.
- Finalize with “**O**” and “**O**”.

The clerk should provide the driver with a copy of the motion with the hearing date and time noted. The court must review the motion within the same time period as for an appeal from an order denying bail or fixing terms of bail or terms of recognizance, giving this proceeding precedence over all other matters on the court’s docket. If court is not held each day, the motion should be docketed on the next day the court sits. If the driver fails to appear at the hearing without just cause, their right of review will be waived. If the court is not scheduled to sit within the seven-day suspension period, then it is recommended that arrangements be made for the judge to hear the motion in another location where the judge will be sitting.

The court shall rescind the suspension if the driver proves by a preponderance of the evidence that either the officer did not have probable cause for the arrest or that there was

not probable cause to issue the petition or warrant or rescind that portion of the suspension that exceeds seven days if there was not probable cause to charge a second offense or sixty days if there was not probable cause to charge a third or subsequent offense. If the court orders the suspension to be rescinded, the license shall be promptly returned to the driver, unless the license has been otherwise suspended or revoked. If the driver is charged with a third or subsequent offense and a rescission is granted the clerk should retrieve the driver's license from the circuit court to return to the driver. The clerk shall give to the driver a certified copy of the order rescinding or reducing the suspension, use form DC-202, and transmit the order to the [Department of Motor Vehicles](#). Also, it is recommended that the clerk caution the driver to carry the certified copy of the order of rescission or reduction with them for the remainder of the rescinded suspension period.

If the driver is tried and acquitted of the underlying charge after the period has expired, or the charge is dismissed either during that period or at trial, the administrative suspension is immediately rescinded and the clerk should notify DMV, as previously noted by certifying a copy of the case papers itemizing charge and disposition to DMV.

The rescission occurs when there is a dismissal or acquittal of all the charges under [Va. Code § 18.2-51.4](#), [Va. Code § 18.2-266](#) or [Va. Code § 18.2-268.3](#) or any similar ordinances, or [Va. Code § 46.2-341.24](#) or [Va. Code § 42.3-241.26:3](#) for the same offense for which a person's driver's license or privilege to operate a motor vehicle was suspended under [Va. Code § 46.2-391.2](#). [Va. Code § 46.2-391.4](#). Unless the defendant is found guilty of the initial charge for which their license was administratively suspended, they are entitled to a rescission of the expired administrative suspension. For example, if a defendant was arrested for a first violation of [Va. Code § 18.2-266](#) because their breath test revealed a BAC of 0.08% or higher, resulting in the immediate seven-day suspension, but later pleads guilty to and is found guilty of reckless driving and the original charge under [Va. Code § 18.2-266](#) is dismissed, the expired administrative suspension is rescinded. In this context, the court does not actually rescind the suspension or order its rescission. Rather, since the statute provides that the acquittal or dismissal "shall result in the immediate rescission of the suspension," the rescission occurs simply by operation of law and the role of the court is merely to reflect in the disposition that the rescission has occurred. [Va. Code § 46.2-391.4](#). This means that the court is without the discretion to refuse to rescind the suspension. When a rescission occurs under these conditions, courts should follow the same procedure as when the acquittal or dismissal takes place during the suspension period.

Thus, the judge should reflect, as a part of the disposition, that the suspension is rescinded, provide a copy of the disposition to the defendant, and also transmit a copy to DMV. Typically, this notation would be made on the back of the warrant and copies of the warrant provided to the defendant and to DMV. As in the case of acquittals or dismissals within the suspension period, the DMV copy should be sent to the "Court Suspension Work Center". Since DMV deletes the record of a rescinded administrative suspension from the version of a driver's transcript that is provided in response to the inquiries of insurance companies and employers, the rescission of an expired suspension may be a significant result for the driver.



If the driver is tried and convicted of a violation of [Va. Code § 18.2-266](#) or [Va. Code § 18.2-266.1](#), or a similar ordinance, or [Va. Code § 46.2-341.24](#) within the administrative suspension period and the court decides to issue a restricted driving permit under [Va. Code § 18.2-271.1](#), the permit shall not be issued prior to the expiration of the first seven days of the administrative suspension period.

### **Trial Matters**

Five different offenses are contained in the driving while intoxicated statute [Va. Code § 18.2-266](#), or driving a commercial vehicle while intoxicated [Va. Code § 46.2-341.24](#), making it unlawful to drive or operate a motor vehicle when any one of the following occurs:

- While such person has a blood alcohol concentration of .08 percent or more by weight by volume as indicated by a chemical test administered in accordance with the provisions of [Va. Code § 18.2-268.1](#) or [Va. Code § 46.2-341.26:1](#), or
- While such person is under the influence of alcohol, or
- While such person is under the influence of any narcotic drug or any other self-administered intoxicant or drug of whatsoever nature, or any combination of such drugs, to a degree which impairs their ability to drive or operate any motor vehicle, engine, or train safely, or
- While such person is under the combined influence of alcohol and any drug or drugs to a degree which impairs their ability to drive or operate any motor vehicle, engine, or train safely, or
- While such person has a blood concentration of any of the following substances at a level that is equal or greater than: (a) 0.02 milligrams of cocaine per liter of blood, (b) 0.1 milligrams of methamphetamine per liter of blood, (c) 0.01 milligrams of phencyclidine per liter of blood, or (d) 0.1 milligrams of 3,4-meethylenedioxymethamphetamine per liter of blood.

When a blood sample has been taken, the sample will be divided between two vials and sent to the [Department of Forensic Science](#). The defendant may, at any time prior to the expiration of the 90-day period after the blood sample is taken, move the court for an order directing the Department of Forensic Science to transmit the remaining sample to an independent laboratory retained by the defendant for analysis. Such a motion would be made through district court form DC-303: [Motion for Transmission of Blood Sample](#). On motion of the accused, the report of analysis prepared for the remaining blood sample shall be admissible in evidence, provided that the report is duly attested by a person performing such analysis and the independent laboratory that performed the analysis is accredited or certified to conduct forensic blood alcohol/drug testing by one or more of the following bodies: American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB); College of American Pathologists (CAP); U.S. Department of Health and Human

Services Substance Abuse and Mental Health Services Administration (SAMHSA); or American Board of Forensic Toxicology (ABFT). If no notice of a motion to transmit the remainder of the blood sample is received prior to the expiration of the 90-day period, the Department of Forensic Science will retain the second vial for ninety days and destroy the vial unless the Commonwealth has filed a written request with the Department to return the remainder of the blood sample to the investigating law-enforcement agency. In such case, the Department shall return the remainder of the blood sample, if not sent to an independent laboratory, to the investigating law-enforcement agency. The defendant is responsible for providing notice to the Department that they have filed this motion. Following disposition of the motion, the clerk should send the order of the court disposing of that motion to the Department. The order may be transmitted via facsimile to the Department (804.786.6857). District court form, DC-303 contains a vehicle for the judge to enter an order disposing of the motion. The defendant “retains” the independent laboratory, so they would directly bear the costs for that testing, as well as bearing the responsibility for notice to the Department of Forensic Science.

**Note:** In accordance with [Va. Code § 19.2-187](#) and [Va. Code § 19.2-187.1](#) the certificate is served on the defendant and filed with the clerk before trial in order to be admissible. The certificate becomes part of the case file and is thus presumptively open to the public.

### Sentencing Options

Upon conviction of driving while intoxicated or driving a commercial vehicle while intoxicated, the following sentencing options are available under [Va. Code § 18.2-270](#), [Va. Code § 18.2-270.1](#), [Va. Code § 18.2-271](#), [Va. Code § 18.2-271.1](#) and [Va. Code § 46.2-341.28](#). The table [DUI Matrix](#) summarizes the penalties as well as the provisions regarding restricted driver's licenses, participation in an alcohol safety action program and use of ignition interlock. In addition, the defendant may also be responsible for expenses incurred by responding emergency vehicles, in the form of restitution. The locality must have adopted a local ordinance in order for agencies to request repayment of expenses. The agency can bill per minute or submit a bill for a flat fee of \$350.00. If assessed, receipt under account code 520 (restitution) and pay to the appropriate agency.

#### ***First DUI conviction:***

- 0 to 12 months in jail.
- If the blood alcohol content is .15 up to .20, there is an additional mandatory five days in jail. If the blood alcohol content is .20 or above, there is an additional mandatory ten days in jail. These additional mandatory jail times shall not be suspended by the court.
- There is a mandatory minimum fine of \$250, which shall not be suspended by the court. The maximum fine is \$2500.

- VASAP (Virginia Alcohol Safety Action Program) participation shall be ordered, unless, after an evaluation by VASAP, the assessment by VASAP indicates that intervention is not appropriate for such person, the court, for good cause shown, may decline to order such participation.
- Driver's license suspended for one year by operation of law. If a restricted driver's license is granted, an ignition interlock must be installed for twelve months of the restricted driver's license period. Upon motion of an offender, a court may require a minimum of six consecutive months without alcohol-related violations of the interlock requirements if additional restrictions are ordered for the duration of the restricted license.

***Second DUI conviction (the offense must be charged as a second violation) committed within less than five years of a first offense:***

- One month to one year in jail, with mandatory jail time of twenty days, which shall not be suspended by the court.
- If the blood alcohol content is .15 up to .20, there is an additional mandatory ten days in jail. If the blood alcohol content is .20 or above, there is an additional mandatory twenty days in jail. These additional mandatory jail times shall not be suspended by the court.
- There is a mandatory minimum fine of \$500, which shall not be suspended by the court.
- There is an additional mandatory minimum fine of \$500 if the blood alcohol content is .15 or above.
- A payment of \$50 to the Trauma Fund must be ordered.
- VASAP (Virginia Alcohol Safety Action Program) participation shall be ordered, unless, after an evaluation by VASAP, the assessment by VASAP indicates that intervention is not appropriate for such person, the court, for good cause shown, may decline to order such participation.
- Driver's license revoked for three years by operation of law. Upon restoration of the defendant's driver's license, an ignition interlock system must be installed for 12 months unless an ignition interlock system has been in use for at least 12 months while the defendant has operated a vehicle under a restricted driver's license. The offender's driver's license should be taken and forwarded to the Department of Motor Vehicles once the ten-day appeal period has run.
- Other provisions:
  - In addition, if a person is convicted of driving while under the influence (for either a first or subsequent offense) and the offense is committed while a person under eighteen years of age was in the vehicle, the defendant shall be fined an additional \$500 to \$1000 and sentenced to a mandatory, minimum period of confinement of five days.

- Any suspension or revocation imposed for a driving under the influence conviction, shall run consecutively with any period of suspension for failure to permit a blood or breath sample to be taken as required by [Va. Code § 18.2-268.1](#) through [Va. Code § 18.2-268.12](#) or [Va. Code § 46.2-341.26:1](#) through [Va. Code § 46.2-341.26:11](#) or any period of suspension for a previous violation of [Va. Code § 18.2-266](#), [Va. Code § 18.2-266.1](#), or [Va. Code § 46.2-341.24](#). Upon receipt of a DUI conviction, the Department of Motor Vehicles will check the offender's record for an existing DUI suspension/RDL. If an order is in effect, their system will set the revocation for the newest conviction to begin after the existing period of suspensions/restrictions ends. DMV will generate an order advising the customer to return to the court in which the second conviction occurred to have the RDL extended. If the court holds a hearing to grant the extension, it is recommended to enter in GCMS as an administrative hearing to the DUI conviction [Va. Code § 18.2-271](#).
- If the court, as a condition of license restoration or as a condition of a restricted license under subsection C of [Va. Code § 18.2-271.1](#) or [Va. Code § 46.2-391](#), or when required by [Va. Code § 18.2-270.1](#), fails to prohibit an offender from operating a motor vehicle that is not equipped with a functioning, certified ignition interlock system, the Commissioner of DMV shall enforce the requirements relating to installation of such systems in accordance with the provisions of [Va. Code § 18.2-270.1](#) and [Va. Code § 46.2-391.01](#).

***Offenses charged as a DWI, Prior Related Felony Conviction, or a third or subsequent offense are felonies and would, therefore, be tried in the Circuit Court***

**Note:** The sentencing options for a conviction of driving a commercial vehicle while intoxicated are the same as a conviction of driving a motor vehicle while intoxicated in accordance with the provisions of [Va. Code § 46.2-341.28](#).

### **Refusal to Give Blood or Breath Sample**

Anyone who operates a motor vehicle on any highway of the Commonwealth is deemed to have consented to have their blood or breath, or both, tested to determine the alcohol and/or drug content of their blood if they are arrested for driving under the influence (DUI) or driving after license forfeiture within three hours of their arrest [Va. Code § 18.2-268.2](#) and [Va. Code § 46.2-341.26:2](#). This is commonly referred to as the "implied consent" law. Should the operator unreasonably refuse such a test, they may be charge with an offense commonly called "Refusal." [Va. Code § 18.2-268.3](#) and [Va. Code § 46.2-341.26:3](#).

The refusal case is separate from the driving while intoxicated case. If the defendant pleads guilty to driving while intoxicated, the judge may dismiss the refusal to give blood or breath sample [Va. Code § 18.2-268.3](#), [Va. Code § 18.2-268.4](#), [Va. Code § 29.1-738.2](#) and [Va. Code § 46.2-341.26:4](#). Although first offenses in these cases are civil cases, [Va. Code § 18.2-268.3](#), [Va. Code § 18.2-268.4](#) and [Va. Code § 46.2-341.26:4](#) provide that trial procedures are the

same as in misdemeanor cases. The procedures for the appeal of any breath or blood refusal, civil offense, are the same as in misdemeanor cases.

If the judge finds that the defendant unreasonably refused to give a blood or breath test and within the previous ten years, the defendant has not committed an offense of refusal or driving while intoxicated, the judge suspends the defendant's driver's license for one year. If the defendant has a prior offense of breath refusal or driving while intoxicated within the last ten years and the defendant was charged and convicted on a second or subsequent offense, they are guilty of a Class 1 misdemeanor and the defendant's privilege to drive shall be suspended for a period of three years. This suspension is in addition to an administrative license suspension under.

If the defendant has a prior offense of blood refusal or driving while intoxicated within the last ten years and the defendant was charged and convicted on a second or subsequent offense, they are guilty of a civil offense and the defendant's privilege to drive shall be suspended for a period of three years. This suspension is in addition to any administrative license suspension. The finding in the refusal case for both blood and breath can be admitted as evidence in the trial of the driving while intoxicated charge for the sole purpose of explaining the absence of a chemical test.

The prosecution of the case is initiated on district court form DC-319: Summons or on a warrant [Va. Code § 16.1-260 \(H\)](#). Such summons or warrant will be accompanied by either district court form DC-231: Certificate of Refusal - Blood/Breath Test Watercraft or Motorboats, district court form DC-232: Certificate of Refusal - Blood/Breath Test (Commercial Motor Vehicle), or district court form DC-233: Declaration and Acknowledgement of Refusal – Blood/Breath Test (Motor Vehicles Generally).

### **Virginia Alcohol Safety Action Program (VASAP) Participation**

VASAP participation is required for all first and second offense convictions of DUI. If the assessment by VASAP indicates that intervention is not appropriate for the defendant, the court, for good cause shown, may decline to order it. If the defendant has been charged with a violation of the DUI statutes or a substantially similar local ordinance, the defendant may voluntarily enter into a VASAP program at any time prior to trial. Only participation in a local VASAP program certified as meeting minimum standards and criteria established by the [Commission on the Virginia Alcohol Safety Action Program](#) is permitted.

#### ***In-State Conviction***

After being convicted of driving while intoxicated for the first or second time under [Va. Code § 18.2-266](#) or a similar local ordinance, the court must refer the defendant to a VASAP program unless, after evaluation, the assessment by VASAP indicates that intervention is not appropriate for such person, the court, for good cause shown, may decline to order such participation. The terms and conditions of court-ordered VASAP

participation, including the granting or denying of permission for the defendant to receive a restricted driver's license (see below), are to be contained in district court form DC-265: Restricted Driver's License Order and Entry into Alcohol Safety Action Program.

### ***Out-of-State Conviction***

If a defendant has been convicted in another state of driving while intoxicated pursuant to a statute which is substantially similar to [Va. Code § 18.2-266](#) and whose Virginia driver's license is subject to revocation for such conviction under [Va. Code § 46.2-389](#), the defendant may petition the general district court to be given probation, be assigned to VASAP, and to be issued a restricted license order. If the defendant would have been eligible for VASAP, had they been convicted of DUI in Virginia, the court may refer the defendant to VASAP and issue a restricted license order. The court must refer all those convicted of a first or second offense to VASAP. The issuance of a restricted driver's license in circumstances involving out-of-state DUI convictions is handled as a civil matter. See basic steps to process this type of case later in this chapter under **Non-DUI related/Conviction under law of another State or Federal law for Driving While Intoxicated**. The terms and conditions of court-ordered VASAP participation, including the granting or denying of permission for the defendant to receive a restricted license (see below) and ordering DMV to stay the suspension of the driver's license, are to be contained in district court form DC-265: Restricted Driver's License Order and Entry into Alcohol Safety Action Program.

### ***Fees***

The judge must require the defendant to pay to VASAP a fee of no less than \$250 but not more than \$300 when entering the program. If the judge positively finds that the defendant is indigent, then he may reduce or waive the fee. The fee is collected by VASAP, not the court. Failure to pay this fee may be grounds for revoking the VASAP participation or for suspending the driver's license. These two options are described below.

### ***Failure to Pay VASAP Fee***

If the defendant fails to timely pay the VASAP fee or any installment of the fee, the defendant's driver's license may be suspended. There are two processes by which this suspension can be affected. If the VASAP entry fee is noted on district court form DC-210: Fines and Costs Payment Agreement/Acknowledgment of Driver's License Status the clerk should manually produce an abstract to be sent to DMV suspending the defendant's driver's license upon notification by VASAP in writing that the VASAP fee has not been paid. When the VASAP fee has been paid to VASAP, the VASAP receipt must be presented to the clerk who will then prepare a manual district court form DC-30: Driver's License Reinstatement Form to be given to the defendant. The defendant is instructed to take the DC-30 with the receipt to DMV for reinstatement of the driver's license.

Alternatively, the VASAP program can file district court form DC-635: [Motion for Show Cause Summons or Capias](#) to seek revocation of the defendant's driver's license for failure to pay the VASAP fee, and district court form DC-360: Show Cause Summons (Criminal) is issued. If the judge orders the driver's license suspended for failing to pay the fee, the defendant (if in court) should be required to execute district court form DC-210: Fines and Costs Payment Agreement/Acknowledgment of Driver's License Status and an amended abstract of conviction is filed with DMV showing the suspension of the license. Upon payment of the VASAP fee to VASAP, not the court, the defendant brings a copy of the VASAP receipt or a letter from VASAP showing full payment to the clerk's office, which photocopies and attaches it to the show cause summons, prepares district court form DC-30: Driver's License Reinstatement Form attaches the receipt or letter to form DC-30, and instructs the defendant to take it to a local DMV office (to get the DMV records cleared). See also, Post-Trial Procedures – Notices to Department of Motor Vehicles.

### ***Court Jurisdiction during VASAP***

Even though the final order in a case places the defendant into VASAP, the court retains jurisdiction over the defendant until they successfully complete VASAP or their VASAP participation is revoked due to ineligibility or violation of a condition or conditions imposed by the court [Va. Code § 18.2-271.1\(G\)](#).

### ***Revocation of VASAP***

If, after entry into VASAP, the judge learns that the defendant is ineligible to participate in VASAP or has violated at least one of the conditions imposed by the judge, the judge may commence a revocation proceeding by notice sent by first class mail, ordering the defendant to show cause why their VASAP participation should not be revoked. The hearing must be held not less than ten days from the date of mailing [Va. Code § 18.2-271.1](#). Failure to appear in response to the notice is grounds for revocation of VASAP participation.

### ***Clerical Procedures***

In addition to updating GCMS for transmittal of conviction date to DMV (see samples in "Abstracts of Convictions" above) and accepting the defendant's driver's license, the clerk will prepare for the judge's signature a district court form DC-265: Restricted Driver's License Order and Entry Into Alcohol Safety Action Program. Coordination with VASAP (beyond sending a copy of the order to VASAP) will be dictated by local practice. When VASAP participation is revoked, an amended abstract of conviction is prepared. The amended abstract should contain the language "VASAP Revocation". If restricted driving privileges were previously ordered, the defendant must surrender their driver's license and district court form DC-265: Restricted Driver's License Order and Entry Into Alcohol



Safety Action Program. Mail the amended abstract of conviction and the driver's license to DMV. See also discussion of suspension of license, below. The clerk's office does not handle the collection of VASAP fees. VASAP revocations are not confidential and there is no statutory authority to seal the reports.

## Restricted and Other Driver's License Actions

### DUI Related

In General, the Virginia Code provides for the revocation of a person's driver's license upon conviction of DUI. Conviction in and of itself operates to deprive the individual of the privilege to drive [Va. Code § 18.2-271](#). For a first offense DUI, the individual's license is suspended for one year. In the case of conviction of a second offense DUI within ten years, the individual's license is revoked by the [Department of Motor Vehicles](#) for a period of three years. For a third offense DUI within ten years of the other two convictions, as well as a conviction of maiming of another as a result of DUI under [Va. Code § 18.2-51.4](#) or a conviction of involuntary manslaughter as a result of DUI, the individual's license is revoked indefinitely. These latter three offenses are all felonies and therefore, an adult offender would be tried in circuit court. The defendant must be charged and convicted of a subsequent offense for the driver's license to be revoked.

**Note:** Upon conviction of driving a commercial vehicle while intoxicated, the penalties are the same as the penalties set forth for driving a motor vehicle while intoxicated [Va. Code § 46.2-341.28](#):

- The only way that a person convicted of a first or second DUI can avoid the full effect of the mandatory driver's license suspension or revocation is for the defendant to successfully participate in and complete VASAP. The judge has a wide range of options regarding the future driving privilege of the defendant who is participating in VASAP, including:
- Whether the defendant may drive at all, if participating in VASAP (no driving privilege if, upon conviction, defendant does not participate in VASAP).
- For first offenders, permitting the defendant to drive only on a court-ordered restricted license during the one-year suspension period.
- Deferring the commencement of the driving privilege during VASAP participation for exemplary punishment purposes. For second offenders, permitting the defendant to drive on a restricted license during all or part of the three-year suspension or revocation period but not during the first 4 months of such period if the second conviction was within ten years of the first offense and not within the first year if the second conviction was within five years of the first offense [Va. Code § 18.2-271.1 \(E\)](#).



- Restricted Driver’s License - The judge may order the issuance of a restricted driver’s license for any VASAP participants, but only for the following statutorily authorized purposes:
  - To and from place of employment.
  - To and from VASAP or other alcohol rehabilitation programs.
  - Driving during working hours if driving a vehicle is a necessary incident of employment (but does not include operation of a commercial motor vehicle).
  - To and from school if such a person is a student, upon proper verification to the court that such person is enrolled in a continuing program of education.
  - Travel for health care services, including medically necessary transportation of an elderly parent or any person residing in the person’s household with a serious medical problem upon written verification of need by a licensed health care professional.
  - Travel necessary to transport a minor child under the care of the person to and from school, day care, and facilities housing medical service providers.
  - Travel to and from court-ordered visitation with a child
  - Travel to a screening, evaluation and education program entered pursuant to [Va. Code § 18.2-251](#) or [Va. Code § 18.2-258.1 \(H\)](#).
  - Travel to and from a place of religious worship one day per week at a specified time and place.
  - Travel to and from appointments approved by the Division of Child Support Enforcement of the Department of Social Services as a requirement of participation in an administrative or court-ordered intensive case monitoring program for child support.
  - Travel to and from jail to serve a sentence when such person has been convicted and sentenced to confinement in jail and pursuant to [Va. Code § 53.1-131.1](#) the time to be served is on weekends or nonconsecutive days.
  - Travel to and from the facility that installed or monitors the ignition interlock in the person's vehicle.
  - Travel to and from a job interview for which you have with you written proof from your potential employer of the date, time, and location of the job interview
  - Travel to and from the offices of the Virginia Employment Commission for the purpose of seeking employment.
- If the petition is granted, the clerk prepares a district court form DC-265: Restricted Driver’s License Order and Entry Into Alcohol Safety Action Program and the VASAP copy is transmitted to VASAP. However, if the judge finds that the motorist has a prior conviction for driving while intoxicated, the restricted driver’s license order may not be effective immediately.

- For a second offense within ten years, a restricted driver's license may not be issued until four months of the suspension period has elapsed. For a second offense within five years, a restricted driver's license may not be issued until one year of the suspension period has elapsed. The issuance of a restricted driver's license is ordered on district court form DC-265: Restricted Driver's License Order & Entry Into Alcohol Safety Action Program. The restricted license order, original of the order, may be delivered to the offender conditioned on the offender enrolling in VASAP within fifteen days. The district court form order DC-265: Restricted Driver's License Order and Entry into Alcohol Safety Action Program should be prepared and signed and given to the offender to take to VASAP. The VASAP copy (which is not an authorization to drive) should be sent separately to VASAP for enrollment verification purposes. After enrollment, VASAP will endorse the back of the original of the order with a proof of enrollment and give it to the offender who should take it to DMV for issuance of a new restricted license.

If the defendant does not complete the VASAP program during the suspension period, they may wish to petition the court for an extension of the restricted driver's license as the court retains jurisdiction during VASAP participation, until the VASAP program is successfully completed, or participation is revoked by the judge. If granted, an amended DC-265: Restricted Driver's License Order and Entry Into Alcohol Safety Action Program should be issued checking the box granting "an extension for completion of the program" and entering the amount of time given by the court to complete the program.

In some cases, VASAP will want to change the location of delivery of VASAP services or require the defendant to participate in an additional treatment program. The judge and VASAP should reach an agreement as to whether such changes will be handled by an amended DC-265: Restricted Driver's License Order and Entry Into Alcohol Safety Action Program prepared in the clerk's office or by a document on VASAP stationery prepared by VASAP.

### **First Refusal of Blood/Breath Test-RDL**

A defendant who is found guilty of a first offense refusal of blood or breath test and whose license is suspended may petition the court 30 days after the date of conviction for a restricted license and the court may, for good cause shown, grant the restricted license during the remaining period of suspension, or any portion thereof for any of the purposes set forth in subsection E of [Va. Code § 18.2-271.1](#). The defendant files a DC-263: Application for Restricted Driver's License to initiate the request:

- If the court does not hold a hearing, do not add an administrative hearing in GCMS.
- If the court holds a hearing, add a hearing date to the original charge using hearing type **AH**.

- If the petition is granted, the clerk enters the restrictions into GCMS and prepares district forms DC-265: Restricted Driver’s License and Entry Into Alcohol Safety Action Program, and a DC-266: Restricted License Conditions - Ignition Interlock Order.
- The conviction will have previously transmitted to the DMV, a copy must be manually forwarded to DMV. A copy must be transmitted to VASAP, and a copy should be given to the defendant. A copy should be retained by the court with the petition and attached to the original case.

### Motion for RDL/Motion to Amend RDL

If a defendant files a motion for a Restricted Driver’s License or a motion to amend a current Restricted Driver’s license after the conviction has transmitted to DMV, district court form DC-630: [Motion to Amend or Review Order](#) should be filed:

- If the court does not hold a hearing, do not index the motion in GCMS.
- If the court holds a hearing, the motion should be indexed in GCMS as follows:
  - Enter as a subsequent action to the original charge using case type **RL**
  - Enter **None** in the complainant field
  - Enter **18.2-271.1** in the code cite field
  - Enter the verbiage **Motion for RDL** or **Motion to Amend RDL** in the charge field
  - Upon conclusion of the case, update with **F** and **GR** or **DN** for denied.
- If the court grants a Restricted Driver’s License after the conviction has transmitted to DMV, a new Restricted Driver’s License should be prepared and marked “**Original**”, and a copy must be forwarded to DMV. A copy should be given to the defendant, and a copy should be retained by the court with the motion and attached to the original case.
- If the court grants a Motion to Amend an existing Restricted Driver’s License:
  - If the court adds or deletes license restrictions:
  - The defendant surrenders the old copy of district court form DC-265: Restricted Driver’s License Order and Entry Into Alcohol Safety Action Program (which is destroyed) and the driver’s license (unless not yet re-issued by DMV) to the judge or clerk. The judge signs a new district court form DC-265, and the original is given to the defendant, and a copy is sent to DMV, and the court files its copy.
  - DMV re-issues a license (unless restricted license is revoked) showing the changed effective date or codes for changed restrictions.
- If the driver requests a change other than those listed above, change of workplace, change of address etc., use the same procedure as above except that the defendant

does not surrender their driver's license for forwarding to DMV. It is not necessary to send a copy of the amended RDL to DMV.

The court that convicted a person of DUI has continuing jurisdiction over the person during any period of license revocation resulting from that conviction, for the purposes of referring the person to a certified alcohol safety action program and providing a restricted permit, regardless of whether or not it took either action at the time of the conviction [Va. Code § 18.2-271.1 \(G\)](#).

### **Petition for RDL for case 10+ years old**

Drivers may petition and request issuance of a Restricted Driver's License for a conviction that occurred 10 years or more ago. In these instances, it is appropriate for the court to request the driver provide a DMV transcript to ensure the conviction is from the court where the request is made:

- Accept the petition and allow the court to make a decision if issuance is proper:
  - The defendant should also complete a DC-273, Application for Restricted Driver's License.
  - The transcript will contain the original case number.
- If the RDL is granted:
  - Prepare the RDL.
  - The RDL must be mailed to the DMV.
  - File a copy of the RDL with your current end-of-day work.

### **Ignition Interlock Systems**

An ignition interlock device is a device that connects a motor vehicle ignition system to an analyzer that measures a driver's blood alcohol content; prevents a motor vehicle ignition from starting if a driver's blood alcohol content exceeds 0.025 percent; and is equipped with the ability to perform a rolling retest and to electronically log the blood alcohol content during ignition, attempted ignition and rolling retest. "Rolling retest" is defined as a test of the vehicle operator's blood alcohol content required at random intervals during operation of the vehicle, which triggers the sounding of the horn and flashing of lights if the test indicates that the operator has a blood alcohol content which exceeds 0.025 percent, or the operator fails to take the test.

In addition to any penalty provided by law for a conviction under [Va. Code § 18.2-51.4](#) or clauses (i), (ii), or (iv) of [Va. Code § 18.2-266](#) or a substantially similar ordinance of any county, city or town, any court of proper jurisdiction shall, as a condition of a restricted license prohibit an offender from operating a motor vehicle that is not equipped with a

functioning, certified ignition interlock system for any period of time not to exceed the period of license suspension and restriction, not less than 12 consecutive months without alcohol-related violations of the interlock requirements. In addition to any penalty provided by law for a conviction under clauses (iii) or (v) of [Va. Code § 18.2-266](#) or a substantially similar ordinance of any county, city or town, any court of proper jurisdiction may, for a first offense, as a condition of a restricted license, prohibit an offender from operating a motor vehicle that is not equipped with a functioning, certified ignition interlock system for any period of time not to exceed the period of license suspension and restriction, not less than 12 consecutive months without alcohol-related violations of the interlock requirements.

The court shall, as a condition of a restricted license for a conviction under [Va. Code § 18.2-51.4](#), a second or subsequent offense of [Va. Code § 18.2-266](#) or a substantially similar ordinance of any county, city or town, or as a condition of license restoration pursuant to subsection C of [Va. Code § 18.2-271.1](#), or [Va. Code § 46.2-391](#) require that such a system be installed on each motor vehicle, as defined in [Va. Code § 46.2-100](#), owned by or registered to the offender, in whole or in part, for any period of time not less than 12 consecutive month without alcohol-related violations of the interlock requirements. Such condition shall be in addition to any purposes for which a restricted license may be issued pursuant to [Va. Code § 18.2-271.1](#).

However, if (i) a conviction was under [Va. Code § 18.2-266](#) or a substantially similar ordinance of any county, city, or town; (ii) the conviction was for a first offense; and (iii) the offender was an adult at the time of the offense, the only restriction of a restricted license that the court shall impose is to prohibit the offender from operating a motor vehicle that is not equipped with a functioning certified ignition interlock system for not less than 12 consecutive months without alcohol-related violations of the interlock requirements. Upon motion of an offender, a court may require a minimum of six consecutive months without alcohol-related violations of the interlock requirements if additional restrictions are ordered for the duration of the restricted license, [Va. Code § 18.2-271.1\(C\)](#).

In addition, if an offender is ineligible to receive a restricted license in accordance with subsection C, the court may, upon motion of the defendant, order that the offender (i) use a remote alcohol monitoring device for a period of time coextensive with the period of time of the prohibition imposed under subsection B and (ii) refrain from alcohol consumption during such period of time. Additionally, the court may issue a restricted license to operate a motor vehicle for any purpose to a person who is prohibited from operating a motor vehicle that is not equipped with a functioning, certified ignition interlock system when such person is ordered to use a remote alcohol monitoring device and has a functioning, certified ignition interlock system installed on each motor vehicle, owned by or registered to the offender, in whole or in part [Va. Code § 18.2-271.1\(E\)](#).

In any case in which the court requires the installation of an ignition interlock system, the court shall order the offender not to operate any motor vehicle that is not equipped with such a system for the period of time that the interlock restriction is in effect. The

Department shall issue to the offender for the period during which the interlock restriction is imposed a restricted license which shall appropriately set forth the restrictions required by the court under this subsection and any other restrictions imposed upon the offender's driving privilege, and shall also set forth any exception granted by the court under subsection I of [Va. Code § 18.2-270.1](#). The period of time during which the person (i) is prohibited from operating a motor vehicle that is not equipped with an ignition interlock or (ii) is required to have an ignition interlock system installed on each motor vehicle owned by the or registered to the offender, in whole or in part, shall be calculated from the date the offender is issued the restricted license by the court; however, such period of time shall be tolled upon the expiration of the restricted license issued by the court until such time has the person is issued a restricted license by the Department [Va. Code § 18.2-270.1](#), and [Va. Code § 18.2-271.1](#).

The only exception to the requirement of an ignition interlock is when the court allows the defendant to operate a motor vehicle without an ignition interlock system, solely for employment purposes, at the request of the employer, when the vehicle is owned or provided by their employer. Such person shall not be permitted to operate any other vehicle without a functioning ignition interlock system. If the court expressly permits such operation as a condition of a restricted license, the defendant in no event shall be permitted to operate a school bus, school vehicle, or a commercial motor vehicle as defined in [Va. Code § 46.2-341.4](#). The court should not make this exception if such employer is an entity wholly or partially owned or controlled by the defendant.

In any case in which the court issues a restricted driver's license with the driving privilege of **C** only, travel during the hours of employment, IF the operation of a motor vehicle is necessary to the employment described, without ignition interlock, please fax a copy of the DC-266 to the DMV Driver Compliance at 804-367-6211.

Whenever an ignition interlock system is required, the court may order the installation of an ignition interlock system to commence immediately upon conviction. A fee of \$20 to cover court and administrative costs related to the ignition interlock system shall be paid by any such offender to the clerk of the court. The offender shall be enrolled in and supervised by an alcohol safety action program pursuant to [Va. Code § 18.2-271.1](#) and to conditions established by regulation under [Va. Code § 18.2-270.2](#) by the Commission during the period for which the court has ordered installation of the ignition interlock system. The offender shall be further required to provide to such program, at least quarterly during the period of court ordered ignition interlock installation, a printout from such electronic log indicating the offender's blood alcohol content during such ignitions, attempted ignitions, and rolling retests, and showing attempts to circumvent or tamper with the equipment [Va. Code § 18.2-270.2](#).

Any person who enters into such program prior to trial may pre-qualify with the program to have an ignition interlock system installed on any motor vehicle owned or operated by them and may have such ignition interlock system installed. Any installation period of time

accrued by such person prior to trial for the pending charge shall count for any (i) ignition interlock or restricted license period of time ordered by a court or (ii) restricted license, suspension, or revocation issued by the Department of Motor Vehicles pursuant to Va. Code § 46.2-389.

The defendant shall be ordered to provide the appropriate ASAP program, within thirty days of the effective date of the order of court, with proof of the installation of the ignition interlock system. The Program shall require the defendant to have the system monitored and calibrated for proper operation at least every thirty days. The defendant shall pay the cost of leasing or buying and monitoring and maintaining the ignition interlock system. Absent good cause shown, the court may revoke the defendant's restricted license for failing to (i) timely install such system or (ii) have the system properly monitored and calibrated.

### Non-DUI related

#### *Petition for Restricted Driver's License Pursuant to [Va. Code § 46.2-301\(E\)](#)*

A defendant who has had their driver's license or privilege to operate a motor vehicle suspended for a conviction of [Va. Code § 46.2-301\(B\)](#), may petition the court that suspended the license provided the period of time for which the license was suspended by the court, if measured from the date of conviction, has expired, even though the suspension itself has not expired.

The following procedures are recommended when processing a request for a restricted driver's license:

Step:	Description:
1.	<p>The clerk receives district court form DC-273: Petition For Authorization For Restricted Driver's License – Conviction For Unauthorized Driving.</p> <p>It is recommended that the petitioner file a compliance summary from DMV along with the petition.</p>
2.	<p>The clerk will check to be sure the underlying conviction occurred in the court. If so, enter the petition in the traffic division as a new case using case type <b>RL</b>:</p> <ul style="list-style-type: none"> <li>• Code section: <b>46.2-301(E)</b></li> <li>• Complainant: <b>None</b></li> <li>• Charge: <b>Petition for RDL 46.2-301(E)</b></li> <li>• Offense date: <b>Date of conviction from underlying charge</b></li> </ul>



Step:	Description:
3.	<p>According to local policy, the court may hold a hearing or handle administratively. If hearing is to be held, set the date and time.</p> <p>The court may for good cause shown authorize DMV to issue a restricted license for any of the purposes set forth in subsection E of Va. Code § 18.2-271.1.</p>
4.	<p>After the hearing, conclude the case in GCMS Hearing/Disposition screen using <b>F</b> in the <b>Hearing Result</b> field; and <b>GR</b> for granted; or <b>DN</b> for denied in the <b>Case Disposition</b> field.</p> <p>If the petition is granted:</p> <p>Print the district court form DC-274: Authorization For Restricted Driver’s License – Conviction For Unauthorized Driving on white paper, not green safety paper.</p>
5.	<p>The court shall forward by mail a copy of district court form DC-274: Authorization For Restricted Driver’s License – Conviction For Unauthorized Driving to the Commissioner of DMV.</p> <p>It is not necessary to hold the authorization – it may be mailed immediately. The authorization does not transmit electronically to DMV.</p>
6.	<p>The court shall provide a copy of district court form DC-274: Authorization For Restricted Driver’s License – Conviction For Unauthorized Driving to the person, who may not operate a motor vehicle until receipt from DMV of a restricted license.</p> <p>The court does not determine the length of the restricted driving privilege. DMV may receive authorizations with various restrictions. They will authorize only the restrictions for which all courts agree and authorize. The defendant may not operate a commercial motor vehicle with this license.</p>
7.	<p>File the petition and a copy of the authorization in the concluded traffic file for the court date. The authorization does not transmit electronically to DMV.</p>

### ***Conviction under law of Another State or Federal Law for Driving While Intoxicated***

While most matters regarding driving while intoxicated cases are handled as criminal matters, one exception exists. If a Virginia motorist is convicted in another state or federal court of driving while intoxicated, the motorist may petition a general district court *in a civil action* for a restricted driver’s license pursuant to [Va. Code § 18.2-271.1 \(D\)](#). The provisions applicable to the section on “Suits in Debt” are also applicable to these cases, except as follows:



- Case Initiation -Motorist files petition (which may be in any form, including a letter) with the general district court clerk in the locality where the petitioner resides together with the court-processing fee. The petition should include the offense date and the date and place of conviction.
- The clerk's office collects civil fees, indexes the petition as a new civil case using case type **RL**, and treats the civil case as an "in re" proceeding; therefore, there is no defendant to serve. The petitioner will be entered as the plaintiff. The defendant field in CMS should be explained as follows: "Petition for Rest. OL 18.2-271.1(D)." At the conclusion of the hearing, GCMS should be updated with **O** in the **Hearing Result** field and **O** in the **Case Disposition** field. You may wish to make a notation in the **Further Case Information** field as to whether the petition was granted or denied.

If the court grants the petition, the DC-265: Restricted Driver's License Order and Entry Into Alcohol Safety Action Program should be printed on green safety paper. A copy of the DC-265 should be sent manually to VASAP and DMV.

***Restricted Driver's License (RDL) Upon a Conviction of Careless Driving, and infliction of injury of death on a vulnerable road user, Reckless Driving or Aggressive Driving***

The court may, in its discretion, and for good cause shown, grant an RDL to a defendant who has been convicted of careless driving and infliction of injury or death on a vulnerable road user, reckless driving or aggressive driving and whose driver's license is ordered suspended as a result [Va. Code § 46.2-392](#), and [Va. Code § 46.2-393](#). As a condition of the RDL, the court may require the defendant to participate in an alcohol safety action program if the defendant is convicted under [Va. Code § 46.2-868](#), or [Va. Code § 46.2-868.1](#). The purposes for which the RDL may be granted are shown in Driver's License Actions-DUI Related-Restricted Driver's License above.

In any criminal case for any violation of reckless driving, [Va. Code § 46.2-852](#) et seq., where a defendant's license to operate a motor vehicle in the Commonwealth is subject to revocation or suspension and the court orders a defendant, as a condition of probation or otherwise, to enter into and successfully complete an alcohol safety action program, the court may, in its discretion, issue the defendant a restricted license to operate a motor vehicle where the only restriction of the restricted license that the court shall impose is to prohibit the defendant from operating a motor vehicle that is not equipped with a functioning, certified ignition interlock system for a period of not less than six consecutive months without alcohol-related violations of the interlock requirements. This RDL is ordered using district court form DC-260: Driver's License Forfeiture/Suspension and Restricted Driving Order.

***Restricted Learner's Permit***

The Department of Motor Vehicles is authorized to issue a restricted learner's permit if the person is required to have a learner's permit, is 25 years of age or older, and the court has authorized restricted driving privileges to the person. Any such learner's permit shall be subject to the restrictions ordered by the court. The court would issue the RDL applicable to the violation [Va. Code § 46.2-335](#).

## Impoundment or Immobilization of Motor Vehicles

### Administrative Impoundment Process, Including Post-Conviction Impoundments

The motor vehicle being driven by any person (i) arrested whose driver's license, learner's permit or privilege to drive a motor vehicle has been suspended or revoked for a violation of [Va. Code § 18.2-51.4](#) or [Va. Code § 18.2-272](#) or driving while under the influence in violation of [Va. Code § 18.2-266](#), [Va. Code § 46.2-341.24](#) or a substantially similar ordinance or law in any other jurisdiction; or where such person's license has been administratively suspended under the provisions of [Va. Code § 46.2-391.2](#); (iii) driving after such person's driver's license, learner's permit or privilege to drive a motor vehicle has been suspended or revoked for unreasonable refusal of tests in violation of [Va. Code § 18.2-268.3](#), [Va. Code § 46.2-341.26:3](#) or a substantially similar ordinance or law in any other jurisdiction; or (iv) driving without an operator's license in violation of [Va. Code § 46.2-300](#) having been previously convicted of such offense or a substantially similar ordinance of any county, city, or town or law in any other jurisdiction shall be impounded or immobilized by the arresting law-enforcement officer at the time the person is arrested for driving after their driver's license, learner's permit or privilege to drive has been so revoked or suspended or for driving without an operator's license in violation of [Va. Code § 46.2-300](#) having been previously convicted of such offense or a substantially similar ordinance of any county, city, or town or law in any other jurisdiction. The impoundment or immobilization for a violation of clauses (i) through (iii) shall be for a period of 30 days. The period of impoundment or immobilization for a violation of clause (iv) shall be until the offender obtains a valid operator's license pursuant to [Va. Code § 46.2-300](#) or three days, whichever is less. In the event that the offender obtains a valid operator's license at any time during the three-day impoundment period and presents such license to the court, the court shall authorize the release of the vehicle upon payment of all reasonable costs of impoundment or immobilization to the person holding the vehicle [Va. Code § 46.2-301.1](#).

Information regarding impoundments for violations of [Va. Code § 46.2-300](#) can be found in the chapter titled Traffic Case Procedures.

The arresting officer shall serve a Notice of Vehicle Impoundment/ Immobilization upon the driver. A copy of this notice shall be delivered to the magistrate and forwarded promptly by the magistrate to the clerk of the general district court in the locality where the arrest was made. Unlike an administrative license suspension, administrative impoundments are always processed through the general district court, even if the driver is a juvenile. Administrative impoundments are processed as civil proceedings.

In addition, the court may impound the vehicle for an additional period of up to ninety days upon conviction of driving while suspended as described above, unless at the time of violation the offender was not the owner of the vehicle.

### **Impoundment of Motor Vehicle, Exhibition Driving, [Va. Code § 46.2-867.1](#)**

The motor vehicle being driven by any person arrested for a violation of exhibition driving pursuant to subsection C or E of § [46.2-865](#) shall be impounded or immobilized by the arresting law-enforcement officer for a period of 20 days. The impoundment shall follow the procedures set out in [Va. Code § 46.2-301.1](#).

At the time of arrest, the arresting officer shall serve notice of the impoundment upon the arrested person. A copy of the notice of impoundment shall be delivered to the magistrate and thereafter promptly forwarded to the clerk of the general district court of the jurisdiction where the arrest was made. Transmission of such notice may be by electronic means.

### **Procedures for Administrative Impoundment**

The following procedures are recommended when processing an administrative and exhibition driving impoundments:

Step:	Description:
1.	<p>The clerk receives the Notice of Vehicle Impoundment, which may be attached to the Virginia Uniform Summons, Warrant of Arrest or Summons for the arresting charge or received from the JDR Court, if the underlying charge is against a juvenile.</p> <p>Care must be given when receiving traffic charges, as this notice may be attached to arresting case(s). This should be separated from the traffic cases and processed as a civil case. It is suggested that a copy of the Notice of Vehicle Impoundment be attached to the underlying charge.</p>
2.	<p>The case is numbered and entered into the CIVIL division for civil case, case type <b>IM</b> for impoundment:</p> <ul style="list-style-type: none"><li>• Plaintiff: <b>Commonwealth /Locality</b></li><li>• Defendant: <b>Driver</b></li></ul> <p>Vehicles are impounded/immobilized for thirty days for an administrative impoundment pursuant to Va. Code §46.2-301.1, and twenty days for an exhibition driving impoundment pursuant to Va. Code § 46.2-867.1, at which</p>

Step:	Description:
	time the driver/owner may retrieve their vehicle. Offender driver prior to release of the vehicle shall pay all costs of impoundment.
3.	<p>Hearing date and time: same as filing date.</p> <p>Finalize case immediately using code <b>O</b> for disposition.</p> <p><b>Comments:</b> Recommend notes for remarks field, where vehicle is impounded/date of release.</p>
4.	<p>At least five days prior to the expiration of the period of impoundment, the clerk shall provide the offender with information on the location of the motor vehicle and how and when the vehicle will be released. The Clerk may prefer to do it at time the case is entered and finalized. The clerk should complete the reverse side of the notice of impoundment, noting the number of days the vehicle will be impounded, check the box marked <a href="#">Va. Code § 46.2-301.1</a>, fill in the name of the court, the date the court notified the offender, and the date of release of the vehicle.</p> <p><b>Comments:</b> Computation of time should be in accordance with <a href="#">Va. Code § 1-210</a>. It is recommended that a photocopy of the front and back of the completed notice be sent to the offender, the owner of the vehicle, if not the offender, and if the offender is a juvenile, to the juvenile and domestic relations district court which has jurisdiction over the juvenile offender's underlying charge.</p>
5.	<p>Any driver owner may file district court form DC-499: Motion and Order for Release of Vehicle. An owner or co-owner who was not the driver at the time may also file. This asks the court to review the impoundment.</p> <p>There are no fees for filing this motion. By statute, the court must review the motion within the same time period as the court hears a bond appeal or bond hearing and must give precedence over all other matters on the docket. This is entered as a subsequent action using the original impoundment number. It will need to be manually entered on the Civil Case Entry Screen with the appropriate subsequent number:</p> <ul style="list-style-type: none"> <li>• Case type: <b>OT</b></li> <li>• Plaintiff: <b>Commonwealth</b></li> <li>• Defendant: <b>Name of offender</b></li> <li>• Hearing type: <b>MO</b></li> </ul>

Step:	Description:
	<p>Once the Court has signed order, close the case with an <b>O</b> for both hearing and case disposition.</p> <p>Remarks-outcome of hearing: motion granted, vehicle released and notice of release given to petitioner; or motion denied.</p> <p>If motion granted, the vehicle shall be immediately released.</p> <p>If motion granted, the petitioner should be given a copy of the completed district court form DC-499: Motion and Order for Release of Vehicle to take to the garage/storage facility.</p> <p>The clerk will submit district court form DC-40 to OES for reimbursement of expenses incurred only if the Court makes a no probable cause finding at the hearing. The following documentation must accompany district court form DC-40: List of Allowances, a bill from the storage company, or a receipt from the person who incurred the costs of the impoundment AND a copy of district court form DC-499: Motion and Order for Release of Vehicle with the "No probable cause for arrest or warrant" checked.</p> <p>If the person requesting the motion to review fails to appear, their right of review shall be waived.</p> <p><b>Comments:</b> If the Court finds any other reason to release the vehicle, it is the driver owner or non-owner's responsibility to pay the costs of impoundment</p>
6.	<p><b>If The Charge is Dismissed or Accused is Acquitted:</b></p> <p>The vehicle shall be immediately released, and Commonwealth shall pay/or reimburse the individual for all reasonable costs of impoundment, including removal or storage costs.</p> <p>The clerk will submit district court form DC-40: List of Allowances to OES for reimbursement of expenses incurred. The following documentation <b>must</b> accompany district court form DC-40: List of Allowances: a bill from the storage company, or a receipt from the person who incurred the costs of the impoundment, and a copy of the underlying charge reflecting dismissal or acquittal. <b>Note:</b> Under this code section, steps 5 and 6 are the only situations in which there is statutory authorization for reimbursement by the Commonwealth.</p>
7.	<p>To <b>appeal</b> the decision of the court on a motion for release of vehicle, the petitioner should fill out district court form DC-475: Notice of Appeal - Civil.</p>

Step:	Description:
	<p>A district court form DC-460: Civil Appeal Bond is required within thirty days of judgment, and circuit court appellate costs required to perfect appeal.</p> <p><b>Note:</b> Once perfected, no statutory authority for withdrawal in district Court.</p> <p>For further information on processing the appeal, see Appeals appendix.</p>

### Procedures for Post-Conviction Impoundment

The following procedures are recommended when processing a post-conviction impoundment:

Step:	Description:
1.	<p>If offender is convicted of the underlying traffic charges, the Court may impose up to an additional ninety-day impoundment period. The clerk should change the reverse side of the notice of impoundment, noting the number of days the vehicle will be impounded, check block "<a href="#">Va. Code § 46.2-301</a>", the name of the court, the date the court notified the offender, and the date of release of the vehicle. It is suggested that a note about the date of change/trial date be made on the notice of impoundment.</p> <p>If the offender was driving a motor vehicle owned by another person, the court has no jurisdiction over that specific vehicle, but may order the impoundment of a motor vehicle owned solely by the offender at the time of arrest.</p> <p>Mail changed copy of notice of impoundment to offender, mark court's copy with date copy sent to offender, and mail a copy to the garage impounding the vehicle, and the law enforcement officer. <b>Note:</b> Computation of time should be in accordance with <a href="#">Va. Code § 1-210</a>.</p>
2.	<p>If initial thirty-day period of impoundment has expired, or vehicle was returned to offender or owner based on findings of a motion to review impoundment, and the judge has given an additional impoundment period based upon conviction of <a href="#">Va. Code § 46.2-301</a>, the Judge should enter judgment on the bottom of warrant/summons, indicating the place and date that the car should be surrendered. Failure to do so may cause the issuance of a civil show cause for contempt. <b>Note:</b> Computation of time should be in accordance with <a href="#">Va. Code § 1-210</a>.</p>
3.	<p>It would be recommended that clerk update remarks field with place of vehicle surrender, and date copy of warrant mailed.</p>

Step:	Description:
	The clerk should mail a copy of the warrant to the place of surrender. All costs of impoundment or immobilization, including removal or storage expenses, shall be paid by the offender prior to the release of their motor vehicle.

### Forms

Received from Law Enforcement Agency	Notice Of Vehicle Impoundment/Immobilization
DC-499	Motion and Order for Release of Vehicle

### References

<a href="#">Va. Code § 1-210:</a>	Computation of time.
<a href="#">Va. Code § 46.2-301:</a>	Driving while license, permit, or privilege to drive suspended or revoked.
<a href="#">Va. Code § 46.2-301.1:</a>	Administrative impoundment of vehicle for certain driving while license suspended/revoked offenses.
<a href="#">Va. Code § 46.2-867.1:</a>	Exhibition Driving; Impoundment of motor vehicle.

## Chapter 6 – Civil Case Procedures

### Introduction

Civil cases are brought to enforce, redress, or protect the private rights of an individual, organization or government entity. The remedies available in a civil action include the recovery of money damages and the issuance of a court order requiring a party to the suit to complete an agreement or to refrain from some activity. The party who initiates the suit is the “plaintiff,” and the party against whom the suit is brought is the “defendant.” In civil cases, the plaintiff must prove their case by “a preponderance of the evidence.”

Any person who is a plaintiff in a civil action in a court of the Commonwealth and a resident of the Commonwealth or a defendant in a civil action in a court of the Commonwealth, and who is on account of their poverty unable to pay fees or costs, may be allowed by the court to sue or defend a suit therein without paying fees and costs. The person may file the DC-409: Petition for Proceeding in Civil case without Payment of Fees or Costs.

In determining a person’s ability to pay fees or costs on account of their poverty, the court shall consider whether such person is current recipient of a state and federally funded public assistance program for the indigent or is represented by legal aid society, including an attorney appearing as counsel, pro bono or assigned or referred by legal aid society. If so, such person shall be presumed unable to pay such fees and costs [Va. Code § 16.1-69.48:4](#) and [Va. Code § 17.1-606](#).

The following subsections provide a quick summary of the jurisdiction and venue requirements and the available discovery procedures in general district court.

#### **Jurisdiction** [Va. Code § 16.1-77](#) and [Va. Code § 17.1-513](#)

The general district court has exclusive original jurisdiction over any claim not exceeding \$4,500, excluding interest and attorney’s fees.

The general district court has concurrent jurisdiction with the circuit court for civil actions on contract for any claim in excess of \$4,500 and up to and including \$50,000, excluding interest and attorney’s fees claimed. However, cases involving liquidated damages for violations of vehicle weight limits, or cases involving forfeiture of bond, claims, counterclaims, and crossclaims filed in actions for unlawful entry or detainer, are not subject to the maximum jurisdictional limit applicable in general district court, regardless of the purpose for which the occupant is using the premises, commercial and residential.

The general civil jurisdiction statute for general district courts sets forth additional situations in which district courts have jurisdiction, whether it is exclusive or concurrent with the circuit



courts. A court must have jurisdiction over the parties and the action in order to hear the case.

While a matter is pending in a general district court or a circuit court, upon motion of the plaintiff seeking to increase or decrease the amount of the claim, the court shall order transfer of the matter to the general district court or circuit court that has jurisdiction over the amended amount of the claim without requiring that the case first be dismissed or that the plaintiff suffer a nonsuit, and the tolling of the applicable statutes of limitations governing the pending matter shall be unaffected by the transfer.

Where such a matter is pending, if the plaintiff is seeking to increase or decrease the amount of the claim to an amount wherein the general district court and the circuit court would have concurrent jurisdiction, the court shall transfer the matter to either the general district court or the circuit court, as directed by the plaintiff, provided that such court otherwise has jurisdiction over the matter.

Except for good cause shown, no such order of transfer shall issue unless the motion to amend, and transfer is made at least 10 days before trial. The plaintiff shall pay filing and other fees as otherwise provided by law to the clerk of the court to which the case is transferred, and such clerk shall process the claim as if it were a new civil action. The plaintiff shall prepare and present the order of transfer to the transferring court for entry, after which time the case shall be removed from the pending docket of the transferring court and the order of transfer placed among its records. The plaintiff shall provide a certified copy of the transfer order to the receiving court [Va. Code §8.01-195.4](#).

While a matter is pending in a general district court, upon motion of the plaintiff seeking to increase the amount of the claim, the court shall order transfer of the matter to the circuit court that has jurisdiction over the amended amount of the claim without requiring that the case first be dismissed or that the plaintiff suffer a nonsuit, and the tolling of the applicable statutes of limitations governing the pending matter shall be unaffected by the transfer.

Except for good cause shown, no such order of transfer shall issue unless the motion to amend, and transfer is made at least 10 days before trial.

The plaintiff shall pay filing and other fees as otherwise provided by law to the clerk of the court to which the case is transferred, and such clerk shall process the claim as if it were a new civil action. The plaintiff shall prepare and present the order of transfer to the transferring court for entry, after which time the case shall be removed from the pending docket of the transferring court by updating the pending case with O and TR in the case management system and the order of transfer is placed with the case papers. The plaintiff shall provide a certified copy of the transfer order to the receiving court [Va. Code § 16.1-77](#).

## Venue

“Venue” refers to the place of trial, i.e., the particular county or city in which a case must be heard. See [Va. Code § 16.1-76](#) and [Va. Code § 8.01-257](#). [Virginia Code § 8.01-261](#): Preferred venue, and [Va. Code § 8.01-262](#): Permissible venue, list several different types of actions and the places in which venue would be proper for each action. In order for venue to be proper, it must be in accordance with these sections [Va. Code § 8.01-260](#).

A defendant may object to the choice of venue, but it is within the court’s discretion whether or not to grant the request for a venue transfer [Va. Code § 8.01-264](#), [Va. Code § 8.01-265](#), and [Va. Code § 8.01-267](#). Further, an objection to improper venue does not result in a dismissal, but in a transfer of the action to a proper venue [Va. Code § 8.01-264](#).

## Discovery Procedures

Discovery procedures in the general district courts are limited to the following:

- Subpoena duces tecum, to parties and non-parties [Va. Code § 16.1-89](#).
- Evidence of medical reports or records; testimony of health care provider or custodian of records [Va. Code § 16.1-88.2](#).
- Bill of particulars, filed by plaintiff at judge’s request, [Va. Code § 16.1-69.25:1](#).
- Grounds of defense, filed by defendant at judge’s request, Rule 7B:2.
- Interrogatories, following issuance of a fieri facias upon a judgment rendered in general district court, [Va. Code § 16.1-103](#).

## Narrative Description

A plaintiff initiates a civil case in the general district court by filing a pleading describing the complaint or dispute with the defendant named in the pleading and remitting all appropriate fees [Va. Code § 17.1-272](#), [Va. Code § 16.1-69.48:2](#), [Va. Code § 17.1-278](#), [Va. Code § 17.1-281](#), and [Va. Code § 42.1-70](#). All pleadings, motions, briefs, and other documents filed in the court shall be on paper eight and one-half by eleven inches in size, with certain exceptions for evidentiary items. See Rule 7A:7. Whenever a party files, or causes to be filed, with the court a motion, pleading, subpoena, exhibit, or other document containing a social security number or other identification number appearing on a driver's license, credit card, debit card, bank account, or other electronic billing and payment system, the party shall make reasonable efforts to redact all but the last four digits of the identification number, unless there is a specific statute to the contrary that applies to the particular type of proceeding in which the party is involved [Va. Code § 8.01-420.8](#).

There are two types of pleadings in general district court: the civil warrant or summons form and the motion for judgment [Va. Code § 16.1-79](#), [Va. Code § 16.1-81](#). The more frequently used

of the two is the civil warrant or summons form, which the plaintiff files, with the appropriate filing fee in the clerk's office or with a magistrate.

If the warrant or summons form is filed in the clerk's office, the clerk marks the date and time of receipt in the clerk's office on the form, issues receipts for fees, assigns the case a sequential case number which is placed on the form, and indexes the case in the case index system [Va. Code § 16.1-86](#). If the civil warrant or summons form and fees are filed with a magistrate, the magistrate forwards all forms and fees to the clerk's office that performs the above listed process. When any pleading in any civil action is filed in a district court, including interrogatories and garnishments, the clerk or their designee shall stamp or mark the date received and time of filing on the face of such pleading.

Filing results in the issuance of process, such as a district court form DC-412: [Warrant in Debt](#) prepared by either the clerk's office or the magistrate and picked up for service by the sheriff, private process server, or investigator as defined in [Va. Code § 8.01-293](#). After serving the civil warrant or summons, the sheriff, private process server or investigator as defined in [Va. Code § 8.01-293](#), returns the original civil warrant or summons together with the return of service to the clerk's office.

The other type of pleading is a motion for judgment or complaint prepared entirely by the plaintiff or plaintiff's attorney, or if a business entity is a party, certain high-level employees, who files it with the appropriate filing fee in the clerk's office. The clerk then marks the date and time of receipt in the clerk's office on the motion for judgment, assigns a sequential case number which is placed on the motion for judgment, and indexes the case in the index system. The sheriff picks it up and serves it like a civil warrant and makes their return of service on the original, which is returned to the clerk's office [Va. Code § 16.1-82](#).

The defendant may file an answer with the court, settle the suit prior to court appearance, or appear in court on the return date and, depending on local practice, be ready for trial or be ready to set a trial date.

Parties not represented by counsel, and who have made an appearance in the case, shall promptly notify in writing the clerk of court wherein the litigation is pending, and any adverse party, of any change in the party's address necessary for accurate mailing or service of any pleadings or notices. In the absence of such notification, a mailing to or service upon a party at the most recent address contained in the court file of the case shall be deemed effective service or other notice. A district court form DC-437: [Notice of Change of Address](#) should be given to the pro se defendant in court, and attached to the district court form DC-421: [Summons for Unlawful Detainer \(Civil Claim for Eviction\)](#) when issued for service. Generally, the party filing the pleading or that party's attorney must sign pleadings. However, corporate officers, managers of a limited liability companies, trustees of a business trust may sign [Va. Code § 16.1-88.03](#).

Prior to the scheduled court date, the clerk retrieves all of the cases from the files for that court date and prints the docket, which includes cases settled out of court prior to their scheduled court date. The case papers and the docket are sent to court on the scheduled court date, and dockets are posted.

In court, cases are called and are either tried on this date or continued to a future date for trial. Court actions on all cases, including completed cases resulting in a judgment, are recorded in GCMS and on the case papers. The cases are returned to the clerk's office after court.

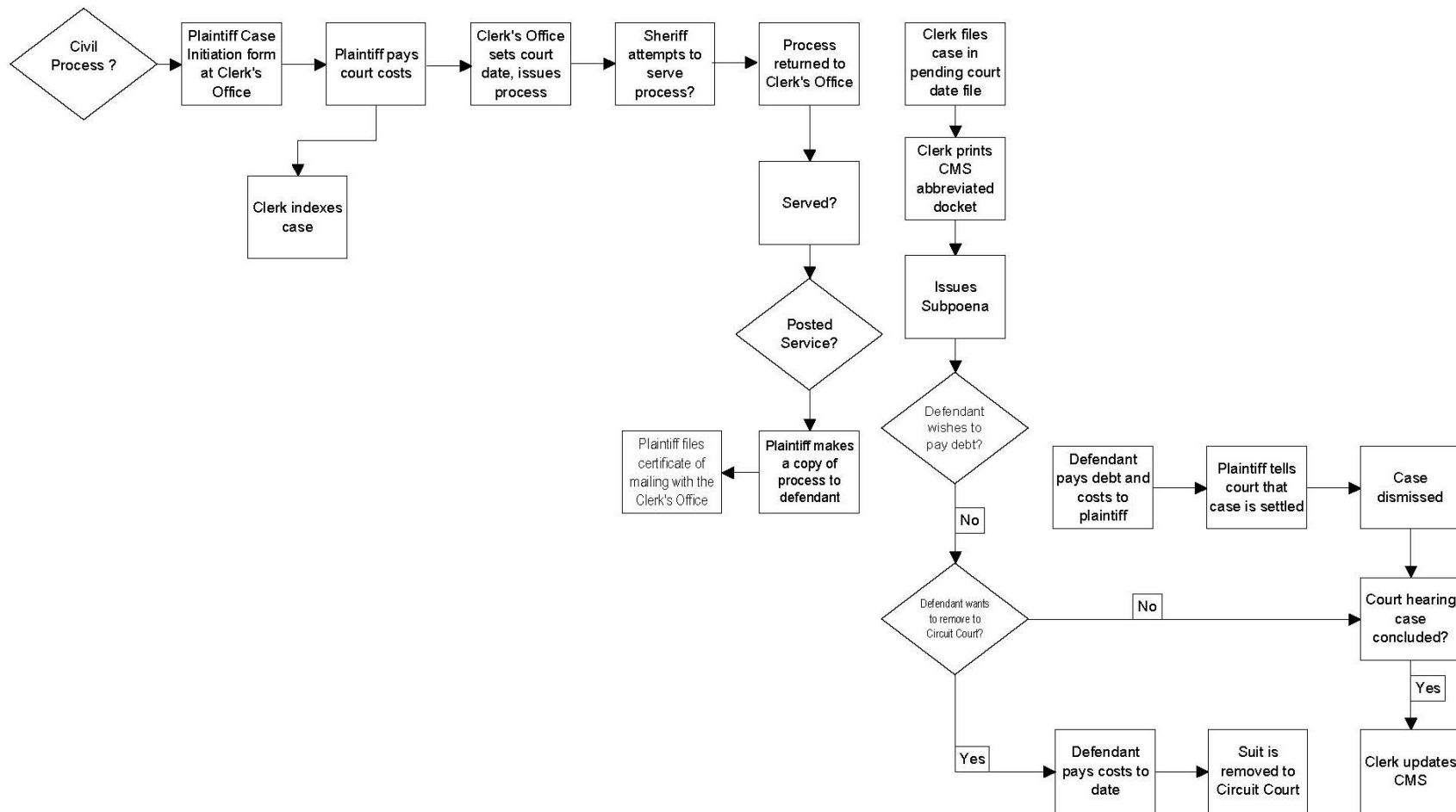
All appeals to the circuit court must begin by noting the appeal in writing within ten days after the date on which the order was entered [Va. Code § 16.1-106](#). The appellant posts an appeal bond and pays the circuit court writ tax and costs within thirty days from the date of judgment, ten days from date of unlawful detainer judgment to the general district court clerk [Va. Code § 16.1-107](#). The clerk's office forwards all case-related materials, bond, writ tax, and costs to the circuit court [Va. Code § 16.1-112](#). An appeal is permitted only if the amount in controversy exceeds \$20 [Va. Code § 16.1-106](#). In cases of unlawful detainer for a residential dwelling unit, the appeal bond need not include future rents that may accrue through the date of the appeal. Tenants appealing an eviction judgment must post an appeal bond with the general district court, within 10 days of the date of judgment, for the amount of outstanding rent, late charges, attorney's fees, and any other charges or damages due, as amended, on the unlawful detainer by the court. Once the appeal has been perfected, the tenant then must pay the rental amount as contracted for in the rental agreement to the plaintiff on or before the fifth of each month. If any rent is not so paid, the landlord may file a written motion with the circuit court, along with a written affidavit, copies of which have been mailed by regular mail to the tenant. The judge of the circuit court shall, without hearing, enter judgment for the amount of the outstanding rent, late charges, attorney's fees, and any other charges or damages due as of that date, subtracting any payments made by the tenant as reflected in the court accounts, the appeal bond, or in the plaintiff's affidavit, and an order of possession of the property [Va. Code § 16.1-107](#).

In all civil cases, except trespass, ejectment or any action involving the recovering rents, no indigent person shall be required to post an appeal bond. Additionally, no indigent person shall be required to post a bond to appeal any unlawful detainer action brought by a public housing authority [Va. Code § 16.1-107](#).

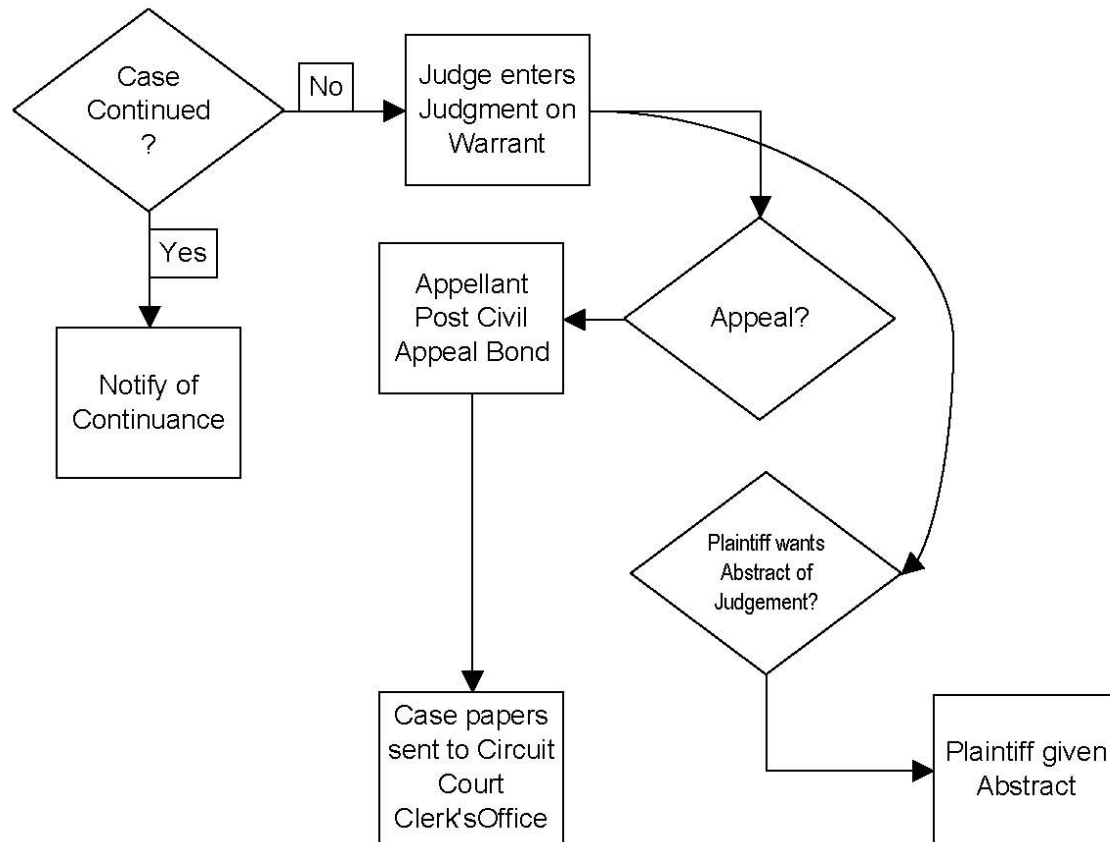
Clerks may charge fees for making copies of civil case papers.

Descriptions of other execution procedures such as liens on property, and reviews of the detailed procedures by type of case, are presented in the following sections.

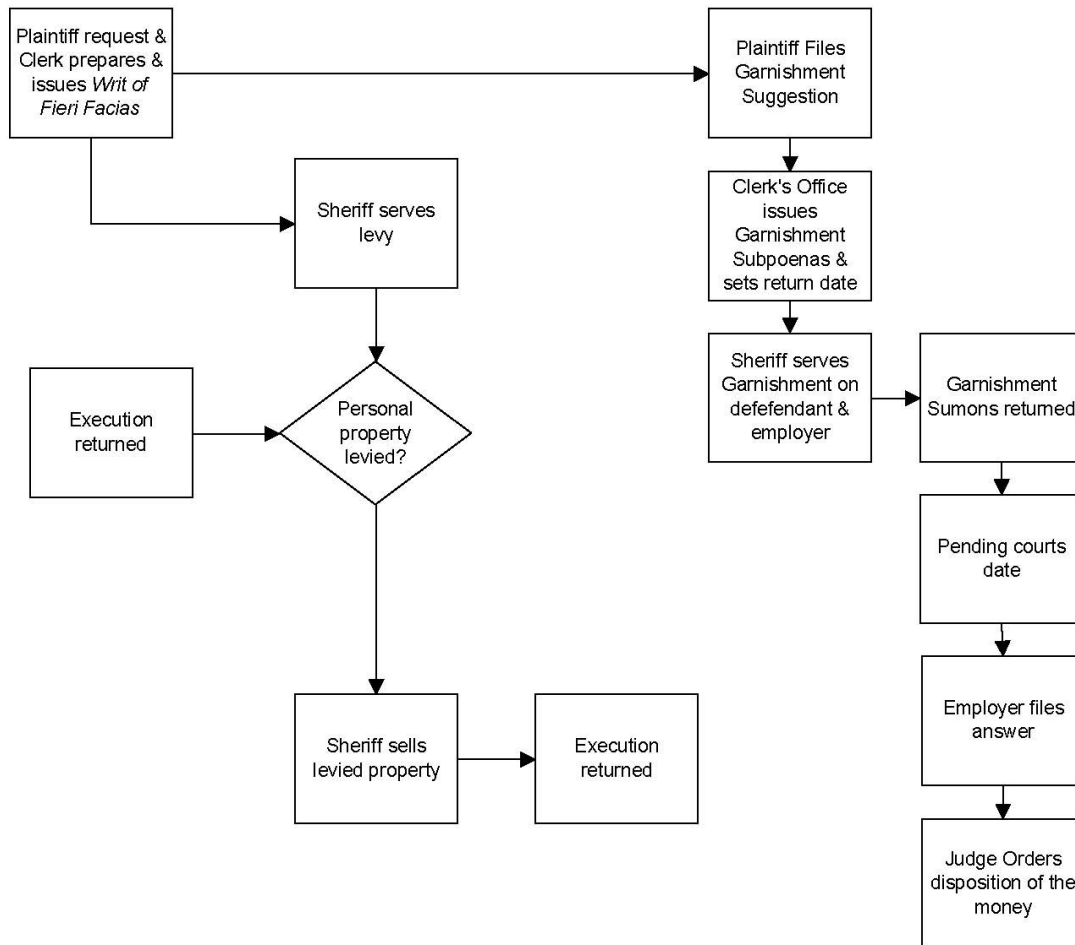
## Pre-Trial Procedures Flow Chart



Trial Procedures Flow Chart



## Judgment Enforcement Flow Chart



## Venue

Jurisdiction determines whether or not the court has the authority to hear a case. If a court has jurisdiction, then it must be determined if that court is within the proper venue for trying the case. Venue designates the court in a particular county or city that may hear and determine the case.

### Preferred Venue [Va. Code § 8.01-261](#)

Certain actions are required to be brought where the preferred or Category A venue exists. Improper venue, however, does not result in dismissal, but in a transfer of the action to a proper venue [Va. Code § 8.01-264](#):

- In actions for review of, appeal from, or enforcement of state administrative regulations, decisions, or other orders, venue is preferred where the citizen resides,

regularly does business, or where their affected property is located, or if none apply, where the violation took place [Va. Code § 8.01-261 \(1\)\(a\)-\(c\)](#).

- Except where venue is preferred under paragraph 1, in an action against an officer of the Commonwealth in their official capacity, venue is preferred where any such person has their official office [Va. Code § 8.01-261 \(2\)](#).
- In actions having to do with title or interests in real estate, the preferred place of venue has traditionally been the city or county in which the real estate is located [Va. Code § 8.01-261 \(3\)](#).
- In actions for writs of mandamus, prohibition, or certiorari, except those issued by the Supreme Court, venue is preferred in the jurisdiction where the record to which the writ relates is located or where the proceeding took place [Va. Code § 8.01-261 \(5\)](#).
- In actions on bonds required for public contract, venue is preferred in the city or county in which the project, or any part of it, is situated [Va. Code § 8.01-261 \(6\)](#).
- In actions on any contract between a transportation district and a component government, venue is preferred in any county or city that is within the transportation district [Va. Code § 8.01-261 \(10\)](#).
- In attachments, preferred venue is determined as if the principal defendant is the only defendant or is where the principal defendant has estate or debts owing them [Va. Code § 8.01-261 \(11\)](#).
- In an action to collect state, county, or municipal taxes, venue is preferred where the taxpayer resides or owns real or personal property or has a registered office or regularly conducts business or, if they left the Commonwealth, where venue was proper at the time taxes were assessed or at the time the person left the Commonwealth. [Va. Code § 8.01-261 \(13\) \(a\)](#).
- In an action for the correction of an erroneous assessment of state taxes and tax refunds, where the taxpayer resides, has a registered office, regularly conducts business, or where the involved real or personal property is located, or the Circuit Court of the City of Richmond [Va. Code § 8.01-261 \(13\) \(b\)](#).
- In actions under the Virginia Tort Claims Act, where the claimant resides, where the act or omission complained of occurred, or in the City of Richmond if the act occurred outside the Commonwealth and the complainant resides outside the Commonwealth [Va. Code § 8.01-261 \(18\)](#).
- In distress actions, in the county or city where the premises yielding the rent, or some part thereof, may be or where goods liable to distress may be found [Va. Code § 8.01-261 \(20\)](#).



**Permissible Venue [Va. Code § 8.01-262](#)**

All civil actions, other than those enumerated in [Va. Code § 8.01-261](#) where preferred venue is required, can be brought in the following permissible forums, permissible or category B venue:

- Where the defendant resides or has their principal place of employment [Va. Code § 8.01-262 \(1\)](#).
- Where the defendant has a registered office, has appointed an agent, or an agent has been appointed by the operation of law, where its chief officer resides or, in a case where the defendant has withdrawn from the Commonwealth, where venue would have been proper at the time of withdrawal. This provision applies to legal entities in addition to corporations [Va. Code § 8.01-262 \(2\)](#).
- Where the defendant regularly conducts substantial business activity or in the case of withdrawal, where venue was proper at the time of withdrawal [Va. Code § 8.01-262 \(3\)](#).
- Where the cause of action, or any part, arose [Va. Code § 8.01-262 \(4\)](#).
- Where the personal property is located or where evidence of such property is located or if either of these do not apply, where the defendant resides, in actions to recover or partition personal property [Va. Code § 8.01-262 \(5\)](#).
- For actions based on an improper message transmission or misdelivery, where the message was transmitted or delivered or accepted for delivery or was misdelivered [Va. Code § 8.01-262 \(7\)](#).
- For actions based on delivery of goods where goods were received [Va. Code § 8.01-262 \(8\)](#).
- If none of the other specific forum are available, where the defendant has property or debts owing them, which are subject to seizure by civil process [Va. Code § 8.01-262 \(9\)](#).
- If all of the defendants are unknown or are nonresidents of the Commonwealth, or there is no other forum available under [Va. Code § 8.01-261](#), or [Va. Code § 8.01-262](#), then the county or city where any of the plaintiffs reside [Va. Code § 8.01-262 \(10\)](#).

**Multiple Parties [Va. Code § 8.01-263](#)**

In actions involving multiple parties, venue is not subject to objection:

- If one or more of the parties is entitled to preferred venue and the action is commenced in a preferred forum; or
- In all other cases if venue is proper as to any party.

**Note:** If an original defendant whose presence created venue is dismissed after the parties are at issue, the remaining defendants may object to venue within ten days of dismissal if they can show that the dismissed defendant was not properly joined as a defendant or was added to create the venue. However, the judge may deny the request and retain the case on plaintiff's motion and for good cause.

### **Objection to Improper Venue [Va. Code § 8.01-264](#) and Rule 7B:11**

Improperly laid venue is subject to objection. Transfer, not dismissal, is generally required [Va. Code § 8.01-264](#).

- While venue is subject to objection, this section prohibits dismissal for lack of venue if there is a proper venue somewhere in the Commonwealth.
- Even where venue is subject to objection under this section, the defendant may waive their objection by failure to file a timely objection:
  - In general district courts objection to venue must be made by written motion, which may be by letter or other writing, and filed with or received by the court on or before the day of trial. Defendant shall mail a copy to all counsel of record.
  - All initial pleadings must inform the defendant of their right to object to improper venue in clear, nontechnical language. Supreme Court Rule 7B:3.
  - The objecting party's motion shall state in which court(s) they believe that proper venue lies.
  - Waiver by one defendant of objection to venue does not constitute a waiver for any other defendant.
  - The court shall hear the motion promptly upon reasonable notice by any party.
  - Objection to venue on behalf of an original defendant cannot be defeated by the subsequent joinder of another defendant or the intervention of another party.
  - If the motion is sustained, the court shall order the venue transferred and notify each party.
  - If the defendant who objected to venue is not present, a copy of the order is mailed to the defendant.

If the motion is denied, the case goes to trial. However, if the defendant who objected to venue is not present, the case is continued, and the defendant is notified by mail.

The court shall notify each party of the judge's decision concerning the objection.

**Motion for Transfer of Venue [Va. Code § 8.01-265](#) and Rule 7B: 11**

In addition to the requirement that the court transfer venue under [Va. Code § 8.01-264](#), the court may, upon motion of any party and for good cause shown, transfer any action to any fair and convenient forum having jurisdiction within the Commonwealth or, upon motion of any party and for good cause shown, may retain any action for trial. The same procedure used to object to venue is used here except that:

- No action shall be transferred from a preferred venue to a non-preferred venue, nor shall an action with a preferred venue be retained by a non-preferred venue, except by agreement of all parties.
- An action brought by a non-resident may be dismissed if the cause of action arose outside of the Commonwealth, and if the court determines that there is a more convenient forum in which to hear the case in a jurisdiction outside of the Commonwealth [Va. Code § 8.01-265](#).
- If the parties are not present and the court transfers venue, the clerk transfers the case papers to the transferee court after the appeal period has run and sends a copy of the transmittal letter or transfer order to all parties together with information regarding costs awarded.
- If the parties are not present and the court denies the transfer motion, the court sets a trial date, and the clerk notifies the parties by first class mail of the trial date and of any costs awarded.
- Good cause shall be deemed to include, but not limited to, agreement of the parties, or avoidance of substantial inconvenience to parties or witnesses [Va. Code § 8.01-265](#).

**Civil Transportation of Incarcerated Witnesses**

District courts have no authority to order transportation of incarcerated witnesses or parties in civil cases. The authority to issue prisoner transportation orders in civil cases granted by [Va. Code § 8.01-410](#) is vested solely in the circuit courts. By expressly granting the specific authority to issue such transportation orders only to the circuit court, the Supreme Court of Virginia found that the General Assembly intended to exclude the district courts from the authority to issue such transportation orders. *Commonwealth v. Brown*, 259 Va. 697, 529 S.E.2d 96 (2000).

**Note:** This decision does not affect the ability of the district courts to require the transportation of defendants as witnesses in **criminal** cases.

**Discretion of Judge [Va. Code § 8.01-267](#)**

The court's decision transferring or refusing to transfer an action under Va. Code § 8.01-265, and the court's decision as to the amount of costs awarded under Va. Code § 8.01-266, are entirely within the trial judge's discretion.

**Docketing a Transferred Case**

The transferred case shall be docketed by the transferee court, which will notify the plaintiff and defendant of the hearing date.

**Service of Process**

Generally, it has been the appropriate sheriff in the district who serves process on the defendant. However, [Va. Code § 8.01-293](#) provides that "whenever in this Code the term "officer" or "sheriff" is used to refer to persons authorized to make, return, or do any other act relating to service of process, such term shall be deemed to refer to any person authorized in this section to serve process." This section authorizes any person who is at least eighteen years old and who is not a party or otherwise interested in the case, to serve process as well as an investigator employed by an attorney for the Commonwealth; when the sheriff has agreed the investigator may serve process.

An investigator employed by the Indigent Defense Commission shall be allowed to provide service of a witness subpoena while engaged in the performance of official duties [Va. Code § 8.01-293](#).

Only a sheriff or high constable, however, may execute an order or writ of possession for personal, real or mixed property, including an order or writ of eviction in unlawful detainer, and only a sheriff, the high constable for the City of Norfolk or Virginia Beach or a treasurer may levy upon property [Va. Code § 8.01-293 \(B\)](#).

Generally, when a sheriff serves process on the defendant, a \$12.00 sheriff's fee will be charged for each process served. A sheriff's fee of \$25.00 will be charged for service and publication of any notice of a publicly-advertised public sale, service of writ of possession, levying upon current money, bank notes, goods or chattels under [Va. Code § 8.01-478](#), service of a declaration of ejectment on any person, firm or corporation, levying distress warrant or attachment or levying an execution. An additional \$12.00 will be charged for each additional defendant when serving a writ of possession or a declaration of ejectment.

The sheriff is required to call or go to the clerk's office every day to receive all process and other papers to be served by them. The sheriff may serve process not only in their own political subdivision but also in any contiguous city or county.

The fees for service of process by the office of the high constable are determined by the locality [Va. Code § 17.1-273](#). The fees collected are receipted into revenue code 230 - High Constable Fees and transmitted by check along with the process to be served to the high constable for service.

Below is a synopsis, and description of the return of process, of the statutory provisions governing upon which process may be served, Service of Process - By Parties and Special Substitute Service Provisions.

**Note:** These methods of service are listed in order of preference. A “lower” method of service cannot be used unless a preferred method cannot be used.

### By Parties

#### *Natural Person, Virginia resident generally:*

- Served in person in Virginia
- Served by substituted service:
  - If not at usual place of abode, then:
    1. Deliver the process to a family member found at abode who is at least sixteen years old and is not a temporary sojourner or guest and give this person information regarding the purpose of the process delivered. See [Va. Code § 8.01-296](#).
    2. If it is not successful, then by posting on front door or other such door as appears to be the main entrance of such abode; however, at least ten days before entry of default judgment, (1) plaintiff must mail by regular mail to the party served by posted service a copy of the process and certify such mailing to the clerk, or (2) plaintiff in a general district court case can mail a copy of the pleading which contains the date, time and place of the return prior to or after filing such pleading and certify such mailing to the clerk [Va. § 8.01-294](#) and [Va. § 8.01-325](#), [Va. Code § 8.01-296 \(2\)\(c\)](#).
- Service on the [Secretary of the Commonwealth](#) if process has been delivered to the sheriff or to a disinterested person for execution and, if unable to be served, that the person seeking service, usually a plaintiff, has made a bona fide attempt to determine the actual place of abode or location of the person to be served [Va. Code § 8.01-329 \(B\)](#).
- By order of publication:
  - Serving party unable to locate person to be served after exercising due diligence, or
  - Sheriff unable to serve other party at last known address after having process twenty-one days, or

- o Other party is unknown [Va. Code § 8.01-316](#)

**Note:** The person executing substituted service shall note the manner and date of such service on the original and the copy of the process so delivered or posted. See by substituted service above.

### ***Convicts as defendants***

- Service may be affected by delivery to the officer in charge of jail or institution whose duty it is to promptly deliver it to convict [Va. Code § 8.01-297](#).

### ***Non-resident***

- Personal service in Virginia or on the [Secretary of the Commonwealth](#).
- Personal service outside Virginia by person authorized to serve process where person to be served is located in the same provided in Chapter 8 of Title 8.01, [Va. Code § 8.01-285](#) et seq. (Personal service on a non-resident outside Virginia is the equivalent of personal service on a non-resident within Virginia, if the “long arm” statute would provide personal jurisdiction) [Va. Code § 8.01-320](#), [Va. Code § 8.01-329](#).
- Order of publication; Posting in three public places for certain liens (innkeepers, garage men, etc.) [Va. Code § 43-34](#).

### ***Government Entities***

- Cities and towns:
  - o On its city or town attorney, if such position exists, otherwise on its mayor, manager, or trustee. Service may be made by leaving a copy with the person in charge of the office of any officer designated above [Va. Code § 8.01-300](#).
- Counties (Generally):
  - o On its County Attorney where such position exists, otherwise, on its Attorney for the Commonwealth. Service may be made by leaving a copy with the person in charge of the office of any officer designated above Va. Code § 8.01-300.
- Against county official or employees:
  - o On named defendant and the County Attorney. If there is not County Attorney, then the clerk of the County Board [Va. Code § 8.01-300](#).
- Virginia Tort Claims Act or Other public governmental entities:
  - o On director, chief administrative officer, commissioner, attorney, or member of governing body, or person in charge of office of any above designated official.

- Partnerships or Partners:
  - General:
    1. On any general partner, except plaintiff-partner [Va. Code § 8.01-304](#).
  - Limited:
    1. On any general partner, on limited partner only to enforce limited partner's partnership liability [Va. Code § 8.01-304](#).
- Unincorporated associations, orders, and common carriers:
  - Domestic or Foreign - On any officer, director, trustee, staff member or other agent [Va. Code § 8.01-305](#), or
  - On Clerk of [State Corporation Commission](#), if the association, etc., does business in the Commonwealth, or
  - Order of publication [Va. Code § 8.01-306](#)
- Corporation or Limited Liability Company:
  - By personal service on any officer, director, or registered agent of the corporation or on the registered agent of such limited liability company, or
  - Domestic:
    1. By substituted service on stock corporations in accordance with [Va. Code § 13.1-637](#) on non-stock corporations in accordance with [Va. Code § 13.1-836](#) and on limited liability companies in accordance with [Va. Code § 13.1-1108](#), [Va. Code § 8.01-299 \(1\) and \(2\)](#).
    2. Garnishments, by service on an officer, the garnishment designee of the corporation, limited liability company, limited partnership, financial institution, or other entity, unless such garnishment designee is also the judgment debtor. If the creditor files a certificate that they used due diligence and that (i) such corporation, limited liability company, limited partnership, financial institution or other entity has no garnishment designee; (ii) such garnishment designee cannot be found at the designated address; or (iii) such garnishment designee is also the judgment debtor, then the summons shall be served in accordance with the provisions of [Va. Code §§ 8.01-299, 8.01-301, or 8.01-304](#) or other provision of law applicable to service of process upon such entity or upon a managing employee. A "managing employee" means an employee charged by the corporation or the limited liability company, as applicable, with the control of operations and supervision of employees at the business location of such corporation or limited liability company where the process is sought to be served. Before serving the registered or statutory agent of a financial institution, the judgment creditor or his attorney must further certify that after exercising due diligence, no managing employee could be found in the Commonwealth, that such managing employee is also the judgment

debtor, or that, upon information and belief, the financial institution has authorized or requested such service of process.

- o Foreign:
  - 1. By personal service on any officer, director, or on the registered agent of a foreign corporation authorized to do business in Virginia. If doing business without such authority, then by personal service on any of the corporation's agents, or
  - 2. By substituted service in accordance with [Va. Code § 13.1-766](#) and [Va. Code § 13.1-928](#), if such corporation is authorized to do business in Virginia, or
  - 3. Where jurisdiction is authorized under [Va. Code § 8.01-328.1](#), by substituted service in accordance with [Va. Code § 8.01-329](#), regardless of whether the corporation is authorized to do business in Virginia, or
  - 4. Where jurisdiction in rem or quasi-in-rem is authorized, by order of publication in accordance with [Va. Code § 8.01-316](#) and [Va. Code § 8.01-317](#), regardless of whether the corporation is authorized to do business in Virginia [Va. Code § 8.01-301 \(1-4\)](#).
  - 5. Garnishments, by service on an officer, an employee designated by the corporation other than an officer, or if there is no designated employee or if the designated employee cannot be found, upon a managing employee. If the creditor files a certificate that they used due diligence and an officer, designated employee or managing employee cannot be found or the designated or managing employee is the debtor, it may be served on the registered agent or upon the clerk of the [State Corporation Commission](#). If the corporation intends to designate an employee for receipt of service, the corporation shall file the designation with the [State Corporation Commission](#), [Va. Code § 8.01-513](#).
- o Operated by trustees or receivers:
  - 1. On any trustee or receiver.
  - 2. If a trustee or receiver cannot be served, may serve as detailed above for a regular corporation [Va. Code § 8.01-303](#).
- o Stock corporations (domestic and foreign):
  - 1. Substitute service on Clerk of [State Corporation Commission](#).
- o Non-stock foreign corporations:
  - 1. Substitute service on Clerk of [State Corporation Commission](#) when corporation has no registered agent or agent cannot be found at registered office with due diligence.
  - 2. Order of Publication
  - 3. [Secretary of the Commonwealth](#) (Foreign corporations only)



- o Automobile insurers uninsured or underinsured motorist:
  1. Same as party defendant except that [Va. Code § 8.01-288](#) does not apply, See [Va. Code § 38.2-2206 \(E\)](#).
- o Waiver of Service of Process
  1. Plaintiff may request defendant waive service of process, CC-1433: Notice of Commencement of Action and Request for Waiver of Service of Process [Va. Code § 8.01-286.1](#).

### Special Substitute Service Provisions

Type of Case or Party:	Person Served:
Auctioneers (non-resident)	Director of <a href="#">Virginia Auctioneer Board, Va. Code § 54.1-603</a>
Automobile tort cases	<a href="#">Commissioner of Motor Vehicles</a>
Reciprocal insurance	Clerk of the <a href="#">State Corporation Commission</a>
Non-resident owner and operator of aircraft (tort cases)	<a href="#">Secretary of the Commonwealth, Va. Code § 8.01-309</a>
Public school tax publishers	<a href="#">Secretary of the Commonwealth</a>
Solicitors of Contributions	<a href="#">Secretary of the Commonwealth</a>
Virginia Tort Claims Actions	<a href="#">Attorney General, Va. Code § 8.01-195.4</a>
Transportation district	Chairman of the commission of the transportation district, <a href="#">Va. Code § 8.01-195.4</a>

### Return of Service

A return of service must be made in one of the following ways:

- The sheriff must make a return on all process delivered to them for service of process as required by law within seventy-two hours from the date of service except where the third day would fall on a Saturday, Sunday, or legal holiday. The return would then be due on the next business day following the Saturday, Sunday, or legal holiday [Va. Code § 8.01-294](#).

- Proof of service by any person other than the sheriff or deputy sheriff must include an affidavit of their qualifications, the date and manner of service and the name of the party served [Va. Code § 8.01-325](#).
- The clerk's office shall accept a photocopy, facsimile, or other copy of the original proof of service as if it were an original, provided that the proponent provides a statement that the copy is a true copy of the original.

Unless otherwise directed by the court, the person serving process shall make the return within three days of service, except when the third day would end on a Saturday, Sunday, or legal holiday. In this case, the return would be due the day following the Saturday, Sunday, or legal holiday [Va. Code § 8.01-325](#). Failure to make the return within that time frame does not invalidate the service. If the court finds that a late return prejudices a party or interferes with the handling of the case by the court, the court may grant a continuance, require additional service, or take other appropriate action.

Further, when service has been executed by substituted service, the date of service shall be noted on the return [Va. Code § 8.01-296 \(2\)\(c\)](#).

If served through the [Secretary of the Commonwealth](#):

- Plaintiff, or their attorney or agent, prepares district court form DC-410: [Affidavit for Service of Process on the Secretary of the Commonwealth](#) (two copies), and attaches a copy of the process or notice to one copy of the affidavit. A copy of the affidavit is filed with the clerk of the court.
- Plaintiff, their attorney, or agent mails to the [Secretary of the Commonwealth](#):
  - 2 Affidavits, one original and one copy of the district court form DC-410: [Affidavit for Service of Process on the Secretary of the Commonwealth](#)
  - 1 copy of papers being served
  - 1 envelope addressed to the person/business being served, returnable to the plaintiff
  - 1 certified mail card (green), also addressed to the person/business being served, returnable to the plaintiff
  - A check or money order for \$28.00 per person/business being served. If it is a couple, two separate sets of papers are required.
- The [Secretary of the Commonwealth](#) must return all unserved general district court processes received within ten days of the return date. If the service of process is to be served on the Secretary of the Commonwealth by the sheriff, then the clerk also collects the copies of the affidavit and service of process fee from the plaintiff and forwards to the sheriff the copies of the items to be served, the copies of the

affidavits and the fee for service of process on the Secretary of the Commonwealth. The clerk does not mail these items directly to the Secretary of the Commonwealth.

- If timely received, the [Secretary of the Commonwealth](#) sends a copy by certified mail return receipt requested to the person to be served, usually the defendant, then executes the Certificate of Compliance portion of the district court form DC-410: [Affidavit for Service of Process on the Secretary of the Commonwealth](#) and mails it to the general district court clerk. Service of process is effective on the date when service is made on the Secretary of the Commonwealth. Upon receipt of the certificate of compliance, the clerk mails verification of filing of the certificate with the court to person filing the affidavit. The clerk shall not mail this verification unless the person filing the affidavit provides the clerk with a self-addressed, stamped envelope [Va. Code § 8.01-329 \(C\)](#).
- Clerk enters the date and time filed on the affidavit (becomes effective date of service) and files the affidavit form with completed certificate with case papers.
- If served through the Clerk of the [State Corporation Commission](#), the Commissioner of the [Department of Motor Vehicles](#), or other statutory agent for service of process, the same procedure used for service of process through the [Secretary of the Commonwealth](#) is used, including the filing of a certificate of compliance, except that:
  - An affidavit for service of process is not usually required by statute, and
  - Different fees for such service of process are set by statute for each such statutory agent, and
  - Different timetables are statutorily set for each such agent to perform their duties.
  - The plaintiff, not the clerk, is responsible for arranging for timely service through any statutory agent, including the Secretary of the Commonwealth.
- If an order of publication is to be used:
  - [Va. Code § 8.01-317](#) also requires that the court date shall be no sooner than fifty days after entry of the order of publication. It is recommended that any hearing date be set 60 days from the date of entry of the order.
  - Any waiver of publication must be ordered by the court. There is no initial filing fee for an order of publication, but the cost of newspaper publication shall be billed to and paid initially by the party seeking service. The court may, in any case where deemed proper, dispense with such publication in a newspaper or may order that appropriate notice be given by electronic means, under such terms and conditions as the court may direct, either in addition to or in lieu of publication in a newspaper, provided that such electronic notice is reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. However, costs may be recoverable pursuant to [Va. Code § 17.1-601](#).

### Alternate Service

Alternatively, a person for whom service of process is intended may accept service of process by signing the proof of service and indicating the jurisdiction and state where service of process was accepted [Va. Code § 8.01-327](#).

Unexecuted process should be docketed on the original return date and disposed of accordingly. If the plaintiff applies to the clerk for reissue within three months of the original return date, a new pleading should be completed and marked “Reissue” and assigned the same original case number. When no service of process is had on a defendant named in any civil process other than a notice of motion for judgment, such process may be reissued once by the court or clerk at the court’s direction by changing the return day of such process, for which service by the court or clerk there shall be no charge; however, reissuance of such process shall be within three months after the original return day.

After the case initiation papers are served on a party, all future documents (except in contempt cases) may be served on the attorneys for the parties unless otherwise ordered by the judge.

Service of process within twelve months of commencement of the action shall be timely as to that defendant. Service of process on a defendant more than twelve months after the suit was commenced shall be timely upon a finding by the court that the plaintiff exercised due diligence to have timely service made on the defendant [Va. Code § 8.01-275.1](#).

A person, upon whom process has not been served within one year of commencement of the action against them, may make a special appearance, which does not constitute a general appearance, to file a motion to dismiss. Upon finding that the plaintiff DID NOT exercise due diligence to have timely service, and sustaining the motion to dismiss, the court shall dismiss the action with prejudice. Upon finding that the plaintiff DID exercise due diligence to have timely service and denying the motion to dismiss, the court shall require the person filing such motion to file a responsive pleading within twenty-one days of such ruling. The plaintiff shall not be prevented from filing a nonsuit under [Va. Code § 8.01-380](#) before the entry of an order granting a motion to dismiss.

Enter such a motion as an **AH** in the GCMS hearing update screen. The Judge should decide whether there should be an actual hearing with the plaintiff in attendance.

### Clerk’s Procedures for Order of Publication

Step:	Description:
1.	The plaintiff files district court form DC-435: <a href="#">Affidavit and Petition for Order of Publication</a> that states statutory reasons authorizing an order of publication.

Step:	Description:
	<p>The clerk receives and date stamps the Affidavit and Petition for Order of Publication. This may be either on the district court form DC-435: <a href="#">Affidavit and Petition for Order of Publication</a> or an attorney-drafted petition. It may be filed separately or as an attachment to a civil case or motion. It does not receive a separate case number in GCMS from the original civil case.</p>
2.	<p>The published order must state the abbreviated style of the suit, the object of the suit, and require the defendant to appear by a certain date.</p> <p>The clerk prepares the Order of Publication, which can be entered by either the judge or clerk.</p> <p>Use district court form DC-436: Order of Publication using language from the affidavit and including the court date and publication dates. Orders of publication shall be published once each week for four consecutive weeks and shall be posted at the front door of the courthouse or on a public bulletin board at a courthouse, it shall constitute compliance with this requirement of the required posting is posted on the public government website served by the court, or on the website of any court, court clerk, sheriff, or commissioner of accounts of the locality or where such notice, summons, or other official document is posted at or near the principal public entrance to the courthouse.</p>
3.	<p>Clerk mails or delivers copy of order to newspaper and mails copy to defendant(s) at last known post office address as stated in the Affidavit for Order of Publication <a href="#">Va. Code § 8.01-316</a>.</p> <p><b>Comments:</b> Mailing to the defendant, delivering to the newspaper and posting on the courthouse door must be completed within twenty days of the entry of the Order of Publication <a href="#">Va. Code § 8.01-317</a>.</p>
4.	<p>The clerk shall post a certified copy of the order at the front entrance of the courthouse or post on the public government website or on the website of the circuit court clerk of the locality served by the court where such notice, summons, or other official document is posted, and mail certified copies to all parties and counsel.</p> <p>The clerk should use the “FOR COURT USE ONLY” portion of the order to document completion of these steps</p>
5.	<p>After the order has run for four weeks, the newspaper should mail the court an affidavit of the publisher providing the dates of publication and the accompanying copy of the published order.</p>

Step:	Description:
	It is the clerk's responsibility to ensure that this affidavit is in the file on the hearing date.

### Forms

DC-435	<a href="#">Affidavit and Petition for Order of Publication</a>
DC-436	Order of Publication

### References

<a href="#">Va. Code § 1-211.1:</a>	Courthouse, posting of notices.
<a href="#">Va. Code § 8.01-316:</a>	Service by publication; when available.
<a href="#">Va. Code § 8.01-317:</a>	What order of publication to state, how published, when publication in newspaper dispensed with.
<a href="#">Va. Code § 8.01-318:</a>	Within what time after publication case tried or heard; no subsequent publication required.
<a href="#">Va. Code § 8.01-319:</a>	Publication of interim notice.
<a href="#">Va. Code § 8.01-320:</a>	Personal Service outside of Virginia.
<a href="#">Va. Code § 8.01-324:</a>	Newspapers which may be used for legal notices and publications.
<a href="#">Va. Code § 17.1-601:</a>	General rule as to recovery of costs on final judgment.

## Suits in Debt

A civil suit referred to as a “suit in debt” is one in which a plaintiff is suing to recover an unpaid debt owed to them by the defendant named in the suit. The following stages of the civil process, as they occur in a suit in debt, are covered by this section:

- Case initiation
- Service of process
- Pre-trial procedures
- Discovery procedures
- Case hearing, judgment
- Post-trial procedures

### Case Initiation

Plaintiffs initiate suits in debt in general district court in one of two ways: the plaintiff or their attorney may prepare a motion for judgment, or they may file a district court form DC-

412: [Warrant in Debt](#) with a clerk or magistrate. Once the warrant or summons form is filed in the clerk's office, the clerk marks the date and time of receipt in the clerk's office on the form [Va. Code § 16.1-86](#).

### ***Complaint Filed with Clerk***

The Clerk receiving the complaint will:

- Request the plaintiff or their attorney or, if a corporation or partnership is the plaintiff, the statutorily authorized officer or employee as provided in [Va. Code § 16.1-88.03](#), to complete a district court form DC-412: [Warrant in Debt](#) according to the instructions in the District Court Forms Manual.
- Ascertain that all of the necessary information, plaintiff name and phone number, defendant's name and address, amount of claim, reason for claim, is present.
- Mark on the warrant the date and time filed in the clerk's office.
- Collect processing fees. No fee is charged:
  - When the Commonwealth of Virginia is the plaintiff
  - When the local government is suing to collect taxes, or
  - When the school board is suing to collect overdue schoolbook rentals. See [Va. Code § 17.1-266](#), [Va. Code § 16.1-69.48:2](#).

**Note:** The judge shall determine which plaintiffs, state residents, can file suit or which defendants can file suit or defend a suit without paying costs due to poverty claims as provided in [Va. Code § 17.1-606](#) either on a case-by-case basis or by providing an eligibility formula to be implemented by the clerks. An example of such a formula is the eligibility guidelines for court-appointed counsel in criminal cases. See "Criminal Case Procedures-Trial Procedures-Right to Representation by a Lawyer."

- Assign a sequential case number to each case and place it on all copies of the district court form DC-412: [Warrant in Debt](#).
- Index the case in GCMS
- Determine jurisdiction, and if appropriate, issue the process by signing the warrant portion of the district court form DC-412: [Warrant in Debt](#). [Va. Code § 16.1-79](#) allows for the return date to be within 90 days of the date of service on the defendant.

The sheriff is required by statute to come to the clerk's office daily to pick up warrants in debt and other processes to be served.

### ***Complaint Filed with the Magistrate***

The magistrate receiving the complaint will:

- Request completion of the district court form DC-412: [Warrant in Debt](#).
- Review the district court form DC-412: [Warrant in Debt](#) as would the clerk's office and collect the processing fee. Insert date and time filed on the pleadings. Individuals seeking to have the filing fee waived due to a claim of poverty should be handled in the same manner as they would be handled in the local clerk's office.
- Forward the documents and fees to the clerk's office.

***Upon receipt, the clerk's office will:***

- Mark on the warrant the date and time of receipt of such form or warrant in the clerk's office.
- Assign a sequential case number to each case and place it on all copies of the district court form DC-412: [Warrant in Debt](#).
- Index the case in GCMS.

The sheriff will pick up the Warrants in Debt along with other process to be served from the clerk's office.

### ***Motion for Judgment***

See [Va. Code § 16.1-81](#)

The motion for judgment is handled the same as a warrant in debt filed with the clerk, except that:

- The plaintiff or plaintiff's attorney, or if a corporation or partnership, the statutorily authorized officer or employee as provided in [Va. Code § 16.1-88.03](#), prepares the entire motion for judgment, including the date and time of the return and hearing which must be within 90 days from service of process on the defendant. Plaintiffs who regularly file motions for judgment should be encouraged to arrange through the clerk's office a return date to avoid docket overcrowding.
- The motion for judgment can be filed only in the clerk's office
- It must be served not fewer than five days before the return date, if returned as "not found," a new motion is required with a payment of all fees for re-service [Va. Code § 16.1-69.48.2](#):
  - The clerk's office may utilize the DC-430: Summons For Hearing should service documentation be required.
  - The DC-480: Case Disposition may be utilized for the disposition order.



## Pre-Trial Procedures

After service of process and prior to the court hearing, the clerk's office must perform certain administrative functions and the defendant has various options on how to proceed. The clerk's duties include processing motions for judgment served by the sheriff, filing all civil warrants and motions for judgment in the appropriate file, and preparing a docket. During this time, the defendant's options include settlement of the debt prior to the court hearing, taking additional steps, such as filing a counterclaim against the plaintiff, filing a crossclaim against a co-defendant, or filing a third-party claim against a person who is not yet a party in the suit but who was involved in the dispute, and/or preparing an answer and filing it with the clerk. The defendant may also file an interpleader action (discussed below).

On all pleadings filed in the clerk's office, the date and time of the filing of such pleadings shall be stamped or marked on the pleadings.

Pleadings may be signed and filed by attorneys and by parties who are representing themselves. In certain listed general district court civil actions, [Va. Code § 16.1-88.03](#) permits a partnership to sign pleadings by any general partner, manager of a limited liability company, or a trustee of a business trust. Similarly, the statute permits a corporation to sign certain listed pleadings by its president, vice-president, treasurer, or other officer, except when the cause of action was assigned to the corporation or partnership solely for the purpose of enforcing an obligation owed or right inuring to another. Notwithstanding any rule of court to the contrary, (i) any person licensed under the provisions of [Va. Code § 54.1-2106.1](#), (ii) any property manager, or a managing agent of a landlord as defined in [Va. Code § 55.1-1200](#), or (iii) any employee, who is authorized in writing by a corporate officer with the approval of the board of directors, or by a manager, a general partner or a trustee, of a partnership, association, corporation, limited liability company, limited partnership, professional corporation, professional limited liability company, registered limited liability partnership, registered limited liability limited partnership or, business trust, or family trust to sign pleadings as the agent of the business entity to obtain a judgment for possession or for rent or damages.

Parties that are not represented by counsel are responsible for notifying in writing the clerk and the other parties of any change in address. If no notification of change of address is provided, service mailed to most recent address in the court file is effective service. See [Va. Code § 8.01-128](#).

To prepare the case for court, the clerk's office will file the district court form DC-412: [Warrant in Debt](#) and motion for judgment by court date.

The General District Court Case Management System User's Guide describes the recommended procedures for indexing cases, filing records prior to court, and preparing the docket. Detailed questions concerning these procedures should be referred to that manual. See also [Va. Code § 8.01-449](#).

## Pre-Trial Settlement

Frequently, a defendant will desire to settle a case rather than go to court. The steps involved in pre-trial settlement of a civil case include:

- Defendant settles the case with the plaintiff.
- The plaintiff advises the clerk's office in writing of the settlement and moves to dismiss the case.
- Cases, which go to court after a pre-trial settlement has been achieved, are to be dismissed when the court is advised of the settlement.

Where a plaintiff executes a release of liability as a condition of settlement in a claim or action for personal injury within thirty days of the incident giving rise to the claim, the plaintiff has the right to rescind the release until midnight on the third business day after the day on which the release was executed [Va. Code § 8.01-425.1](#). This only applies where the plaintiff was not represented by counsel when the release was executed, the rescission is made in writing and the plaintiff returns any check or settlement proceeds prior to the rescission.

## Mediation

Generally, a court, on its own motion or on a motion of one of the parties, may refer any contested civil matter to a dispute resolution orientation session in order to encourage the early settlement of disputes. The court shall set a date for the parties to return to court in accordance with its regular docket and procedure, notwithstanding the referral to an orientation session. If the parties agree to mediation, an Order of Referral is entered by the court. This order shall be kept with the case papers. The parties shall notify the court, in writing, if the dispute is resolved prior to the return date [Va. Code § 8.01-576.5](#).

If an interpreter is required for court-ordered mediation and a staff interpreter is not available, the interpreter may be paid from the criminal fund. It will be necessary to attach district court form DC-400: Mediation Orientation Order of Referral to district court form DC-44: List of Allowances – Interpreter before submitting for payment.

## Guardian ad Litem

[Va. Code § 8.01-9](#) gives a judge of the general district court the authority to appoint guardian *ad litem* to a person under a disability in a civil case. For documentation purposes, the court may wish to enter district court form DC-401: Order For Appointment Of Guardian *Ad litem*.

In a civil action against an incarcerated felon for damages arising out of a criminal act, the compensation and expenses of the guardian *ad litem* shall be paid by the Commonwealth

out of the state treasury from the appropriation for criminal charges. Otherwise, payment arrangements should be made with the plaintiff prior to the appointment as guardian *ad litem* are not paid out of the criminal fund.

### Subpoenas for Witnesses

There are two parallel procedures for issuing witness subpoenas.

In any proceeding before a general district court, the court may appoint an guardian *ad litem* to represent the interest of a minor who is called to testify. It shall be the duty of the court to ensure that the interests of a minor witness are represented and protected.

When the guardian *ad litem* has rendered substantial service, the court may allow reasonable compensation to be paid from the funds appropriated to pay for the compensation of court-appointed counsel [Va. Code § 8.01-396.2](#).

When the court determines it is appropriate to appoint guardian *ad litem* for a minor, the DC-401: Order for Appointment of Guardian *ad litem* may be utilized.

#### ***Issuance by The Clerk***

The district court form DC-325: [Request for Witness Subpoena](#) or other writing with the appropriate information is required before any subpoenas can be issued. The party prepares the district court form DC-325: [Request for Witness Subpoena](#).

The judicial officer should:

- Verify that the request is returnable to the proper court and court division, i.e., the same as the court appearance location, and that the court date is correct
- Obtain phone numbers where possible, to aid the clerk in contacting witnesses in the event of a pre-trial resolution of the case or of a continuance
- Note date and time of receipt of request and issuance of subpoenas. Supreme Court Rule 7A: 12(a) provides that requests for subpoenas should be filed at least ten days prior to trial.
- Prepare the district court form DC-326: [Subpoena for Witnesses](#) as per the instructions in the District Court Forms Manual. Subpoenas can be issued by either a clerk or a magistrate.

The original and copies of the subpoena are forwarded to the sheriff for service in sufficient time prior to the court date to allow the party adequate notice.

The original of the subpoena, when returned by the sheriff, and the request are attached to the originating case papers and filed.

### ***Attorney Issued Witness Subpoenas***

An attorney who is an active member of the [Virginia State Bar](#) may issue a witness subpoena in most types of pending civil proceedings.

Following the issuance of a subpoena, issued at the request of a party or by or at the request of an attorney representing a party the person to whom such subpoena is directed may be released from compliance with such subpoena by any attorney for the party on whose behalf the subpoena was issued, or a person acting on behalf of such attorney, by a party requesting the subpoena, provided that, in civil cases only, notwithstanding 19.2-267, such release is in writing and served concurrently on all parties, or if any such party is represented by counsel, on the attorney of record, by electronic mail notwithstanding the requirement of Rule 1:12 of the Rules of The Supreme Court of Virginia. A copy of such written release shall so be sent to the clerk of the court via fax or, if available, through the clerks' electronic filing system. A release transmitted by electronic mail to the person to who such subpoena was directed qualifies as a written release from such subpoena and a copy of such written release shall be served contemporaneously on all other parties by electronic mail [Va. Code § 8.01-407](#).

The following categories of proceedings are excluded from this provision: habeas corpus proceedings under [Va. Code § 8.01-654](#) et seq., delinquency proceedings, child abuse and neglect proceedings, civil forfeiture proceedings, habitual offender proceedings, proceedings to contest an administrative license suspension under [Va. Code § 46.2-391.2](#), and pursuant to petitions for writs of prohibition or mandamus in connection with civil proceedings.

The attorney should use district court form DC-497: [Subpoena for Witness \(Civil\) - Attorney Issued](#). This form is a master form because it is expected that attorneys will produce these witness subpoenas, as well as the attorney-issued subpoena duces tecum, (see below) through automated means. The forms are available on the web site of the Supreme Court: [www.courts.state.va.us](http://www.courts.state.va.us). Any attorney issued subpoena served less than five calendar days before appearance and served on a judicial officer generally incompetent to testify pursuant to [Va. Code § 19.2-271](#), has no legal force or effect.

When an attorney transmits the subpoenas to the sheriff for service, such subpoenas shall be accompanied by a transmittal sheet. The transmittal sheet, which may be in the form of a letter, shall contain for each subpoena: (i) the person to be served, (ii) the name of the city or county in which the subpoena is to be served, in parentheses, (iii) the style of the case in which the subpoena was issued, (iv) the court in which the case is pending, and (v) the amount of fees tendered or paid to each clerk in whose court the case is pending together with a photocopy of either (a) the payment instrument and a photocopy of the letter sent to the clerk's office that accompanied such payment instrument or (b) the clerk's receipt. The sheriff is not required to serve an attorney-issued witness subpoena if it is not issued at least five business days prior to the date the

attendance is sought. These subpoenas may be served by a private process server, in which no service fees would be paid to the clerk. On the same day that the subpoena is issued, the attorney shall transmit a copy of the subpoena, or subpoenas, to the clerk's office.

If the witness subpoena is served fewer than five calendar days prior to the date attendance is sought, the court may refuse to enforce the subpoena for lack of adequate notice.

### **Subpoenas Duces Tecum**

Unless otherwise ordered for good cause shown; when a party subpoenas documents, the party who subpoenaed the documents, upon receipt of the documents, must provide a copy to any other party, if copies were requested in writing. The party requesting copies of the documents must pay the reasonable cost of copying or reproducing the subpoenaed documents. If the subpoenaed documents are returnable to the clerk of court this requirement is not applicable [Va. Code § 8.01-417](#).

If the subpoena duces tecum is for medical records, please see "Discovery of Medical Records" in the Miscellaneous Civil Case Procedures chapter of this manual.

#### ***Issuance by The Court***

A district court clerk or judge, pursuant to [Va. Code § 16.1-89](#), may complete and issue the district court form DC-336: [Subpoena Duces tecum](#) requiring the production of any evidence in the hands of a party to the litigation or a person who is not a party to the litigation. In order to procure a subpoena duces tecum:

- The requesting person files a written request for a subpoena duces tecum in the Request for Subpoena Duces tecum portion of the district court form DC-336: [Subpoena Duces tecum](#), describing the items sought with reasonable certainty, naming the person from whom these items are sought, and stating where the items should be produced.
- Supreme Court Rule 7A: 12(b) provides that requests for subpoenas duces tecum should be filed at least fifteen days prior to trial; requests for subpoenas duces tecum not timely filed should not be honored except when authorized by a judge for good cause.
- Enough copies of this request are needed for each copy of the subpoena duces tecum.
- The requesting party also certifies that they mailed or delivered a copy of this request to other attorneys in the case and to unrepresented parties.

Upon receipt of the request and certification, the clerk completes and issues the district court form DC-336: [Subpoena Duces tecum](#) as described above.

### ***Attorney Issued Subpoenas duces tecum***

Attorneys who are active members of the [Virginia State Bar](#) may also issue subpoenas *duces tecum* in the same types of pending civil cases in which they may issue witness subpoenas. The issuance and processing of attorney issued subpoenas duces tecum tracks generally that of the attorney issued witness subpoenas, as described above [Va. Code § 16.1-89](#), [Va. Code § 16.1-265](#).

If the recipient of a subpoena duces tecum has less than fourteen days following service to comply with the subpoena duces tecum, they may serve a written objection on the party issuing the subpoena. Upon proper objection, the issuing party is not entitled to compliance, unless the issuing party moves the court to compel compliance, the issuing party gives notice of this motion to the person to whom the subpoena is directed, and the court grants the motion. If the motion to compel is timely, the court may quash, modify, or sustain the subpoena duces tecum.

### **Incarcerated Witness**

The Supreme Court of Virginia has held that [Va. Code § 8.01-410](#) does not give a general district court the authority to issue a transportation order for a person who is a participant in a civil case Commonwealth v. Brown, 259 Va. 697 (2000). Therefore, the [Department of Corrections](#) will no longer comply with such transportation orders issued by general district courts. However, in civil matters under Chapter 6 of Title 16.1, [Va. Code § 16.1-76](#) et seq., a general district court may, in its discretion, conduct any hearing using a telephonic communication system or an electronic audio and video communication system to provide for the appearance of any parties and witnesses [Va. Code § 16.1-93.1](#). Any electronic audio and video communication system used to conduct such a hearing shall meet the standards set forth in subsection B of [Va. Code § 19.2-3.1](#).

### **Counterclaims, Cross-Claims, Third-Party Claims**

In any general district court proceeding, a defendant may, at any time before trial, plead a counterclaim against the plaintiff(s) in the case [Va. Code § 16.1-88.01](#). The counterclaim does not have to be related to plaintiff's claim, but it cannot exceed the general district court's jurisdictional amount limits. It is a part of the original case; however, it is entered in GCMS with a new case number.

A defendant may also, prior to trial, plead a crossclaim against any other defendant in the case, as long as the crossclaim relates to the plaintiff's claim in the case. A crossclaim is given a new case number in GCMS [Va. Code § 16.1-88.02](#). To be treated as a crossclaim or a counterclaim, the document should be labeled as a "counterclaim" or a "crossclaim." It is at

the court's discretion whether to hear these matters as part of the original case or in a separate hearing. No separate processing fees are charged for filing counterclaims or crossclaims.

Whenever a party is served with a warrant, summons, motion for judgment, counterclaim or crossclaim, such party may, within ten days after service or up to the trial date, whichever is sooner, file a third-party civil warrant or motion for judgment on a person not a party to the action who is or may be liable to the party for all or part of the claim being asserted against such party. Supreme Court Rule 7B:10(a). The person served with a third-party claim is the "third-party defendant." After this time period, such third-party claims may be asserted only with leave of court. Processing fees are to be collected when a third-party claim is filed.

Any party may move to strike the third-party warrant or motion for judgment or move for its severance for a separate trial. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to them for all or part of the claim made in the action.

### **Consolidation of Actions**

The court may, in its discretion, consolidate for trial separate suits which could be treated as counterclaims, crossclaims, and third-party claims. Supreme Court Rule 7B:10(b). The judge may enter such orders as may be appropriate to affect a prompt and fair disposition of such cases.

### **Discovery Procedures**

#### ***Bill of Particulars and Grounds of Defense***

In any civil proceeding, the judge of any general district court may order the plaintiff to file and serve a written Bill of Particulars and may order the defendant to file and serve a written Grounds of Defense within the periods of time specified in the order. The failure of either party to comply may be grounds for awarding summary judgment in favor of the other party. Supreme Court Rule 7B:2. At trial, the judge may exclude evidence as to matters not described in any such pleading.

#### ***Depositions***

Depositions are the sworn written testimony of witnesses taken outside of court and are not typically permitted in general district court. However, depositions are used in Virginia general district court cases pursuant to [Va. Code § 16.1-88.2](#) in personal injury cases where the deposition of the doctor may be taken. There is also a provision for the court to assess the cost of taking the deposition of a health care provider or custodian of records.



## Removal to Circuit Court

The right to remove a matter from the general district court to the circuit court has been eliminated.

## Nonsuits

The plaintiff may take their first nonsuit as a matter of right although the court may allow additional nonsuits upon reasonable notice to counsel of record for all defendants and upon a reasonable attempt to notify any party not represented by counsel, or counsel may stipulate to additional nonsuits. The court, in the event additional nonsuits are allowed, may assess costs and attorney's fees against the plaintiff. When suffering a nonsuit, a party shall inform the court if the cause of action has been previously nonsuited. Any order affecting a subsequent nonsuit shall reflect all prior nonsuits and shall include language that reflects the date of any previous nonsuit together with the court in which any previous nonsuit was taken. The plaintiff prepares the district court form DC-419: [Motion and Order for Voluntary Nonsuit](#). If the notice to take a nonsuit of right is given to the opposing party with seven (7) days of trial, the court has the discretion to assess against the nonsuiting party reasonable witness fees and travel costs of expert witnesses scheduled to appear at trial, which are incurred by the opposing party only because of the failure to give notice of the nonsuit more than seven (7) days before trial [Va. Code § 8.01-380 \(D\)](#). The court shall determine the reasonableness of witness fees and travel costs.

The taking of the nonsuit must be noted in an order, after which the plaintiff may recommence the action in the same court, with certain exceptions, by filing a civil warrant or motion for judgment within six months from entry of the order documenting the nonsuit, or within the limitations period, whichever is longer [Va. Code § 8.01-229 \(E\)\(3\)](#) and [Va. Code § 8.01-380](#). If, however, the plaintiff dies before the end of the six-month period, the suit may be recommenced within one year of the qualification of the personal representative or before the expiration of the six-month refiling period, whichever occurs later [Va. Code § 8.01-229 \(B\)\(1\)](#).

Upon the refiling of the nonsuited action, the clerk treats the matter as if it is a new suit (collect costs, index the case with a new case number, etc.). If, after a nonsuit, an improper venue is chosen, the court shall not dismiss the matter but shall transfer it to the proper venue upon motion of any party.

## Case Hearing, Judgment

Responsibilities of the clerk's office in terms of case hearings include bringing all of the case files and the docket for the day's cases to court, recording the disposition on the docket and warrant, and accounting for witness expenses.



## Interpreters

### *Deaf Person*

If a deaf person is a party or a witness in a civil case, they have the right to use an interpreter during the proceeding. If requested, the court must appoint an interpreter provided through the [Virginia Department for the Deaf and Hard of Hearing](#). The deaf person may waive the appointment of an interpreter and retain any interpreter at the deaf person's expense.

If the Department cannot procure such services, then the court may appoint a readily available interpreter with full certification from the [Registry of Interpreters for the Deaf, Inc.](#), or an equivalent national certification. Such court-appointed interpreter's qualifications are subject to review and approval by the [Virginia Department for the Deaf and Hard-of-Hearing](#).

An information sheet addressing common ADA accommodations within the court system, to include communication services provided by interpreters for the deaf can be found at this link:

[https://www.vacourts.gov/courtadmin/aoc/djs/programs/interpreters/resources/ada\\_resource\\_card.pdf](https://www.vacourts.gov/courtadmin/aoc/djs/programs/interpreters/resources/ada_resource_card.pdf)

### *Non-English-Speaking Person:*

The court may also appoint an interpreter when a non-English speaking person is either a party or a witness in any trial, hearing, or other proceeding before a judge in a civil case. The judge hearing the case may appoint a qualified English-speaking person who is fluent in the language of the non-English speaking person, unless the non-English speaking person obtains a qualified interpreter of their own choosing who is approved by the court as competent [Va. Code § 8.01-384.1:1\(a\)](#).

The interpreter's compensation shall be set by the court in accordance with guidelines set by the Judicial Council of Virginia and shall be paid from the criminal fund of the state treasury as part of the expense of trial. See the Chart of Allowances for instructions regarding the submission of claims for compensation of these interpreters [Va. Code § 8.01-384.1:1 \(B\)](#).

When a non-English speaking person communicates with another person under circumstances that render the communication privileged, i.e., the other person could not be compelled to testify as to the communication, the privilege shall also apply to the interpreter. This privilege applies in both circuit and district courts [Va. Code § 8.01-384.1:1 \(C\)](#).

## Continuances

Supreme Court Rule 7A: 14 sets forth the standard continuance requirements. One party, all parties or a combination of parties may request a continuance. A continuance is granted at the discretion of the judge for good cause. If all parties agree to the continuance, the moving party is responsible for providing notice of the continuance and of the new court date to the subpoenaed witnesses. If all parties do not agree to the continuance, a hearing may be held, and the requesting party is responsible for giving notice of this hearing to the other parties. Continuance requests made at the time set for the hearing or trial, where the other parties or witnesses are present and prepared for trial, should be granted only if it is shown that to proceed with the trial would not be in the best interest of justice. If a continuance is granted at a hearing the witnesses may be given a return to court notice and, if recognized for their appearance on the continuance date, required to execute a district court form DC-329: Recognizance.

## Exclusion of Witnesses

Witnesses (except for individual named parties or one officer or agent for a corporation or association or, when requested, an expert witness for each side) may be excluded from the courtroom except when testifying. Such exclusion may be done on the judge's motion and shall be done on motion of any party [Va. Code § 8.01-375](#).

## Constitutional Rights

In any civil action, the exercise by a party of any constitutional protection shall not be used against them [Va. Code § 8.01-223.1](#).

## Trial On Affidavit, Denial by Defendant

In any action at law for the payment of money based on a note or on a contract, express or implied, or for the collection of taxes, if the plaintiff files an affidavit with their motion for judgment or civil warrant, and a copy of the account, if there is one, and it is served on defendant with the warrant in debt or motion for judgment, the plaintiff is entitled to a judgment on the affidavit and account without further evidence unless the defendant either appears and pleads under oath or files an affidavit with the court denying in whole or in part the claim. The defendant's denial needs not be in writing. If the defendant appears and pleads, the plaintiff or defendant shall, on motion, be granted a continuance. See [Va. Code § 8.01-28](#), [Va. Code § 16.1-88](#).

The plaintiff may use a similar procedure to recover when the physical evidence of a debt has been lost [Va. Code § 8.01-32](#). To recover on a "lost debt" the plaintiff must verify under oath that a debt exists and that the evidence of the debt has been lost. Such verification may be made either by sworn affidavit or sworn testimony in open court. Recovery may occur only when the "lost debt" is past due.

## Entry and Docketing of Judgment

Supreme Court Rule 7B:7 provides that no judgment for the plaintiff shall be granted, except on request made in court by the plaintiff, plaintiff's attorney, or plaintiff's regular and bona fide employee, except as permitted by statute.

The judgment or decree of the court may provide for interest on any principal sum awarded. Any judgment entered for a suit under a negotiable instrument shall provide for interest at the rate specified in the instrument. If no interest is specified, the judgment or decree shall bear interest from its date of entry at the judgment rate [Va. Code § 8.01-382](#).

The rate of interest for a judgment shall be the judgment rate of interest in effect at the time of entry of the judgment. Interest in cases in which a judgment has been entered is not affected by subsequent changes in the judgment rate of interest in [Va. Code § 6.2-302](#). The current judgment rate of interest is 6% except on contracts for the loan of money, which accrue interest at the lawful rate stated in the contract or 6%, whichever is higher [Va. Code § 6.2-302](#).

## Payment of Judgment into General District Court

When a judgment is taken in the general district court, upon motion of a party for good cause shown, the general district court judge may enter an order directing the clerk of the general district court to hold funds in escrow for a period not to exceed 180 days to enable such party to file a petition requesting that the funds be received and held by the clerk of the circuit court. If an order directing the clerk of the general district court to transfer funds to the clerk of the circuit court is not received within 180 days, the clerk of the general district court may disburse the funds to the plaintiff after giving a 30-day notice to the parties [Va. Code § 8.01-600](#), [Va. Code § 8.01-606](#).

The following procedures are recommended when the court enters an order for funds to be held in escrow by the court:

Step:	Description:
1.	<p>One of the parties submits an Order at the conclusion of trial where judgment has been awarded in favor of the plaintiff and presents funds to be held by the court.</p> <p>There are no fees associated with this filing.</p> <p>Clerk receipts funds to revenue code 509 using original case number.</p>

Step:	Description:
	<b>Note:</b> BR08 will list the case under the defendant's name in liability accounts monthly.
2.	Enter administrative hearing in GCMS using original case number for six months from the date of the receipt.
3.	<p>Clerk will receive an order from circuit court directing the clerk to disburse funds immediately to circuit court. Issue check using ES, auto format, disbursement code. Prepare district court form DC-25: Circuit Court Case Transmittal and Fees Remittance Sheet.</p> <p><b>Note:</b> Do not mark case satisfied unless requested to do so by plaintiff/creditor.</p>
4.	Transmit copy of circuit court order and check to circuit court.
5.	<p>If the court does not receive an order from circuit court by the date of the administrative hearing, give parties notice on court's letterhead as noted in sample below. Keep a copy of the notice sent to the parties with the case papers. Attach a copy to the case papers.</p> <div data-bbox="349 951 1255 1320" data-label="Image"> </div>
6.	<p><b>Appeal Procedures</b></p> <p>Appeal may be noted in writing within ten calendar days of judgment.</p> <p><b>Note:</b> Bond and Circuit Court costs, including sheriff fees for service, are due within thirty days of Judgment, <i>not</i> appeal date.</p> <p>If case is perfected, prepare file in accordance with local policy for delivery to the circuit court; and send check for fees and any funds in escrow account along with a completed district court form DC-25: Circuit Court Case Transmittal and Fees Remittance Sheet. See appendix on <a href="#">Appeals</a> for procedures.</p>

### Forms

DC-25:	Circuit Court Case Transmittal and Fee Remittance Sheet
DC-475:	Notice of Appeal - Civil
DC-460:	Civil Appeal Bond

### *References*

<a href="#">Va. Code § 8.01-600:</a>	Payment of funds into circuit court.
<a href="#">Va. Code § 8.01-606:</a>	Payment of small amounts to certain persons through court without intervention of fiduciary, authority of commissioners of accounts, certain fiduciary exempt of accountings.

### **Bad Check Cases**

In civil suits to collect on bad (bounced) checks, the court may add to the face amount of the check, less any credits, as a part of the judgment:

- Legal interest from the date of the check
- The protest or bad (bounced) check bank fees
- The check holder's normal bad check processing fee not to exceed \$50.00 if the check was returned for insufficient funds or because such check was returned because of a stop-payment order placed in bad faith on the check by the drawer [Va. Code § 8.01-27.1](#). However, if the plaintiff charges an amount in excess of this statutory limit, the plaintiff is liable to the defendant for the lesser of \$50.00 plus the excess of the authorized amount or twice the excess charged over the statutory limit.
- Reasonable attorney's fees, if awarded by the court [Va. Code § 8.01-27.1](#).
- Civil penalty of the lesser of \$250 or three times the amount of the check pursuant to [Va. Code § 8.01-27.2](#) if:
  - The check was returned for insufficient funds, and
  - The check is not paid within thirty days after drawer receives written notice by certified, registered, or regular mail that the check was returned unpaid, no criminal bad check case pursuant to [Va. Code § 18.2-181](#) has been started.
  - Cost of service of process or mailing, as applicable.

### **Failure to Appear and Default Judgments**

If the defendant fails to appear in court, the court may enter judgment against them in their absence (default judgment). Rule 7B:9. Where plaintiff filed an affidavit with their district court form DC-412: [Warrant in Debt](#) or motion for judgment, the plaintiff may be entitled to judgment on the affidavit without having to introduce other evidence. See Trial on Affidavit -

Denial by Defendant section above. In tort cases or on other claims where the damages are not fixed or liquidated, if the defendant fails to appear or file an answer, the court will still require evidence to determine the amount of damages. When service of process was obtained by posted service, no default judgment may be granted unless the plaintiff files a certificate, such as a district court form DC-413: [Certificate of Mailing Posted Service](#) certifying that he mailed a copy of the pleadings at least ten days prior to the entry of judgment. District court form DC-412: [Warrant in Debt](#) states specifically that this action may be taken. The court is not statutorily required to notify the defendant of a default judgment. Thus, the defendant may learn of the judgment when served with a summons for garnishment or other execution document. The administrative procedures performed by the clerk's office following a default judgment are the same as for a judgment with the defendant present.

Supreme Court Rule 7B:8 provides that if the plaintiff fails to appear and the defendant appears, the judge will either:

- Dismiss the case without prejudice to plaintiff's right to refile if defendant admits owing all or part of the claim, or
- Enter judgment for defendant.
- If neither party appears, the judge then dismisses the case without prejudice to plaintiff's right to refile the case.

### **Servicemembers Civil Relief Act Requirements for Default Judgment**

A default judgment may not be entered until the plaintiff files an affidavit (i) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or (ii) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service. The district court form DC-418: [Affidavit – Default Judgment Servicemembers Civil Relief Act](#) is available for use by plaintiffs. Failure to file the affidavit is not grounds to set aside an otherwise valid default judgment against a defendant who was not, at the time of service of process or entry of the default judgment, a service member. However, case law indicates that failure to comply with the affidavit requirement in a case involving a defendant who is a service member and whose military service interfered with their ability to respond to a suit creates a voidable default judgment. See [Flynn v. Great Atlantic Management Co.](#), 246 Va. 93; [Matthews v. Allstate Ins. Co.](#), 194 F. Supp. 459 (E.D. Va 1961).

If the defendant is believed to be in military service and is unaware of the action, the court must appoint an attorney to represent the defendant prior to entry of a default judgment. Counsel appointed pursuant to the Servicemembers Civil Relief Act shall not be selected by the plaintiff or have any affiliation with the plaintiff. However, the plaintiff's attorney may

provide a list of attorneys familiar with the provisions of the Servicemembers Civil Relief Act upon the request of the court.

The court must grant a stay of not less than ninety days upon request by appointed counsel or upon its own motion if the court believes that (i) there may be a defense that requires the defendant's presence or (ii) counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists after due diligence. If the service member cannot be contacted within the first ninety-day stay period, a default judgment may be entered, but the service member may attack the judgment and the attorney's actions shall not bind them. The judge may enter the stay on the DC-417: Order for Stay – Servicemembers Civil Relief Act.

If the service member is believed to be in military service and has been provided notice of the action, the court may grant a stay of ninety days or more upon its own motion, and shall grant a stay upon application of a service member with notice, if such service member provides (i) a letter setting forth the reasons why their military duties materially affect their ability to appear, and a date on or after which they could appear and (ii) a letter from the service member's commanding officer stating that their service precludes their ability to appear and that they are not authorized to take leave. Active-duty status alone, even in another state, does not necessarily "materially affect" one's ability to appear. Application for this stay does not constitute a waiver of jurisdictional defenses. A service member may apply for additional stays, but the court need not grant them. If the court refuses to grant an additional stay after the first ninety-day stay and the service member still cannot appear by reason of their military service, then the court must appoint an attorney to represent them before entering default judgment.

If appointment of counsel is required, the court may assess attorneys' fees and costs, not to exceed \$125, unless the court deems a higher amount appropriate, against any party, as the court deems appropriate, and shall direct in its order which of the parties shall pay. Such fees and costs shall not be assessed against the Commonwealth unless it is the party that obtains the judgment.

The Servicemembers Civil Relief Act covers National Guard members who are in Title 10 status. Title 10 status means they are paid and under the direct control of the federal government. Members who are in a Title 32 status, paid and trained by the United States Armed Forces but under control of the respective state governors, are covered by the Servicemembers Civil Relief Act if they are in that status pursuant to a contingency mission specified by the President or [Secretary of Defense](#). Members who are paid by and under the command of their states' governors are not covered under this Act.

A service member who did not have notice of an action that resulted in a default judgment may petition the court to reopen a case within ninety days of his release from service. The court shall rehear the matter and allow the service member to defend the action only if (i) the service member was materially affected in making a timely defense by reason of military

service and (ii) the service member has a meritorious or legal defense to the action or some part thereof.

### **Civil Action for Bad Check, Shoplifting and Employee Theft**

No civil action may be initiated for a bad check, shoplifting or employee theft pursuant to [Va. Code § 8.01-27.2](#) or [Va. Code § 8.01-44.4](#) if criminal action has been commenced against the perpetrator. However, in the case of shoplifting or employee theft, the merchant may non-suit the civil action and institute criminal proceedings. Since the clerk is not authorized to refuse to accept such civil actions, this issue may not arise prior to trial, and it is an issue to be resolved by the judge at trial.

## **Post-Trial Procedures**

### **Appeals**

In a general district court civil case in which the dispute is of a value greater than \$20.00, the losing party may appeal the judgment of the lower court to the circuit court provided the appeal is noted in writing within ten calendar days from the date judgment was entered. If the tenth day falls on a Saturday, Sunday, or legal holiday, the last day to note an appeal will be the next day the court is open. An appeal from the juvenile and domestic relations district court or an appeal in a civil case from the general district court shall be heard de novo in the circuit court.

For details and step-by-step instructions for handling appeals and withdrawal of appeals, see the appendix on [Appeals](#).

### **New Trial of Case**

A motion for a new trial must be made by one of the parties within thirty days after the date of judgment, not including the date of entry of such judgment [Va. Code § 16.1-97.1](#). The new trial process is as follows:

- Any party to the suit files a motion for new trial within thirty days after the entry of judgment (use district court form DC-368: [Motion to Reopen \(Criminal/Traffic\)/Motion to Rehear \(Civil\)/Motion for New Trial \(Civil\)](#)).
- The request must be heard by the judge, who acted in the case before, or if not available, by another judge. Granting of the motion is within the judge's discretion. The judge must rule on the motion within forty-five days after judgment.
- In the event that this thirty-day time period has passed, a judge is authorized to reopen the case to correct clerical errors, or to set aside a confessed or default judgment because of fraud (if motion made within two years of judgment), a void judgment, or proof of an accord and satisfaction [Va. Code § 8.01-428](#).



## Motion to Vacate

A motion to vacate is filed by the plaintiff or judgment debtor to set aside a default judgment on the following grounds: (i) fraud on the court, (ii) a void judgment, (iii) on proof of an accord and satisfaction, or (iv) on proof that the defendant was, at the time of service of process or entry of judgment, a person in the military service of the United States for purposes of 50 U.S.C. app. § 502. Such motion on the ground of fraud on the court shall be made within two years from the date of the judgment or decree. Reasonable notice must be given to the opposite party [Va. Code 8.01-428](#).

Sometimes a judgment may need to be corrected due to a clerical error. In that case, the court may correct the error based on its motion or the motion of either party. [Va. Code § 8.01-428 \(B\)](#) states as follows:

“Clerical mistakes - Clerical mistakes in all judgments or other parts of the record and errors therein arising from oversight or from any inadvertent omission may be corrected by the court at any time on its own initiative or upon the motion of any party and after such notice, as the court may order. During the pendency of an appeal, such mistakes may be corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending such mistakes may be corrected with leave of the appellate court”.

## Notice of Satisfaction

Once the judgment has been paid or otherwise satisfied, the plaintiff/judgment creditor must notify the court in which the judgment was rendered in writing of that satisfaction. This notice must be provided within thirty days of receipt of payment or satisfaction and is required only upon full satisfaction. The district court form DC-458: [Notice of Satisfaction](#) may be used for this purpose but it is not mandatory. Any type of notice is satisfactory if it contains:

- The case number
- The names of the parties
- The date of the judgment

Upon receipt of the notice of satisfaction, the clerk should affix a statement of satisfaction using a stamp or handwrite the statement on the original judgment case papers. The clerk should sign the statement and insert the date the statement of satisfaction is affixed to the case papers. The notice of satisfaction should then be attached to the original judgment case papers [Va. Code § 16.1-94.01](#), [Va. Code § 8.01-454](#).

For any money judgment marked as satisfied pursuant to either [Va. Code § 8.01-454](#) or [Va. Code § 16.1-94.01](#), nothing shall satisfy an unexecuted order of possession entered pursuant

to [Va. Code § 8.01-126](#), provided that (i) the time period for issuing writs of eviction in unlawful entry and detainer provided by [Va. Code § 8.01-471](#) has not lapsed and (ii) the defendant has not exercised his right of redemption in accordance with [Va. Code § 55.1-1250](#).

If the plaintiff/judgment creditor fails to notify the court of the satisfaction of the judgment within thirty days, the defendant/judgment debtor may file a motion to have the judgment marked satisfied.

- District court form DC-459: [Motion for Judgment to be Marked Satisfied](#) may be used for this purpose
- Judgment debtor/defendant must give the plaintiff/judgment creditor ten days' notice of the motion prior to filing with the court
- Enter in the civil division of GCMS giving a new case number and case type: "OT"
- Collect all filing fees and service fees
- The clerk will set a hearing date and send out for service

Upon a hearing on the motion, the court may order that the judgment be marked satisfied. The disposition of a district court form DC-459: [Motion for Judgment to be Marked Satisfied](#) may be appealed to the circuit court.

A judgment debtor wishing to discharge a judgment, pursuant to the provision of [Va. Code § 8.01-456](#), when the judgment creditor cannot be located, may pay the circuit court docketing and indexing fees and docket the judgment in the circuit court. Once the debtor has docketed the judgment, payment may be made, and the judgment satisfied in circuit court following the filing of a petition in circuit court and the entry of a circuit court order [Va. Code § 16.1-69.55](#).

## Records and Evidence Management

As civil cases are completed in general district court, there are certain clerical tasks that must be completed to assure that cases are properly recorded. These administrative tasks that the clerk's office performs include:

- Record the disposition in GCMS.
- Process appeals as noted earlier.
- Process executions of court orders as per plaintiff's request.
- File cases in the Civil Court Date Disposed File

The clerk may provide for disposal or donation of evidence after the date on which to note an appeal or request a rehearing has elapsed. If an appeal is not noted, or if a case is appealed, or notice of appeal is pending or the case is being reheard, after the appeal or rehearing is concluded. The clerk must first give notice to the owner or attorney by first class mail and wait until twenty-one days have elapsed from mailing of the notice to dispose of the evidence unless the owner or attorney requests its return [Va. Code § 8.01-452.1](#).

### Execution of Judgment

When a decree or order requiring the payment of money is entered, the persons entitled to that payment are called “judgment creditors.” The persons required to pay the judgment are called “judgment debtors.” Where the judgment is in favor of the plaintiff (judgment creditor) in a civil suit in debt, the defendant (judgment debtor) may either immediately satisfy the judgment, appeal the judgment to circuit court, or refuse or delay satisfying the judgment. The judgment creditor has two options for executing the judgment through a general district court when the case has not been appealed or satisfied:

- Garnish the judgment debtor’s wages, other income, or other money or credits in a third party’s hands [Va. Code § 8.01-511](#).
- Levy on certain of the judgment debtor’s property which can be touched and sold by the sheriff and is not subject to exemption.

The writ of fieri facias (also informally called a “fi.fa.” or “writ of fi.fa.”) is a document that causes a lien to be put on the judgment debtor’s property. The property is then converted to money through a sheriff’s sale, and the money and the executed writ of fieri facias are returned to the court. This writ is used in connection with all general district court executions of judgments entered on a district court form DC-412: [Warrant in Debt](#). While the writ may be obtained as an independent enforcement vehicle, it is most often obtained as part of the garnishment process and is seldom separately enforced when issued as a part of the garnishment process. When a separate writ is sought, the judgment creditor requests the issuance of a district court form DC-467: Writ of Fieri Facias from the clerk, who delivers it to the sheriff or any other person authorized to serve process pursuant to [Va. Code § 8.01-293](#) for execution [Va. Code § 8.01-501](#). Subsequent steps for levy on personal property and garnishments are described below.

In addition, the judgment creditor can obtain a district court form DC-465: Abstract of Judgment that can be taken to circuit court or to another state for enforcement actions there.

To assist in executing the judgment, the judgment creditor can use the interrogatory process to obtain information from the judgment debtor that the judgment debtor can use to enforce the judgment by garnishment, etc. [Va. Code § 8.01-506](#).

Executions on a judgment in district court can be issued for ten years from the date of judgment. However, the judgment creditor may extend this time period if the judgment creditor, prior to the expiration of the ten years, pays the circuit court docketing and indexing fees along with any other required filing fees and docket the judgment in the circuit court in the same geographic location as the general district court. The judgment creditor can then request issuance of executions in the general district court after expiration of the ten-year period upon the filing in the district court of an abstract from the circuit court. See Extension of Judgments in this chapter.

### Levy On Property in The Hands of the Judgment Debtor

A levy on personal property means that the property levied may be sold or disposed of by the judgment creditor to satisfy the judgment of the court, if not satisfied by other means.

Procedures for execution by levy include:

- The clerk prepares the district court form DC-467: Writ of Fieri Facias and attaches a copy of district court form DC-407: [Notice to Debtor - How to Claim Exemptions/Request for Hearing - Exemption Claim](#), to each copy of the writ, collects sheriff's fees, [Va. Code § 17.1-272](#), and forwards it to the sheriff [Va. Code § 8.01-501](#). Only a sheriff, high constable or treasurer may levy upon property [Va. Code § 8.01-293](#).
- The sheriff levies on the property of the judgment debtor and, if the judgment creditor posted an indemnifying bond with the sheriff, seizes the particular items of personal property noted in the writ of fieri facias, and serves a copy of the writ on the judgment debtor or other responsible person at the premises [Va. Code § 8.01-487.1](#).
- The judgment debtor may at this time decide to:
  - Pay the debt and may do so within the ninety-day life of the execution and ask the judgment creditor to abandon the writ of fieri facias and stop the sheriff's sale prior to the sale, or
  - Regain possession or obtain a release of the lien by posting a district court form DC-470: [Forthcoming Bond](#), or
  - Execute and return the district court form DC-407: [Notice to Debtor - How to Claim Exemptions/Request for Hearing - Exemption Claim](#) whereupon the clerk:
    1. Indexes the district court form DC-407 request as a subsequent action using case type: "OT", and
    2. Schedules a hearing on the claim within ten business days from receiving the request, and
    3. Notifies the parties and sheriff of the date, time, and place of the hearing plus the exemption being claimed.

If the judge determines that the exemption claim is valid, the clerk gives a copy of the order to the parties. Otherwise, no copy is provided:

- The sheriff sells the levied property if the judgment debtor does not pay off the debt and the judgment creditor has posted an indemnifying bond.
- The executed writ is returned with the net proceeds and the proceeds of the sale are disbursed to the judgment creditor by the sheriff. The return shall account for the property seized and sold, the disbursement of funds, and the service of process on the judgment debtor or other responsible person at the premises.
- If the judgment is not satisfied, the judgment creditor may elect to re-execute and the above procedure is repeated.
- Formal notice of satisfaction of the court order should be filed by the judgment creditor with the court, but the judgment debtor may have to request that it be filed by the judgment creditor and can sue to enforce this notice of satisfaction procedure.

In some cases, the defendant, after issuance of the writ, will perfect an appeal in the case. Upon perfecting the appeal, the clerk promptly completes a district court form DC-323: Recall of Process with a notation that the defendant perfected his appeal and transmits it to the sheriff. In such a case, the sheriff returns the writ, discontinues the sale, and releases the levied or seized property to the prior possessor.

If more than one writ of fieri facias is issued and the proceeds are insufficient to satisfy all writs, then the writs of fieri facias are satisfied under [Va. Code § 8.01-488](#), in the following order. The writs are divided into two groups:

- Indemnification bond posted prior to sale if required by sheriff.
- No indemnification bond posted.

The group of writs for which indemnification bonds were posted takes priority over the group for which no bonds were posted.

Within each group, order of priority is based on the time that the writs were delivered to the sheriff for execution, first writ delivered takes priority over second writ delivered. If writs are delivered at the same time to the sheriff, the funds are allocated ratably among the writs delivered at the same time.

### **Garnishment of Funds [Va. Code § 8.01-511](#)**

A garnishment may be used when the judgment debtor has sufficient income, not subject to exemption, debts owed to them, money in the bank or other money in the hands of a third party from whom the judgment creditor may reasonably expect to obtain satisfaction of the

judgment by the garnishment process. The judgment debtor is the person who is required to pay the judgment. The garnishee is the third party who holds money for or owes money to the judgment debtor. Often, the garnishee is the judgment debtor's employer.

The garnishment may be filed where the judgment was obtained or where the judgment debtor resides. If the garnishment is filed where the judgment debtor resides, an abstract of judgment must be provided to the court before the garnishment can be filed. Additional information is provided at the end of this section.

The procedures for execution by garnishment are as follows:

***Judgment creditor***

- Files a district court form DC-450: [Suggestion for Summons in Garnishment](#) and provides the clerk with an envelope, with first class postage attached, addressed to each judgment debtor at their last known address.
- The plaintiff is responsible for calculating the interest due. Interest is computed on the judgment principal only. See [Va. Code § 8.01-382](#).
- Pays the same civil fees required for warrants in debt, and one sheriff's fee per service for each garnishment summons. There are no additional sheriff's fees collected for the writ of fieri facias if requested. A separate summons is required for each judgment debtor. If there is more than one garnishee for a judgment debtor, a separate garnishment proceeding for each garnishee is required. All costs incurred by the judgment creditor after entry of the judgment, in aid of execution of the judgment and paid to a clerk of court, sheriff, or process server are chargeable against the judgment debtor, unless such costs are chargeable against the judgment creditor pursuant to [Va. Code § 8.01-475](#). Regardless of the actual amount of the fee paid by the judgment creditor, the fee for a process server chargeable against the judgment debtor shall not exceed the fee authorized for service by the sheriff. All such previous costs chargeable against the judgment debtor may be included by the judgment creditor as judgment costs in the garnishment summons form prescribed in [Va. Code § 8.01-512.3](#).
- The clerk's office issues receipts for all fees, verifies that the judgment was granted in at least the amount listed as the "Judgment Principal" on the district court form DC-451: [Garnishment Summons](#) and issues the summons with copies of the district court form DC-454: [Request for Hearing - Garnishment Exemption Claim](#), and district court form DC-455: [Garnishment Information Sheet](#) attached to each copy of the garnishment summons and with a copy of district court form DC-456: [Garnishee's Answer](#) attached to the garnishee's copy of these forms. The garnishment summons contains a plain language interpretation of [Va. Code § 34-29](#).
- The summons is made returnable to the court that issued it within ninety days from the writ's issuance, except that, in the case of a wage garnishment, the summons

shall be returnable not more than 180 days after such issuance [Va. Code § 8.01-514](#). The life of the writ of fieri facias will be the same as the summons to which it is attached. Garnishment proceedings for child support pursuant to [Va. Code § 20-78.1](#) continue until the judgment is satisfied or for 180 days.

- [Virginia Code § 8.01-511](#) permits clerks to issue a garnishment summons for wages, salaries, commission, or other earnings only if the garnishment summons contains the following data:

If the judgment is based on a business, trade or professional credit transaction entered into on or after January 1, 1984, the summons must:

- Be in the form prescribed by [Va. Code § 8.01-512.3](#)
- Contain both the “Total Balance Due” and the social security number of the judgment debtor.
- Specifies that it is a garnishment against the judgment debtor’s wages, salary, or other compensation some other debt due or property of the judgment debtor.
- Be directed to only one garnishee for the garnishment of only one judgment debtor; however, courts may accept a single suggestion for summons, district court form DC-450, for co-debtors where:
  - The judgment is against both individuals named, and thus a single case number, and
  - The suggestion for summons is for a non-wage garnishment, bank account or other potentially jointly held property.
- If the judgment is based on a claim other than a business, trade or professional credit transaction entered into on or after January 1, 1984, the summons must contain the same information described above except that the summons may be issued without the social security number of the judgment debtor if the judgment creditor represents that they have made a diligent good faith effort to secure the judgment debtor’s social security number and has been unable to do so. This information can be found on the district court form DC-450: [Suggestion for Summons in Garnishment](#)
- The clerk then provides enough copies for service of the summons with forms attached to each copy as described above plus the pre-addressed stamped envelope which contains a copy of the summons with the district court form DC-454: [Request for Hearing - Garnishment Exemption Claim](#) and the district court form DC-455: [Garnishee Information Sheet](#) attached.
- The summons and attached forms shall be served on the garnishee and shall be served on the judgment debtor promptly after service on the garnishee. After serving the garnishee, a copy of these papers is mailed to the judgment debtor in the pre-addressed stamped envelope that the judgment creditor provided to the clerk. If the person upon whom there is a suggestion is a corporation, the summons



shall be served on an officer, an employee designated by the corporation other than an officer, or if there is no designated employee or if the designated employee cannot be found, upon a managing employee. If the creditor files a certificate that they used due diligence and an officer, designated employee or managing employee cannot be found or the designated or managing employee is the debtor, it may be served on the registered agent or upon the clerk of the [State Corporation Commission](#). The designated employee should be listed with the State Corporation Commission if the corporation has designated such an individual. A “managing employee” is an employee who has control of operations and supervision of employees at the location where process is served [Va. Code § 8.01-513](#).

The executed summons is returned to the general district court clerk’s office:

- If the service of the summons was not made on the judgment debtor, the mailing shall constitute service of process on the judgment debtor.
- The employer or other garnishee garnishes the judgment debtor’s wages and subsequently files an answer, usually by tendering the garnished funds, in the clerk’s office on or before the return date. The district court form DC-456: [Garnishee’s Answer](#) may be used by the garnishee in answering the garnishment summons.
  - Unless the debtor is employed by the federal government, checks received from the garnishee should be made payable to the judgment creditor. When garnishment funds are received and the check(s) are not payable to the judgment creditor, the clerk’s office should return the checks to the garnishee communicating the checks should be made payable to the judgment creditor.
  - When the debtor is employed by the federal government the checks may be payable to the court. Please see the Financial [Accounting System, Federal Garnishment Procedures](#) for proper directions.
- If the garnishment summons is served on a garnishee-employer and
- the summons does not comply with the issuance requirements of [Va. Code § 8.01-511](#), or
- The summons is for the enforcement of a judgment for which the social security number was omitted pursuant to [Va. Code § 8.01-511](#), and the garnishee-employer’s records do not have an employee whose name and current address match the same on the garnishment summons, such garnishee-employer may file an answer to that effect and have no liability on such summons, which shall be void upon transmission of such answer:
  - If a garnishment summons is served on a financial institution relating to a joint account, the financial institution may file an answer to that effect pursuant to [Va. Code § 6.2-606](#) and send a copy by first class mail to the judgment creditor or his attorney [Va. Code § 63.2-1931](#). If the judgment



creditor wishes to pursue the claim against such an account, the judgment creditor shall provide the clerk with a copy of the district court form DC-451: [Garnishment Summons](#) and its attachments for each party to be served. The address of the parties on the account as shown by the financial institution's records may be used.

- o The clerk shall prepare a district court form DC-430: Summons for Hearing for return on the same date as the garnishment summons with enough copies for service on the financial institution, the other parties having an interest in the account, and the judgment debtor. Service on other parties with an interest in the account should be made at the address shown in the financial institution's records, but service on the financial institution and judgment debtor may be by certified or registered mail [Va. Code § 6.2-606](#). In the description of the matter on the summons, check "The attached assertion" and add: "Notice: Attached is a copy of the documents served on a financial institution to cause it to withhold money from an account in which you may have an interest. If you wish to protect your interests, you or your attorney should take appropriate legal action promptly."
- o The financial institution is required to hold the amount garnished in such account only for twenty-one days from the filing of the answer unless served by the 21st day with a copy of the district court form DC-430: Summons for Hearing in which case the funds are held pending the outcome of the case. If not timely served, the financial institution may treat the garnishment summons as having terminated insofar as the joint or trust account is concerned.

If the judgment debtor executes and returns the district court form DC-454: [Request for Hearing - Garnishment Exemption Claim](#), the clerk must:

- Advance the garnishment on the docket, and
- Schedule a hearing on the claim within seven business days from receiving the request, pursuant to [Va. Code § 8.01-512.5](#), and
- Notify all parties of the date, time, and place of the hearing plus the exemption being claimed. District court form DC-512: [Notice of Hearing](#) may be used for such purpose.
- Only if the garnishment summons is modified or dismissed is a copy of the court's order required to be provided to the parties by the clerk.
- A homestead exemption claim may be filed by the judgment debtor prior to or upon the return date of the garnishment summons and shall be considered by the court [Va. Code § 34-17](#).
- An exemption may be filed by a parent who supports a dependent child or children residing with them to hold exempt from garnishment an additional amount for the

support of the child or children as follows: \$34 per week for one child, \$52 per week for two children, and \$66 per week for three or more children. This additional exemption amount shall not be available to a parent whose household gross income, including any support payments received for the children, exceeds \$1,750 per month. In order to claim this exemption, the parent must file the district court form DC-454: [Request for Hearing - Garnishment Exemption Claim](#), the district court form DC-449: [Affidavit Concerning Dependent Children and Household Income](#), and submit two items of proof showing that the debtor is entitled to the exemption. The clerk must advance the garnishment on the docket and schedule a hearing on the claim within seven business days of receiving the request [Va. Code § 8.01-512.4](#) and [Va. Code § 34-4.2](#).

- At the garnishment hearing, the judge orders disposition of the money. In most cases, the funds go by default order of payment to the judgment creditor.
- If there is more than one garnishment summons before the court, priority is determined by the date and time that the underlying writ of fieri facias was received by the sheriff; however, judicial or administrative income deduction orders for support will take priority pursuant to [Va. Code § 20-79.3](#) over any other liens created by state law, including garnishments, on an employee's income in the employer's hands.
- A homestead exemption claim may be filed by the judgment debtor prior to or upon the return date of the garnishment summons and shall be considered by the court [Va. Code § 34-17](#).
- If the garnishment funds have not yet been received and the judge determines that the funds are owed based on the garnishee's answer, the clerk will issue a district court form DC-453: Garnishment Disposition. If the garnishee failed to pay in response to an Order of Payment contained in a district court form DC-453: Garnishment Disposition, then the judge may enter a judgment against the garnishee.
- If the garnishee has not answered, the district court form DC-481: Show Cause Summons (Civil) may be issued to force the garnishee to respond by requiring his personal appearance in court.
- Sheriff's fee applies if requested by the judgment creditor, preferably in writing, however, no fee is assessed if ordered by the court.
- Enter in GCMS as a subsequent action of the Garnishment Summons from the Civil Case Entry screen.
- Issue district court form DC-481: Show Cause Summons (Civil) listing the garnishee as the Respondent.
- Continue original garnishment to same date as the show cause hearing.
- On return date, update the Show Cause with disposition using regular civil disposition codes and finalize the Garnishment Summons in GCMS.

- If the garnishee does not pay judgment, the judgment creditor may request a district court form DC-465: Abstract of Judgment from this action and proceed with other collection enforcement attempts.

If the judgment is not yet satisfied, the judgment creditor requests re-execution, and the procedure is repeated.

The judgment creditor files a notice of satisfaction of the court order with the court or the judgment debtor may request that the judgment creditor file a notice. Upon certification by the judgment creditor that its claim has been satisfied or that it desires its action against the garnishee be dismissed for any other reason, the court or clerk shall, by written order, which may be served by the sheriff, notify the garnishee to cease withholding assets of the judgment debtor, and to treat any funds previously withheld as if the original garnishment action had not been filed. The court in which the garnishment action was filed shall then dismiss the action on or before the return date.

The garnishment process may be stopped by the judgment debtor paying off the debt directly to the judgment creditor who files a district court form DC-453: Garnishment Disposition with the court. In some instances, the judgment debtor will perfect the appeal after the garnishment summons has been issued.

If the garnishment has been served, the judgment creditor should file a district court form DC-453: Garnishment Disposition asking for release of the garnishment. If not done by the judgment creditor, then a district court form DC-512: [Notice of Hearing](#) should be issued to be served on the judgment creditor, judgment debtor, and garnishee, with the reason being “why the garnishment summons should not be dismissed due to perfection of appeal.” The disposition should be noted either in the disposition part of district court form DC-451: [Garnishment Summons](#) or by order as appropriate.

There is no refund of processing fees paid by the judgment creditor.

### **Garnishment (Filed Where Judgment Debtor Resides)**

The following procedures are recommended when the plaintiff/creditor is filing an abstract from another district court to issue a garnishment where the judgment debtor resides.

Step:	Description:
1.	<p>Plaintiff/creditor files CC-1464: <a href="#">Abstract of Judgment</a>, or district court form DC-465: Abstract of Judgment.</p> <p>There are no fees associated with this filing, however if the plaintiff/creditor is asking for additional execution off of this abstract appropriate fees for those executions will apply.</p>

Step:	Description:
	<p>Assign a new case number in the Civil division of case management. Any additional executions will be entered as subsequent actions to the new case number. Close case with <b>O</b> in the <b>HEARING RESULT</b> field and <b>O</b> in the <b>CASE DISPOSITION</b> field. Enter the original date of judgment in the <b>REMARKS</b> field.</p> <p>Case type will be <b>AJ</b>.</p> <p>Filing date and hearing date are the same date.</p>
2.	Upon satisfaction, the creditor must file satisfaction of judgment in both courts.

### Notice of Lien on Financial Institutions

Any judgment creditor serving a notice of lien on a financial institution shall, within five business days of such service, mail to the judgment debtor at their last known address a copy of the notice of lien along with a District Court Form DC-454: [Request for Hearing- Garnishment/Lien Exemption Claim](#). District Court Form DC-467: Writ of Fieri facias, may be used as a Notice of Lien. The judgment creditor or attorney for the judgment creditor shall file a certification with the court affirming that they have mailed the judgment debtor these notices. In the event that the judgment creditor fails to comply, the judgement creditor shall be liable to the judgment debtor for no more than \$100 in damages, unless they prove by a preponderance of the evidence that the failure was not willful [Va. Code § 8.01-502.1](#).

If a debtor requests an exemption hearing on the notice of lien, the court will enter as a subsequent action to the original judgment using case type **OT**. Once the court has held the hearing, disposition may be entered on district court form DC-480: Case Disposition. A certified copy of the DC-480 should be provided to the defendant and the financial institution(s).

### Abstract of Judgment

Another alternative open to the plaintiff who has received a judgment in their favor in general district court, which has not yet been paid, is to request that a district court form DC-465: Abstract of Judgment be issued to them. The plaintiff then docket the abstract against the defendant in the clerk's office of the circuit court in a jurisdiction in which the judgment debtor owns land. This creates a lien against any real property that the person owns in that jurisdiction. Satisfaction of the judgment against real estate is accomplished by plaintiff's filing of a separate suit in circuit court through the circuit court clerk's office.

If the plaintiff requests an exemplified abstract, district court form DC-619: Exemplification of Record and district court form DC-465: Abstract of Judgment should be provided; both should have original signatures.

In civil suits arising out of motor vehicle accidents, unsatisfied judgments are, if requested, abstracted to the [Department of Motor Vehicles](#) on a separate abstract of judgment FR-6. The clerk can obtain this form from the Department of Motor Vehicles.

### **Interrogatories** [Va. Code § 8.01-506](#)

Interrogatories are questions propounded by one party in a lawsuit to another party or, if a corporation, to certain officers or employees who shall be required to answer them. In most district courts, interrogatories are used primarily as a post-trial discovery procedure in civil cases. Interrogatories can be used to determine the income or debts owed to a defendant subject to execution of a civil judgment in order to determine what further action can be taken to enforce the judgment.

**Note:** The interrogatories may be conducted before the court that issued the underlying writ of fieri facias or a commissioner in chancery of such jurisdiction, or before the same type of court or a commissioner in chancery of a contiguous jurisdiction. However, on request of the judgment creditor the interrogatories may be conducted before the same type of court or commissioner in chancery either where the judgment debtor resides or in a contiguous jurisdiction to the place where the judgment debtor resides. See [Va. Code § 8.01-506](#). Other than when the summons is to be issued where the judgment debtor resides or contiguous thereto, if the judgment creditor, in completing the district court form DC-440: [Summons to Answer Interrogatories](#) has the interrogatories set to be heard in one of these different jurisdictions from the one where judgment was entered, the clerk mails the summons to the appropriate sheriff. The clerk of the court hearing an interrogatory from a judgment in another court assigns the interrogatory a new case number, and after the hearing, returns the original interrogatory to the judgment court and retains a copy in the court date disposed file. If the judgment creditor requests that the debtor appear before a court in the place where the debtor resides or contiguous thereto, the case may be filed or docketed in that court. An abstract of judgment must be filed with the court. A summons for interrogatories will issue from that court once appropriate fees are paid. Any subsequent executions must issue from that court. Notices of satisfaction must be filed in both courts.

The procedures for conducting these interrogatory proceedings are:

- The judgment creditor prepares the district court form DC-440: [Summons to Answer Interrogatories](#) as instructed in the District Court Forms Manual together with a certificate that they have not used this interrogatory process against the judgment debtor within the last six months. The six-month wait may be waived by the judge on motion of the judgment creditor for good cause shown. The issuance of a summons that is not served shall not constitute the act of proceeding against an execution debtor for the purposes of making the certificate required.

- The judgment creditor pays the same civil and service fees required for warrants in debt. There are no additional sheriff's fees collected for the writ of fieri facias.
- The judgment creditor may also request the issuance of a district court form DC-336: [Subpoena Duces tecum](#). Such a subpoena would be requested and issued by the same procedures used when a subpoena duces tecum is requested prior to trial. See "Pre-Trial Procedures - Subpoenas, Witness Summoning" above except that:
  - It may be used only to obtain a book of accounts or other writings containing material evidence; and
  - It may be issued by a judge, clerk or commissioner in chancery and require both the production of evidence and appearance of the custodian before the judge or the commissioner in chancery.
- The clerk's office completes the summons portion of district court form DC-440: [Summons to Answer Interrogatories](#) setting forth time and place of hearing, who is to appear, and what records are to be produced. The writ of fieri facias portion of the form is also prepared together with a district court form DC-407: [Notice to Debtor - How to Claim Exemptions/Request for Hearing - Exemption Claim](#) if a writ of fieri facias is not already in effect.
- The clerk's office issues the district court form DC-440: [Summons to Answer Interrogatories](#), which is served on the judgment debtor or corporate officer or employee as respondent.
- Prior to the hearing, on motion of the judgment debtor/respondent and for cause shown, the court from which the writ of fieri facias issued shall, pursuant to [Va. Code § 8.01-506](#), transfer the debtor interrogatory proceeding to a forum more convenient to the judgment debtor. See above, for procedure for handling requests for exemption hearings.
- At the hearing, the judge or commissioner conducting the examination will permit the examination of the records by the judgment creditor and require the respondent to answer the questions, oral or written, asked by the judgment creditor.
- The commissioner shall, if requested by the parties, file a report with the court together with the interrogatories, answers, and property produced by the hearing.
- If the judgment debtor respondent fails to appear, answers evasively or refuses to deliver property, the judge or commissioner in chancery may have the respondent taken into custody by use of district court form DC-483: Capias: Attachment of the Body (Civil), or DC-361: Capias if personal service was held on the district court form DC-440: [Summons to Answer Interrogatories](#), or proceed on a district court form DC-481: Show Cause Summons (Civil) if there was no personal service. If the respondent is taken into custody on a district court form DC-361: Capias, [Va. Code § 8.01-508](#) requires that if the respondent is not brought promptly before the court or the commissioner in chancery to whom the capias is returnable, they shall be entitled to

bail pursuant to [Va. Code § 19.2-120](#). If the respondent appeals, they shall be entitled to bail pursuant to [Va. Code § 19.2 120](#).

### Interpleader and Postponement of Sale

On occasion, not only does the judgment debtor have an interest in property that has been levied upon through the execution of judgment, but a third party may also have an interest in the property. Personal property owned by a third party but in the possession of a judgment debtor may also be levied upon. In such situations, the third party may wish to protect their interests in the property through a process called interpleader.

A third party to a suit may file a claim to the property to discharge it from the lien by preparing a summons in interpleader. The property in question must not be greater in value than \$50,000 and the applicant must claim an interest in the property such that there is sufficient cause to discharge the property from the lien.

The procedures for processing an interpleader and postponement of sale are as follows:

- Applicant prepares the district court form DC-432: [Affidavit for Summons in Interpleader](#) as per the instructions in the District Court Forms Manual.
- Upon receipt of the affidavit, the clerk's office will:
  - Review the affidavit for completeness and assign a return date.
  - Prepare the Summons portion of the district court form DC-433: Summons in Interpleader and Order for Postponement of Sale.
  - Verify the date of sale or hearing noted on the affidavit.
  - Determine whether the return date on the affidavit and on the summons is before or after the sale date or the return date of any process that would subject the property to a final disposition:
    1. If the sale date is after the return date, then the Postponement of Sale portion of district court form DC-433: Summons in Interpleader and Order for Postponement of Sale is not completed.
    2. If the sale date is before the return date, then complete the Postponement of Sale portion of district court form DC-433: Summons in Interpleader and Order for Postponement of Sale to postpone sale of the property until after the hearing on the interpleader. Note: This process is similar to, but not the same as, pre-trial interpleader under [Va. Code § 8.01-364](#). See discussion of "Interpleader."
  - Forward the affidavit and summons for service.



- The hearing is held on the return date. The judge enters an order to determine whether or not the lien will remain on the property and what the rights of the interested parties are in the property. An appeal may be noted and processed in the same manner as in suits in debt pursuant to [Va. Code § 16.1-106](#) and [Va. Code § 16.1-122](#).

### Interpleader of Real Estate Escrows

If a licensed real estate broker or an agent of the licensee is holding escrow funds for the owner of real property and such property is foreclosed upon by a lender, the licensee or an agent of the licensee shall have the right to file an interpleader action in the general district court [Va. Code § 54.1-2108.1](#).

The procedures for processing an interpleader are as follows:

- Applicant prepares the district court form DC-432: [Affidavit for Summons in Interpleader](#) and district court form DC-428: [Warrant In Debt – Interpleader](#) as per the instructions in the District Court Forms Manual.
- Upon receipt of the affidavit, the clerk's office will:
  - Review the affidavit for completeness and assign a return date.
  - Prepare the "Summons" portion of the district court form DC-428: [Warrant In Debt – Interpleader](#).
  - Forward the affidavit and summons for service.
- The hearing is held; the judge enters an order to determine to whom the escrow funds belong. An appeal may be noted and processed in the same manner as in suits in debt pursuant to [Va. Code § 16.1-106](#) and [Va. Code § 16.1-122](#).

### Suits in Detinue

A "suit in detinue" is a civil suit in which a plaintiff seeks to recover specific personal property, or its value, that the defendant possesses and is unlawfully withholding from the plaintiff. There are two variations of the suit in detinue procedures. In the first instance, called a suit in detinue, the plaintiff allows the property to remain in the defendant's hands. In the second instance, a suit in detinue with pre-trial process of seizure, the plaintiff files an affidavit to have an order issued and the property seized and returned to them prior to court.

Many of the procedures for suits in detinue are the same as the procedures for suits in debt reviewed previously. Thus, unless a different procedure is described below, reference should be made to the appropriate sub-section of the procedures in "Suits in Debt."



## Suit in Detinue Without Pre-Trial Seizure

### *Case Initiation*

Procedures for initiating a suit in detinue without seizure are as follows:

- The plaintiff, their attorney, or plaintiff's regular and bona fide employee completes a district court form DC-414: [Warrant in Detinue](#), or a motion for judgment, [Va. Code § 8.01-114](#). The clerk's office verifies that the form has been prepared properly and that all necessary information is present.
- The clerk's office collects filing fees.
- The clerk's office distributes copies of the warrant as noted, original and first copy to the law officers for service, other copies distributed as per local practice.

Service of process and pre-trial procedures for suits in detinue are the same as for suits in debt.

### *Case Hearing, Judgment, Post-Trial Procedures*

- If a request for hearing on an exemption claim is filed, the court must dispose of the claim prior to the entry of judgment.
- The final judgment of the court pursuant to [Va. Code § 8.01-121](#) shall dispose of the property or its proceeds according to the rights of the parties except as noted below:
  - **Secured transaction:** When the judgment is in favor of the plaintiff under a contract made to secure payment, the defendant may, if the judge permits them to do so within thirty days from the date of judgment, elect either to immediately return the disputed property to the plaintiff or to pay them the value determined in the court order. If the defendant fails to make a timely election when so permitted by the judge or permission to make an election is granted to the plaintiff and not to the defendant, then the plaintiff determines whether they want the property or its value. If the defendant then fails to satisfy the judgment election of the plaintiff, the plaintiff may be forced to obtain execution of the judgment through the court.
  - **Animals:** When animals are the items in dispute, the court may order the return to the prevailing plaintiff without regard to any alternative method of recovery.

Appeals and post-trial proceedings for suits in detinue are the same as for suits in debt.

**Note:** For details and step-by-step instructions for handling appeals, see appendix on Appeals.

### ***Executions***

Procedures for requesting and obtaining execution of the court order include:

- Plaintiff requests that the judge or clerk prepare a district court form DC-468: Writs of Possession and Fieri facias in Detinue.
- The judge or clerk prepares the district court form DC-468: Writs of Possession and Fieri facias in Detinue, alternate value of the property listed is the unpaid purchase price.
- The clerk's office records and issues the writ to the sheriff for service. See [Va. Code § 8.01-293](#).
- The writ is served on the defendant. See [Va. Code § 8.01-293](#).
- The Sheriff seizes the property named in the suit and
- The executed writ is returned by the sheriff to the general district court clerk's office.
- The seized property is returned by the sheriff to the plaintiff.

If the defendant has disposed of the property, the plaintiff may request execution by garnishment or lien; the procedures are then the same as for execution of garnishment summons in suits in debt. The amount to be garnished is the alternate value set forth in the district court form DC-414: [Warrant in Detinue](#). The alternate value of the goods is the unpaid purchase price.

In some instances, the judgment debtor will perfect their appeal after the issuance of the district court form DC-468: Writs of Possession and Fieri facias in Detinue. Upon perfecting the appeal, the clerk promptly completes a district court form DC-323: Recall of Process with a notation that the defendant perfected their appeal and transmits it to the sheriff. In such a case, the sheriff returns the writ, discontinues the sale, and releases the levied or seized property to the prior possessor.

### **Suit in Detinue with Pre-Trial Seizure**

The procedures for pre-trial seizure in detinue actions are similar to procedures used in attachment suits. Like attachments, many procedures in pre-trial detinue seizure suits are the same as "Suits in Debt". However, the following procedures apply specifically to pre-trial detinue seizure actions:

#### ***Case Initiation***

Plaintiff prepares a district court form DC-415: [Detinue Seizure Petition](#) and pays civil fees to the clerk or magistrate. A petition in detinue for pretrial seizure pursuant to this article

may be filed either to commence the detinue proceeding or may be filed during the pendency of a detinue proceeding which commenced on a warrant or motion for judgment and no additional civil fees are collected except for any sheriff service fees. If a petition is filed, it shall:

- Describe the kind, quality and estimated fair market value of the specific personal property as to which plaintiff seeks possession.
- Describe the basis of the plaintiff's claim of entitlement to recover the property, with such certainty as will give the adverse party reasonable notice of the true nature of the claim and, if based on a contract to secure the payment of money, the amount due on such contract, and
- Allege one or more of the grounds mentioned in [Va. Code § 8.01-534](#) and set forth specific facts in support of such allegation [Va. Code § 8.01-114](#).

The Plaintiff also tenders a district court form DC-447: [Plaintiff's Bond for Levy or Seizure](#) with every petition. The minimum bond amount is twice the fair market value of property to be seized regardless of the type of bond posted, [Va. Code § 8.01-115](#). If surety bonds are tendered, the judge or magistrate reviewing the petition must approve the surety. If a property bond is tendered, the bond amount must not exceed the net equity in the property. The plaintiff should be told that the sheriff would not seize property if the sheriff believes that the property valuation is too low and, therefore, the bond amount is inadequate.

The judge or magistrate, not the clerk, reviews the petition and bond. Review is restricted to the contents of the petition and bond. The summons may not issue until the judge or magistrate finds:

- The petition conforms to the statutory requirements [Va. Code § 8.01-114 \(A\)](#)
- Reasonable cause to believe that the grounds for pre-trial seizure described in the petition may exist, and
- Proper bond has been posted, and fees and costs have been paid [Va. Code § 8.01-114 \(B\)](#).
- If these requirements are met, the judge or magistrate, not the clerk, signs and issues a district court form DC-416: Detinue Seizure Order with a copy of the petition and the bond and the district court form DC-407: [Notice to Debtor - How to Claim Exemptions/Request for Hearing - Exemption Claim](#) attached to each copy of the order, and gives the process to the judgment creditor for service. An additional copy is forwarded to the clerk's office if issued by a magistrate.

***Service of Process and Pre-trial Procedures. See also Va. Code § 8.01-293***

- The order is served on the defendant or other responsible person where the seizure is made, the sheriff takes possession of the property and it is turned over to the plaintiff, who keeps it pending trial, and the executed summons is returned to the clerk's office.
- If the defendant wants the property returned to them, defendant posts a counter bond, district court form DC-448: [Defendant's Bond for Levy or Seizure](#) with the sheriff for twice the value of the property seized.
- See "Levy on Property in the Hands of the Judgment Debtor" in this chapter, for procedure for handling request for exemption hearings.
- The clerk's office assigns a case number, indexes the case, and prepares a docket following the same procedures as for suits in debt.

### ***Case Hearing***

Pursuant to [Va. Code § 8.01-119](#) the court must hold a hearing to review the issuance of the order:

- If the order was issued ex parte, no notice to defendant prior to issuance of the order, within thirty days from issuance of the order.
- If application for an order was made with notice to defendant, then promptly upon application.
- If combined with a hearing on exemption claims, then within ten business days from filing of the request for hearing on exemption claims.

### ***Post-trial Procedures***

Execution of a judgment in favor of the plaintiff is as follows:

- The court order is sent to the sheriff.
- The plaintiff posts a bond if they have not already done so.
- The sheriff takes possession of the property.
- The clerk's office voids the defendant's bond if one was posted.

## **Unlawful Detainer**

This type of suit arises when a defendant unlawfully detains a house, land, or tenement that they are renting or leasing from the plaintiff. This suit may also arise regarding foreclosure of a single-family residential dwelling [Va. Code § 8.01-124](#), [Va. Code § 8.01-126](#). This could occur when a defendant refuses to pay rent or refuses to vacate the premises following termination of a rental or lease agreement. The plaintiff may sue for return of the premises, and may also ask for unpaid rent, for damages caused by the unlawful detention, and for attorney's fees. In

the event of a closure of the Federal Government or declaration of emergency by the Governor, certain protections are afforded to employees of the United States Government pursuant to [Va. Code § 44-209](#).

Many of the procedures in unlawful detainer suits are the same as the procedures for suits in debt. Thus, unless a different procedure is described below, reference should be made to the appropriate sub-section of the procedures in “Suits in Debt”.

When written notice is required, notice includes any representation of words, letters, symbols, numbers, or figures, whether (i) printed in or inscribed on a tangible medium or (ii) stored in an electronic form or other medium, retrievable in perceivable form, and regardless of whether an electronic signature is affixed.

### Case Initiation

An unlawful detainer suit is initiated by the plaintiff’s filing of a complaint with a magistrate or clerk:

- The plaintiff, their attorney, or a person described in [Va. Code § 55.1-1257](#) prepares a district court form DC-421: [Summons for Unlawful Detainer](#) (Civil Claim for Eviction) in accordance with the instructions in the District Court Forms Manual. However, if a person described in [Va. Code § 55.1-1257](#) is seeking possession of the premises, then venue lies only in a jurisdiction where the premises, in whole or in part, is situated. The clerk should ask if all required notices have been given [Va. Code § 55.1-1415](#) and [Va. Code § 55.1-1245](#). The clerk checks the index of tenant’s complaints for a district court form DC-429: [Tenant’s Assertion and Complaint](#):
  - If a complaint is on file, the file number from the district court form DC-429: [Tenant’s Assertion and Complaint](#) should be noted on the district court form DC-421: [Summons for Unlawful Detainer \(Civil Claim for Eviction\)](#) so that the judge will be alerted and can decide if the unlawful detainer action is prohibited by [Va. Code § 55.1-1258](#).
  - If there is no complaint on file, proceed to the next step. **Note:** Plaintiff may have a claim for cost of service of any notice under [Va. Code § 55.1-1415](#) or [Va. Code § 55.1-1245](#) or process by a sheriff, and private process server, which cost shall not exceed the amount authorized by [Va. Code § 55.1-1247](#), [Va. Code § 55.1-1251](#).
- The plaintiff pays filing fees and any sheriff service fees.
- The clerk, or magistrate, completes the summons portion of the district court form DC-421: [Summons for Unlawful Detainer \(Civil Claim for Eviction\)](#) in accordance with the instructions in the District Court Forms Manual.
- If the action is brought under the Virginia Residential Landlord Tenant Act, [Va. Code § 55.1 Chapter 12](#) et seq. the initial hearing is to be set as soon as practicable, but not more than twenty-one days after the date of filing. If the case cannot be heard within

twenty-one days from filing, it shall be heard as soon as possible, but in no event later than thirty days. The plaintiff may also request a later date for the initial hearing [Va. Code § 8.01-126](#).

- The clerk issues process to the sheriff for service. Such summons shall be served at least ten days before the return day thereof. See also [Va. Code § 8.01-293](#), [Va. Code § 8.01-126](#).
- If the action is filed by an owner of a residential single family dwelling unit and the court finds evidence that (i) no rental agreement exists or has ever existed between the owner and the occupant; or (ii) the occupant occupies such dwelling unit without permission of such owner; and (iii) the owner has given such occupant a written notice to vacate such dwelling unit at least 72 hours prior to the date of filing, an emergency hearing is to be set as soon as practicable, but not more than 14 days after the date of filing. If the case cannot be heard within 14 days from filing, it shall be heard as soon as possible, but in no event later than thirty days. [Va. Code § 8.01-126](#).
- The clerk's office may attach to the Summons of Unlawful Detainer served upon the defendant, at the direction of the chief judge, the plain English instructions for interpretation of the Summons for Unlawful Detainer form.
- A tenant may designate a third party to receive a duplicate copy of a summons in an unlawful detainer action and any other written notices from the landlord. This does not grant standing to any third party to challenge actions of the landlord. The failure of the landlord to give notice to a third party does not affect the validity of any judgment entered against the tenant [Va. Code § 55.1-1209](#).

## Trial Procedures

The right to remove a matter from the general district court to the circuit court has been eliminated.

The plaintiff must produce proof of service of pay or quit notice to obtain judgment for actions pursuant to [Va. Code § 55.1-1415](#), [Va. Code § 55.1-1245](#).

A nonresident property owner of four or more commercial or residential rental units in a city or county must have filed in the circuit court clerk's office the designation of a resident agent for service of process. Such a property owner cannot maintain an action in Virginia courts until such a designation has been filed. Whenever any nonresident property owner fails to appoint or maintain an agent, as required, or whenever their agent cannot with reasonable diligence be found, then the [Secretary of the Commonwealth](#) may be served as an agent of the nonresident property owner with any process, notice, order or demand. Service by the Secretary shall be by registered or certified mail to the property owner at their address as shown on the official tax records maintained by the locality where the property is located.

The plaintiff may seek judgment as to monetary claims on an affidavit only, without having witnesses testify in court, [Va. Code § 8.01-28](#) and [Va. Code § 16.1-88](#). See Trial on Affidavit, Denial by Defendant in this chapter.

The tenant may pay or present to the court a redemption tender for payment of all rent due and owing as of the return date, including late charges, attorney fees, and court costs, at or before the first return date on an action for unlawful detainer.

If the tenant presents a redemption tender to the court at the return date, the court shall continue the action for unlawful detainer for 10 days following the return date for payment to the landlord of all rent due and owing as of the return date, including late charges, attorney fees, and court costs and dismissal of the action upon such payment.

Should the landlord not receive full payment of all rent due and owing as of the return date, including late charges, attorney fees, and court costs, within 10 days of the return date, the court shall, without further evidence, grant to the landlord judgment for all amounts due and immediate possession of the premises.

A redemption tender is defined by statute as “a written commitment to pay all rent due and owing as of the return date, including late charges, attorney fees, and court costs, by a local government or nonprofit entity within 10 days of said return date.”

In cases of unlawful detainer, a tenant, or any third party on behalf of the tenant, may pay the landlord or the landlord’s attorney or pay into the court all rent due and owing as of the court date as contracted for in the rental agreement, other charges and fees as contracted for the rental agreement, late charges contracted for in the rental agreement and as provided by law, reasonable attorney fees as contracted for in the rental agreement and as provided by law, and cost of the proceeding as provided by law at which time the unlawful detainer proceeding shall be dismissed, unless there are bases for the entry of an order of possession other than nonpayment of rent stated in the unlawful detainer action filed by the landlord.

If such payment has not been made as of the return date for the unlawful detainer, the tenant or any third party on behalf of the tenant, may pay to the landlord, the landlord's attorney, or the court all amounts claimed on the summons in unlawful detainer, including current rent, damages, late fees, costs of court, any civil recovery, attorney fees, and sheriff fees, including the sheriff fees for service of the writ of eviction if payment is made after issuance of the writ, no less than 48 hours before the date and time scheduled by the officer to whom the writ of eviction has been delivered to be executed.

Upon receipt of such payment, the landlord, or the landlord’s attorney or managing agent, shall promptly notify the officer to whom the writ of eviction has been delivered to be executed that the execution of the writ of eviction shall be canceled. If the landlord has actual knowledge that the tenant has made much payment and willfully fails to provide such notification, such act may be deemed to be a violation of [Va. Code § 55.1-1423](#). In addition,

the landlord shall transmit to the court a notice of satisfaction of any money judgment in accordance with [Va. Code § 8.01-454](#).

Upon receiving a written request from the tenant, the landlord, or the landlord's attorney or managing agent, shall provide to the tenant a written statement of all amounts owed by the tenant to exercise his right of redemption. Any payments made by the tenant shall be by cashier's check, certified check, or money order. A court shall not issue a writ of eviction on any judgment for possession that has expired or has been marked as satisfied [Va. Code § 55.1-1423](#) and [Va. Code § 55.1-1250](#).

If the defendant/tenant seeks a continuance or requests that the case be set on the contested docket, the court shall order, at the request of the plaintiff/landlord, that the tenant pay an amount equal to the rent due as of the initial court date into the court escrow account prior to granting the continuance or setting the case on a contested docket [Va. Code § 55.1-1242](#). The defendant/tenant must also be required to pay any rent that comes due prior to the next court date into the escrow account. If the court finds that the defendant is asserting a good faith defense, the court shall not require the rent to be paid into escrow. If rent escrow is required:

- The court grants the defendant/tenant a continuance of no more than a week to make full payment of the escrow.
- Once the rent escrow is received in the clerk's office, the case is set for an available court date.
- No rent required to be escrowed in an unlawful detainer action shall be disbursed within ten (10) days of the date of judgment unless otherwise agreed to by the parties.

If the defendant/tenant fails to pay the entire amount within the time period set by the court, the court shall, upon request of the plaintiff/landlord, enter judgment for the plaintiff and enter an order for possession of the premises.

In an unlawful detainer action seeking possession of residential real estate for default in rent, the defendant, to avoid losing possession of the real estate, may pay into the court all rent, rent arrearages, reasonable attorney's fees and late charges as provided by the written rental agreement [Va. Code § 55.1-1423](#). If the defendant seeks to use this procedure, the clerk holds these funds in an escrow account pending a court order for disbursement. The judge will determine:

- Any disputes in the amount that has been escrowed
- Whether this option was timely exercised, escrow deposit must be made on or before the first return date of the summons for unlawful detainer.



- Whether this option has been used more than once in any twelve-month period of continuous residency in the rental dwelling unit, not allowed more than once in any such twelve-month period.

Note: Damages for unlawful use and possession is composed of lost rents, including rent increases, breach of contract damages incurred by landlord, etc. It does not include physical damage or destruction to the premises, which is also called “waste.”

In addition, pursuant to [Va. Code § 55.1-1423](#), in a proceeding for unlawful detainer based on nonpayment of rent, the defendant may avoid losing possession of the real estate by paying all rent, rent arrearages, reasonable attorney fees and late charges directly to the plaintiff or her attorney on or before the return date. This option also cannot be used more than once in a twelve-month period of continuous residency.

No landlord may accept full payment of rent, as well as damages, money judgment, award of attorney fees, and court costs, and receive an order of possession from a court of competent jurisdiction pursuant to an unlawful detainer action and proceed with eviction under [Va. Code § 55.1-1245](#), unless there are bases for entry of an order of possession other than non-payment of rent stated in the unlawful detainer action filed by the landlord.

However, the landlord may accept partial payment of rent and other amounts owed by the tenant to the landlord and receive an order of possession from a court of competent jurisdiction and proceed with eviction for nonpayment for rent under [Va. Code § 55.1-1245](#), provided that the landlord has stated in a written notice to the tenant that any and all amounts owed to the landlord by the tenant including payment of rent, damages, money judgment, award of attorney fees and court costs, would be accepted with reservation and would not constitute a waiver of the landlord’s right to evict the tenant. Notice may be included in a written termination notice given by the landlord to the tenant in accordance with [Va. Code § 55.1-1245](#), and if so included, nothing should be construed by the court or otherwise as requiring such landlord to give the tenant subsequent written notice [Va. Code § 55.1-1250](#).

Judgment for the plaintiff awards the plaintiff possession of the premises, rent due, and damages rather than a lump sum dollar judgment as in suits in debt. The plaintiff may be given a simultaneous judgment for money due and for possession without credit for security deposit, which shall be credited to the tenant’s account when the tenant actually vacates the premises.

The court shall not enter an order of possession unless the plaintiff or plaintiff’s attorney or agent has presented a copy of a proper termination notice issued to the defendant and the court has entered the notice into evidence.

The plaintiff may include on the summons for unlawful detainer a request for all amounts due and owing as of the date of the hearing and the approximate amount the defendant

may owe as of the date of the hearing if the defendant makes no payments prior to the date of such hearing. Notwithstanding any rule of court or provision of law to the contrary, if such request is made on the summons for unlawful detainer, the court shall permit amendment of the amount requested on the summons for unlawful detainer filed in court in accordance with the evidence and the amounts contracted for in the rental agreement. If the plaintiff makes such a request and additional amounts become due and owing prior to the final disposition of a pending unlawful detainer, a plaintiff may amend the amount in an unlawful detainer to request all amounts due and owing as of the date of final disposition.

If, however, the plaintiff has not included on the summons for unlawful detainer a request for all amounts due and owing as of the date of the hearing, the court may permit the plaintiff to amend the amount requested on the summons for unlawful detainer upon finding that (i) the evidence accurately sets forth the amount due and owing to the plaintiff, (ii) the plaintiff provided the defendant with a separate written notice of additional amounts due and owing as of the date of the hearing and of the plaintiff's intent to amend the amount requested on the summons, and (iii) the defendant had the opportunity at court to object to any additional amounts claimed.

If the plaintiff requests all amounts due and owing as of the date of the hearing or if the court grants an amendment of the amounts requested, the plaintiff shall not subsequently file additional unlawful detainers or warrants in debt against the defendant for additional amounts if those amounts could have been included in the amended amount. Any such subsequent unlawful detainers or warrants in debt filed for amounts that were included in the amended amount shall be dismissed. Nothing in this section shall prevent the plaintiff from filing an unlawful detainer for a non-rent lease violation when an unlawful detainer is pending for nonpayment of rent or from filing a warrant in debt for an unrelated amount against the defendant.

When the tenant pays with a bad check, a landlord may seek award of civil recovery pursuant to [Va. Code § 8.01-27.2](#) as part of damages requested on an unlawful detainer action filed pursuant to [Va. Code § 8.01-126](#). The landlord must have given notice and may be included in the fourteen-day termination notice. In the case of a foreclosure sale of a single-family residential the written termination notice must be given at least three days prior to the effective date of the termination. The civil recovery may include an award of costs, attorney fees, and the lesser of \$250 or three times the amount of the bad check, or draft order.

Alternatively, plaintiff may receive a final judgment for possession of the property and continue the case for up to 120 days to establish final rent and damages. The plaintiff must provide notice to the defendant at least fifteen days prior to the continuance date advising the defendant of:

1. The continuance date
2. The amounts of final rent and damages, and

3. That the plaintiff is seeking judgment for these sums

A copy of this notice must be filed with the court [Va. Code § 8.01-128](#).

The court must award attorneys' fees to the plaintiff if the rental agreement provides for payment of attorney's fees in the event of breach of the agreement or noncompliance by the tenant unless the tenant proves by a preponderance of the evidence that the failure to pay rent or vacate the premises was reasonable.

If the court finds that the tenant has successfully raised a defense and enters judgment for the tenant, the court, in its discretion, may impose upon the landlord the reasonable costs of the tenant, including court costs, and reasonable attorney fees.

Plaintiff may also have a claim for the cost of service of any notice under [Va. Code § 55.1-1415](#) or [Va. Code § 55.1-1245](#) or process by a sheriff or private process server, which cost shall not exceed the amount authorized by [Va. Code § 55.1-1251](#).

If the defendant does not make an appearance in court, the plaintiff or the plaintiff's attorney or agent may include in the affidavit entered into evidence pursuant to subsection B a statement of the amount of outstanding rent, late charges, attorney fees, and any other charges or damages due as of the date of the hearing. Upon request of the plaintiff or the plaintiff's attorney or agent, if the court determines that (i) the affidavit accurately sets forth the amount due the plaintiff and (ii) the unlawful detainer summons served upon the defendant requests judgment for all amounts due as of the date of the hearing, the court shall permit amendment of the amount requested on the summons for unlawful detainer filed in court in accordance with the affidavit and shall enter a judgment for such amount due as of the date of the hearing in addition to entering an order of possession for the premises.

### **Eviction Diversion Program – Va. Code 55.1-1262**

Establishes the Eviction Diversion Program (EDP), consisting of specialized dockets within the existing structure of the general district courts. The purpose of the program is to reduce the number of evictions of low-income persons. Parties to an unlawful detainer action in participating jurisdictions will be directed to participate in the Program upon certain findings by the court.

The tenant must appear on the first docket call to request for referral into the program and be able to pay 25% of the full amount due on the Unlawful Detainer. The court can order the payment be made to the landlord or to the court. The tenant must provide sworn testimony that they are employed or can make the required payments and explain the reasons that they have been unable to make rental payments as contracted in the agreement.

The tenant will only qualify if they have not been late with their rent twice in the last six (6) months or three (3) times in the last twelve (12) months. The tenant must also have not exercised their right of redemption within the last six (6) months and have not participated in the Eviction Diversion Program in the last twelve (12) months. There are now some other statutes that overlay this process, and your judges should be aware of those bills.

The court will direct the tenant and landlord to participate in the program and enter a court-ordered payment plan. The case will be continued to allow for the full payments to be made as required by the plan. The payments must be made to the landlord using certified funds by the 5<sup>th</sup> day of the month. The tenant must also continue to make all monthly rent payments in a timely fashion during the program. If the tenant is successful in making all payments that are required, the unlawful detainer will be dismissed as satisfied.

If a tenant files a DC-4101: Eviction Diversion Program Request for Referral or other written request to be considered for the program, follow these steps:

Step:	Description:
1.	If the tenant meets the requirements and the parties are referred to the program, the judge will enter the payment plan on the DC-4102, EDP Order and Payment Plan.
2.	<p>The tenant must pay the required 25%.</p> <ul style="list-style-type: none"> <li>• If the judge requires the funds to be paid to the court and the funds are certified funds, the check may be issued the next day following the same procedures as all disbursements.</li> <li>• Receipt the monies into Account Code <b>509</b>- Escrow Account.</li> <li>• If the payment is made using a payment type that is not considered certified, i.e. personal check or credit card, the funds should be released to the landlord or their agent after 21 days.</li> </ul>
3.	<p>All parties should be given copies of the DC-4102, EDP Order and Payment Plan and:</p> <ul style="list-style-type: none"> <li>• Provide the landlord with the DC-4103: EDP Landlord's Notice of Nonpayment.</li> <li>• Provide the tenant with the DC-4104: EDP Affidavit of Tenant's Response to Landlord's Notice of Nonpayment</li> </ul>
4.	Continue the case to a date that is 2 weeks after the final payment is to be paid. Use continuance code <b>EDP</b> . This code should only be used at the first continuance.

Step:	Description:
5.	If the tenant makes all payments in accordance with the court-ordered payment plan, the judge shall dismiss the unlawful detainer as being satisfied. Finalize the case with a Hearing Result of “O” and a Case Disposition as “I”
6.	If the tenant fails to keep rent current or fails to make the required payments, the landlord will submit a DC-4103: EDP Landlord’s Notice of Nonpayment.
7.	Advance the Unlawful Detainer on the docket to eleven (11) days after the certified date for the notice to the tenant of nonpayment and set for hearing using the Hearing Type <b>CV</b> .
8.	If the clerk’s office does not receive a response from the tenant, the order of possession will be entered. If no future date is requested for final rent and damages, the case can be finalized.
9.	<p>If the tenant files an affidavit of response, send notice to the parties of an expedited hearing on the dispute of payment. At this hearing, the judge could:</p> <ul style="list-style-type: none"> <li>• Find that payment had been properly made and continue the payment plan or,</li> <li>• Enter possession and finalize the case if the landlord has not requested a hearing on final rent and damages pursuant to § 8.01-128(B), or</li> <li>• Continue the case for the hearing on final rent and damages.</li> </ul>

### **Forms**

DC-4101	Eviction Diversion Program Request for Referral
DC-4102	Eviction Diversion Program Order and Payment Plan
DC-4103	Eviction Diversion Program Landlord’s Notice of Nonpayment
DC-4104	Eviction Diversion Program Affidavit of Tenant’s Response
DC-4105	Notice to Landlords and Tenant Regarding Eviction Diversion Program

### **Post-Trial Procedures**

#### ***Appeal***

After an appeal has been noted in writing, the bond must be posted, and the writ tax paid within ten days of the judgment date.

In cases of unlawful detainer for a residential dwelling unit, notwithstanding the provisions of [Va. Code § 8.01-129](#), an appeal bond shall be posted by the defendant with payment into the general district court in the amount of outstanding rent, late charges, attorney fees, and any other charges or damages due, as contracted for in the rental agreement, and as amended on the unlawful detainer by the court. If such amount is not so paid, any such appeal shall not be perfected as a matter of law. Upon perfection of an appeal, the defendant shall pay the rental amount as contracted for in the rental agreement to the plaintiff on or before the fifth day of each month. If any such rental payment is not so paid, upon written motion of the plaintiff with a copy of such written motion mailed by regular mail to the tenant, the judge of the circuit court shall, without hearing, enter judgment for the amount of outstanding rent, late charges, attorney fees, and any other charges or damages due as of that date, subtracting any payments made by such tenant as reflected in the court accounts and on a written affidavit submitted by the plaintiff, plaintiff's managing agent, or plaintiff's attorney with a copy of such affidavit mailed by regular mail to the tenant, and an order of possession without further hearings or proceedings in such court [Va. Code § 16.1-107](#).

**Exception:** In cases of unlawful detainer against a former owner based upon a foreclosure against that owner, a person who has been determined to be indigent shall post an appeal bond within 30 days from the date of judgment. A determination of indigence does not exempt the owner from the appeal bond requirement. However, no indigent person shall be required to post an appeal bond to appeal any unlawful detainer action brought by a public housing authority.

The appeal bond is calculated pursuant to [Va. Code § 8.01-129](#), and includes:

- The district court judgment: principal, interest, district court costs, and attorney's fees [Va. Code § 16.1-107](#).
- The rent accruing during the appeal, based on expected length of time for appeal. The portion of the appeal bond covering rent for which judgment was granted and that may accrue during the appeal period may not exceed one year's rent.
- The damages from the unlawful use and possession of the premises accruing during the appeal, based on the expected length of time for appeal. The portion of the appeal bond covering damages for unlawful use and possession of the premises for which judgment was granted and that may accrue during the appeal period may not exceed three month's damages.

No appeal bond shall be required of a plaintiff in a civil case where the defendant has not asserted a counterclaim, the Commonwealth or when an appeal is proper to protect the estates of a decedent, an infant, a convict, or an insane person, or the interest of a county, city, town or transportation district created pursuant to [Va. Code § 16.1-296](#). In all civil cases, except trespass, ejectment or any action involving the recovering rents, no indigent person shall be required to post an appeal bond [Va. Code § 16.1-107](#).

In a case where a defendant with indemnity coverage through a liability insurance company appeals, the bond required shall not exceed the amount of the judgment that is covered by a policy of indemnity [Va. Code § 16.1-107](#).

### ***Execution***

If the judgment is in favor of the plaintiff and the defendant has not appealed, the plaintiff may request execution of the court order. For any money judgment marked as satisfied pursuant to this section, nothing shall satisfy an unexecuted order of possession entered pursuant to [Va. Code § 8.01-126](#) [Va. Code § 8.01-454](#).

The plaintiff requests execution to recover the premises, rent due, damages if any, court costs, and attorney fees. In any unlawful detainer case filed under [Va. Code § 8.01-126](#), if a judge grants the plaintiff a judgment for possession of the premises, upon request of the plaintiff, the judge shall further order that the writ of eviction issue immediately upon entry of judgment for possession. In such case, the clerk shall deliver the writ to the sheriff, who shall then, at least 72 hours prior to execution of such writ, serve notice of intent to execute the writ, including the date and time of eviction, as provided in [Va. Code § 8.01-470](#). In no case, however, shall the sheriff evict the defendant from the dwelling unit prior to the expiration of the defendant's 10-day appeal period.

An immediate writ of eviction shall not be issued when a tenant perfects an appeal.

To recover the premises, the plaintiff applies for a writ of eviction using the request portion of the district court form DC-469: [Request for Writ of Eviction in Unlawful Detainer Proceedings](#). See, the District Court Forms Manual for instructions on completing this form.

The clerk prepares the writ of eviction section of the district court form DC-469: [Request for Writ of Eviction in Unlawful Detainer Proceedings](#). See, the District Court Forms Manual for instructions on completing this form. The landlord must affirmatively state that the landlord has not accepted rent payments without reservation since the entry of the judgment.

A writ of eviction must be issued within 180 days from the judgment for possession and shall be made returnable within 30 days from the date of issuing the writ, and any executed writ shall be returned to the issuing clerk by the sheriff executing such writ. The clerk's office shall enter the date of execution in the case management system, in the field titled, Writ of Eviction Execution Date. When a plaintiff cancels a writ of eviction, such plaintiff may request other writs of eviction during such 180-day period. The writ should not be issued if the request is made more than 180 days after the judgment. The sheriff's fee for the execution of the writ is paid to the clerk at the time of filing of the district court form DC-469 request.



The sheriff executes the writ, and the defendant vacates the premises. The writ is effective not only against the tenant, but also against any of the tenant's guests and invitees and against trespassers. The writ should be executed within fifteen calendar days after receipt by the sheriff, or as soon as practicable, but no more than thirty days after the date the writ is issued.

Notwithstanding any other provision of law, a writ of eviction not executed within 30 days from the date of issuance shall be vacated as a matter of law without further order of the court that entered the order of possession, and no further action shall be taken by the clerk.

No writ shall issue, however, in cases under the Virginia Residential Landlord and Tenant Act if, following the entry of judgment for possession, the landlord has entered into a new written rental agreement with the tenant, as described in [Va. Code § 55.1-1250](#), [Va. Code § 8.01-470](#), [Va. Code § 8.01-471](#).

In some instances, the judgment debtor will perfect his appeal after the issuance of the district court form DC-469: [Request for Writ of Eviction in Unlawful Detainer Proceedings](#). Upon perfecting the appeal, the clerk promptly completes a district court form DC-323: Recall of Process, with a notation that the defendant perfected his appeal, and transmits it to the sheriff.

Expungement of Unlawful Detainer Pursuant [Va. Code § 8.01-130.1](#). See Chapter 10, Records Retention, Destruction and Expungements of this manual.

## Attachments

An "attachment" is a civil suit in which a plaintiff is suing to levy or seize specific property in which the defendant named has an interest, in order to satisfy a potential judgment in favor of the plaintiff.

The district courts have jurisdiction to try and decide attachment cases when the plaintiff's claim does not exceed \$50,000, exclusive of interest and attorney's fees [Va. Code § 16.1-77 \(2\)](#).

An attachment is used when there is reasonable cause to believe that statutory grounds for attachment may exist. These grounds are usually situations in which plaintiff believes that normal process of law will not be sufficient to recover debts owed to them by the defendant.

The plaintiff may use an attachment when they have one of the following claims if one of the statutory grounds for attachment is present, [Va. Code § 8.01-533](#):

- Claims to specific personal property.



- Claims to any debt, including rent, whether due and payable or not, but does not apply for claims to any debt not yet due and payable where the only ground for attachment is the fact that a defendant is a foreign corporation or a non-resident individual with an estate or debts owing to such defendant in Virginia.
- Claims for damages for breach of express or implied contract.
- Claims for damages for a wrong.
- Claims for a judgment for which no supersedeas or other appeal bond has been posted.

[Virginia Code § 8.01-534](#) sets forth the following statutory grounds for attachment:

- When the defendant is not a resident of this Commonwealth.
- When the defendant is removing themselves out of this Commonwealth with intent to change their domicile.
- When the defendant is removing the property out of this Commonwealth.
- When the defendant is converting their property into money with intent to hinder, delay or defraud their creditors.
- When the defendant has disposed of their estate with intent to hinder, delay or defraud creditors.
- When the defendant has absconded or has concealed themselves or their property.
- When the defendant has previously assessed unpaid fees and penalties due to the Commonwealth Va. Code § 46.2-613.4.
- The procedure for an attachment suit is the same as in the section Suits in Debt, except as follows.

### Case Initiation

Plaintiff prepares district court form DC-445: [Attachment Petition](#) including grounds of attachment as listed on the back of the petition.

The petition in the claim description must show [Va. Code § 8.01-537](#):

#### ***For recovery of personal property***

- Description of each item with enough detail that a reasonable person can identify such items. The description should include the kind of property and the quantity. If any additional sheet for such listing is used, petition should also state. See attached list.
- Total fair market value and items plus damages, if any, for such detention.

- Plaintiff's claimed property interest: owner, borrower, etc.
- The particulars of the plaintiff's claim to the property with enough detail to give the defendant(s) reasonable notice of the true nature of the claim.

***For recovery of debt or damage:***

- Enough details of the claim so that a reasonable person knows what is involved in the claim
- Amount sought to be recovered
- If based on a contract and if the claim is for a debt not then due and payable, at what time or times the debt will become due and payable

The petition, in the grounds of attachment, must show [Va. Code § 8.01-537](#):

- The grounds of attachment that are claimed. Multiple grounds must be claimed together (connected by "and"). Exception: grounds nos. 4 and 5 on the back of the petition, same as in [Va. Code § 8.01-534](#), may be connected to each other, but not to other grounds by "or" or "and."
- A list of specific facts attached to petition that support the grounds listed on the front of the petition.

In the statement of relief desired, the petition must show [Va. Code § 8.01-537](#):

- Whether "levy" only or "levy and take into possession (seize)" is desired.
- Whether specific items are to be levied upon or seized or whether any property of the principal defendant may be attached.

The statement portion of the petition must be completed as follows:

- If recovery of specific personal property is sought, the third and seventh lines are completed and, if applicable, the fourth, fifth and eighth lines are completed.

**Note:** In addition to plaintiff's name and address, plaintiff's telephone number or their attorney's name should be on the petition. The plaintiff, their agent or their attorney must sign the petition and the signature must be acknowledged:

- If recovery of debt or damages is sought, the first and seventh lines are completed and, if applicable, the second, fifth, sixth and eighth lines are completed.

Plaintiff also tenders district court form DC-447: [Plaintiff's Bond for Levy or Seizure](#) with every petition. The minimum bond amounts are:

If pre-trial “levy” only is requested,

- For a cash or surety bond, the bond shall be at least the estimated fair market value of the property to be levied.
- For a property bond, at least *twice* the estimated fair market value of the property to be attached.
- If “levy and take into possession (seize)” is requested, twice the fair market value of property to be attached.
- If surety bonds are tendered, the judge or magistrate reviewing the petition must approve the surety. If a property bond is tendered, the bond amount must not exceed the net equity in the property. The plaintiff should be told that the sheriff will not seize property if the sheriff believes that the property valuation is too low and, therefore, the bond amount is inadequate.

#### **Issuance of Attachment** [Va. Code § 8.01-540](#)

A judge or magistrate, not a clerk, shall make an ex parte review of the attachment petition and issue the DC-446: Attachment Summons when appropriate. An attachment shall issue only upon a determination that:

- There is reasonable cause to believe that grounds of attachment may exist, and
- The petition complies with [Va. Code § 8.01-534](#), [Va. Code § 8.01-537](#) and [Va. Code § 8.01-538](#).

If those findings are met, the reviewing judge or magistrate, not a clerk, signs and issues a summons with a copy of the petition and the bond and the district court form DC-407: [Notice to Debtor - How to Claim Exemptions/Request for Hearing - Exemption Claim](#). If the attachment is issued by a magistrate, it shall be returnable to the clerk's office of the jurisdiction where the petition is filed as directed by [Va. Code § 8.01-541](#), and the magistrate shall promptly send the petition and the bond, if any, to the clerk's office to which the attachment is returnable [Va. Code § 8.01-540](#).

The Request for Hearing - Exemption Claim, on the reverse of district court form DC-407: [Notice to Debtor - How to Claim Exemptions/Request for Hearing - Exemption Claim](#) is attached to each copy of the summons, and the process is given to the judgment creditor to transmit to the sheriff for service. The petition must be returnable not more than thirty days after issuance of the summons [Va. Code § 8.01-541](#).

The court costs must be paid within ten days from issuance of the summons if a magistrate issued the summons.

### Service of Process and Pre-Trial Procedures

The summons is served on the defendant or other responsible person when the levy or seizure is made, the sheriff takes possession of the property if the plaintiff so requested in the petition, and the executed summons is returned to the clerk's office [Va. Code § 8.01-293](#).

If the defendant is not otherwise served with process, then the following process is to be used:

- Claims not exceeding \$500, exclusive of interest and attorneys' fees
- The plaintiff completes the district court form DC-435: [Affidavit and Petition for Order of Publication](#).
- The clerk posts a copy of the district court form DC-446: Attachment Summons at the courthouse, on the local public government website, or on the website of the circuit court clerk and certifies the posting of the attachment summons on the back of the original copy of the district court form DC-435: [Affidavit and Petition for Order of Publication](#) in the case file.
- The clerk mails a copy of the district court form DC-446: Attachment Summons to the defendant at the defendant's last known address as stated in the district court form DC-435: [Affidavit and Petition for Order of Publication](#).

Fifteen days after posting and mailing the attachment summons, the court may try the case.

- Claims exceeding \$500.
- Use order of publication process described in the section, Suits in Debt

If the defendant wants the property released from the attachment and/or returned to them, the following steps apply:

- The defendant posts a counter bond district court form DC-448: [Defendant's Bond for Levy or Seizure](#) with the sheriff.
- The sheriff takes the bond and returns the property to the defendant.

See, Attachments – Issuance of Attachment above for procedure for handling request for exemption hearings.

The clerk's office assigns a file number, indexes the case, and prepares a docket following the same procedures as for suits in debt.

If an attachment summons is served on a financial institution and a joint account or trust account is attached, the financial institution may file an answer to that effect pursuant to [Va. Code § 6.2-606](#). If the plaintiff wishes to pursue the claim against such an account, the plaintiff shall request the clerk to issue a district court form DC-430: Summons for Hearing together with the district court form DC-446: Attachment Summons and its attachments, to be served on the financial institution and the other parties having an interest in the account as identified by the financial institution. The financial institution is required to hold the amount attached in such account for twenty-one days from the filing of the answer unless served by the 21st day with a copy of the district court form DC-430: Summons for Hearing in which case the funds are held pending the outcome of the case. If not timely served, the financial institution may treat the attachment summons as having terminated insofar as the joint or trust account is concerned.

### **Case Hearing**

The defendant may request an early hearing, which must be heard within ten business days from the filing of the request.

Judicial or administrative income deduction orders for support take priority pursuant to [Va. Code § 20-79.3](#) over any other liens created by state law on an employee's income in an employer's hands. The judgment normally should be entered on a district court form DC-480: Case Disposition.

### **Post-Trial Procedures**

Execution of an attachment judgment in favor of the plaintiff is as follows:

- The court order is sent to the sheriff.
- The plaintiff posts an attachment bond if they have not already done so.
- The sheriff takes possession of the property.
- The clerk's office voids the defendant's attachment bond if one was posted.

### **Distress for Rent**

This type of civil action arises when a defendant-tenant refuses or fails to make rent payments to the landlord of the premises, and the landlord wants to take pre-trial action to insure the payment of rent. The plaintiff, through this suit, is attempting to preserve this right to recover the rent by having the court "distrain" (levy or seize) enough of the defendant's property or debts to pay the rent due. The distress may be levied on any goods of the lessee, or their

assignee or undertenant, found on the leased premises or which may have been removed from the leased premises not more than thirty days prior.

The procedures for distress actions are similar to procedures used in attachment suits. Like attachments, many procedures in distress suits are the same as “Suits in Debt”. However, the following procedures apply specifically to distress.

### Case Initiation

Plaintiff prepares a district court form DC-423: [Distress Petition](#) including grounds of attachment as listed on the back of the petition.

- The petition in the “claim description” section must show:
  - Rent claimed.
  - The property which plaintiff seeks to distrain either by levy or by seizure.
  - The grounds of attachment that are claimed. Multiple grounds must be claimed together, connected by “and”. Exception: grounds 4 and 5 on the back of the petition form, same as in [Va. Code § 8.01-534](#), may be connected to each other, but not to other grounds by “or” or “and”, and
  - A list of specific facts attached to petition that support the grounds listed on the front of the petition.
- In the “statement of relief desired” section the petition must show:
  - Whether “levy” only or “levy and take into possession (seize)” is desired; and
  - Whether specific items are to be levied upon or seized or whether any property of the principal defendant may be attached. **Note:** In addition to plaintiff’s name and address, plaintiff’s telephone number or their attorney’s name should be on the petition. The plaintiff, their agent or their attorney sign the petition and the signature must be acknowledged.

Plaintiff also tenders district court form DC-447: [Plaintiff’s Bond for Levy or Seizure](#) with every petition. The minimum bond amounts are:

- If pretrial “levy” only is requested:
  - For a cash or surety bond, the bond shall be at least the estimated fair market value of the property to be levied.
  - For a property bond, at least twice the estimated fair market value of the property to be attached.
  - If “levy and take into possession (seize)” is requested, twice the fair market value of the property to be attached.

- If surety bonds are tendered, the judge or magistrate reviewing the petition must approve the surety. If a property bond is tendered, the bond amount must not exceed the net equity in the property. The plaintiff should be told that the sheriff will not seize property if the sheriff believes that the property valuation is too low and, therefore, the bond amount is inadequate.

The distress warrant shall not be issued unless the plaintiff pays the proper costs, taxes, and fees [Va. Code § 8.01-130.4](#). See also [Va. Code § 8.01-367](#). The Commonwealth shall not be required to give an indemnifying bond under the provisions of this section.

A judge or magistrate, not a clerk, shall make an ex parte review of the bond. Review is restricted to the contents of the petition and bond. A summons shall only be issued upon a determination that:

- There is reasonable cause to believe that grounds of attachment may exist, and
- The petition complies with statutory requirements.

If these findings are met, the judge or magistrate, not the clerk, signs and issues a district court form DC-424: Distress Warrant. A copy of the petition and the bond and the Request for Hearing - Exemption Claim, on the reverse of district court form DC-407: [Notice to Debtor - How to Claim Exemptions/Request for Hearing - Exemption Claim](#) is attached to each copy of the warrant. Then, the entire package is given to the judgment creditor for service. Plaintiff pays the levy fee directly to the sheriff. An additional copy is filed in the clerk's office if issued by a magistrate. The return date shall be no more than thirty days from the date of issuance.

### Service of Process and Pre-Trial Procedures

The summons is served on the defendant or other responsible person where the levy or seizure is made, the sheriff takes possession of the property if the plaintiff so requested in the petition, and the executed summons is returned to the clerk's office [Va. Code § 8.01-293](#).

If the defendant wants the property released from the distress warrant and/or returned to them, the following steps apply:

- The defendant posts a counter bond, district court form DC-448: [Defendant's Bond for Levy or Seizure](#) with the sheriff.
- The sheriff takes the bond and returns the property to the defendant.
- If the tenant-defendant whose property was subjected to a levy-type distress files an affidavit with the serving officer pursuant to [Va. Code § 8.01-130.7](#), stating that they are unable to give a forthcoming bond required by [Va. Code § 8.01-526](#).

Then the serving officer leaves the property in the possession of the tenant-defendant, at the risk of the defendant-tenant and returns the process to the court. Thereafter, upon ten days' notice to the tenant-defendant, the plaintiff-landlord may move for judgment and sale of the property so levied.

See Attachments – Issuance of Attachment above, for procedure for handling request for exemption hearings.

The clerk's office assigns a file number, indexes the case with case type "DS", and prepares a docket following the same procedures as for suits in debt.

### **Case Hearing**

The distress warrant shall contain a return date and be tried in the same manner as an action on a warrant as prescribed in [Va. Code § 16.1-79](#), except that the case shall be returnable not more than thirty days from its date of issuance. The trial or hearing of the issues, except as otherwise provided, shall be the same, as near as may be, as in actions in personam [Va. Code § 8.01-130.5](#).

A nonresident property owner of four or more rental units in a city or county must have filed in the circuit court clerk's office the designation of a resident agent for service of process. Such a property owner cannot maintain an action in Virginia courts until such a designation has been filed.

The judgment normally should be entered on a district court form DC-480: Case Disposition.

### **Post-Trial Procedures**

Execution of a judgment in favor of the plaintiff is as follows:

- The court order is sent to the sheriff.
- The plaintiff posts a bond if they have not already done so.
- The sheriff takes possession of the property.
- The clerk's office voids the defendant's bond if one was posted.

### **Execution**

For judgment in favor of the plaintiff, the defendant may choose to immediately pay off the debt if they are able to do so, or the plaintiff may be forced to sell the property seized or seize property and sell it.



When judgment of the court is in the plaintiff's favor, the plaintiff requests that the sheriff seize the items of property levied upon and sell them at public auction up to the point where the dollar amount on the warrant is satisfied. The remaining property, if any, is returned to the defendant.

## Small Claims Division

The Code of Virginia requires that all judicial districts have small claims divisions of their general district courts [Va. Code § 16.1-122.1](#) to [Va. Code § 16.1-122.7](#). These divisions have the jurisdiction, that is, the power to hear and decide civil actions, where the amount claimed does not exceed \$5,000, or recovery of personal property of up to \$5,000 in value. Actions to which the Commonwealth is a party under the Virginia Tort Claims Act or suits against any officer or employee of the Commonwealth for claims arising out of the performance of their official duties or responsibilities are not eligible for trial in a small claims court. Jurisdiction is concurrent with the general district court over such cases.

Actions are commenced by filing a small claims civil warrant, the district court form DC-402: [Warrant in Debt-Small Claims Division](#) or DC-404: [Warrant in Detinue - Small Claims Division](#). The district court form DC-402: Warrant in Debt is used for plaintiffs seeking money judgments. The district court form DC-404: [Warrant in Detinue - Small Claims Division](#) is used for plaintiffs who seek the recovery of personal property, or property used as collateral for a loan in default. The plaintiff must specify a dollar amount of and the basis for the claim. A filing fee is paid, along with any service fees, which are taxed as costs in the case. The plaintiff may receive the information pamphlet "Small Claims Court Procedures" from the clerk prior to filling out the warrant.

The clerk fills out the portion of the warrant which requires service of process on the defendant, and a copy of the warrant is served on the defendant by the method used in general district court [Va. Code § 16.1-122.3](#). The defendant may also be served with the information pamphlet about small claims court. Although it is not required, a copy of the warrant may be mailed by first class mail by the plaintiff to the defendant at least ten days before the date when the plaintiff and defendant are due to return to court in the same manner as for other civil process [Va. Code § 8.01-296 \(2\)\(b\)](#). The small claims forms contain a certificate of mailing for the plaintiff to use or the district court form DC-413: [Certificate of Mailing Posted Service](#) may be used, which is delivered to the clerk's office prior to trial or to the court on the return date.

The trial shall be conducted on the return date unless the trial date is changed by consent of all parties or by order of the court [Va. Code § 16.1-122.3 \(E\)](#). All objections to venue that apply in the general district court apply in the small claims court. A continuance shall be granted to either the plaintiff or the defendant only for good cause shown. Counterclaims may be filed by a defendant against a plaintiff, but they may not exceed \$5,000. The defendant may file an answer or grounds of defense, but no other pleadings are allowed.

A defendant in the small claims division may remove the case to the regular general district court docket at any point in the proceedings prior to judgment and may be represented by an attorney for that purpose. The defendant may complete the Removal to General District Court portion of the district court form DC-402: [Warrant in Debt - Small Claims Division](#) or district court form DC-404: [Warrant in Detinue - Small Claims Division](#) and give it to the clerk or judge. Such a request may also be made orally. The court notes the remark on the reverse of the warrant.

All cases are tried in an informal manner; however, the witness shall be sworn. Parties must represent themselves, except:

- A plaintiff or defendant that is a corporation or partnership may be represented by an owner, a general partner, an officer, or an employee who has all the rights of a party appearing pro se. An attorney may appear in this capacity only if the attorney is representing their own corporation or partnership.
- A plaintiff or defendant who in the judge's opinion cannot understand or participate in the proceedings may be represented by a friend or relative if that person is familiar with the facts of the case and is not an attorney.
- An attorney may appear for the defendant only for the purpose of removing the case to the regular general district court docket at any time before judgment Va. Code § 16.1-122.4.

The small claims court is required to “conduct the trial in an informal manner so as to do substantial justice between the parties.” The judge may admit evidence that is inadmissible under the formal rules of evidence [Va. Code § 16.1-122.5](#).

Judgment and collection procedures are the same as for general district courts. The judgment creditor or their attorney may enforce the collection of the judgment.

Appeals from the small claims court are taken in the same manner as other civil appeals, using the district court form DC-475: Notice of Appeal - Civil and other procedures applicable to appeals in civil cases.

## Miscellaneous Case Types

### Lien of Mechanic for Repairs [Va. Code § 43-33](#)

A civil suit referred to as a “lien of mechanic for repairs” occurs when an owner (plaintiff) tries to get their property back from a mechanic (defendant), who may be holding the property to ensure payment. The owner (plaintiff) may have their property returned before trial, provided they post bond in the amount claimed to be owed to the mechanic (defendant), plus all costs and fees. If bond is posted, the Sheriff or other local law

enforcement agency shall seize the property in dispute and return it to the owner (plaintiff). This procedure is used when a dispute arises over the amount owed or charged by the mechanic (defendant).

### *Clerk's Procedures*

Step:	Description:
1.	<p>The Clerk prepares the district court form DC-463: Summons - Lien of Mechanic for Repairs. There are 2 copies: original to the court, first copy to defendant and second copy to plaintiff.</p> <p>Collect fees/sheriff fees. The plaintiff, (owner), in lieu of a separate certificate of mailing, may complete the back of the form if mailing to defendant occurs at or prior to filing of the case.</p> <p>It is recommended to use the <b>Other</b> field to give a brief summary of what the plaintiff alleges.</p> <p>Enter in the civil division of GCMS <b>V</b>—civil case, and <b>ML</b>-Mechanic's Lien as case type.</p>
2.	<p>The Clerk should verify the amount of claim with the mechanic (defendant) and complete the Order of Possession area of the district court form DC-463: Summons - Lien of Mechanic for Repairs. Verification of amount in dispute is done whether or not plaintiff requests property back pre-trial.</p> <p>If owner (Plaintiff) desires to have their property returned before trial, the Clerk prepares district court form DC-462: <a href="#">Plaintiff's Bond-Lien of Mechanic for repairs</a>.</p> <p>The bond shall be equal to the lien claimed by the mechanic (defendant) plus courts cost. The bond may be cash or surety.</p> <p>Receipt bond (if cash) to 503, using <b>ML</b> case type on receipt.</p>
3.	<p>Set case for trial, and issue summons for service.</p> <p>The summons is served on the mechanic (defendant) by the sheriff, who shall also seize the property IF the plaintiff posted bond. The executed summons is returned to the clerk's office, and the sheriff delivers the seized property to the plaintiff.</p>
4.	<p>Finalize in GCMS using appropriate code for Case Disposition:</p> <p><b>Case Disposition:</b></p>

Step:	Description:
	<ul style="list-style-type: none"> <li>• P (PLAINTIFF)</li> <li>• D (DEFENDANT)</li> </ul> <p>At hearing, if judgment in favor of defendant, the property is to be delivered to the plaintiff owner, if not previously returned by posting bond, and the plaintiff owner is to pay to the defendant the amount awarded by the Court. Judgment may also be in favor of owner-plaintiff.</p> <p>The bond should be distributed to satisfy the judgment with the remainder returned to plaintiff after appeal, ten-day, time has elapsed.</p> <p>Where no bond was posted, the plaintiff may recover the property and obtain execution of the order only after the plaintiff pays the defendant the amount of judgment as determined by the court.</p>

**Forms**

DC-462	<a href="#">Plaintiff's Bond-Lien of Mechanic for Repair</a>
DC-463	Summons – Lien of Mechanic for Repairs
DC-475	Notice of Appeal – Civil
DC-460	<a href="#">Civil Appeal Bond</a>
DC-25	Circuit Court Case Transmittal and Fees Remittance Sheet

**References**

<a href="#">Va. Code § 43-33:</a>	Lien of mechanic for repairs
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**Tenant's Assertion and Complaint**

The Virginia Residential Landlord and Tenants Act, [Va. Code § 55.1 Chapter 12](#) et seq. provides tenants with a remedy in situations where a landlord not exempted by [Va. Code § 55.1-1201](#) fails to correct certain problems with rental property such that living conditions are impaired and uninhabitable.

**Clerk's Procedures**

Step:	Description:
1.	The tenant prepares and files a district court form DC-429: <a href="#">Tenant's Assertion and Complaint</a> . This form is also available on the internet to be downloaded, filled out on screen, printed, and brought to the court. The clerk may draw to the attention of the tenant the Prerequisite Conditions for Relief on the back of the DC-429. This pleading may be accompanied by a copy of a notice of the

Step:	Description:
	<p>conditions causing the complaint that was previously sent to the landlord but shall not be required for the filing.</p> <p>There should be the original and at least two copies of the district court form DC-429: <a href="#">Tenant's Assertion and Complaint</a>. Collect fees/sheriff's fees.</p> <p>The original is the courts. The first copy is served on the defendant. If there is more than one defendant, provide a copy to be served on each defendant. The second copy is given to the plaintiff after setting the court date.</p>
2.	Enter the case into the CIVIL case entry screen, using <b>V</b> for civil case and <b>TA</b> (Tenant's Assertion) as case type.
3.	This hearing must be set within fifteen calendar days from the date of service on the landlord or their agent.
4.	The clerk's office sets up an escrow account for the tenant at this step. The tenant sends their periodic rent payment to the clerk's office for deposit in the escrow account until an order is entered. Receipt any monies remitted under the pending civil case number, using account code 509 (escrow/ collections for others).
5.	<p>Judge hears the case and enters a judgment that determines distribution of the funds in the escrow account, between the landlord and tenant, and the duties to be performed by the landlord. In cases where the court deems that the tenant is entitled to relief and enters judgment for the tenant, the court, in its discretion, may impose upon the landlord the reasonable costs of the tenant, including court costs, and reasonable attorney fees.</p> <p><b>Note:</b> Distribution of the funds in the escrow account can be disbursed to the successor landlord or the successor landlord's agent if the tenant's assertion involves rental property that has been foreclosed.</p> <p>If appeal is not noted in writing within ten days, disburse funds in escrow account as directed by court order.</p> <p>Case would be finalized using appropriate code for <b>Case Disposition</b>.</p> <p>If judgment is for one, or more, defendant(s), update <b>J</b> field, beside def name, with appropriate code. Please note that in this unique case type, the judgment could be for both plaintiff and defendant, and, if so, should be updated accordingly.</p>
6.	Appeal may be noted in writing within ten days of judgment. The appealing party has 30 days to perfect.

Step:	Description:
	<p>If case perfected, prepare file in accordance with local policy for delivery to the Circuit Court, and send check for fees and any funds in escrow account along with a completed district court form DC-25: Circuit Court Case Transmittal and Fees Remittance Sheet.</p> <p>See appendix on Appeals for procedures.</p>

**Forms**

DC-429	<a href="#">Tenant's Assertion and Complaint</a>
DC-475	Notice of Appeal – Civil
DC-460	<a href="#">Civil Appeal Bond</a>
DC-25	Circuit Court Case Transmittal and Fees Remittance Sheet

**References**

<a href="#">Va. Code § 55.1-1244</a>	Tenant's assertion; rent escrow.
<a href="#">Va. Code § 55.1-1243.1</a>	Tenant's remedies for landlord's unlawful ouster, exclusion, or diminution of service.
Va. Code §55.1-1234.1	Uninhabitable dwelling unit.

**Tenant's Petition for Relief from Unlawful Exclusion**

The Virginia Residential Landlord and Tenants Act, [Va. Code § 55.1 Chapter 12](#) et seq., provides tenants with a remedy in situations where a landlord unlawfully removes or excludes a tenant from residential premises or willfully interrupts or stops essential services or has taken action to make the premises unsafe for habitation. The tenant initiates this landlord/tenant dispute. The initial hearing on the tenant's petition shall be held within five calendar days from the date of the filing of the petition. The court may issue a preliminary order ex parte to require the landlord to act if the court finds there is good cause to do so, and the tenant has made reasonable effort to alert the landlord of the hearing. Any preliminary ex parte order issued shall further include a date of no more than ten days after the initial hearing for a full hearing to consider the merits of the petition and the damages described [Va. Code § 55.1-1243.1](#).

**Clerk's Procedures**

Step:	Description:
1.	<p>The tenant prepares and files a district court form DC-431: Tenant's Petition for Relief From Unlawful Exclusion. This form is also available on the internet to be downloaded, filled out on screen, printed, and brought to the court.</p> <p>There should be the original and at least two copies of the district court form DC-431: Tenant's Petition for Relief From Unlawful Exclusion. Collect fees/sheriff's fees.</p>
2.	<p>Enter the case into the CIVIL case entry screen, using <b>V</b> for civil case and <b>TA</b> (Tenant's Assertion) as case type.</p> <p><b>Note:</b> The initial hearing of the tenant's petition shall be held within 5 calendar days.</p>
3.	<p>If an ex parte preliminary order is entered, continue the case, and set for a full hearing within 10 days. Send out for service upon the defendant(s).</p> <p>The original is the courts. The first copy is served on the defendant. If there is more than one defendant, provide a copy to be served on each defendant. The second copy is given to the plaintiff after setting the court date.</p>
4.	<p>Judge hears the case and enters a judgment that could include termination of the rental agreement upon request of the tenant and landlord to return all of the security deposit in accordance with <a href="#">Va. Code § 55.1-1226</a>, the actual damages sustained by the tenant, statutory damages for \$5,000 or four months' rent, whichever is greater, and reasonable attorney fees.</p> <p>Case would be finalized using appropriate code for <b>Case Disposition</b>.</p> <p>If judgment is for one, or more, defendant(s), update <b>J</b> field, beside def name, with appropriate code.</p>
5.	<p>Appeal may be noted in writing within ten days of judgment.</p> <p>If case perfected, prepare file in accordance with local policy for delivery to the Circuit Court; and send check for fees and any funds in escrow account along with a completed district court form DC-25: Circuit Court Case Transmittal and Fees Remittance Sheet.</p> <p>See appendix on, Appeals for procedures.</p>

### Forms

DC-431:	Tenant's Petition for Relief From Unlawful Exclusion
DC-475:	Notice of Appeal – Civil

DC-460:	<a href="#">Civil Appeal Bond</a>
DC-25:	Circuit Court Case Transmittal and Fees Remittance Sheet

### *References*

<a href="#">Va. Code § 55.1-1243.1</a>	Tenant's remedies for landlord's ouster, exclusion, or diminution of service.
<a href="#">Va. Code § 55.1-1243.2</a>	Tenant's remedies for exclusion from dwelling unit due to condemnation.

### **Interpleader**

An interpleader action, pursuant to [Va. Code § 8.01-364](#), is filed when, prior to levy or execution, a party wishes the court to determine the rights of various individuals in certain property when two or more people, excluding the plaintiff, claim the property. The parties in the suit are the claimants in the property and include the person holding the property even if this person does not claim to own it. In general district court, an interpleader action may involve personal property not exceeding \$50,000.00. The case is initiated by the filing of a district court form DC-428: [Warrant in Debt - Interpleader](#) or a motion for judgment. At trial, the judge disposes of the property according to the rights of the parties.

This interpleader is similar to post-judgment interpleader discussed in Suits in Debt - Post-Trial Procedures earlier.

### **Freedom of Information Act - Injunctions Or Writs of Mandamus**

The process for handling a request for an injunction or a writ of mandamus to enforce a claim under the Virginia Freedom of Information Act is substantially the same as for processing a warrant in debt except that:

- A petition is drafted and filed in the general district or circuit court by the person seeking to enforce these rights. It may be in the form of a formal petition or some other writing. The district court form DC-495: [Petition for injunction or mandamus - freedom of information act and affidavit for good cause or protection of social security numbers act](#) may be used for this petition.
- The clerk indexes the petition as a civil case using case type of **OT**, collects civil fees and sheriff's service fees, issues a district court form DC-430: Summons for Hearing with a copy of the petition. This summons is to be served on the appropriate government official or employee whom the claimant identifies as the person upon whom process is to be served. The petition for mandamus or injunction shall be heard within seven days of the date of filing [Va. Code § 2.2-3713](#).



- If the claimant seeks a preliminary injunction, the case may be heard without notice to the other party if there is not enough time to permit process to be served on the government official or employee. If a preliminary injunction is entered, a subsequent hearing should be held to address the issue of whether a final injunction should be issued. The district court form [DC-496: Order for Petition for Injunction or a Writ of Mandamus](#) should be used to either grant or deny the requested relief. The case is tried as an equity case.

If the court finds the denial to be in violation of the provisions of this chapter, the petitioner shall be entitled to recover reasonable costs and attorneys' fees from the public body if the petitioner substantially prevails on the merits of the case. If a preliminary or final order is entered, the sheriff should be promptly contacted to insure prompt, timely service of the injunction or the writ of mandamus.

### **Enforcement of Statutory Liens or Order for Sale of Property [Va. Code § 43-34](#), [Va. Code § 46.2-644.03](#)**

In addition to the special provisions in [Va. Code § 43-33](#) for the owner to recover the property held under a mechanic's lien, See Lien of Mechanic for Repair earlier, certain statutory lien holders (innkeepers, livery stable, garage and marina keepers, mechanics and bailees) may bring a civil action to obtain a court order authorizing the sale of personal property held under a statutory lien to satisfy the debt for which the lien arose. In general district court actions, the right to file such an action arises if the value of the property held under a lien pursuant to [Va. Code § 46.2-644.03](#), not the debt for which the lien arose, exceeds \$12,500 but does not exceed \$50,000. If the lien is pursuant to [Va. Code § 43-34](#), and the value of the property is more than \$10,000 but does not exceed \$50,000, this civil action may also be filed in the general district court [Va. Code § 43-34](#), [Va. Code § 46.2-644.03](#).

The applicable procedures are:

- The lien holder files a DC-479: [Petition and Order for Sale of Property](#) and pays the processing fee.
- Enter in the civil division of GCMS using case type **PS**.
- The clerk will set a hearing date and send out for service. If the present owner of the property is a nonresident, or their address is unknown, notice may be served by posting such copy in three "public places", as defined in [Va. Code § 43-34](#), in the county or city wherein the property is located.
- A hearing is conducted.
- If the court is satisfied that the debt and lien are established by the evidence and that the property should be sold to pay the debt, the court orders the sale to be made by

the sheriff of the county or city. If the property to be sold is a motor vehicle and the vehicle is owned by an active-duty member of the military, the lienholder shall comply with the provisions of the federal Servicemembers Civil Relief Act when disposing of the vehicle, even if the value of the vehicle is less than \$12,500.

## **Human Rights Violations**

### ***Local Ordinances***

The governing body of any city, town, or county may enact an ordinance prohibiting discrimination in housing, employment, public accommodations, credit, and education on the basis of race, color, religion, sex, national origin, age, marital status, or disability and enact an ordinance establishing a local commission on human rights.

A local commission shall have the powers and duties granted by the Virginia Human Rights Act.

### ***Wrongful Discharge Claims***

Under [Va. Code § 2.2-2639](#), no employer employing more than five but less than fifteen persons shall discharge any such employee on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, including lactation or age, if the employee is forty years of age or older.

The employee may bring an action in a general district or circuit court having jurisdiction over the employer who allegedly discharged the employee in violation of this section. Any such action shall be brought within 300 days from the date of the discharge. The court may award up to twelve months' back pay with interest at the judgment rate. However, if the court finds that either party engaged in tactics to delay resolution of the complaint, it may (i) diminish the award or (ii) award back pay to the date of judgment without regard to the twelve-month limitation.

In any case where the employee prevails, the court shall award attorney's fees from the amount recovered, not to exceed twenty-five percent of the back pay awarded. The court shall not award other damages, compensatory or punitive, nor shall it order reinstatement of the employee.

## **Arbitration Proceedings**

Arbitration is a dispute resolution method where a neutral third party renders a decision after a hearing in which both parties can be heard. It is intended to avoid the delay, formality, and expense of litigation. General district courts have concurrent jurisdiction with the circuit courts over arbitration matters when the amount in controversy is within the jurisdictional limits of the general district court. Any party who disagrees with the order to

compel arbitration may appeal the decision to the Circuit Court [Va. Code § 16.1-77 \(10\)](#). The powers of the general district court include the following:

### ***Proceedings to Compel or Stay Arbitration***

On application of a party showing an arbitration agreement, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration. However, if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue of the existence of an agreement and shall order arbitration only if it finds for the moving party:

- If there is a pending case in GCMS and the court enters a motion to compel arbitration, and orders the civil action stayed, update GCMS with **O** in the **Hearing Result** field on the GCMS H/D screen and **O** in the **Case Disposition** field. If the court does not stay the civil action, update GCMS according to the disposition, i.e., continued, dismissed, or non-suited.
- There is no pending case and the first pleading filed is a motion to compel arbitration. Enter in the civil division of GCMS assigning a new civil number using case type **OT**, collecting all filing fees and service fees, and placing on the docket for a hearing. The court will enter an order compelling or denying the motion. Update GCMS with **O** in the **Hearing Result** field on the GCMS H/D screen and **O** in the **Case Disposition** field whether or not the court grants the motion. Make a notation in the "Remarks" field as to the disposition of the motion, i.e., motion granted or denied.

Additionally, any action or proceeding involving an issue subject to arbitration shall be stayed if an application for a stay has been made. When the application is made in such action or proceeding, the order for arbitration shall include the stay. The court may stay an arbitration proceeding on a showing that there is no agreement to arbitrate. Such an issue, when in dispute, shall be heard and the stay ordered if found for the moving party. If the stay is found for the opposing party, the court shall order the parties to proceed to arbitration.

If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications for refusal to arbitrate, the application shall be made in that court. Otherwise, the application may be made in any court of competent jurisdiction.

An order for arbitration shall not be refused on the ground that the claim in issue lacks merit or because any fault or grounds for the claim sought to be arbitrated have not been shown [Va. Code § 8.01-581.02](#).

### ***Appointment of Arbitrators***

The court, on application of a party, shall appoint one or more arbitrators in the absence of an agreement, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails or is unable to act and their successor has not been duly appointed. Contact the Office of the Executive Secretary for names of arbitrators when needed for an appointment. An arbitrator so appointed has all the powers of one specifically named in the agreement [Va. Code § 8.01-581.03](#).

The court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy [Va. Code § 8.01-581.04 \(1\)](#).

### ***Witnesses, Subpoenas, Depositions***

The arbitrators may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence. Subpoenas shall be served, and upon application to the court by a party or the arbitrators, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action. All provisions of law compelling a person under subpoena to testify are applicable [Va. Code § 8.01-581.06](#).

### ***Change of Award by Arbitrators***

On application of a party or, if an application to the court is pending, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify, correct, or clarify the award. The application shall be made within twenty days after delivery of the award to the applicant. Written notice shall be given to the opposing party, stating that they must serve their objections, if any, within ten days from the notice [Va. Code § 8.01-581.08](#).

### ***Confirmation of an Award***

Upon application of a party, the court shall confirm an award, unless, within the time limits imposed, grounds are urged for vacating or modifying or correcting the award, in which case the court shall follow the procedures for vacating or modifying an award [Va. Code § 8.01-581.09](#).

If an order confirming an arbitration award is entered in the court's record, enter in the civil division of GCMS using a new case number and case type **OT**. GCMS should be updated according to the order, i.e., judgment for the plaintiff, etc. If any subsequent enforcement actions are filed, enter as a subsequent action to the new civil case number and collect applicable filing fees.

### ***Vacating an Award***

Upon application of a party, the court shall vacate an award where:

- The award was procured by corruption, fraud, or other undue means.
- There was evident partiality by an arbitrator appointed as a neutral, corruption in any of the arbitrators, or misconduct prejudicing the rights of any party.
- The arbitrators exceeded their powers.
- The arbitrators refused to postpone the hearing upon sufficient cause being shown therefore or refused to hear evidence material to the controversy or otherwise so conducted the hearing, in such a way as to substantially prejudice the rights of a party; or
- There was no arbitration agreement, and the issue was not adversely determined in proceedings under [Va. Code § 8.01-581.02](#) and the party did not participate in the arbitration hearing without raising the objection.

The fact that the relief was such that it could not or would not be granted by a court of law or equity is not grounds for vacating or refusing to confirm the award.

An application for vacating an award shall be made within ninety days after delivery of a copy of the award to the applicant, except that, if based upon corruption, fraud, or other means, it shall be made within ninety days after such grounds are known or reasonably should have been known.

In vacating the award on grounds other than those stated in number 5) above, the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the court. If the award is vacated on grounds set forth in subdivisions 3) and 4), the court may order a rehearing before the arbitrators who made the award or their successors. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award [Va. Code § 8.01-581.010](#)

### ***Modification or Correction of Award***

Upon application made within ninety days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:

- There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award.
- The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

- The award is imperfect in a matter of form, not affecting the merits of the controversy.

If the application is granted, the court shall modify and correct the award so as to affect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.

An application to modify or correct an award may be joined in the alternative with an application to vacate the award [Va. Code § 8.01-581.011](#).

### ***Judgment or Decree on Award***

Upon granting an order confirming, modifying, or correcting an award, a judgment or decree shall be entered in conformity therewith and be docketed and enforced as any other judgment or decree. The court may award costs of the application, proceedings, and disbursements [Va. Code § 8.01-581.012](#).

### ***Applications to Court***

An application to the court shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action [Va. Code § 8.01-581.013](#).

### ***Venue***

Unless specifically provided for elsewhere in the code, an initial application shall be made to the court of the county or city in which the agreement provides the arbitration hearing shall be held or, if the hearing has been held, in the county or city in which it was held. Otherwise, venue of the application shall be as provided in [Va. Code § 8.01-257](#) et seq. All subsequent applications shall be made to the court hearing the initial application unless the court directs otherwise [Va. Code § 8.01-581.015](#).

### ***Appeals***

An appeal may be taken from:

- An order denying an application to compel arbitration.
- An order by a general district court granting an application to compel arbitration.
- An order granting an application to stay arbitration.
- An order confirming or denying an award.
- An order modifying or correcting an award.

- An order vacating an award without directing a rehearing, or
- A judgment or decree entered pursuant to the provisions of this article.

An appeal granting or denying a motion to compel arbitration must be noted in writing within ten days using district court form DC-475: Notice of Appeal – Civil. Writ tax and costs are collected based on “General District Appeal – No Monetary Damages”. The writ tax and costs shall be posted within 30 days from the date of judgment [Va. Code § 8.01-581.016](#).

### **Department of Behavioral Health and Developmental Services**

The Department may institute civil proceedings in the name of the Commonwealth to enjoin any person from violating the provisions of this section and to recover a civil penalty of at least \$200 but no more than \$1,000 for each violation. Such proceedings shall be brought in the general district or circuit court for the county or city in which the violation occurred or where the defendant resides. Civil penalties assessed under this section shall be paid into the Behavioral Health and Developmental Services Trust Fund established in [Va. Code § 37.2-318](#). Such styled civil proceeding would be entered in the case management as an OT case type.

### **Pro Se Lawsuits by Prisoners**

The “Virginia Prisoner Litigation Reform Act”, [Va. Code § 8.01-689 through -695](#), creates a procedure that prisoner-plaintiffs must follow in order to file *pro se* civil actions for money damages. It is intended to encompass actions brought by prisoners that arise from the conditions of their confinement. For example, it does not apply to custody or visitation proceedings brought by incarcerated petitioners.

In order to proceed with a suit governed by the Act, the prisoner-plaintiff must pay full filing fees and costs unless granted in forma pauperis status. The approval of in forma pauperis status permits payment of filing fees and costs in installments, as directed by the court. If the prisoner-plaintiff has had no deposits in their inmate trust account for the six months preceding the filing of the action, prepayment of fees and costs are waived but will be taxed at the end of the case.

A prisoner-plaintiff who seeks in forma pauperis status must provide the court with a certified copy of their inmate trust account for the preceding twelve months. This document should be taken to the judge for consideration. If in forma pauperis status is granted, the prisoner-plaintiff shall make payments, in equal installments as the court directs, towards satisfaction of the filing fee and costs. If the court orders such payments, the clerk's office would set up a civil receivable in FAS. If a prisoner-plaintiff who has been granted in forma pauperis defaults on the schedule of installment payments for filing fees, the court should dismiss the case and not refund the incomplete installment payments.

In forma pauperis status must be denied if the prisoner-plaintiff has had three or more cases or appeals dismissed for being frivolous, malicious, or for failure to state a claim, unless the prisoner-plaintiff shows that they are in imminent danger of serious physical injury at the time of filing suit, or it would be manifest injustice to deny such status. Unless it was your court that had dismissed three or more of the prisoner-plaintiff's prior cases as being frivolous or malicious or for the failure to state a claim, the court would not know to deny in forma pauperis status on that basis. If in forma pauperis status is incorrectly granted because the prisoner-plaintiff has had three or more cases or appeals dismissed for being frivolous, malicious, or for failure to state a claim, the [Office of the Attorney General](#) will simply object to the status and the court can review its decision.

Following the granting of in forma pauperis status or upon the receipt of the proper filing fees, [Va. Code § 8.01-694](#) directs the court to “serve” the motion for judgment and supporting papers on the [Office of the Attorney General](#). The Office of the Attorney General is willing to accept this service by mail. The address to be used is:

Correctional Litigation Section  
Office of the Attorney General  
202 N. 9<sup>th</sup> Street  
Richmond, VA 23219.

This Act provides for the review of the prisoner-plaintiff's pleadings as they are filed, as opposed to waiting until a return date. The prisoner-plaintiff's failure to state their claims in a written motion for judgment plainly stating facts sufficient to support their cause of action, accompanied by all necessary supporting documentation, constitutes grounds for dismissal. The court must rule on initial dispositive motions on the record whenever possible rather than hold a hearing.

The Act does not confer on the general district any authority to issue transportation orders to have prisoner-plaintiffs or incarcerated witnesses brought to a hearing. Therefore, the decision of Commonwealth v. Brown, 259 Va. 697 (2000), is still the controlling law for general district courts in this regard. The general district court does have the authority to conduct hearings by telephonic communication systems or video and audio communication systems [Va. Code § 16.1-93.1](#).

The prisoner-plaintiff may not seek the limited discovery available in general district court, [Va. Code § 16.1-89](#) Virginia Supreme Court Rule 4:9, until initial dispositive motions are ruled upon, and then only when they can demonstrate to the court that their requests are relevant and material to the issues in the case. No subpoena for witnesses or documents shall issue unless a judge of the court has reviewed the subpoena request and specifically authorized a subpoena to issue. The court shall exercise its discretion in determining the scope of the subpoena and may condition its issuance on such terms as the court finds appropriate [Va. Code § 8.01-695](#).



No prisoner action shall be filed except in the city or county in which the prison is located where the prisoner was housed when their cause of action arose.

## Assignment of Judgment

Many times, a judgment creditor will sign or assign a judgment in their favor. An assignment, in order to be so noted, must be in writing, showing the date thereof, the name of the assignor and assignee, the amount of the judgment, and when and by what court granted, and either acknowledged as are deeds for recordation in the clerks' offices of circuit courts in this Commonwealth, or signed by the assignor, attested by two witnesses; or such judgment may be assigned by notation on the margin of the judgment lien docket on the page of the book where same is docketed, by the judgment creditor or their attorney of record, and attested by the clerk. The assignment, after the same is noted upon the judgment docket as is herein provided, shall be filed by the clerk with the other papers in the case in their office. When such assignment is made and noted as herein provided further executions shall be issued in the name of the assignee as the plaintiff in the case [Va. Code § 8.01-452](#).

The following describes the procedures involved:

- Assignment must be in writing:
  - Must include date of assignment
  - Name of Assignor
  - Name of Assignee
  - Amount of judgment
  - When and by what court granted
- Assignment must be:
  - Acknowledged,
  - Or signed by the assignor, attested by two witnesses,
  - Or noted on the case papers by the judgment creditor or attorney of record and attested by the clerk.
- No fees are charged for an assignment of judgment.
- In GCMS, make a notation in remarks "Judgment assigned to .... (Name of Assignee.) Do not enter as a new case in GCMS.
- File assignment with case papers.
- Future executions should be styled: John Jones, Assignee for John Doe, Plaintiff vs. Jane Doe, Defendant.

## Extension of Judgments

Normally, executions on a judgment in district court can be issued for ten years from the date of judgment. [Va. Code § 16.94.1](#). However, the judgment creditor may extend this time period if the judgment creditor, prior to the expiration of the ten years, pays the circuit court docketing and indexing fees along with any other required filing fees and docket the judgment in the circuit court in the same geographic location as the general district court. The judgment creditor can then request issuance of executions in the general district court after expiration of the ten-year period upon the filing in the district court of an abstract from the circuit court [Va. Code § 16.1-69.55 B 4](#).

Limitations on the enforcement of judgments entered in the general district court shall be governed by [Va. Code § 16.1-94.1](#), unless an abstract of judgment is docketed in the judgment book of a circuit court. Upon docketing of such judgment such judgment shall be treated as a judgment entered by the circuit court and may be extended in the same manner as a judgment entered by the circuit court, although the original date of entry of the judgment shall remain the date that was entered by the general district court [Va. Code 8.01-251](#).

The following clerk's procedures are recommended when plaintiff/creditor filing abstract from circuit court:

Step:	Description:
1.	<p>Plaintiff/creditor files CC-1464: <a href="#">Abstract of Judgment</a>, or a certified copy of district court form DC-465: Abstract of Judgment obtained from the Circuit Court.</p> <p>There are no fees associated with this filing, however if the plaintiff/creditor is asking for additional execution from this abstract, appropriate fees for those executions will apply.</p> <p>Assign a new case number in the Civil division of case management. Any additional executions will be entered as subsequent actions to the new case number. Enter the original date of judgment in the <b>Remarks</b> field.</p> <p>Case type will be <b>AJ</b>.</p> <p>Filing date and hearing date are the same date.</p>
2.	<p><b>Hearing Result</b> field is <b>O</b> (other).</p> <p><b>Case Disposition</b> field is <b>O</b> (other).</p>
3.	<b>Remarks</b> field:

Step:	Description:
	<b>AJ</b> cases will appear on the internet. No money amounts will display if the court has entered the case utilizing only <b>Remarks</b> to insert judgment amounts and costs. The internet will reflect judgment as “other.” Because the original date of judgment is included in remarks, the credit bureau and others should not reflect this as a new judgment against the defendant.

### References

<a href="#">Va. Code § 16.1-69.55:</a>	Retention of case records; limitations on enforcement of judgments; extensions
<a href="#">Va. Code § 16.1-94.1:</a>	Limitations on enforcement of district court judgments.
<a href="#">Va. Code § 8.01-251:</a>	Limitations on enforcement of judgments

### Collection Of Child Support

Each juvenile and domestic relations district court may enter judgment for money in any amount for arrears of support and maintenance. If the amount of the judgment does not exceed \$25,000, exclusive of interest and any attorney’s fees, the obligee/petitioner or the Division of Child Support Enforcement may deliver an abstract of any such judgment entered to the general district court of the same judicial district, and executions upon such judgment shall be issued by the clerk of such general district court [Va. Code § 16.1-278.18](#).

The following procedures are recommended when a petitioner is filing such abstract from the juvenile and domestic relations court.

Step:	Description:
1.	<p>Petitioner files DC-465: <a href="#">Abstract of Judgment</a>, obtained from the Juvenile and Domestic Relations Court.</p> <p>There are no fees associated with this filing, however if the petitioner is asking for additional execution from this abstract, appropriate fees for those executions will apply.</p> <p>Assign a new case number in the Civil division of case management. Any additional executions will be entered as subsequent actions to the new case number. Enter the original date of judgment in the <b>Remarks</b> field.</p> <p>Case type will be <b>AJ</b>.</p> <p>Filing date and hearing date are the same date.</p>
2.	<b>Hearing Result</b> field is <b>O</b> (other).

Step:	Description:
	<b>Case Disposition</b> field is <b>O</b> (other).
3.	<b>Remarks</b> field:  <b>AJ</b> cases will appear on the internet. No money amounts will display if the court has entered the case utilizing only <b>Remarks</b> to insert judgment amounts and costs. The internet will reflect judgment as “other”. Because the original date of judgment is included in remarks, the credit bureau and others should not reflect this as a new judgment against the defendant.

### References

<a href="#">Va. Code § 16.1-278.18:</a>	Money judgments for arrearages in support from the juvenile and domestic relations court.
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## Chapter 7 – Miscellaneous Civil Case Procedures

### Animal Violations

Animals Violations have been moved to the Criminal Case procedures chapter.

### Bankruptcy

#### Types of Bankruptcy

##### *Chapter 7*

Known as “liquidation,” typically 70-80% of bankruptcy filings in Virginia are under this chapter. In the normal Chapter 7 case, the Trustee collects the nonexempt property of the debtor, converts the property to cash and distributes the cash to creditors pursuant to statutory priorities while the debtor obtains a “discharge”, release, from personal liability of dischargeable debts. Discharge is granted in sixty days after the date first set for creditors meetings unless extended by the Court or an objection is filed.

##### *Chapter 11*

Generally used by business and individual debtors who do not meet Chapter 13 requirements regarding total debt. This chapter, entitled “Reorganization” contemplates debtor rehabilitation. The Debtor generally retains the assets, makes payments to creditors pursuant to court order approved plan from post-petition earnings and obtains a discharge from all debt not paid pursuant to the plan. Final discharge order can take up to ten years for conclusion.

##### *Chapter 13*

Entitled “Adjustment of Debts of an Individual with Regular Income”, assume cure, promise, Chapter 13 is the second most commonly used petition by an individual debtor. A Chapter 13 petition can only be filed by an individual with regular incomes that owes, on the date of the filing of the petition, non-contingent, liquidated, unsecured debts of less than \$100,000 and non-contingent, liquidated, secure debts of less than \$350,000. The debtor retains assets, makes payments to the Trustee through court approved plan, the Trustee sends payments to creditors, and obtains a discharge from all debt not paid pursuant to the plan. The plan may only be filed by the debtor and cannot exceed five years in length. Creditors accept payments from the Trustee but when the Discharge Order is entered at the conclusion of the case, cannot exceed five years, if part of the debt remains, it is discharged and no longer enforceable.

## Definitions

### ***Automatic Stay***

When notice of filing of Bankruptcy petition is received, the creditor, court to whom fines and costs are owed at the time the bankruptcy petition is filed, must cease enforcement for collection of the debt. Fines and costs debts incurred after the bankruptcy petition filing are not affected by the stay. Interest on fines and costs accrues **during the stay**.

### ***Bankruptcy***

The state or condition of one who is unable to pay their debts as they are, or become, due. A bankruptcy proceeding is civil in nature and is intended to relieve an honest and unfortunate debtor of their debts and permit them to begin their financial life anew.

### ***Discharge***

Release (forgiveness) from indebtedness once the bankruptcy court enters an Order of Discharge. Please see the chart below for an explanation of what is dischargeable.

General District Bankruptcy Chart

	Chapter 7:	Chapter 13:
Criminal Fine	NO	NO, If included in the sentence YES, If not included in the sentence, See <b>Note</b> below
Criminal Cost	NO	NO, if the fine is not dischargeable
Traffic Fine	NO	YES
Traffic Cost	NO	YES
Restitution Award	NO	NO
Accrued Interest	NO	NO, if fine is not dischargeable

\* In order to determine if criminal fines under Chapter 13 were not included in the sentence, please verify with your judge. [10/00 - J. L. Warren \(state.va.us\)](#)

**Note:** It is important to remember that Chapter 13 bankruptcy debts may be discharged only after the debtor successfully completes all payments proposed under the bankruptcy plan. The payment plan could take several years to complete. Until the debtor's payment plan is completed and certified by the Bankruptcy Court, the judgment remains a viable debt frozen by the bankruptcy court's automatic stay, and the judgment should not be released. [10/00 - J. L. Warren \(state.va.us\)](#)

The bankruptcy notice to the court only allows the court to stay collection efforts on the judgment. The court cannot remove the judgment from the court records. If the debt was

settled via the bankruptcy proceedings the debtor must ask the creditor to provide a notice of satisfaction to the court. The court may mark the judgment satisfied if they receive a notice of satisfaction from the creditor or the debtor may file district court form DC-459: [Motion for Judgment to be Marked Satisfied](#).

### ***Proof of Claim***

A form telling the bankruptcy court how much a debtor owed a creditor at the time the bankruptcy case was filed, the amount of the creditor's claim. This form is filed with the clerk of the bankruptcy court where the bankruptcy was filed. We do not recommend that the clerk complete and file a Proof of Claim. Generally, once the bankruptcy is complete, the court may resume collections of monies owed to the court.

### ***Trustee***

An attorney, or someone experienced with business and bankruptcy rules, appointed by the United States Trustees Office to oversee a bankruptcy case.

## **Clerk's Procedures - Criminal and Traffic Cases**

The following procedures are recommended when a Notice of Filing is received by the clerk in a **Criminal** or **Traffic** case:

Step:	Description:
1.	<p>Clerk's office receives Notice of Filing of the Bankruptcy Petition from the bankruptcy court.</p> <p>Notice may be in the form of a bankruptcy court form notice or petitioner or petitioner's counsel may tell the Clerk verbally about the filing. If verbal notice is received, the clerk should require the petitioner to provide a copy of the Bankruptcy.</p> <p>Stamp date received and initial.</p> <p>Notice does not have to list the court as a Creditor for Procedures for Stay of Enforcement to be in effect.</p> <p><b>Comments:</b> Eastern District - 703-258-1200 (General Info Line) Western District - 540-857-2391</p>
2.	<p>Clerk matches notice to the individual account in the Financial Accounting System (FAS) or General District Case Management System (GCMS).</p>

	<p>Clerk should use caution in matching the notice to the individual account or case, relying on the social security number, date of birth or address information to determine the match. The matched bankruptcy filing should be filed with the case.</p> <p>If no match no further action is required. Clerk may retain in an administrative file marked “no match.”</p>
3.	<p>Access the FAS individual account and enter <b>BNK</b> (Bankruptcy) in the <b>Status</b> field. This stops collection activity during the bankruptcy period. <b>Note:</b> Do not remove amounts owed from the individual account.</p> <p>All individual accounts containing a <b>BNK</b> action code will print monthly on the BU006 Individual Account Status Report.</p> <p>If an individual wishes to pay on an account marked as bankruptcy <i>and</i> the person has official documentation from either the bankruptcy trustee or their attorney, the court may accept the payment. Otherwise, the clerk may not accept payment for fines/costs or restitution once bankruptcy notice is received. Clerk should instruct individual to contact the bankruptcy court or their attorney.</p> <p>Select <b>Addl Info</b> and record the name of the Bankruptcy court in which the bankruptcy action has been filed, date of filing, and type of bankruptcy, Chapter 7, 11, or 13.</p> <p>Refer to the District Court Financial Management System User’s Guide for information regarding the BU06.</p>
4.	<p>Recall the account if it has been sent to a collection agent using district court form DC-323: Recall of Process. Attach FAS individual account screen prints.</p> <p>If already reported to Tax Set-Off, release the hold on the tax refund through IRMS, Integrated Revenue Management System.</p>
5.	<p>For accounts over ten years old:</p> <ul style="list-style-type: none"> <li>• Reactivate the individual account from inactive.</li> <li>• Place <b>BNK</b> in the <b>Status</b> field.</li> </ul>



	<ul style="list-style-type: none"> <li>When the discharge is received the clerk should remove the <b>BNK</b> and enter <b>OFF</b> in the <b>Status</b> field. This allows you to maintain the account but will prevent further collection. You should use <b>OFF</b> for this instance only.</li> </ul> <p>Collection activity cannot be pursued after ten years. However, the debt is not forgiven and the clerk has no authority to “write off” a debt.</p>
6.	<p>Upon receipt of the order of discharge or dismissal of the case:</p> <ul style="list-style-type: none"> <li>If the fine and costs are not discharged, collection is enforceable. Clerk should perform the following:</li> <li>Remove <b>BNK</b> from the FAS individual account.</li> <li>Re-enter the applicable action code on the FAS individual account to reinstate collection proceedings <b>COL</b>, <b>TAX</b> or <b>COM</b>.</li> </ul>
7.	<p>If fines and costs are discharged under Chapter 13, see chart above, zero out the owed amounts on the individual account affected by the bankruptcy. Fines and costs incurred after the bankruptcy filing are not affected.</p>

### Clerk’s Procedures – Civil Cases

The following procedures are recommended when a Notice of Filing is received by the clerk in a **Civil** case:

Step:	Description:
1.	<p>Clerk’s office receives Notice of Filing of the Bankruptcy Petition from the bankruptcy court.</p> <p>Stamp date received and initial.</p> <p>Notice does not have to list the court as a creditor for Stay of Enforcement to be in effect.</p> <p>Notice may be in the form of a bankruptcy court form notice or the Clerk may be told verbally about the filing by petitioner or petitioner’s counsel. If verbal notice is received, the clerk should require the petitioner to provide a copy of the bankruptcy.</p> <p><b>Comments:</b> Eastern District - 703-258-1200 (General Info Line) Western District - 540-857-2391</p>

Step:	Description:
2.	<p>Clerk matches notice to the civil case(s) in the General District Case Management System (GCMS). Clerk should use caution in matching the notice to the case, relying on the social security number, date of birth or address information to determine the match. The matched bankruptcy filing should be filed with the case.</p> <p>If no match, no further action is required. Clerk may retain a copy in an administrative file marked “no match.”</p> <p>Check the Bankruptcy box on the Civil H/D screen in GCMS.</p>
3.	<p>Determine if the case is a garnishment.</p> <p>If <b>not</b> a garnishment:</p> <ul style="list-style-type: none"> <li>For a civil case in which judgment has already been rendered prior to the bankruptcy filing, clerk may wish to attach bankruptcy notice to the back of the case papers or file in separate bankruptcy file folder.</li> <li>All collection efforts previously issued must be recalled. <b>Exception:</b> A plaintiff-landlord can still pursue a writ of possession after a tenant has filed for bankruptcy if the judgment for possession was taken prior to the bankruptcy petition. This is a change in the law resulting from the 2005 amendments to the bankruptcy code. 11 U.S.C. § 362 (b) (22).</li> <li>For a pending civil case, the clerk will either file the notice with the case papers and hold until the hearing date or advance the case on the docket in order that the case may be non-suited/dismissed. The proper procedure to follow will be based on local practice.</li> </ul> <p>If garnishment, proceed with the following steps.</p>
4.	<p>Advance the garnishment on the docket in GCMS and update with the disposition type of <b>O</b> (Other). In <b>Remarks</b>, note that the advancement is due to bankruptcy.</p>
5.	<p>Complete district court form DC-453: Garnishment Disposition. Based on local policy, Judge or clerk may sign “Release of Garnishment” portion of the form.</p>
6.	<p>Clerk must forward any money already received and any future money received from the garnishee to the bankruptcy trustee.</p>

Step:	Description:
	<p>Send copies of executed district court form DC-451: <a href="#">Garnishment Summons</a> to the following:</p> <ul style="list-style-type: none"> <li>• Trustee (enclose any funds received from garnishee)</li> <li>• Defendant</li> <li>• Plaintiff and plaintiff's attorney</li> <li>• Defendant's bankruptcy attorney</li> <li>• Garnishee</li> </ul>
7.	<p>Upon receipt of the order of dismissal only of bankruptcy:</p> <p>Uncheck the Bankruptcy box in GCMS. Attach a copy of the dismissal to the case papers.</p> <p>The clerk may wish to make note in the <b>Remarks</b> field the date of the dismissal of the bankruptcy.</p> <p><b>Note:</b> If the bankruptcy is discharged the Bankruptcy box remains checked.</p>

### ***Forms***

Initiating forms are not provided by the clerk's office.
DC-323: Recall of Process
DC-453: Garnishment Disposition
Notice to VA Dept. of Taxation Court Debt Collections Office. See sample below.

### ***Notice to Virginia Department of Taxation Court Debt Collections Office Sample***

NOTICE TO VA DEPT. OF TAXATION COURT DEBT COLLECTIONS OFFICE	
DEBTOR NAME _____	SSN _____
CASE(S) _____	
Requested by _____	Court Name _____
Telephone _____	Fax Number _____
<p align="center"><b>REQUEST TO STOP COLLECTION ACTIVITY</b></p> <p><b>REASON:</b></p> <p>_____ Case paid in full prior to placement with CDCO. Sent in error. FAS has been corrected.</p> <p>_____ Debt Setoff match will pay claim in full.</p> <p>_____ Debtor has paid the claim in full <b>BY CASH OR CASHIER'S CHECK</b> and has requested that the Third-Party Lien(s) be released.</p> <p>_____ Debtor has entered into an installment agreement for restoration of their driver's license.</p> <p>_____ Debtor enrolled in a work release/community service, bankruptcy, or deceased.</p> <p>_____ Debtor entered an installment/deferred payment with the court on.</p> <p>_____ SS/SSI benefits for the exemption of fines and cost only.</p> <p><b>NOTE: All delinquent cases placed with CDCO are handled in accordance with the Memorandum of Understanding executed by the Commonwealth Attorney and Virginia Code § 19.2-354 E. The failure of the defendant to make payment when sentenced, or to make payments as ordered by the agreement results in collection under § 19.2-349.</b></p> <p>Please note that FAS places all cases from all jurisdictions with this Office and the Debtor may be contacted if he/she has outstanding fines and fees in another court.</p> <p><b>Court use only:</b>            Court Debt Collections Office Voice Line: (804) 367-6695            Court Debt Collections Fax Line: (804) 367-3162</p>	

## References

Attorney General opinion to Warren, dated 10/31/00 00-030 Criminal costs, which may or may not be contingent upon sentence but are associated with conviction, and traffic fines are non-dischargeable in Chapter 7 bankruptcy proceedings. Debt for restitution or criminal fine included in criminal sentence is non-dischargeable in Chapter 13 bankruptcy; criminal fines not contingent upon sentence, traffic fines arising from traffic infractions, and civil traffic fines are dischargeable in Chapter 13 bankruptcies.

## Bond Forfeitures

A bond forfeiture is an action to incur a penalty or become liable for the payment of a sum of money as a consequence of failure to abide by the terms and condition of bail/release. [Va. Code § 19.2-143](#) provides when a person, under a recognizance in a case, either as a party or witness, fails to perform the condition of appearance, if it is to appear before a court of record or a district court, the court shall record the default therein, and shall issue a notice of default within five days of the breach of the condition appearance.

Proceedings for the forfeiture of bonds in criminal cases are civil in nature. See *Collins v. Commonwealth*, 145 Va. 468, 471, 134 S.E. 688, 688-89 (1926) (“While the taking of [a] recognizance [grows] out of a matter criminal in its nature, the execution of the bond and the effort of the Commonwealth to collect a debt due by reason of the forfeiture of the recognizance is a matter purely civil.”); See also *E.P. Heacock v. Commonwealth*, 228 Va. at 241, 321 S.E.2d at 648.

There is a distinction between a property bail bondsman and a surety bail bondsman.

Surety bail bondsman:

- The surety bail bondsman is an agent of a guaranty, indemnity, fidelity, or security company registered to do business in Virginia. If the court forfeits the bond on which a surety bail bondsman is obligated, the insurance company is liable for the forfeited bond.

Property bail bondsman:

- A property bail bondsman is not an agent of an insurance company. If the court forfeits the bond on which the property bail bondsman is obligated, they are personally liable for the debt.

The DC-482: Order and Notice of bond forfeiture is used to forfeit secured recognizances for surety or property bondsman.

The following form is to be used when initiating bond forfeiture:

DC-482	Order and Notice of bond forfeiture
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Additional forms, if needed:

DC-331	<a href="#">Surety's Capias and Bailpiece Release</a>
DC-410	<a href="#">Affidavit for Service of Process on the Secretary of the Commonwealth</a>
DC-451	<a href="#">Garnishment Summons</a>
DC-458	<a href="#">Notice of Satisfaction</a>
DC-465	Abstract of Judgment

**Note:** There are no filing fees to be paid for the forfeiture proceedings. DC-482: Notice and Order of Bond Forfeiture must be issued within 5 calendar days of the breach of the condition of appearance.

Once an individual account has been established on a forfeited bond, after 91 + days, the unpaid account will appear on the Listing of Unpaid Fines and Cost Report (BU51) for collection by the Commonwealth's Attorney, private collection attorney, or TAX.

## Secured Bond

The following procedures are recommended when processing a bond forfeiture for a secured bond in the general district court.

Step:	Description:
1.	<p>Case entry: assign a new civil number and enter case in GCMS using case type of <b>BF</b>. The first listed surety name on the Recognizance is defendant 01. Enter other defendants using the additional defendants screen to include the Insurance Company and Bonding Company. This information is obtained from district court form DC-330: Recognizance. It should be the persons and entities listed as sureties and could include the individual bondsperson, the Virginia company, the insurance company.</p> <p>For example, if the bail bondsman is a surety, the defendants should include the insurance company (serve registered agent in Virginia), the bonding company (serve the listed bail bondsman).</p> <p>If the bail bondsman is a property bondsman, the defendants should include the bail bondsman personally, the bonding company (serve the listed bail bondsman).</p> <p>If the surety is a third party, serve the third-party surety.</p> <p>Principal is bond amount.</p> <p>Court date is set 151 days from the finding of default (date defendant failed to appear).</p> <p>Plaintiff is: “Commonwealth of Virginia”, under state code, or “Locality’s Name”, under local code section.</p> <p>Prepare district court form DC-482: Order and Notice of Bond Forfeiture.</p> <p>Information needed to issue DC-482: Order and Notice of Bond Forfeiture can be obtained from the DCJS website:</p> <p><a href="#">Search For Credential</a></p>
2.	Notice of default is served on all parties.

Step:	Description:
	<p>Parties may include: Insurance Company and registered agent for the insurance company, bonding company and/or registered agent for the bonding company and surety or sureties.</p> <p>Contact State Corporation Commission if additional information is needed for surety bail bondsman.</p> <p>If the DC-482: Order and Notice of Bond Forfeiture is returned not found on any party, the <a href="#">Secretary of the Commonwealth</a> may be served with the notice required by <a href="#">Va. Code § 19.2-143</a> of the forfeiture hearing when the principal of the bond has failed to appear. There is no fee to the <a href="#">Secretary of the Commonwealth</a> as state agencies and courts do not pay the service fee. It is necessary to send the district court form DC-410: <a href="#">Affidavit for Service of Process on the Secretary of the Commonwealth</a>. Follow the procedure detailed in <a href="#">Va. Code § 8.01-329 (B)</a>.</p> <p>The clerk may wish to ask counsel, the Commonwealth’s Attorney, to sign the DC-410: <a href="#">Affidavit for Service of Process on the Secretary of the Commonwealth</a> as the party or party’s attorney if the case is a Commonwealth case, or the attorney for the locality to sign the form as the party or party’s attorney if it is a local case. Send the original and one copy of the DC-482: Order and Notice of Bond Forfeiture.</p> <p><b>Note:</b> Instructions for service of process through the Secretary of the Commonwealth can be found at the following link:</p> <p><a href="#">Instruction to Litigants</a></p>
3.	<p>Hearing/Disposition:</p> <ul style="list-style-type: none"> <li>Hearing is held on or after the 151st day – The Judge determines to which party the default applies, i.e. judge determines whether or not the default judgment is against a licensed bondsman personally in addition to whether the default judgment is against the bonding company.</li> </ul>

Step:	Description:
4.	<p>If judgment is entered, enter <b>J</b> or <b>DJ</b> whichever is applicable in the <b>Hearing Result</b> field on the GCMS <b>Hearing Disposition</b> screen.</p> <p>Enter <b>P</b> in the <b>Case Disposition</b> field if the judge enters a bond forfeiture order as the judgment. If you have more than one defendant, enter <b>P</b> beside each defendant against whom judgment was awarded in the <b>Judgment Code</b> field.</p> <p>If the defendant is brought before the court within 150 days of the findings of default the court shall dismiss the default upon the filing of a motion by the party in default. Update GCMS with <b>O</b> in the <b>Hearing Result</b> field on the GCMS <b>Hearing Disposition</b> screen and <b>I</b> in the <b>Case Disposition</b> field.</p> <p><b>Note:</b> If the bondsman appears before the hearing date and wishes to pay the bond, set up the Individual Account in FAS under the civil case number to account code 201 or to the appropriate primary locality (county/city) revenue code and receipt the payment. Once paid the case may be moved up on the docket to allow the court to dispose of the case, removing it from the pending docket. If the judge discharges the surety from further liability, update GCMS with <b>O</b> in the <b>Hearing Result</b> field and <b>I</b> in the <b>Case Disposition</b> field.</p>
5.	<p>If judgment is entered and defendant/surety(ies) are present to pay the bond, receipt to the civil case number using 201 or to the appropriate primary locality (county/city) revenue code for the bond amount. Acceptable payment funds are cash or certified check.</p> <p>Update GCMS <b>Judgment Satisfied</b> field. Note the judgment satisfied on the case papers.</p> <p>Once bond has been paid, no further action is taken.</p> <p><b>Note:</b> Bonds in criminal or juvenile cases are required to be made payable to the county or city in which the case is prosecuted. Neither the Commonwealth nor any town will receive bond forfeiture money. Acceptable payment funds are cash or certified check.</p>
6.	<p>If judgment is entered and defendant/surety (ies) are not present to pay, set up a civil individual account in FAS using the DC-482: Order and Notice of Bond Forfeiture case number.</p> <p>One individual account will be established for the entire bond.</p> <ul style="list-style-type: none"> <li>• <b>Account Of:</b> Surety's Name</li> </ul>



Step:	Description:
	<ul style="list-style-type: none"> <li>• <b>FMS Account Type: V</b> (civil)</li> <li>• <b>Account Code:</b> 201 or to the appropriate county/city revenue code</li> <li>• <b>Civil Interest: Y</b> Interest is assessed at the current rate on a bond forfeiture judgment, if ordered by the judge. If interest is collected, receipt to appropriate local interest revenue code.</li> <li>• <b>Additional Information:</b> Reference all judgment debtors-name/address information.</li> <li>• No other GCMS or FAS case will be established for any other defendants on this bond forfeiture Order.</li> </ul> <p>If the forfeited recognizance is not paid by 4:00 PM on the last day of the 150-day period from the finding of default, the license of any bail bondsman on the bond shall be suspended. At such time, the court shall issue a notice to pay within 10 business days to any employer of such bail bondsman if a property bondsman, utilizing the DC- 224: Notice to Pay. If the forfeiture is not paid within 10 business days of the notice to pay, licenses of the employer of the bail bondsman and agents thereof shall be suspended.</p> <p>After 91+ days, the unpaid account will be listed on the Listing of Unpaid Fines and Cost Report (BU51) for collection by the Commonwealth’s Attorney, private collection attorney, or tax.</p> <p><b>Note:</b> Bonds in criminal cases are required to be made payable to the county or city in which the case is prosecuted. Neither the Commonwealth nor any town will receive bond forfeiture money.</p>
7.	<p>Clerk mails a copy of the district court form DC-465: Abstract of Judgment to each judgment debtor and documents date of mailing on the file copy. Clerk shall promptly file an abstract of such judgment to be docketed by the clerk of the circuit court of the city or county.</p> <p>Clerk maintains a file copy indicating the date of delivery of all documents to the locality with the case papers.</p> <p>Place a copy of the district court form DC-465: Abstract of Judgment in the criminal/traffic file.</p>
8.	<p>If the bond is forfeited, and not paid by a professional bail bondsman, once final judgment (151 days after finding of default) is entered, send certified copy of DC-482: Order and Notice of Bond Forfeiture along with proof of service, as well as copies of the Power of Attorney, and district court form DC-330: Recognizance to:</p>

Step:	Description:
	<p>Dept. of Criminal Justice Services P.O. Box 1300 Richmond, VA 23218 (804) 786-0813 Email: <a href="mailto:bb@dcjs.virginia.gov">bb@dcjs.virginia.gov</a> Fax: 1-804-786-6344</p> <p>If bond is forfeited and not paid by a surety bondsperson, once final judgment (150 days after finding of default) is entered, send certified copy of DC-482: Order and Notice of Bond Forfeiture, along with proof of service, as well as copies of the Power of Attorney, and district court form DC-330: Recognizance to:</p> <p>State Corporation Commission Bureau of Insurance ATT: Linwood G. Bennett, Jr. P. O. Box 1157 Richmond, VA 23218 (804) 371-9465</p> <p>If the surety was a third-party who posted real property and the bond was forfeited to your locality, notify the Commonwealth's Attorney of the default using the district court form DC-465: Abstract of Judgment <a href="#">Va. Code § 19.2-348</a>.</p>
9.	<p>After entering the judgment in district court and recording in the circuit court, the district court clerk may issue appropriate process, such as district court form DC-451: <a href="#">Garnishment Summons</a>, to enforce forfeiture as judgment <a href="#">Va. Code § 19.2-143</a> and <a href="#">Va. Code § 16.1-77</a>.</p> <p>If the amount forfeited exceeds \$50,000 the process is returnable to the district, not circuit, court. The \$50,000 limit shall not apply with respect to cases involving forfeiture of a bond.</p>
10.	<p>If the forfeited bond is paid after sending the abstract of judgment to the local circuit court, the clerk must notify the local circuit court by sending district court form DC-458: <a href="#">Notice of Satisfaction</a>.</p> <p>Clerk will keep a copy with the case papers.</p>

Step:	Description:
	<p>The court must notify DCJS and/or the Bureau of Insurance once a bond has been satisfied using district court form DC-458: <a href="#">Notice of Satisfaction</a> if a copy of the DC-482: Order and Notice of Bond Forfeiture was sent to DCJS or the Bureau of Insurance.</p> <p>Update GCMS <b>Judgment Satisfied</b> field. Note the judgment satisfied on the case papers.</p>

### Unsecured Bond

The following procedures are recommended when processing a bond forfeiture for an unsecured bond in the general district court.

Step:	Description:
1.	<p>Case entry: assign a new civil number and enter case in GCMS. Defendant 01 will be the same as the defendant from the underlying traffic/criminal case.</p> <p>Principal is bond amount.</p> <p>Court date is set 151 days from the finding of default (date defendant failed to appear).</p> <p>Plaintiff is Commonwealth of Virginia (under state code) or Locality's Name (under local code section).</p> <p>Use case type <b>BF</b>.</p> <p>Prepare district court form DC-482: Notice and Order for Bond Forfeiture.</p>
2.	Notice is served on the defendant.
3.	<p>Hearing/Disposition:</p> <p>Hearing is held on or after the 151<sup>st</sup> day – The default is recorded if the defendant has not been delivered or appeared before the court.</p>
4.	<p>If judgment is entered, enter <b>J</b> or <b>DJ</b> whichever is applicable in the <b>Hearing Result</b> field on the GCMS <b>Hearing Disposition</b> screen.</p> <p>Enter <b>P</b> in the <b>Case Disposition</b> field if the judge enters a bond forfeiture order as the judgment.</p>

Step:	Description:
	<p>If the defendant appears before the court within 150 days of the findings of default the court shall dismiss the default upon the filing of a motion by the party in default. Update GCMS with <b>O</b> in the <b>Hearing Result</b> field on the GCMS Hearing Disposition screen and <b>I</b> in the <b>Case Disposition</b> field.</p>
5.	<p>If judgment is entered and defendant is not present to pay, set up a civil individual account in FAS using the civil case number from DC-482: Notice and Order for Bond Forfeiture.</p> <p>One individual account is established for the entire bond.</p> <p><b>Account Of:</b> Defendant's Name  <b>FMS Account Type:</b> V (civil)  <b>Account Code:</b> 201 or to the appropriate county/city revenue code  <b>Assessed:</b> Amount of bond forfeited.  <b>Civil Interest:</b> Y Interest is assessed at the current rate on a bond forfeiture judgment like any other judgment if ordered by the judge.  <b>Additional Information:</b> FAS will generate a district court form DC-224: Notice to Pay to be mailed to the debtor.</p> <p><b>Note:</b> Bonds in criminal or juvenile cases are required to be made payable to the county or city in which the case is prosecuted. Neither the Commonwealth nor any town will receive bond forfeiture money</p>
6.	<p>Clerk mails a copy of the district court form DC-465: Abstract of Judgment to the defendant and documents date of mailing on the file copy. Clerk shall promptly file an abstract of such judgment to be docketed by the clerk of the circuit court of their city or county.</p> <p>After entering the judgment in district court and recording in the circuit court, the district court clerk may issue appropriate process, such as district court form DC-451: <a href="#">Garnishment Summons</a>, to enforce forfeiture as judgment <a href="#">Va. Code § 19.2-348</a>.</p> <p>If the amount forfeited exceeds \$50,000 the process is returnable to the district, not circuit, court. The \$50,000 limit shall not apply with respect to cases involving forfeiture of a bond <a href="#">Va. Code § 19.2-143</a> and <a href="#">Va. Code § 16.1-77</a>.</p>
7.	<p>If the forfeited bond is paid after sending abstract of judgment to the local circuit court, the clerk must notify the local circuit court by sending district court form DC-458: <a href="#">Notice of Satisfaction</a>.</p> <p>Clerk will keep a copy with the case papers.</p>

Step:	Description:
	Update GCMS <b>Judgment Satisfied</b> field. Note the judgment satisfied on the case papers.

### Cash Bond

The following procedures are recommended when processing a bond forfeiture for a cash bond posted in the General District Court.

Step:	Description:
1.	<p>Defendant is tried in their absence and convicted, add the assessed fines and costs to the FAS individual account.</p> <p>“... any defendant or juvenile who posted a cash bond and failed to appear is tried in their absence and is convicted, the court or judge trying the case shall first apply the cash bond, or so much thereof as may be necessary, to the payment of any fines or costs, or both, adjudged against the defendant or juvenile or imposed by law. Any remaining funds shall be forfeited without further notice.”</p> <p>Enter a journal voucher into FAS using reason code <b>BD</b> to distribute the portion of the bond to satisfy the fines and costs.</p> <p>After this journal voucher has processed overnight, verify the account balance, and enter another journal voucher to forfeit the remaining bond using reason code <b>BF</b> crediting 201 or to the appropriate primary locality (county/city) revenue code <a href="#">Va. Code § 19.2-143</a>.</p> <p><b>Note:</b> Bonds in criminal or juvenile cases are required to be made payable to the county or city in which the case is prosecuted. Neither the Commonwealth nor any town will receive bond forfeiture money.</p>
2.	<p>Defendant fails to appear and is not tried in their absence; the cash bond is forfeited forthwith without further notice.</p> <p>It is not necessary to issue the district court form DC-482: Order and Notice of Bond Forfeiture.</p> <p>Enter a journal voucher to forfeit the bond using reason code <b>BF</b> crediting 201 or to the appropriate primary county/city revenue code.</p>

### Appeals

A bond forfeiture may be appealed to the circuit court by noting the appeal in writing within ten days after the date on which the order was entered [Va. Code § 16.1-106](#). District court

form DC-475: Notice Of Appeal - Civil, may be used for this purpose. The appellant posts an appeal bond, if so ordered by the court, and pays the circuit court writ tax and costs within thirty days from the date of judgment to the general district court clerk [Va. Code § 16.1-107](#). The clerk's office forwards all case-related materials, bond, writ tax, and costs to the circuit court [Va. Code § 16.1-112](#).

### Refunding the Bond

If a cash bond was posted for a defendant who was tried in their absence and convicted, the cash bond shall be promptly applied to fines and court costs, with the remainder of the bond forfeited to the Locality. However, if a rehearing is granted, the judge may remit all or part of such cash bond not applied to fines/costs and order a refund by the Locality.

If a cash bond was posted for a defendant who was not tried in their absence, the cash bond shall be promptly forfeited. However, if the defendant appears in court within 60 days of the failure to appear without an order of conviction after the bond is forfeited, the judge may remit all or part of the bond and order a refund by the Locality.

If the defendant appears before or is delivered to the court within 24 months of the findings of default, the court shall remit any bond previously ordered forfeited by the courts, less such costs as the court may direct.

If it is brought to the attention of the court that the defendant or juvenile is incarcerated in another state or country within forty-eight months of the finding of default, the court shall remit any bond previously ordered forfeited. If the defendant or juvenile left the Commonwealth with the permission of the court, the bond shall be remitted without deduction of costs; otherwise, the costs of returning them to the Commonwealth shall be deducted from the bond [Va. Code § 19.2-143](#).

Step:	Description:
1.	Court determines legitimacy of refund: <ul style="list-style-type: none"> <li>• Clerk determines whether the refund comes from the clerk's office or from the locality.</li> <li>• Clerk may refund the bond only if funds have not transmitted.</li> <li>• The Locality shall refund any bonds that have previously been remitted to the locality.</li> </ul>
2.	The clerk prepares the following four refund documents for delivery to the Locality: <ul style="list-style-type: none"> <li>• Cover letter on court stationary which includes:               <ol style="list-style-type: none"> <li>1. Clear statement of request.</li> </ol> </li> </ul>

Step:	Description:
	<ol style="list-style-type: none"> <li>2. Name of defendant or surety (if bond) and case number if appropriate, and</li> <li>3. Address of refund recipient (where to send check)</li> </ol> <ul style="list-style-type: none"> <li>• Copy or receipt or journal voucher (adjusting) entry to show funds received.</li> <li>• Copy of court order certified by clerk; and</li> <li>• Copy of Transmittal to Locality</li> </ul>
3.	Court mails to appropriate local Treasurer/Director of Finance.

### Abstract of Judgment Filed by Juvenile and Domestic Relations District Court with the General District Court for Enforcement

Step:	Description:
1.	The General District Court will receive a district court form DC-465: Abstract of Judgment from the Juvenile and Domestic Relations District Court if they wish to enforce the judgment from a bond forfeiture.
2.	<p>Enter the district court form DC-465: Abstract of Judgment in civil division of GCMS.</p> <ul style="list-style-type: none"> <li>• <b>Case Type:</b> <b>AJ</b> (abstract of judgment)</li> <li>• <b>Court Date:</b> Date of filing</li> <li>• <b>Finalize:</b> Using <b>O</b> in the <b>Hearing Result</b> field and <b>O</b> in the <b>Case Disposition</b> field.</li> </ul> <p>Make a note in <b>Remarks</b> that case is a bond forfeiture from JDR court. Any attempt to collect will be subsequent action to this base case number.</p>

### Time Constraints

The clerk's office, within five days of the date the defendant failed to appear, shall issue a DC-482: Order and Notice of Bond Forfeiture.

Bond forfeiture hearing:

- Set first hearing within 151 days after default finding for forfeiture order.

- If the defendant comes or is brought to court within 150 days of the findings of default the court shall dismiss the default upon the filing of a motion by the party in default.
- If defendant who posted the bond was tried in their absence at the criminal hearing, the cash bond shall be promptly forfeited. If the defendant appears in court within 60 days of forfeiture order, the judge may refund all or part of the bond and order a refund by the local Treasurer/Director of Finance. This provision does not apply to a cash bond posted by a third-party surety. See Refund of Bond.
- If the defendant appears before or is delivered to the court within 24 months of the findings of default, the judge shall refund all or part of the bond and order a refund by the local Treasurer/Director of Finance, less such costs as the court may direct. The payment of court costs does not apply to a cash bond posted by a third-party surety without due process and written consent of the posting party. See the back of the district court form DC-330: Recognizance.
- If the court is notified within 48 months of default that the Defendant was incarcerated in another state or county, judge shall refund all or part of the bond and order a refund by the local Treasurer/Director of Finance. Again, this provision does not apply to a cash bond posted by a third-party surety.

## References

<a href="#">Va. Code § 8.01-329 (B):</a>	Service of process or notice; service on Secretary of Commonwealth
<a href="#">Va. Code § 8.01-457:</a>	Marking satisfied judgments for Commonwealth; payment by third parties releasing recognizances
<a href="#">Va. Code § 16.1-106:</a>	Appeals from courts not of record
<a href="#">Va. Code § 16.1-258:</a>	Bonds and forfeitures thereof
<a href="#">Va. Code § 19.2-128:</a>	Penalties for failure to appear
<a href="#">Va. Code § 19.2-143:</a>	Where default recorded; process on recognizance; forfeiture on recognizance; when copy may be used; cash bond
<a href="#">Va. Code § 19.2-145:</a>	How penalty remitted
Attorney General Opinion to Cunningham dated 5/29/02 (2002, page 148): Order of remittance does not serve as satisfaction of judgment in general district court; does act as satisfaction of judgment entered on previously forfeited bond under applicable statutes pertaining to judgments filed in circuit courts.	



<b>VIRGINIA: IN THE GENERAL DISTRICT COURT FOR THE</b> <input type="checkbox"/> CITY <input type="checkbox"/> COUNTY OF _____	
IN THE MATTER OF: (COMMONWEALTH OF VIRGINIA/LOCALITY) vs. _____ Name of Defendant <span style="float: right;">Name of Surety/Sureties</span>	
<b>ORDER REFUNDING BOND</b>	
This cause came to be heard upon the motion of _____, <input type="checkbox"/> Surety <input type="checkbox"/> Defendant for refund of the bond posted in the above-styled case heretofore forfeited and paid to the Treasurer of Virginia.	
It appearing to the court in accordance with § 19.2-145 of the Code of Virginia that the bond of aforesaid defendant was forfeited and said defendant was returned: <input type="checkbox"/> within 24 months of finding of default, or <input type="checkbox"/> within sixty (60) days of failure to appear without an order of conviction	
or not returned and <input type="checkbox"/> proven to be incarcerated in another state or country within 48 months of the finding of default	
It is therefore ADJUDGED, ORDERED and DECREED that said bond, less costs ordered by the court, if any, as follows:	
COURT DATE: CASE NUMBER: ORIGINAL BOND POSTED:     \$ COSTS:                             \$ AMOUNT REFUNDED:             \$	
be refunded to:	
<input type="checkbox"/> Surety  NAME: ADDRESS:	<input type="checkbox"/> Defendant  NAME: ADDRESS:
The judgment as recorded in the Circuit Court of this jurisdiction is hereby satisfied and released.	
ENTERED THIS _____ OF _____, _____.	
JUDGE	

## Discovery of Medical Records

Virginia law protects the privacy of medical records subpoenaed during litigation. These protections apply to both parties and non-party witnesses. Before disclosure occurs, patients whose records are requested must receive notice of the request and must have at least fifteen days to file an objection. Disclosure may occur only after the patient:

1. Consents to the request
2. Fails to object within fifteen days, or
3. Files a motion to quash that is overruled by a court.

These restrictions apply both to attorney-issued subpoenas and requests for the issuance of a subpoena to the clerk of court.

### **Who Must Be Notified**

Unless exempted from provisions of [Va. Code § 32.1-127.1:03 \(H\)](#), a party who subpoenas medical records is subject to heightened notification requirements. When records of a party represented by counsel are subpoenaed, counsel must be notified. When the records of a pro se party or non-party witness are requested, notification must be provided to the person whose health care records are to be provided. The requesting party is also required to transmit notification to the health care provider in possession of the records.

### **Form of Notification**

Notification must include both a copy of the subpoena or request(s) for subpoena and a statutorily required statement outlining the procedures governing requests for medical records. The text of the statement to be provided to the party whose records are requested is specified in [Va. Code § 32.1-127.1:03 \(H\)\(1\)](#). District court form DC-348: [Notice to Individual – Subpoena Duces tecum for Health Records](#). The text of the statement to be provided to health care providers is specified in [Va. Code § 32.1-127.1:03 \(H\)\(2\)](#). District court form DC-350: [Notice to Health Care Entities – Subpoena Duces tecum for Health Records](#).

### **Return Date**

The return date of any subpoena duces tecum requesting the disclosure of medical records must be at least 30 days after the date of the subpoena. An earlier return date is permissible only if authorized by court order for good cause shown. If the health care provider is unable to provide the medical records within 30 days, with written notice of the inability to comply, the provider shall have no more than 30 additional days from the date of such written notice to comply.

### **Transmittal of Records/Motion to Quash**

Either the patient and/or health care provider may move to quash the subpoena. If no motion to quash is filed within fifteen days, the requesting party must certify this fact to the health care provider holding the records. The health care provider then has five days or until the return date of the original subpoena to transmit the records, whichever is later. While the statute is not explicit, it seems that, when no objection is filed, the health care provider is to transmit the records to the requesting party. If the health care provider is informed that a motion to quash the subpoena has been filed, the health care provider is required to transmit the records to the clerk of court in a securely sealed envelope, pending adjudication.

of the motions(s) to quash. When all motions to quash have been adjudicated, the statute charges both the clerk and requesting party with important responsibilities.

Depending upon the resolution of the motion(s) to quash, the clerk must do one of three things:

- If the court determines that no submitted medical records should be disclosed, return all submitted medical records to the provider in a sealed envelope.
- If the court determines that all submitted medical records should be disclosed, provide all the submitted medical records to the party on whose behalf the subpoena was issued; or
- If the court determines that only a portion of the submitted medical records should be disclosed, provide such portion to the party on whose behalf the subpoena was issued and return the remaining medical records to the provider in a sealed envelope.

While the clerk is responsible for transmitting the records, the requesting party must certify the result of the motion(s) to quash to the health care provider. Depending upon the outcome of the proceeding, five different certifications are possible:

- If all of the requests are upheld and the medical records have previously been delivered to the clerk, the requesting party must certify that none of the records will be returned to the provider.
- If all of the requests are upheld and no medical records have previously been delivered to the court by the provider, the requesting party certifies that the provider must transmit the medical records designated in the subpoena by the return date on the subpoena or five days after receipt of certification, whichever is later.
- If all of the requests are quashed but the requested medical records already have been delivered to the clerk, the requesting party must certify that the records will be returned to the provider.
- If the court determines that only some of the requested records are to be disclosed, the requesting party must certify to the provider that record(s) are subject to disclosure. If the requested records have previously been transmitted to the clerk, the certification must inform the provider that those medical records previously delivered to the court for which disclosure was authorized will not be returned to the provider; however, all medical records for which disclosure has not been authorized will be returned to the provider.
- If only some of the requested records are to be disclosed, the requesting party must certify to the provider which record(s) are subject to disclosure. If the requested records have previously been transmitted to the clerk, the certification must inform the provider that those medical records previously delivered to the court for which

disclosure was authorized will not be returned to the provider, however, all medical records for which disclosure has not been authorized will be returned to the provider.

Each type of certification must indicate that the motion(s) to quash have been adjudicated and must include a copy of the court's order or ruling. The requesting party may not transmit certification until all motions to quash have been resolved.

### **Disclosure**

Any records received as a result of a medical subpoena duces tecum must be sealed [Va. Code § 32.1-127.1:03](#).

### **Standards for Adjudicating Motions to Quash**

If the patient or health care provider files a motion to quash, the requesting party must demonstrate "good cause" for the disclosure of the records [Va. Code § 32.1-127.1:03 \(H\)](#). In determining whether good cause has been shown, court must consider:

- The particular purpose for which the evidence was collected
- The degree to which the disclosure of the records would embarrass, injure, or invade the privacy of the individual
- The effect of the disclosure upon the individual's future health
- The importance of the information to the lawsuit or proceeding, and
- Any other relevant factor.

### **Exceptions to Heightened Notification Requirements**

The heightened notification requirements of [Va. Code § 32.1-127.1:03 \(H\)](#) do not apply to requests by a "duly authorized administrative agency." The requirements are also inapplicable when a patient requests medical records from their own healthcare provider pursuant to [Va. Code § 8.01-413](#).

### **Isolation of Certain Persons with Diseases**

[Va. Code § 32.1-48.01](#), [Va. Code § 32.1-48.02](#), [Va. Code § 32.1-48.03](#) and [Va. Code § 32.1-48.04](#) govern petitions for the isolation of persons with certain communicable diseases. The provisions and procedures are loosely patterned after the procedures for hearing cases for involuntary commitment of mentally ill persons. The procedures involve:

- The filing of a petition by the Commissioner of Health or their designee.

- The judge may issue a temporary detention order to have the defendant detained if the defendant cannot be conveniently brought before the court, subject to the statutory limits on such detention. Otherwise, a district court form DC-430: Summons for Hearing is issued. In either event, a copy of the petition is attached to the copy of the order or summons served on the defendant.
- If a temporary detention order is issued, the hearing must be held within forty-eight hours after execution of the order. However, if the time period ends on a Saturday, Sunday or legal holiday, the time period may be held within seventy-two or ninety-six hours after execution.
- The judge must inform the defendant of their right to counsel and, if not represented, must appoint counsel. If requested, the judge must allow a reasonable opportunity to employ counsel at defendant's expense if requested.
  - Prior to the hearing, the judge must inform the defendant of the basis for detention and the right of appeal.
  - In order to issue an isolation order, the court must make certain statutory findings. The order is valid only for 120 days.
  - Appeals must be noted within thirty days from entry of the order.

## Testing for Blood-Borne Pathogens

If an employee of a public safety agency, which may include victims and witnesses of crimes as defined in [Va. Code § 32.1-45.2](#), is involved in a possible “exposure prone” incident involving another person and the exposure is to blood-borne pathogens, the person allegedly carrying the blood-borne pathogens may be requested to submit to testing for hepatitis B or C virus and human immunodeficiency virus as provided in [Va. Code § 32.1-37.2](#). Prior to performing any test for the human immunodeficiency virus, the medical care provider shall inform the patient that they have the right to decline the test. If the alleged carrier refuses to consent to testing, a petition may be filed in general district court to order testing and disclosure of its results. The process is:

Step:	Description:
1.	The Clerk receives district court form DC-405: <a href="#">Petition to Test Blood- Borne Pathogens</a> . Do not collect fees/sheriff fees. The petition is entered in the civil division of GCMS using <b>BT</b> as the case type. Both the plaintiff's and respondent's names should be entered as confidential. The hearing shall be held as soon as practicable after the petition is filed.
2.	The clerk's office will assign a hearing date, sign the summons portion of the DC-405: <a href="#">Petition to Test Blood- Borne Pathogens</a> and send out for service on the respondent and the director of the local health department.

Step:	Description:
3.	<p>Once served, the court shall hear the petition in chambers.</p> <p>If the court finds that an “exposure prone incident” occurred, it shall order testing for hepatitis B, C viruses and HIV and order disclosure of the test results in accordance with the law. If so, the respondent will be ordered to appear at a specific place and time for testing.</p> <p>If there is a fee for the blood testing service, payment is arranged between the testing facility and the person whose blood has been ordered to be tested.</p>
4.	<p>Disclosure of the test results shall be made to the district health director of the jurisdiction in which the petition was filed. The district health director or their designee shall inform the parties of the test results.</p>
5.	<p>Finalize the case in GCMS with <b>O</b> in the <b>Hearing Result</b> field and <b>O</b> in the <b>Case Disposition</b> field. Note in remarks whether or not the petition was granted or denied.</p> <p>The record of the case, including the petition and order, shall be sealed.</p>
6.	<p>Appeal may be noted in writing within ten calendar days of judgment. The appeal is noted using district court form, DC-475: Civil Appeal Notice.</p> <p><b>Note:</b> Do not collect appeal bond or writ tax and costs.</p> <p>The appeal shall be heard as soon as possible by the circuit court. See appendix on <a href="#">Appeals</a> for procedures.</p>

District form, DC-406: [Petition to Require Blood Test](#) is used by a person who is exposed to blood as a part of certain specified job duties, including law enforcement, health care providers, or school board employees, or by a person exposed to the blood of one of these service providers to request the person whose body fluids were involved to submit to testing. If consent is not given, a court order may be obtained [Va. Code §32.1-45.1](#).

The petition is filed in the general district court, unless the person whose blood specimen is sought is a minor, and in that case, the petition is filed in the juvenile and domestic relations district court. A petition may be filed in the general district court to require testing and disclosure of its results. The process is:

Step:	Description:
1.	The Clerk receives district court form DC-406: <a href="#">Petition to Require Blood Test</a> . Do not collect fees/sheriff fees. The petition is entered in the civil division of GCMS using <b>BT</b> as the case type. Both the plaintiff's and respondent's names should be entered as confidential.
2.	<p>The clerk's office will assign a hearing date, sign the summons portion of the DC-406: <a href="#">Petition to Require Blood Test</a> and send out for service on the respondent and the director of the local health department.</p> <p>A hearing on such a petition shall be given precedence on the docket so as to be heard by the court within <b>48 hours</b> of the filing of the petition, or, if the court is closed during such time period, such petition shall be heard on the next day that the court is in session. A copy of the petition, which shall specify the date and location of the hearing, shall be provided to the person whose specimen is sought.</p>
3.	<p>Once served, the court shall hold a hearing.</p> <p>If applicable, the respondent will be ordered to appear at a specific place and time for testing. Disclosure of the test results shall be made to the district health director of the jurisdiction in which the petition was filed. The district health director or their designee shall inform the parties of the test results.</p> <p>If there is a fee for the blood testing service, payment is arranged between the testing facility and the person whose blood has been ordered to be tested.</p>
4.	<p>Disclosure of the test results shall be made to the district health director of the jurisdiction in which the petition was filed. The district health director or their designee shall inform the parties of the test results.</p> <p>No specimen obtained pursuant to this section shall be tested for any purpose other than for the purpose provided for, nor shall the specimen or the results of any testing pursuant to this section be used for any purpose in any criminal matter or investigation.</p>
5.	<p>Finalize the case in GCMS with <b>O</b> in the <b>Hearing Result</b> field and <b>O</b> in the <b>Case Disposition</b> field. Note in remarks whether or not the petition was granted or denied.</p> <p>The record shall be sealed.</p>

Step:	Description:
6.	<p>Any person who is subject to a testing order may appeal the order of the general district court to the circuit court of the same jurisdiction within 10 days of receiving notice of the order.</p> <p>The appeal is noted using district court form DC-475: Civil Appeal Notice.</p> <p><b>Note:</b> Do not collect appeal bond or writ tax and costs.</p> <p>The appeal shall be heard as soon as possible by the circuit court. See appendix on <a href="#">Appeals</a> for procedures.</p>

## Jail Fees

Any sheriff or jail superintendent may establish a program to charge inmates a reasonable fee, not to exceed \$3 per day, to defray the costs associated with the prisoners' keep.

If a person is unable to pay in full the fees owed to the local correctional facility or regional jail pursuant to [Va. Code § 53.1-131.3](#), the sheriff or jail superintendent shall establish a deferred or installment payment agreement subject to the approval of the general district court.

### Petition and Order for Approval of Jail Fees Payment Agreement Procedures

Step:	Description:
1.	The Clerk receives district court form DC-276: Petition and Order for Approval of Jail Fees Payment Agreement. Do not collect fees/sheriff fees.
2.	The petition is entered in the civil division of GCMS whether or not the court holds a hearing using <b>NC</b> (Non-Case) as case type.
3.	The hearing is optional. If the court wishes to hold a hearing, the clerk sets a court date and completes the Notice of Hearing portion, giving a copy to the petitioner, and serving the respondent.
4.	<p>Once the court has completed the order portion of district court form DC-276: <a href="#">Petition and Order for Approval of Jail Fees Payment Agreement</a>, update GCMS using <b>O</b> and:</p> <ul style="list-style-type: none"> <li>• <b>G</b> – Granted</li> <li>• <b>D</b> – Denied</li> <li>• <b>I</b> – Dismissed</li> </ul> <p>After the hearing, a copy of the DC-276: <a href="#">Petition and Order for Approval of Jail Fees Payment Agreement</a> should be provided to the plaintiff.</p>



Step:	Description:
5.	<p>Appeal may be noted in writing within ten calendar days of judgment.</p> <p><b>Note:</b> Do not collect appeal bond or writ tax and costs.</p> <p>Prepare file in accordance to local policy for delivery to the Circuit Court; and forward with completed district court form DC-25: Circuit Court Case Transmittal and Fees Remittance Sheet.</p> <p>See appendix on <a href="#">Appeals</a> for procedures.</p>

### Obtain Civil Judgment Procedures

Step:	Description:
1.	<p>The Clerk will receive district court form DC-412: <a href="#">Warrant in Debt</a> or a Motion for Judgment. Instructions for completing the DC-412 are found in the District Court Forms Manual.</p> <p>Mark on the warrant the date and time filed in the clerk's office.</p> <p>Do not collect fees/sheriff fees.</p>
2.	Index the case in GCMS
3.	If appropriate, issue the process by signing the warrant portion of district court form DC-412: <a href="#">Warrant in Debt</a> .
4.	Once the case has been heard, update GCMS using normal hearing disposition update procedures. The plaintiff may ask for suspension at the same hearing date using district court form DC-277: <a href="#">Petition and Order Authorizing Suspension or Nonrenewal of Driver's License – Failure to Pay Jail Fees</a> .
5.	<p>Appeal may be noted in writing within ten calendar days of judgment. Court may wish to set an appeal bond.</p> <p><b>Note:</b> Do not collect writ tax and costs. Prepare file in accordance with local policy for delivery to the Circuit Court; and forward with completed district court form DC-25: Circuit Court Case Transmittal and Fees Remittance Sheet.</p> <p>See appendix on <a href="#">Appeals</a> for procedures.</p>

### Forms

DC-276	<a href="#">Petition and Order for Approval of Jail Fees Payment Agreement</a>
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DC-412	<a href="#">Warrant in Debt</a>
DC-25	Circuit Court Case Transmittal and Fees Remittance Sheet

### References

<a href="#">Va. Code § 53.1-127.3:</a>	Deferred or installment payment agreement for unpaid fees
<a href="#">Va. Code § 53.1-127.5:</a>	Collection of fees owed; contract for collection; duties of Department of Taxation

### Notaries; Providing Advice On Immigration

A notary public shall not offer or provide legal advice on immigration or other legal matters, or represent any person in immigration proceedings, unless such notary public is authorized or licensed to practice law in the Commonwealth or is accredited pursuant to 8 C.F.R. § 292.2 to practice immigration law or represent persons in immigration proceedings. Any person who violates the provisions of subsection B is subject to a civil penalty not to exceed \$500 for a first violation and a civil penalty not to exceed \$1,000 for a second or subsequent violation. All penalties arising under this section shall be recovered in a civil action brought by the Attorney General in the name of the Commonwealth and the proceeds shall be deposited into the Legal Aid Services Fund established in [Va. Code § 17.1-278](#), [Va. Code § 47.1-15.1](#).

The following procedure is recommended when processing a violation of [Va. Code § 47.1-15.1](#).

Step:	Description:
1.	The Office of the Attorney General will prepare a Motion for Judgment or other pleading and file with the court. If the pleading requires service, prepare district court form DC-430: Summons for Hearing with a copy of the Motion for Judgment or other pleading to be served on the defendant.  Do not collect filing fees or service fees.
2.	Case entry: assign a new civil number and enter case in GCMS using case type of <b>OT</b> :  Plaintiff is: "Commonwealth of Virginia" Principal is amount of civil penalty being sought Court date is the date of first hearing
3.	Hearing/Disposition: If judgment is entered, enter <b>J</b> or <b>DJ</b> whichever is applicable in the <b>Hearing Result</b> field on the GCMS <b>Hearing Disposition</b> screen. Enter <b>P</b> in the <b>Case Disposition</b> field if the judge enters a judgment. If the judge

Step:	Description:
	dismisses the case, update GCMS with <b>O</b> in the <b>Hearing Result</b> field on the GCMS <b>Hearing Disposition</b> screen and <b>I</b> in the <b>Case Disposition</b> field.
4.	If judgment is entered and defendant is present to pay the civil penalty, receipt to the civil case number using revenue code 123 (Legal Aid Services Fund).  Update GCMS <b>Judgment Satisfied</b> field. Note the judgment satisfied on the case papers.
5.	If judgment is entered and defendant is not present to pay, set up a civil individual account in FAS using the civil case number:  <b>Account Of:</b> Defendant's Name <b>FMS Account Type:</b> V (civil) <b>Account Code:</b> Revenue code 123 (Legal Aid Services Fund) <b>Assessed:</b> Amount of civil penalty  FAS will generate a district court form DC-224: Notice to Pay and Notice of Suspension for Failure to Pay to be mailed to the defendant.
6.	Appeal may be noted in writing within ten calendar days of judgment.  Prepare file in accordance to local policy for delivery to the Circuit Court; and forward with completed district court form DC-25: Circuit Court Case Transmittal and Fees Remittance Sheet.  See appendix on <a href="#">Appeals</a> for procedures.

## Overweight Violations/Motor Carrier Violations

### Case Initiation

If a person seeks to contest a motor vehicle overweight violation that has been charged on a Virginia overweight citation pursuant to [Va. Code § 46.2-1133](#), or seeks to contest certain violations of license, registration, tax requirements, and vehicle size limits that has been charged on a Virginia motor carrier citation pursuant to [Va. Code 46.2-613.1](#), that person must timely file a notice of contest with the [Virginia Department of Motor Vehicles](#), not with the court. Upon receipt, DMV notifies the contesting party and the arresting officer of the pre-set trial date and that the case papers have been sent to the general district court. When the court receives the papers, the case is docketed and indexed in the civil division of GCMS. If the charge is a violation of [Va. Code § 46.2-1133](#), the case is indexed using case type **OC**. If the charge is a violation of [Va. Code § 46.2-613.1](#), the case is indexed using case type **MC**.

No additional service of process or notice of trial date is needed unless a continuance is granted.

If an overweight case has been commenced through a district court form DC-446: Attachment Summons the normal attachment procedures apply except that a magistrate may take a defendant's bond and forward it to the court [Va. Code § 46.2-1134](#). The Commonwealth is not required to give an indemnifying bond that an authority may require before levying an attachment, writ of fieri facias, or warrant of distress on property if such authority doubts whether the property is subject to such levy [Va. Code § 8.01-367](#).

### Case Hearing, Judgment

The case is tried as if brought by the government on a district court form DC-412: [Warrant in Debt](#) or, if applicable, on a district court form DC-446: Attachment Summons except that:

- Judgment is entered on a district court form DC-480: Case Disposition and a copy is sent to DMV after the ten-day appeal period has run. GCMS should be updated using O in the **Hearing Result** field and an O in the **Case Disposition** field. The case should not be updated as a judgment as this information will display on the Internet. DMV must be notified of the disposition whether or not a judgment was entered.
- The court does not collect the judgment. Payments are to be made to DMV. If the defendant offers to pay by check, have the check made payable to DMV, not to the court, and forward it to DMV together with the DMV copy of the district court form DC-480, Case Disposition.
- An overweight citation case can be appealed. Defendant should complete district court form DC-475: Civil Appeal Notice. The court may wish to set an appeal bond. Writ tax and costs for circuit court should be assessed. The defendant has ten days to note and thirty days to perfect.

### Violations of Town Ordinances Concerning Weight Limits

If the violation is of a town ordinance adopted pursuant to [Va. Code § 46.2-1138.2](#), the liquidated damages assessed are paid into the town treasury.

### Petition to Restore Right to Purchase, Possess or Transport a Firearm

[Va. Code § 18.2-308.1:1](#) Purchase, possession, or transportation of firearms by persons acquitted by reason of insanity; penalty; permit.

A. It shall be unlawful for any person acquitted by reason of insanity and committed to the custody of the Commissioner of Behavioral Health and Developmental Services, pursuant to Chapter 11.1 ([Va. Code § 19.2-182.2](#) et seq.) of Title 19.2, on a charge of treason, any felony or any offense punishable as a misdemeanor under Title 54.1 or a Class 1 or Class 2 misdemeanor

under this title, except those misdemeanor violations of (i) Article 2 ([Va. Code § 18.2-266](#) et seq.) of Chapter 7 of this title, (ii) Article 2 ([Va. Code § 18.2-415](#) et seq.) of Chapter 9 of this title, or (iii) [Va. Code § 18.2-119](#), or (iv) an ordinance of any county, city, or town similar to the offenses specified in (i), (ii), or (iii), to knowingly and intentionally purchase, possess, or transport any firearm. A violation of this subsection shall be punishable as a Class 1 misdemeanor.

**B.** Any person so acquitted may, upon discharge from the custody of the Commissioner, petition the general district court in the city or county which they reside to restore their right to purchase, possess or transport a firearm. Any person who is not a state resident may petition the general district court of the city or county in which the most recent of the proceedings occurred which made it unlawful for them to purchase, possess, or transport any firearm. A copy of the petition shall be mailed or delivered to the attorney for the Commonwealth for the jurisdiction where the petition was filed who shall be entitled to respond and represent the interests of the Commonwealth. The court shall conduct a hearing if requested by either party. If the court determines after receiving and considering evidence concerning the circumstances regarding the disability referred to in subsection A and the person's criminal history, treatment record, and reputation as developed through character witness statements, testimony, or other character evidence, that the person will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest, the court shall grant the petition. Any person denied relief by the general district court may petition the circuit court for a de novo review of the denial. Upon a grant of relief in any court, the court shall enter a written order granting the petition, in which event the provisions of subsection A do not apply. The clerk of court shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any such order.

[Va. Code § 18.2-308.1:2](#) Purchase, possession, or transportation of firearm by persons adjudicated legally incompetent or mentally incapacitated, penalty.

**A.** It shall be unlawful for any person who has been adjudicated (i) legally incompetent pursuant to former Va. Code § 37.1-128.02 or former Va. Code § 37.1-134, (ii) mentally incapacitated pursuant to former Va. Code § 37.1-128.1 or former Va. Code § 37.1-132 or (iii) incapacitated pursuant to Chapter 10 (Va. Code § 37.2-1000 et seq.) of Title 37.2 to purchase, possess, or transport any firearm. A violation of this subsection shall be punishable as a Class 1 misdemeanor.

**B.** Any person whose competency or capacity has been restored pursuant to former Va. Code § 37.1-134.1 or Va. Code § 37.2-1012 may petition the general district court in the city or county which they reside to restore their right to purchase, possess or transport a firearm. Any person who is not a state resident may petition the general district court of the city or county in which the most recent of the proceedings occurred which made it unlawful for them to purchase, possess, or transport any firearm. A copy of the petition shall be mailed or delivered to the attorney for the Commonwealth for the jurisdiction where the petition was filed who shall be entitled to respond and represent the interests of the Commonwealth. The court shall conduct

a hearing if requested by either party. If the court determines after receiving and considering evidence concerning the circumstances regarding the disability referred to in subsection A and the person's criminal history, treatment record, and reputation as developed through character witness statements, testimony, or other character evidence, that the person will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest, the court shall grant the petition. Any person denied relief by the general district court may petition the circuit court for a de novo review of the denial. Upon a grant of relief in any court, the court shall enter a written order granting the petition, in which event the provisions of subsection A do not apply. The clerk of court shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any such order.

[Va. Code § 18.2-308.1:3](#) Purchase, possession, or transportation of firearm by persons involuntarily admitted or ordered to outpatient treatment, penalty.

**A.** It shall be unlawful for any person (i) involuntarily admitted to a facility or ordered to mandatory outpatient treatment pursuant to [Va. Code § 19.2-169.2](#), (ii) involuntarily admitted to a facility or ordered to mandatory outpatient treatment as the result of a commitment hearing pursuant to Article 5 ([Va. Code § 37.2-814](#) et seq.) of Chapter 8 Title Va. Code § 37.2, notwithstanding the outcome of any appeal taken pursuant to [Va. Code § 37.2-821](#), (iii) involuntarily admitted to a facility or ordered to mandatory outpatient treatment as a minor 14 years of age or older as the result of a commitment hearing pursuant to Article 16 ([Va. Code § 16.1-335](#) et seq.) of Chapter 11 of Title 16.1, (iv) who as the subject of a temporary detention order pursuant to [Va. Code § 37.2-809](#) or subsequently agreed to involuntary admission pursuant to [Va. Code § 37.2-805](#) or (v) who, as a minor 14 years of age or older, was the subject of a temporary detention order pursuant to [Va. Code § 16.1-340.1](#) and subsequently agreed to voluntary admission pursuant to [Va. Code § 16.1-338](#) ; or (vi) who was found incompetent to stand trial and likely to remain so for the foreseeable future and whose case was disposed of in accordance with [Va. Code § 19.2-169.3](#), to purchase, possess or transport a firearm. A violation of this subsection shall be punishable as a Class 1 misdemeanor.

**B.** Any person prohibited from purchasing, possessing or transporting firearms under this section may, at any time following their release from involuntary admission to a facility, or their release from an order of mandatory outpatient treatment, or their release from voluntary admission pursuant to [Va. Code § 37.2-805](#) following the issuance of a temporary detention order, their release from a training center, or their release as provided by [Va. Code § 19.2-169.3](#), petition the general district court in the city or county which they reside to restore their right to purchase, possess or transport a firearm. Any person who is not a state resident may petition the general district court of the city or county in which the most recent of the proceedings occurred which made it unlawful for them to purchase, possess, or transport any firearm. A copy of the petition shall be mailed or delivered to the attorney for the Commonwealth for the jurisdiction where the petition was filed who shall be entitled to respond and represent the interests of the Commonwealth. The court shall conduct a hearing if requested by either party. If the court determines after receiving and considering evidence

concerning the circumstances regarding the disabilities referred to in subsection **A** and the person's criminal history, treatment record, and reputation as developed through character witness statements, testimony, or other character evidence, that the person will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest, the court shall grant the petition. Any person denied relief by the general district court may petition the circuit court for a de novo review of the denial. Upon a grant of relief in any court, the court shall enter a written order granting the petition, in which event the provisions of subsection **A** do not apply. The clerk of court shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any such order.

### Clerk's Procedures

Step:	Description:
1.	<p>Petitioner will present petition to general district court in which they reside. A petitioner may include a minor 14 years of age or older. Do not collect filing fees.</p> <p><b>Note:</b> District court form DC-4040: <a href="#">Petition To Restore Right To Purchase, Possess Or Transport A Firearm</a> will be available to the public via the internet.</p>
2.	<p>Clerk will enter petition in the Civil Division of the Case Management.</p> <p>The court shall conduct a hearing when requested by either party.</p> <p>Petition to be entered with special case type of <b>PR</b>.</p> <p>Petitioner is entered as plaintiff.</p> <p>Commonwealth of Virginia as the Defendant.</p> <p>A copy of the petition shall be mailed or delivered to the attorney for the</p> <p>Commonwealth for the jurisdiction where the petition was filed who shall be entitled to respond and represent the interest of the Commonwealth.</p>
3.	<p>District court form DC-4042: Order - Restoration of Right to Purchase, Possess or Transport a Firearm to be completed by the Judge at hearing.</p> <p>Upon conclusion of hearing (when requested by either party), the Clerk will update the case accordingly.</p> <p>Hearing results field is updated with an <b>O</b> and final disposition is entered as ordered. Valid codes are:</p>

Step:	Description:
	<ul style="list-style-type: none"> <li>• <b>G</b> – Granted</li> <li>• <b>D</b> – Denied</li> <li>• <b>I</b> – Dismissed</li> </ul>
4.	<p>If the petitioner’s rights are restored, the clerk shall certify and forward to the <a href="#">Virginia State Police</a>:</p> <ul style="list-style-type: none"> <li>• SP237, CCRE form, and</li> <li>• DC-4042: Order – Restoration Of Right To Purchase, Possess Or Transport A Firearm</li> </ul> <p>If the original SP237 was not completed by your court, Virginia State Police will provide a copy of the original SP237 for informational purposes only. Virginia State Police may be reached by calling (804) 674-6753. If the court restores the petitioner’s firearm rights, please complete a new SP237.</p> <p><b>Important:</b> All SP237: Notification Of Involuntary Admission, Mental Incapacity, Mental Incompetence, And TDO With Voluntary Admission, shall be confidential and must be sealed upon being scanned. The clerk should place the SP237 in a DC-392: Sealed Documents Envelope and must be sealed upon being scanned <a href="#">Va. Code § 37.2-819</a>.</p>
5.	<p>Any person denied relief by the general district court may petition the circuit court for a de novo review of the denial. An appeal is not filed with general district court. If the general district court denies the petition, the petitioner will simply petition the circuit court.</p>

### Forms

DC-4040	<a href="#">Petition to restore right to purchase, possess or transport a firearm</a>
DC-4042	Order –Restoration of right to Purchase, Possess or Transport a Firearm
SP237	CCRE – Virginia State Police



## References

<a href="#">Va. Code § 18.2-308.1:1:</a>	Purchase, possession, or transportation of firearms by person acquitted by reason of insanity; penalty; permit.
<a href="#">Va. Code § 18.2-308.1:2:</a>	Purchase, possession, or transportation of firearm by person adjudicated legally incompetent or mentally incapacitated; penalty.
<a href="#">Va. Code § 18.2-308.1:3:</a>	Purchase, possession, or transportation of firearm by persons involuntarily admitted or ordered to outpatient treatment, penalty.

## Protective Orders

### Jurisdiction

General district courts have jurisdiction to issue protective orders in cases where an individual engages in any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury regardless of the relationship of the parties [Va. Code § 19.2-152.7:1](#).

Juvenile and domestic relations courts have jurisdiction over all protective orders involving juveniles, whether as the alleged victim or as the respondent. [Va. Code 16.1-241](#).

A violation of an emergency protective order issued pursuant to [Va. Code § 19.2-152.8](#), or a preliminary protective order issued pursuant to [Va. Code § 19.2-152.9](#), or a protective order issued pursuant to [Va. Code § 19.2-152.10](#) is punishable as a Class 1 misdemeanor pursuant to [Va. Code § 18.2-60.4](#). The violation must be charged by Warrant of Arrest – not a show cause summons or capias. Upon conviction, the court shall, in addition to the sentence imposed, enter a protective order pursuant to [Va. Code § 19.2-152.10](#) for a specified period not exceeding two years from the date of conviction. A violation of [Va. Code § 18.2-60.4](#) may be prosecuted in the jurisdiction where the protective order was issued, in any county, city, or town where any act constituting the violation of the protective order occurred, or in the jurisdiction where the party protected by the protective order resided at the time of such violation.

Any person who is the subject of an emergency protective order, preliminary protective order or protective order and possesses a concealed weapon permit, shall be prohibited from carrying any concealed firearm, and shall surrender their permit to the court entering the order, for the duration of any protective order. The concealed handgun permit may be surrendered to:

- Magistrate who transfers the permit to the Clerk for retention during the period of the protective order

- When serving protective order, if the permit is confiscated by or voluntarily surrendered to law enforcement, it should be delivered to the Clerk for retention during the period of the protective order
- The Clerk or Court at a hearing (or immediately following a hearing) in which the person who is the subject of the protective order is present and reminded by the Court order to surrender any concealed handgun permit

A violation of this subsection shall be a Class 1 misdemeanor [Va. Code § 18.2-308.1:4](#).

The [Department of State Police](#) shall keep and maintain a computerized Protective Order Registry. The purpose of the Registry shall be to assist the efforts of law-enforcement agencies to protect their communities and their citizens. Such information shall be maintained and disseminated by the registry as accurately and completely as possible to assist in the expedited entry and dissemination of protective order information [Va. Code § 19.2-387.1](#) and [Va. Code § 52-45](#).

**Note:** As used in this section, “copy” includes a facsimile copy that may be served on the respondent and provided to the petitioner as soon as possible.

### Venue

Proceedings in which a protective order is sought shall be commenced where (i) either party has their principal residence; (ii) the act of violence, force, or threat by the respondent against the petitioner occurred; or (iii) a protective order was issued if, at the time of the proceeding is commenced, the order is in effect to protect the petitioner or a family or household member of the petitioner [Va. Code 19.2-152.11](#).

### Confidentiality Considerations

The residential address, telephone number and place of employment of a person protected by a protective order shall not be disclosed, unless it is required by law or is necessary for law-enforcement purposes. In addition, no fee shall be charged for filing or serving a protective order. Finally, upon receipt of a protective order, law enforcement agencies shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the [Department of State Police](#) into the Virginia Criminal Information Network System (VCIN) and the order shall be served forthwith upon the respondent and due return made to the court.

See [Va. Code § 16.1-253](#), [Va. Code § 16.1-253.1](#), [Va. Code § 16.1-253.4](#), [Va. Code § 16.1-279.1](#), [Va. Code § 17.1-272](#), [Va. Code § 19.2-152.8](#).

**Note:** Protective orders have had the sensitive information removed from the order and placed on district court form DC-621: [Non-Disclosure Addendum](#) that will be used for service purposes but otherwise maintained in a confidential area.

Protective orders are entered in the civil division of GCMS. The Emergency Protective Order, Preliminary Protective Order and Protective Order each receive a new civil case number. Upon receipt of the Petition, if the petitioner is seeking a preliminary protective order, the petition is entered in GCMS using case type **PP**. If the petitioner is seeking a full protective order, the petition is entered in GCMS using case type **PO**.

### **Fees**

No fees are charged for filing or serving of any protective order. Also, service fees are not collected for issuing subpoenas or subpoena duces tecum in protective order hearings [Va. Code § 19.2-152.10](#).

### **Emergency Protective Order**

Any judge or magistrate may issue a written or oral ex parte Emergency Protective Order, using the district court form DC-382: Emergency Protective Order, [Va. Code § 19.2-152.8](#). When a law-enforcement officer or an alleged victim asserts under oath to a judge or magistrate that such person is being or has been subjected to an act of violence, force, or threat and on that assertion and other evidence the judge or magistrate finds that there is probable danger of a further such act being committed by the respondent against the alleged victim or a petition or a warrant for the arrest of the respondent has been issued for any criminal offense resulting from the commission of an act of violence, force, or threat, the judge or magistrate shall issue an ex parte emergency protective order imposing one or more conditions on the respondent.

This order prohibits further acts of violence, force, or threat or criminal offenses resulting in injury to person or property. It may prohibit such contact with the alleged victim or such person's family or household members and the respondent. This order expires at 11:59 p.m. on the third day after issuance, whether served or not. If the expiration occurs on a day that the court is not in session, the Emergency Protective Order shall be extended until 11:59 p.m. of the next business day that the court that issued the order is in session.

**Note:** The legislative history indicates that the term "in session" means when the court to which the order is returnable normally is scheduled to convene.

If the court to which the emergency protective order is returnable convenes for an emergency hearing on a day other than its normally scheduled date, the court is not in session for purposes of this statute.

A law-enforcement officer may request an emergency protective order pursuant to this section orally, in person or by electronic means and the judge of a circuit court, general district court or a juvenile and domestic relations district court or a magistrate may issue an oral emergency protective order. An oral emergency protective order must be reduced to writing by the law-enforcement officer requesting the order or the magistrate on a preprinted form approved and provided by the Supreme Court of Virginia. If the order was issued orally, the judge or magistrate must complete the verification portion of the district court form DC-382: Emergency Protective Order prior to filing with the clerk's office. After any required verification, these emergency orders are to be returned to the issuing district court to be filed. The fact that an emergency protective order has been issued will be entered on the appropriate GCMS Civil Case Entry screen. No hearing is held and no further action is taken, with the exception that the respondent may request a hearing to dissolve or modify the order.

[Va. Code 16.1-264](#) provides that a law enforcement officer may affect service of an emergency protective order by personally serving the respondent with a notification of the issuance of the order using district court form DC-373: Notice of Issuance of Emergency Protective Order. The notice must contain the necessary information and the requirements of the emergency protective order. The officer making service shall enter or cause to be entered the information into the Virginia Criminal Information Network (VCIN) and return to the court.

The following procedures should be followed when processing a district court form DC-382: Emergency Protective Order.

Step:	Description:
1.	<p>The Clerk receives the district court form DC-382: Emergency Protective Order which may be accompanied by the district court form DC-621: <a href="#">Non-Disclosure Addendum</a>. Upon request, preferably in writing, the Clerk shall provide the alleged victim with information regarding the date and time of service of the EPO.</p> <p>No fees are charged for filing or serving the Emergency Protective Order (EPO). The original copy is filed with the clerk of the appropriate district court within five business days of the issuance of the order after verification, if required, by the judge or magistrate who issued the order.</p>
2.	<p>The case is indexed in the Civil division using case type <b>PE</b>. Plaintiff = Alleged Victim; Defendant = Respondent</p> <p>Enter the expiration date as the Hearing date and set a time.</p>

Step:	Description:
	<p>Petitioner may be the law-enforcement officer or the alleged victim. One copy of the order shall be given to the alleged victim. (Service is not required on the victim.)</p> <p>In the <b>Remarks</b> field, it is recommended to note the date and time of service on the respondent and date and time of the expiration of the district court form DC-382: Emergency Protective Order.</p> <p><b>PE</b> - Emergency Protective Order</p>
3.	<p>Route to the Civil Hearing Disposition screen and update with <b>O</b> in the <b>Hearing Result</b> field and <b>O</b> in the <b>Case Disposition</b> field.</p> <p>Emergency Protective Orders issued by the magistrate are not entered in the GCMS Protective Order Interface with State Police. It is the responsibility of the magistrate or law-enforcement to enter the EPO into VCIN.</p> <p><b>Note:</b> If the EPO is issued by the court, the case is indexed in GCMS using case type <b>PE</b>. Upon issuance of an emergency protective order, the clerk of the court shall make available to the petitioner information that is published by the Department of Criminal Justice Services for victims of domestic violence or for petitioners in protective order cases.</p> <p>Route to the Civil Hearing Disposition screen and update with <b>O</b> in the <b>Hearing Result</b> field and <b>G</b> in the <b>Case Disposition</b> field.</p> <p>Upon completion of <b>G</b> in the Case Disposition field, the VCIN Interface will display. Complete the appropriate data elements. This screen is a critical component of the protective order procedures as it interfaces with the <a href="#">State Police</a> to expedite entry of protective orders into VCIN.</p> <p>Enter in Protective Order Entry Screen only if the Emergency Protective Order was issued by the court.</p> <ul style="list-style-type: none"> <li>• <b>PO Type:</b> E</li> <li>• <b>Time Issued:</b> Judge will note time issued and expiration time.</li> </ul>
4.	<p>Mandatory non-disclosure of residential address, telephone number, or place of employment of person protected or family of such person is automatic and the protected person does not have to file district court form DC-301: <a href="#">Request for Confidentiality</a> to prevent disclosure.</p>

Step:	Description:
	<p><b>Caution:</b> Neither a law enforcement agency, the attorney for the Commonwealth, a court nor the clerk’s office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or their family except as required by law, as necessary for law enforcement purposes or by order for good cause shown.</p> <p>Seal the district court form DC-621: <a href="#">Non-Disclosure Addendum</a> that contains the protected information. Use DC-392: Sealed Documents clasp envelopes supplied through OES Purchasing.</p> <p>The EPO will be filed in the disposed civil court date file . If the court receives district court form DC-373: Notice of Issuance of Emergency Protective Order, the document is filed with the case papers. The notice is not indexed in the system. No further action is required on the notice.</p>
5.	<p>The Respondent may at any time file a district court form DC-630: <a href="#">Motion to Amend or Review Order</a> with the court requesting a hearing to dissolve or modify the order.</p> <p>No fees for service by the Sheriff are collected.</p> <p>The Clerk’s office enters the date and time of the hearing on the motion and prepares copies of the district court form DC-630: <a href="#">Motion to Amend or Review Order</a> and the district court form DC-621: <a href="#">Non-Disclosure Addendum</a> for service on the parties clearly stating the date and time of the hearing. The copy of the district court form DC-621: <a href="#">Non-Disclosure Addendum</a> form is attached to Alleged Victim’s copy only.</p> <p>The hearing shall be given precedence on the docket.</p> <p>All conditions and limitations remain in effect until the hearing on the Motion.</p> <p>The motion will be entered as a subsequent action of the EPO using case type <b>OT</b>. Route to the Civil Case Entry screen, enter the EPO case number with the appropriate suffix, i.e. -01. Plaintiff = Respondent; Defendant = Alleged Victim Retrieve the original EPO for the hearing.</p>
6.	<p>After the hearing on the motion (-01), update the GCMS Hearing Disposition screen with <b>O</b> in the <b>Hearing Result</b> field and <b>O</b> in the <b>Case Disposition</b> field. Make a notation in the “Further Case Info” as to the disposition of the motion, i.e., motion to dissolve granted.</p>

Step:	Description:
	<p>If the EPO is modified, the clerk's office shall prepare a new district court form DC-382: Emergency Protective Order and the district court form DC-621: <a href="#">Non-Disclosure Addendum</a> using the original case number of the EPO. Attested copies shall be forwarded forthwith to the primary law enforcement agency responsible for service on both parties and entry into VCIN. The copy of district court form DC-621: <a href="#">Non-Disclosure Addendum</a> is attached to the Alleged Victim's copy only.</p> <p>If the EPO is dissolved or withdrawn, prepare district court form DC-652: <a href="#">Order Dissolving Protective Order</a> and the district court form DC-621, <a href="#">Non-Disclosure Addendum</a> using the original case number of the EPO in the <b>CASE NO</b> field. Attested copies shall be forwarded forthwith to the primary law enforcement agency responsible for service on both parties and entry into VCIN. The copy of district court form DC-621: <a href="#">Non-Disclosure Addendum</a> form is attached to the Alleged Victim's copy only.</p> <p>If there is no change made to the existing EPO, it is not necessary to make any changes to the original EPO.</p>
7.	<p>Seal the district court form DC-621: <a href="#">Non-Disclosure Addendum</a> that contains the protected information. Use district court form DC-392: Sealed Documents clasp envelopes supplied through OES Purchasing.</p> <p>The district court form DC-630: <a href="#">Motion to Amend or Review Order</a> and related case papers will be filed in the disposed civil court date file.</p>
8.	<p>If the Respondent surrenders a Concealed Handgun permit, clerk will retain permit with applicable case until the expiration date of the applicable protective order.</p> <p>Concealed handgun permit is to be returned, upon request, preferably in writing, upon expiration of protective order.</p> <p>It is recommended that the Respondent appear in person with photo identification to request return of the Concealed Handgun permit up expiration of the EPO.</p> <p>The Clerk's office must verify that the protective order has expired or been terminated by court order by checking the applicable case and order documents. Photocopy the permit and notate date and time of return. File copy with the protective order.</p>
9	Disclosure of Sealed Information:

Step:	Description:
	<p>Written request or motion per case may be filed by applicable agency employee, law-enforcement agency, attorney for the Commonwealth, a court or clerk's office, or by any other individual requesting disclosure of information contained in the sealed documents.</p> <p>The request, or motion, should be handled administratively and should be referred to the judge for determination of disclosure unless the Court has issued a written policy/order to the Clerk authorizing disclosure and setting forth specific protocols for disclosure.</p>

### Preliminary Protective Orders

The general district court may issue preliminary protective orders [Va. Code § 19.2-152.9](#), in cases where an individual engages in an act of violence, force, or threat or a petition or warrant for any criminal offense resulting from the commission of an act of violence, force, or threat.

The alleged victim may request either a preliminary protective order or protective order using the district court form DC-383: [Petition for Protective Order](#). The petition must be supported by an affidavit or sworn testimony before the judge, or upon evidence of a Military Protective Order issued by a commanding officer in the Armed Forces of the United States, the Virginia National Guard, or the National Guard of any other state in favor of the petitioner or petitioner's family or household members, if a preliminary protective order is requested. If the petitioner alleges that they have, within a reasonable time, been subjected to any act of violence, force, or threat, or the filing of a written motion requesting a hearing to extend a protective hearing pursuant to [Va. Code § 19.2-152.10](#) without alleging that the petition is or has been, within a reasonable period of time, subject to an act of violence, force or threat, or that a petition or warrant has been issued for the arrest of the alleged perpetrator for any criminal offense resulting from the commission of an act of violence, force or threat district court form DC-384: Preliminary Protective Order may be issued ex parte upon good cause shown or upon evidence of a Military Protective order, against the alleged perpetrator in order to protect the health and safety of the petitioner or any family or household member of the petitioner. Immediate and present danger of any act of violence, force, or threat or evidence sufficient to establish probable cause that an act of violence, force, or threat has recently occurred shall constitute good cause.

The clerk, upon receiving the district court form DC-383: [Petition for Protective Order](#) should inquire as to whether a preliminary order of protection is being sought. If a preliminary protective order is sought, an ex parte hearing is scheduled as quickly as possible, usually the same day. The preliminary protective order may be issued in an ex parte proceeding upon good cause shown when the petition is supported by an affidavit or sworn testimony before



the judge or upon evidence of a Military Protective Order, or upon the filing of a written motion requesting a hearing to extend the protective order pursuant to [Va Code §19.2-152.10](#).

If an ex parte order is issued without an affidavit or a completed form as prescribed by subsection D of [Va. Code § 19.2-152.8](#) being presented, the court, in its order, shall state the basis upon which the order was entered, including a summary of the allegations made and the court's findings. Any Military Protective Order issued between the parties shall only be admissible or considered as evidence in accordance with the Code of Virginia, the Rules of Evidence of the Supreme Court of Virginia, or relevant Virginia case law.

The full hearing on the petition is scheduled within fifteen days from the issuance of the preliminary protective order, additionally when the request for a preliminary protective order is denied a full hearing on the petition of the protective order is to be scheduled. When the court is closed pursuant to [Va. Code § 16.1-69.35](#) and such closure prevents the hearing from being held within such time period, in which case the hearing shall be held on the next day not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. If such court is closed pursuant to [Va. Code § 16.1-69.35](#), the preliminary protective order shall remain in full force and effective until it is dissolved by such court, until another preliminary protective order is entered, or until a protective order is entered. If the respondent fails to appear at the full hearing because the respondent was not personally served, the court may extend the preliminary protective order for a period not to exceed six months. The extended protective order shall be served as soon as possible on the respondent. However, where the respondent show good cause, the court may continue the hearing. Either party may, at any time, file a motion requesting a hearing to dissolve or modify the order. Upon petitioner's motion to dissolve the preliminary protective order, a dissolution order may be issued ex parte by the court with or without a hearing. If an ex parte hearing is held, it shall be heard by the court as soon as practicable. If an order dissolving the preliminary protective order is issued ex parte, the court shall serve a copy of the dissolution order on the respondent forthwith in conformity with [Va. Code § 8.01-286.1](#) and [Va. Code § 8.01-296](#).

The following procedures should be followed when the petitioner is requesting an ex parte hearing and the Court will process as a **Preliminary Protective Order** (PPO).

Step:	Description:
1.	<p>The petitioner, or their attorney files the district court form DC-383: <a href="#">Petition for Protective Order</a> along with the district court form DC-621: <a href="#">Non-Disclosure Addendum</a>.</p> <p>District court form DC-418: <a href="#">Affidavit – Default Judgment Servicemembers Civil Relief Act</a> should be filed in every case at the time of the filing of the petition. This form is required in any civil action or proceeding in which the defendant</p>

Step:	Description:
	<p>does not make an appearance <a href="#">Va. Code § 8.01-15.2</a>. However, the clerk must accept the petition even if not accompanied by District court form DC-418: <a href="#">Affidavit – Default Judgment Servicemembers Civil Relief Act</a>.</p> <p>There are no fees for filing or serving the district court form DC-383: Petition for Protective Order.</p> <p>Petition must be attested, or an affidavit attached only if the petitioner is requesting the issuance of an ex parte <b>Preliminary Protective Order</b> (PPO). If petition is not notarized, the clerk’s office must administer the oath and sign the petition.</p>
2.	<p>Clerk assigns a new case number and enters the petition in the Civil division with case type <b>PP</b>. Enter the hearing date and time of the ex parte hearing (the same day the petition is filed) on the GCMS Hearing Disposition screen. Plaintiff = Petitioner/Alleged Victim; Defendant = Respondent; Case Remarks = Petition for PO.</p> <p>Print district court form, DC-384: Preliminary Protective Order and district court form, DC-394: Denial/Dismissal in Protective Order Case prior to sending the petition in the courtroom. If the court dismisses or denies the Preliminary Protective Order, it is not necessary to send the DC-394: Denial/Dismissal in Protective Order Case out for service. However, if the court denies the Preliminary Protective Order but sets a date for a full hearing, the clerk should complete the Summons for Hearing box on the DC-394: Denial/Dismissal in Protective Order Case and forward to law enforcement for service on the respondent. A copy of the DC-394 showing the court date should be provided to the petitioner. The copy of district court form DC-621: <a href="#">Non-Disclosure Addendum</a> form is attached to the Alleged Victim’s copy only.</p> <p><b>Note:</b> If your court is not in session, petition may be faxed to where your judge is sitting or the juvenile and domestic relations court may be designated to hear the petition.</p>
3.	<p>Ex parte hearing is held and judge grants or denies the preliminary protective order <a href="#">Va. Code § 19.2-152.9</a>.</p> <p>If an ex parte order is issued without an affidavit or a completed form as prescribed by subsection D of <a href="#">Va. Code § 19.2-152.8</a> being presented, the court, in its order, shall state the basis upon which the order was entered, including a summary of the allegations made and the court’s findings.</p> <p>If the PPO is granted, issue the district court form DC-384: Preliminary Protective Order and the district court form DC-621: <a href="#">Non-Disclosure</a></p>

Step:	Description:
	<p><a href="#">Addendum</a>. After the hearing on the motion, update the GCMS Hearing Disposition screen with <b>O</b> in the <b>Hearing Result</b> field and <b>G (Granted)</b> in the <b>Case Disposition</b> field. This order will include any conditions and limitations being placed upon the respondent and will state the date and time of the full hearing.</p> <p><b>Note:</b> Upon issuance of a preliminary protective order, the clerk of the court shall make available to the petitioner information that is published by the Department of Criminal Justice Services for victims of domestic violence or for petitioners in protective order cases.</p> <p>The respondent may be required to notify the court in writing within seven days of any change of residence while the preliminary protective order is in effect, provided that the respondent has been served a copy of the order. Any failure of a respondent to make such required notification shall be punishable by contempt. Scan any such notice to the case and attach the notice to the preliminary protective order.</p> <p>If the respondent is in the military or is a person under a disability, the court will determine if the respondent is entitled to counsel or a guardian ad Litem. If the court determines counsel or a guardian ad Litem should be appointed, then the appropriate orders should be prepared. For a respondent in the military, the court may wish to complete the bottom of DC-418: <a href="#">Affidavit – Default Judgment Servicemembers Civil Relief Act</a>. Counsel appointed pursuant to the Servicemembers Civil Relief Act shall not be selected by the plaintiff; however, counsel for the plaintiff may provide a list of attorneys familiar with the provisions of the Servicemembers Civil Relief Act upon the request of the court.</p> <p>For a respondent under a disability, the court may wish to use district court form DC-401: Order for Appointment of Guardian ad Litem.</p> <p>The hearing shall be held within 15 days of the issuance of the preliminary order, unless the court is closed pursuant to <a href="#">Va. Code § 16.1-69.35</a> and such closure prevents the hearing from being held within such time period, in which case the hearing shall be held on the next day not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. If such court is closed pursuant to <a href="#">Va. Code § 16.1-69.35</a>, the preliminary protective order shall remain in full force and effect until it is dissolved by such court, until another preliminary protective order is entered, or until a protective order is entered.</p>
4.	Enter the date and time of the full hearing in GCMS as an administrative hearing ( <b>AH</b> ) on the preliminary protective order case number.

Step:	Description:
	<p>A recommendation is made to set up the protective order case (<b>PO</b>) in GCMS using a new civil case number entering the date of the full hearing. Print district court form DC-385: Protective Order, which will include the DC-649: Protective Order Firearm Certification and DC-394: Denial/Dismissal in Protective Order Case blanking out the hearing date.</p>
5.	<p>Upon completion of <b>G</b> in the <b>Case Disposition</b> field, the VCIN Interface will display. Complete the appropriate data elements. This screen is a critical component of the protective order procedures as it interfaces with the <a href="#">State Police</a> to expedite entry of protective orders into VCIN.</p> <p>Enter in Protective Order Entry Screen only if a preliminary or protective order is issued.</p> <p>The court shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer electronically, through GCMS, to the Virginia Criminal Information Network system the respondent's identifying information and the name, date of birth, sex and race of each protected person. See General District Case Management Systems User's Guide, Protective Order Interface for instructions.</p>
6.	<p>If the Preliminary Protective Order is denied, update the GCMS <b>Hearing Disposition</b> screen with <b>O</b> in the <b>Hearing Result</b> field and <b>D</b> (denied) in the <b>Case Disposition</b> field.</p> <p><b>Important:</b> When a request for a preliminary protective order is denied, a full hearing on the petition for a protective order will be held by the court. The clerk's office shall provide notice of the hearing to the parties.</p> <p>If the Preliminary Protective Order is dismissed update the GCMS <b>Hearing Disposition</b> screen with <b>O</b> in the <b>Hearing Result</b> field and <b>I</b> (dismissed) in the <b>Case Disposition</b> field.</p>
7.	<p>If the Court enters the PPO, complete and sign the Summons for Hearing portion on the district court form DC-384: Preliminary Protective Order. This order will include any conditions and limitations being placed upon the respondent and will state the date and time of the full hearing.</p> <p>Make services copies of the district court form DC-384: Preliminary Protective Order and the district court form DC-383: Petition for Protective Order to be served on the respondent. District court form DC-621: <a href="#">Non-Disclosure Addendum</a> is copied for use by law enforcement for entry into VCIN. Forward forthwith to the primary law-enforcement agency responsible for entry into VCIN and service upon the respondent.</p>

Step:	Description:
	<p>The copy of district court form DC-621: <a href="#">Non-Disclosure Addendum</a> is attached to Petitioner's copy only. Petitioner may be served immediately after court while still present. The district court form DC-621: <a href="#">Non-Disclosure Addendum</a> must be copied for service purposes and then destroyed by the serving officer. If not destroyed, clerk should shred the DC-621 service copy when it is returned to the clerk's office.</p>
8.	<p>Mandatory non-disclosure of residential address, telephone number, or place of employment of person protected or family of such person is automatic and the protected person does not have to file district court form DC-301: <a href="#">Request for Confidentiality</a> to prevent disclosure.</p> <p>Seal any case papers containing the protected information. Use district court form DC-392: Sealed Documents clasp envelopes supplied through OES Purchasing.</p> <p><b>Caution:</b> Neither a law enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or their family except as required by law, as necessary for law enforcement purposes or by order for good cause shown.</p>
9.	<p>The Preliminary Protective Order is effective upon personal service on the alleged perpetrator.</p> <p>The statute requires that upon receipt of the return of service, the clerk shall forward an attested copy of the PPO to the law enforcement agency, which shall on the date of receipt, enter into VCIN any other information required by the <a href="#">State Police</a> which was not previously entered.</p> <p>Upon request, preferably in writing, the clerk shall provide the alleged victim of such crime, information regarding date and time of service.</p>
10.	<p>Upon motion of the respondent, the court may continue the hearing for good cause and the Preliminary Protective Order shall remain in full force and effect unless and until dissolved or modified by the court.</p> <p>Reissue district court form DC-384: Preliminary Protective Order with new hearing date and time using the same case number, check the <b>Extension of Preliminary Protective Order</b> checkbox.</p>

Step:	Description:
11.	<p>Make a copy of the district court form DC-384: Preliminary Protective Order and the district court form DC-621: <a href="#">Non-Disclosure Addendum</a> for service of process and entry into VCIN. Forward forthwith to the primary law-enforcement agency responsible for entry into VCIN and service upon the respondent.</p> <p>Route to the Hearing Disposition screen to update, enter the new date and time for the next hearing as an administrative hearing (<b>AH</b>).</p> <p>Provide copy to petitioner.</p> <p>The Preliminary Protective Order remains in full force and effect unless and until dissolved or modified by the court.</p>
12.	<p>Seal the district court form DC-621: <a href="#">Non-Disclosure Addendum</a> that contains the protected information. Use district court form DC392: Sealed Documents clasp envelopes supplied through OES Purchasing.</p>
13.	<p>If the respondent fails to appear at the hearing because the respondent was not personally served, the court may extend the protective order for a period not to exceed six months. The extended protective order shall be served as soon as possible on the respondent.</p> <p>Reissue district court form DC-384: Preliminary Protective Order with new hearing date and time using the same civil case number, check the <b>Extension of Preliminary Protective Order</b> checkbox.</p> <p>Make a copy of the district court form DC-384: Preliminary Protective Order and the district court form DC-621: <a href="#">Non-Disclosure Addendum</a> for service of process. Forward forthwith to the primary law-enforcement agency responsible for entry into VCIN and service upon the respondent.</p> <p><b>Comments:</b> Route to the Hearing Disposition screen to update, enter the new date and time for the next hearing as an administrative hearing (<b>AH</b>). Provide a copy to petitioner.</p>
14.	<p>Upon motion of the respondent and for good cause shown, the court may continue the hearing. If the court does not find good cause and does not continue the “15-day hearing”, the district court form DC-384: Preliminary Protective Order shall remain in effect until the hearing.</p>
15.	<p>Seal any case papers containing the protected information. Use district court form DC-392: Sealed Documents clasp envelopes supplied through OES Purchasing.</p>

Step:	Description:
16.	<p>Either party may at any time file a district court form DC-630: <a href="#">Motion to Amend or Review Order</a> with the court requesting a hearing to dissolve or modify the order. No fees for service by the Sheriff are collected. Upon petitioner's motion to dissolve the preliminary protective order, a dissolution order may be issued ex parte by the court with or without a hearing. If an ex parte hearing is held, it shall be heard by the court as soon as practicable. If an order dissolving the preliminary protective order is issued ex parte, the court shall serve a copy of the dissolution order on the respondent forthwith in conformity with <a href="#">Va. Code § 8.01-286.1</a> and <a href="#">Va. Code 8.01-296</a>. The Clerk's office enters the date and time of the hearing on the motion and prepares copies of the district court form DC-630: <a href="#">Motion to Amend or Review Order</a> and the district court form DC-621: <a href="#">Non-Disclosure Addendum</a> for service on the parties clearly stating the date and time of the hearing. The copy of district court form DC-621: <a href="#">Non-Disclosure Addendum</a> form is attached to alleged victim's copy only.</p> <p>The Preliminary Protective Order remains in full force and effect until dissolved or modified by the court.</p> <p>The hearing shall be given precedence on the docket:</p> <ul style="list-style-type: none"> <li>• All conditions and limitations remain in effect until the hearing on the motion.</li> <li>• The motion will be entered as a subsequent action of the <b>PPO</b> using case type <b>OT</b>. Route to the Civil Case Entry screen, enter the <b>PPO</b> case number with the appropriate suffix, i.e. – 01. Plaintiff = Respondent; Defendant = Alleged Victim</li> <li>• Retrieve the original <b>PPO</b> for the hearing. Update the GCMS <b>Hearing Disposition</b> screen of the <b>PPO</b> (original case) as an administrative hearing with the date and time for the hearing on the motion.</li> </ul>
17.	<p>After the hearing on the motion (-01), update the GCMS <b>Hearing Disposition</b> screen with <b>O</b> in the <b>Hearing Result</b> field and <b>O</b> in the <b>Case Disposition</b> field. Make a notation in the "Further Case Info" as to the disposition of the motion, i.e., motion to dissolve granted. Add information in the "Further Case Info" field on both the original case and the subsequent action.</p> <p>If the PPO is modified, the clerk's office shall prepare a new district court form DC-384: Preliminary Protective Order using the original case number of the PPO. Attested copies shall be forwarded forthwith to the primary law enforcement agency responsible for service on both parties and entry into VCIN. The copy of district court form DC-621: <a href="#">Non-Disclosure Addendum</a> form is attached to the alleged victim's copy only.</p>



Step:	Description:
	<p>It may be possible to obtain service on the parties prior to leaving the courthouse.</p> <p>If the PPO is dissolved or withdrawn, prepare the district court form DC-652: <a href="#">Order Dissolving Protective Order</a> using the original case number of the PPO. Attested copies shall be forwarded forthwith to the primary law enforcement agency responsible for service on both parties and entry into VCIN. The copy of district court form DC-621: <a href="#">Non-Disclosure Addendum</a> form is attached to the alleged victim's copy only.</p> <p>If there is no change made to the existing PPO, it is not necessary to make any change to the original PPO.</p> <p>The administrative hearing will drop off of the system.</p>
18.	<p>Seal the district court form DC-621: <a href="#">Non-Disclosure Addendum</a> that contains the protected information. Use DC-392: Sealed Documents clasp envelopes supplied through OES Purchasing. The district court form DC-630: <a href="#">Motion to Amend or Review Order</a> and related case papers will be filed in the disposed civil court date file.</p>
19.	<p>If Respondent surrenders a Concealed Handgun permit, clerk will retain permit with applicable case until the expiration date of the applicable protective order.</p> <p>Concealed handgun permit is to be returned, upon request, preferably in writing, upon expiration of protective order, so long as the holder has not been convicted of a disqualifying offense.</p> <p>It is recommended that the Respondent appear in person with photo identification to request return of the Concealed Handgun permit upon expiration of the PPO.</p> <p>Written request to return the Concealed Handgun Permit by mail must be notarized and a copy of the photo identification should be attached to the notarized request.</p> <p>The Clerk's office must verify that the protective order has expired or been terminated by court order by checking the applicable case and order documents. Photocopy the permit and notate date and time of return. File copy with the protective order.</p>



### Preliminary Protective Order- Transfer from JDR

If a preliminary protective order is received by transfer from the Juvenile and Domestic Relations Court:

- Enter in the civil division of GCMS giving a new case number with case type **OT**.
- Enter the granted date as the Hearing Date and finalize with **O** in the **Hearing Result** field and **O** in the **Case Disposition** field. No **VCIN** entry is required as the entry will have been completed by the JDR court.
- Note in **Case Remarks** field **Granted PPO transferred from JDR court**.
- Enter the date and time of the full hearing for the protective order in GCMS as an administrative hearing (**AH**) on the preliminary protective order case number.
- The Preliminary Protective Order remains in full force and effect unless and until dissolved or modified by the court.

A recommendation is made to set up the protective order case (**PO**) in GCMS using a new civil case number entering the date of the full hearing. Print district court form DC-385: Protective Order, which will include the DC-649: Protective Order Firearm Certification and DC-394: Denial/Dismissal in Protective Order Case blanking out the hearing date.

### Protective Orders

The court may issue a protective order if the court finds that the petitioner has proven the allegation that a petitioner is or has been, within a reasonable period of time, subjected to an act of violence, force, or threat. The court may issue a protective order to protect the health and safety of the petitioner and family or household members of a petitioner upon (i) the issuance of a petition or warrant for, or a conviction of, any criminal offense resulting from the commission of an act of violence, force, or threat, or (ii) a hearing held pursuant to subsection D of [Va. Code § 19.2-152.9](#).

The protective order may be issued for a specified period; however, unless otherwise authorized by law, a protective order may not be issued for a period longer than two years. The protective order shall expire at 11:59 p.m. on the last day specified or at 11:59 p.m. on the last day of the two-year period if no date is specified. Prior to the expiration of the protective order, a petitioner may file a written motion requesting a hearing to extend the order. Proceedings to extend a protective order shall be given precedence on the docket of the court. A written motion requesting a hearing to extend the protective order shall be served as soon as possible on the respondent. Either party may, at any time, file a motion requesting a hearing to dissolve or modify the order. Upon petitioner's motion to dissolve the preliminary protective order, a dissolution order may be issued ex parte by the court with or without a hearing. If an ex parte hearing is held, it shall be heard by the court as soon as practicable. If an order dissolving the preliminary protective order is issued ex parte, the

court shall serve a copy of the dissolution order on the respondent forthwith in conformity with [Va. Code § 8.01-286.1](#) and [Va. Code § 8.01-296](#).

The court may assess costs and attorneys' fees against either party regardless of whether an order of protection has been issued as a result of a full hearing.

Upon issuance of a protective order pursuant to [Va. Code § 16.1-279.1](#) or [Va. Code § 19.2-152.10](#), the court shall order the person who is subject to the protective order to within 24 hours after being served with a protective order, surrender any firearm possessed by such person to a designated local law-enforcement agency, sell or transfer any firearm possessed by such person to a dealer, sell or transfer any firearm possessed by such person to any person who is not otherwise prohibited by law from possessing such firearm and within 48 hours after being served with a protective order certify in writing, that the person does not possess any firearms or that all firearms possessed by the person have been surrendered, sold, or transferred and file such certification with the clerk of the court that entered the protective order.

The willful failure of any person to certify in writing that all firearms possessed have been surrendered, sold, or transferred or that they do not possess any firearms shall constitute contempt of court.

### Clerk's Office Procedures for The Petition for Protective Order

The following procedures should be followed when processing a district court form DC-385: Protective Order:

Step:	Description:
1.	<p>The petitioner or their attorney files the district court form DC-383: <a href="#">Petition For Protective Order</a> along with district court form DC-621: <a href="#">Non-Disclosure Addendum</a>.</p> <p>District court form DC-418: <a href="#">Affidavit – Default Judgment Servicemembers Civil Relief Act</a> should be filed in every case at the time of the filing of the petition. This form is required in any civil action or proceeding in which the defendant does not make an appearance <a href="#">Va. Code § 8.01-15.2</a>. However, the clerk must accept the petition even if not accompanied by District court form DC-418: <a href="#">Affidavit – Default Judgment Servicemembers Civil Relief Act</a>.</p> <p>There are no fees for filing the district court form DC-383: Petition for Protective Order.</p>
2.	<p>Clerk assigns a new case number and enters the petition in the Civil Division with a Case Type <b>PO</b>. If a Preliminary Protective Order was entered, the protective</p>

Step:	Description:
	<p>order receives a new civil case number. Plaintiff = Petitioner/Victim; Defendant = Respondent; Case Remarks = Petition for PO.</p> <p>Enter a hearing date and time for the full hearing. If case started as a PPO, must be held within 15 days of the issuance of a PPO. If case started as petition seeking a full protective order, petition must take precedence on the docket.</p> <p>Print the DC-385: Protective Order that will include the DC-649: Protective Order Firearm Certification and DC-394: Denial/Dismissal in Protective Order Case using the forms program prior to sending the petition in the courtroom.</p>
3.	<p>Make service copies of the district court form DC-383: Petition for Protective Order, and the district court form DC-621: <a href="#">Non-Disclosure Addendum</a> for service on the respondent. Forward forthwith to the primary law-enforcement agency responsible for entry into VCIN and service upon the respondent. The copy of district court form DC-621: <a href="#">Non-Disclosure Addendum</a> form is attached to alleged victim's copy only. The district court form DC-621: <a href="#">Non-Disclosure Addendum</a> must be copied for service purposes and then destroyed by the serving officer. If not destroyed, clerk should shred the DC-621 service copy when it is returned to the clerk's office.</p>
4.	<p>Mandatory non-disclosure of residential address, telephone number, or place of employment of person protected or family of such person is automatic and the protected person does not have to file district court form DC-301: <a href="#">Request for Confidentiality</a> to prevent disclosure.</p> <p><b>Caution:</b> Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or their family except as required by law, as necessary for law-enforcement purposes, or by order for good cause shown.</p> <p>Seal any case papers containing the protected information. Use district court form DC-392: Sealed Documents clasp envelopes supplied by OES Purchasing.</p>
5.	<p>Upon motion of the respondent and for good cause shown, the court may continue the hearing.</p> <p>Route to the Hearing Disposition update, enter the new date and time for the next hearing. Whenever a preliminary protective order was issued prior to the full protective order hearing, upon continuance of a new hearing date and time of the full protective hearing, issue a preliminary protective order with the <b>same</b> case number as the previous preliminary protective order, check the <b>Extension</b></p>

Step:	Description:
	<p><b>of the Preliminary Protective Order</b> checkbox, and send out to law enforcement for service on all parties and VCIN entry.</p> <p>If the court does not find good cause and does not continue the “15-day hearing” the PPO shall remain in effect until the hearing.</p>
6.	<p>At the full hearing on the petition, the court may issue district court form DC-385: Protective Order pursuant to <a href="#">Va. Code § 19.2-152.10</a> upon a showing that:</p> <p>The issuance of a petition or warrant or a conviction of any criminal offense resulting from the commission of an act of violence, force, or threat, or a hearing is held pursuant <a href="#">Va. Code § 19.2-152.9</a>.</p> <p>A Protective Order may be issued for a period of up to two years. The protective order shall expire at the end of the last day identified for the two-year period and if no date is identified, it shall expire at the end of the two years following the date of issuance at 11.59 p.m.</p>
7.	<p>If a Protective Order is granted, update the case with <b>O</b> in the <b>Hearing Result</b> field and <b>G</b> (granted) in the <b>Case Disposition</b> field.</p> <p><b>Note:</b> Upon issuance of a protective order, the clerk of the court shall make available to the petitioner information that is published by the Department of Criminal Justice Services for victims of domestic violence or for petitioners in protective order cases.</p> <p>The respondent shall be required to notify the court in writing within seven days of any change of residence while the preliminary protective order is in effect, provided that the respondent has been served a copy of the order. Any failure of a respondent to make such required notification shall be punishable by contempt. Scan any such notice to the case and attach the notice to the preliminary protective order.</p> <p>Upon completion of <b>G</b> in the Case Disposition field, the VCIN Interface will display. Complete the appropriate data elements. This screen is a critical component of the protective order procedures as it interfaces with State Police to expedite entry of protective orders into VCIN.</p> <p>See General District Case Management Systems User’s Guide, Protective Order Interface for instructions. Issue the district court form DC-385: Protective Order.</p> <p>Any person who has been issued a protective order pursuant to <a href="#">Va. Code § 19.2-152.10</a> by any district court shall be issued a Hope Card, via the Hope Card Program. The Hope Card shall to the extent possible contain essential information about the protective order <a href="#">Va. Code 19.2-152.10:1</a>.</p>

Step:	Description:
	<p>Instructions for processing a completed Hope Card Application can be found at the following link:</p> <p><a href="#">Hope Card Instructions</a></p> <p>Make service copies of the district court form DC-385: Protective Order and attach the DC-649: Protective Order Firearm Certification for service on the respondent. Forward forthwith to the primary law-enforcement agency responsible for entry into VCIN and service upon the respondent. The copy of district court form DC-621: <a href="#">Non-Disclosure Addendum</a> form is attached to alleged victim's copy only.</p> <p>The clerk shall forthwith, but in all cases no later than the end of the business day, on which the order was issued, enter and transfer identifying information electronically, through GCMS, to the Virginia Criminal Information Network.</p> <p>Serve a copy of the Protective Order on the petitioner. If the respondent is present, serve a copy of the Protective Order along with the attached copy of the DC-649: Protective Order Firearm Certification before leaving court, if at all possible.</p>
8.	<p>If the respondent returns the completed DC-649: Protective Order Firearm Certification immediately after service of the protective order, scan and file the document with the protective order.</p> <p>If the completed DC-649: Protective Order Firearm Certification is not returned at the protective order hearing, set a 5-calendar day administrative hearing using hearing type <b>AH</b> to track the return of the completed DC-649: Protective Order Firearm Certification.</p> <p><b>Note:</b> The General District Court will continue to monitor the filing of the completed DC-649: Protective Order Firearm Certification, even if the Protective Order is appealed.</p> <p>If on the 5-day administrative hearing the DC-649: Protective Order Firearm Certification has not been completed and returned to the court by the respondent, the judge may request the issuance of a show cause for contempt of court. The judge may utilize the bottom portion of the DC-649: Protective Order Firearm Certification to order the show cause. The judge should indicate whether the show cause will be issued as civil or criminal and provide the statute.</p>

Step:	Description:
	If the show cause is ordered enter as a subsequent action to the protective order with the case type of “SC”. Enter the Complainant as “ <b>Upon Court’s Motion</b> ”. Set for a hearing and send the show cause out for service.
9.	<p>If the Petition for PO is dismissed, update the GCMS <b>Hearing Disposition</b> screen with <b>O</b> in the <b>Hearing Result</b> field and <b>I</b> (dismissed) in the <b>Case Disposition</b> field. If the petition is denied, update the GCMS <b>Hearing Disposition</b> screen with <b>O</b> in the <b>Hearing Result</b> field and <b>D</b> (denied) in the <b>Case Disposition</b> field.</p> <p><b>Note:</b> As protective order information is no longer available on the Internet, it is recommended that the clerk make an extra copy of the DC-394: Denial/Dismissal In Protective Order Case and forward to law enforcement at the conclusion of the hearing. Preliminary protective orders remain in effect until the full hearing. Forwarding a copy of the denial/dismissal order enables law enforcement to remove the preliminary protective order from VCIN before 11:59 p.m. when Virginia State Police run their program to remove expired protective orders. As the preliminary protective order and full protective order have different case numbers, the clerk may wish to attach of a copy of the preliminary protective order to the DC-394: Denial/Dismissal In Protective Order Case before forwarding to law enforcement.</p>
10.	Upon request after the protective order is served, the clerk shall provide the petitioner with a copy of the order and information regarding the date and time of service.
11.	<p>Seal the district court form DC-621: <a href="#">Non-Disclosure Addendum</a> that contains the protected information. Use district court form DC-392: Sealed Documents clasp envelopes supplied through OES Purchasing.</p> <p>File the district court form DC-383: <a href="#">Petition for Protective Order</a>, the DC-385: Protective Order and the district court form DC-649: Protective Order Firearm Certification in the disposed civil court date file.</p>
12.	<p>Either party may at any time file a district court form DC-630: <a href="#">Motion to Amend or Review Order</a> with the court requesting a hearing to dissolve or modify the order. No fees for service by the Sheriff are collected. Upon petitioner’s motion to dissolve the protective order, a dissolution order may be issued ex parte by the court with or without a hearing. If an ex parte hearing is held, it shall be heard by the court as soon as practicable. If an order dissolving the preliminary protective order is issued ex parte, the court shall serve a copy of the dissolution order on the respondent forthwith in conformity with <a href="#">Va. Code § 8.01-286.1</a> and <a href="#">Va. Code § 8.01-296</a>.</p> <p>The Clerk’s office enters the date and time of the hearing on the motion and prepares copies of the district court form DC-630: <a href="#">Motion to Amend or Review</a></p>

Step:	Description:
	<p><a href="#">Order</a> for service on the parties clearly stating the date and time of the hearing. The copy of the district court form DC-621: <a href="#">Non-Disclosure Addendum</a> form is attached to the protected person’s copy only.</p> <p>The hearing shall be given precedence on the docket.</p> <p>All conditions and limitations remain in effect until the hearing on the motion. The motion will be entered as a subsequent action of the <b>PO</b> using case type of <b>OT</b>. Route to the Civil Case Entry screen, enter the <b>PO</b> case number with the appropriate suffix, i.e., 01.</p> <p>Retrieve the original PO for the hearing. Update the GCMS <b>Hearing Disposition</b> screen of the <b>PO</b> (original case) as an administrative hearing with the date and time for the hearing on the motion.</p>
13.	<p>After the hearing on the motion (-01), update the GCMS <b>Hearing Disposition</b> screen with <b>O</b> in the <b>Hearing Result</b> field and <b>O</b> in the <b>Case Disposition</b> field. Make a notation in the “Further Case Info” as to the disposition of the motion, i.e., motion to dissolve granted. Add information in the “Further Case Info” field on both the original case and the subsequent action.</p> <p>If the <b>PO</b> is modified, the clerk’s office shall prepare a new district court form DC-385: Protective Order using the original case number of the PO. Attested copies shall be forwarded forthwith to the primary law enforcement agency responsible for service on both parties and entry into VCIN. The copy of district court form DC-621: <a href="#">Non-Disclosure Addendum</a> is attached to the Alleged Victim’s copy only.</p> <p>If the PO is dissolved or withdrawn, prepare district court form DC-652: <a href="#">Order Dissolving Protective Order</a> using the original case number of the <b>PO</b> in the <b>Case No</b> field. Attested copies shall be forwarded forthwith to the primary law enforcement agency responsible for service on both parties and entry into VCIN. The copy of district court form DC-621: <a href="#">Non-Disclosure Addendum</a> form is attached to the Alleged Victim’s copy only.</p> <p>If there is no change made to the existing <b>PO</b>, it is not necessary to make any changes to the original <b>PO</b>.</p> <p>The administrative hearing will drop off of the system. It may be possible to obtain service on the parties prior to them leaving the courthouse.</p>
14.	<p>Seal the district court form DC-621: <a href="#">Non-Disclosure Addendum</a> that contains the protected information. Use district court form DC-392: Sealed Documents clasp envelopes supplied through OES Purchasing.</p>



Step:	Description:
	<p>The district court form DC-630: <a href="#">Motion to Amend or Review Order</a> and related case papers will be filed in the disposed civil court date file.</p>
15.	<p>If an appeal is requested, prepare the district court form DC-475: Notice of Appeal – Civil. For step-by-step procedures, see <a href="#">Appeals</a> in the appendix. The Protective Order remains in full force and effect until dissolved or modified by the court.</p> <p><b>Reminder:</b> The General District Court will continue to monitor the filing of the completed DC-649: Protective Order Firearm Certification by setting the 5 calendar day Administrative Hearing even if the Protective Order is appealed. If the Respondent surrenders a Concealed Handgun permit, clerk will retain permit with applicable case until the expiration date of the applicable protective order <a href="#">Va. Code § 18.2-308.1:4</a>.</p> <p>Concealed handgun permit is to be returned, upon request, preferably in writing, upon expiration of protective order, so long as the holder has not been convicted of a disqualifying offense.</p> <p>Written request to return the Concealed Handgun Permit by mail must be notarized and a copy of the photo identification should be attached to the notarized request.</p> <p>It is recommended that the Respondent appear in person with photo identification to request return of the Concealed Handgun permit upon expiration of the protective order.</p> <p>The Clerk’s office must verify that the protective order has expired or been terminated by court order by checking the applicable case and order documents. Photocopy the permit and notate date and time of return. File copy with the protective order.</p>
16.	<p>If Respondent surrenders a Concealed Handgun permit, clerk will retain permit with applicable case until the expiration date of the applicable protective order.</p> <p>Concealed handgun permit is to be returned, upon request (preferably in writing), upon expiration of protective order, so long as the holder has not been convicted of a disqualifying offense.</p> <p>It is recommended that the Respondent appear in person with photo identification to request return of the Concealed Handgun permit upon expiration of the PPO.</p>



Step:	Description:
	<p>Written request to return the Concealed Handgun Permit by mail must be notarized and a copy of the photo identification should be attached to the notarized request.</p> <p>The Clerk's office must verify that the protective order has expired or been terminated by court order by checking the applicable case and order documents. Photocopy the permit and notate date and time of return. File copy with the protective order.</p>
17.	<p>Disclosure of Sealed Information:</p> <ul style="list-style-type: none"> <li>• Written request or motion per case may be filed by applicable agency employee (law-enforcement agency, attorney for the Commonwealth, a court or clerk's office) or by any other individual requesting disclosure of information contained in the sealed documents.</li> <li>• The request, or motion, should be handled administratively and should be referred to the judge for determination of disclosure unless the Court has issued a written policy/order to the Clerk authorizing disclosure and setting forth specific protocols for disclosure.</li> <li>• If a hearing is required, use the <b>AH</b> (administrative hearing) feature of GCMS with the applicable case for court review of the motion.</li> </ul>

### Extension of Protective Orders

A petitioner who has obtained a protective order under [Va. Code § 19.2-152.10](#) may file to obtain an extension of such order. Prior to the expiration of the protective order, the petitioner may file a written motion requesting a hearing to extend the order. Proceedings to extend the protective order shall be given precedence on the docket of the court. A written motion to extend the protective order shall be served as soon as possible on the respondent.

The court may extend the protective order for a period not longer than two years to protect the health and safety of the petitioner or person who are family or household members of the petitioner at the time of the request for an extension is made. The extension of the protective order shall expire at 11:59 pm on the last day specified or at 11:59 pm on the last day of the two-year period if no date is specified. There is no limit to the number of extensions that may be requested or issued.

Upon the filing of a written motion requesting a hearing to extend the protective order, the court may issue ex parte a preliminary protective order pursuant to [Va. Code § 19.2-152.9](#) until the extension hearing. The ex parte preliminary protective order shall specify a date for

the extension hearing, which shall be held within 15 days of the issuance of the ex parte preliminary order and may be held after the expiration of the full protective order.

If the respondent fails to appear at the extension hearing because the respondent was not personally served, the court shall schedule a new date for the extension hearing and may extend the ex parte preliminary protective order until such new date. The extended ex parte preliminary protective order shall be served on as soon as possible on the respondent. If the respondent was personally served, and where the petitioner shows by clear and convincing evidence that a continuance is necessary to meet the ends of justice or the respondent shows good cause, the court may continue the extension hearing and such ex parte preliminary protective order shall remain in effect until the extension hearing.

Except as otherwise provided, a violation of a protective order issued under this section shall constitute contempt of court. The court may assess costs and attorney fees against either party regardless of whether an order of protection has been issued as a result of a full hearing.

The following procedures should be followed when processing a written motion or a district court form DC-630: [Motion to Amend or Review Order for](#) an extension.

Step:	Description:
1.	<p>The petitioner, or their attorney files a district court form DC-630: <a href="#">Motion to Amend or Review Order</a> with the court requesting an extension of the protective order.</p> <p>Verify that there is a protective order in effect in the court. If the protective order has already expired, please accept the documents and have the petitioner speak with the judge.</p> <p>No fees for service by the Sheriff are collected.</p> <p>The Clerk's office enters the date and time of the hearing on the motion and prepares copies of the district court form DC-630: <a href="#">Motion to Amend or Review Order</a> for service on the parties clearly stating the date and time of the hearing. The copy of the district court form DC-621: <a href="#">Non-Disclosure Addendum</a> form is attached to the protected person's copy only.</p> <p>When a petitioner does not complete the DC-630, the clerk's office may attach the written notice to the DC-512: <a href="#">Notice of Hearing</a> for service on the parties clearly stating the date and time of the extension hearing. The copy of the district court form DC-62: <a href="#">Non-Disclosure Addendum</a> form is attached to the protected person's copy only.</p> <p>The hearing shall be given precedence on the docket.</p>

Step:	Description:
	<p>The motion will be entered as a subsequent action to the original <b>PO</b> using case type of <b>OT</b>. Route to the Civil Case Entry screen, enter the <b>PO</b> case number with the appropriate suffix, i.e., 01.</p> <p>Retrieve the original <b>PO</b> for the hearing. Update the GCMS <b>Hearing Disposition</b> screen of the <b>PO</b> (original case) as an administrative hearing with the date and time for the extension hearing on the motion.</p>
2.	<p>Provide the motion and copy of the original PO to the judge for review prior to sending the documents out for service. The court will decide if the issuance of an ex parte preliminary protective order is appropriate. The extension hearing shall be within 15 days from the issuance of the ex parte preliminary protective order.</p>
3.	<p>Index the ex parte preliminary protective order as a new civil case number; reference the issuance of this preliminary protective order in the remarks area of the original protective order.</p> <p>When the court authorizes issuance of the PPO, issue the district court form DC-384: Preliminary Protective Order and the district court form DC-621: <a href="#">Non-Disclosure Addendum</a>. After the hearing on the motion, update the GCMS Hearing Disposition screen with <b>O</b> in the <b>Hearing Result</b> field and <b>G (granted)</b> in the <b>Case Disposition</b> field. This order will include any conditions and limitations being placed upon the respondent and will state the date and time of the extension hearing.</p> <p>Upon completion of <b>G</b> in the <b>Case Disposition</b> field, the VCIN Interface will display. Complete the appropriate data elements. This screen is a critical component of the protective order procedures as it interfaces with State Police to expedite entry of protective orders into VCIN.</p> <p>Scan and tag the preliminary protective order to ensure the protective order interface will provide a copy of this protective order to law enforcement.</p> <p><b>Note:</b> Upon issuance of a preliminary protective order, the clerk of the court shall make available to the petitioner information that is published by the Department of Criminal Justice Services for victims of domestic violence or for petitioners in protective order cases.</p> <p>If the respondent is in the military or is a person under a disability, the court will determine if the respondent is entitled to counsel or a guardian ad Litem. If the court determines counsel or a guardian ad Litem should be appointed, then the appropriate orders should be prepared. For a respondent in the military, the</p>

Step:	Description:
	<p>court may wish to complete the bottom of DC-418: <a href="#">Affidavit – Default Judgment Servicemembers Civil Relief Act</a>. Counsel appointed pursuant to the Servicemembers Civil Relief Act shall not be selected by the plaintiff; however, counsel for the plaintiff may provide a list of attorneys familiar with the provisions of the Servicemembers Civil Relief Act upon the request of the court.</p> <p>For a respondent under a disability, the court may wish to use district court form DC-401: Order for Appointment of Guardian ad Litem.</p>
4.	<p>After the hearing on the motion (-01), update the GCMS Hearing Disposition screen with <b>O</b> in the <b>Hearing Result</b> field and <b>O</b> in the <b>Case Disposition</b> field. Make a notation in the “Further Case Info” as to the disposition of the motion, i.e., motion to extend granted. Add information in the <b>Further Case Info</b> field on both the original case and the subsequent action.</p> <p>If the respondent fails to appear at the extension hearing, because the respondent was not personally served, the court shall schedule a new date for the extension hearing and may extend the ex parte preliminary protective order until the new hearing. The extended ex parte preliminary protective hearing shall be served as soon as possible on the respondent.</p> <p>If the respondent was personally served, and where the petitioner shows by clear and convincing evident that a continuance is necessary to meet the end of justice or the respondent shows good cause, the court may continue the extension hearing and such ex parte preliminary protective order shall remain in effect until the extension hearing.</p> <p>In either instance, the clerk shall prepare a new district court form DC-384: Preliminary Protective Order using the same case number, ensure the <b>Extension of the Preliminary Protective Order</b> box is checked and the reason for extending the preliminary protective order is indicated by completing one of the check boxes as provided on the DC-384. The extended preliminary protective order shall provide the new extension hearing date.</p> <p>Attested copies shall be forwarded forthwith to the primary law enforcement agency responsible for service on both parties and entry into VCIN.</p> <p>Scan and tag the extended preliminary protective order to ensure the protective order interface will provide this protective order to law enforcement.</p>
5.	<p>If the <b>PO</b> is extended, the clerk’s office shall prepare a new district court form DC-385: Protective Order using the same case number, ensure the <b>Extension of Protective Order</b> box is checked, and attach the DC-649: <a href="#">Protective Order Firearm Certification</a> for service on the respondent. The copy of the district</p>

Step:	Description:
	<p>court form DC-621: <a href="#">Non-Disclosure Addendum</a> form is attached to the alleged victim's copy only. It is possible that the protected persons may not be the same ones listed on the original protective order. Do not make any changes to the original <b>PO</b>. Send the new DC-385: <a href="#">Protective Order</a> to law enforcement for update and entry in VCIN.</p> <p>The clerk should make note in the remarks section of the original protective order case that this protective order has been extended.</p> <p>Scan and tag the extended protective order to ensure the protective order interface will provide this extended protective order to law enforcement. Any person who has been issued a protective order pursuant to <a href="#">Va. Code § 19.2-152.10</a> by any district court shall be issued a Hope Card, via the Hope Card Program. The Hope Card shall to the extent possible contain essential information about the protective order <a href="#">Va. Code § 19.2-152.10:1</a>.</p> <p>Instructions for processing a completed Hope Card Application can be found at the following link:</p> <p><a href="#">Hope Card Instructions</a></p> <p>Mandatory non-disclosure of residential address, telephone number, or place of employment of person protected or family of such person is automatic and the protected person does not have to file district court form DC-301: <a href="#">Request for Confidentiality</a> to prevent disclosure.</p> <p>It may be possible to obtain service on the parties prior to them leaving the courthouse.</p>
6.	<p>If the respondent is present and returns the completed DC-649: Protective Order Firearm Certification immediately after service of the protective order, scan and file the document with the protective order.</p> <p>If the completed DC-649: Protective Order Firearm Certification is not returned at the protective order hearing, set a 5-calendar day administrative hearing to track the return of the completed DC-649: Protective Order Firearm Certification.</p> <p><b>Note:</b> The General District Court will continue to monitor the filing of the completed DC-649: Protective Order Firearm Certification even if the Protective Order is appealed.</p>

Step:	Description:
	<p>If on the 5-day administrative hearing the DC-649: Protective Order Firearm Certification has not been completed and returned to the court by the respondent, the judge may request the issuance of a show cause for contempt of court. The judge may utilize the bottom portion of the DC-649: Protective Order Firearm Certification to order the show cause. The judge should indicate whether the show cause will be issued as civil or criminal and provide the statute.</p> <p>If the show cause is ordered enter as a subsequent action to the protective order with the case type of “<b>SC</b>”. Enter the Complainant as “<b>Upon Court’s Motion</b>”. Set for a hearing and send the show cause out for service.</p>
7.	<p>Seal the district court form DC-621: <a href="#">Non-Disclosure Addendum</a> that contains the protected information. Use district court form DC-392: Sealed Documents clasp envelopes supplied through OES Purchasing.</p> <p>The district court form DC-630: <a href="#">Motion to Amend or Review Order</a> and related case papers will be filed in the disposed civil court date file.</p>
8.	<p>If an appeal is requested, prepare the district court form DC-475: Notice of Appeal – Civil. For step-by-step procedures, see <a href="#">Appeals</a> in the appendix. The Protective Order remains in full force and effect until dissolved or modified by the court.</p> <p><b>Reminder:</b> The General District Court will continue to monitor the filing of the completed DC-649: Protective Order Firearm Certification by setting the 5-calendar day Administrative Hearing even if the Protective Order is appealed.</p>
9.	<p>If Respondent surrendered a Concealed Handgun permit, clerk would retain permit with the applicable case until the expiration date of the applicable protective order <a href="#">Va. Code § 18.2-308.1:4</a>.</p> <p>Concealed handgun permit is to be returned, upon request, preferably in writing, upon expiration of protective order, so long as the holder has not been convicted of a disqualifying offense.</p> <p>It is recommended that the Respondent appear in person with photo identification to request return of the Concealed Handgun permit upon expiration of the protective order.</p> <p>The Clerk’s office must verify that the protective order has expired or been terminated by court order by checking the applicable case and order documents. Photocopy the permit and notate date and time of return. File copy with the protective order.</p>

## Forms

DC-382	Emergency Protective Order
DC-383	Petition for Protective Order
DC-384	Preliminary Protective Order
DC-385	Protective Order
DC-392	Sealed Documents
DC-649	Protective Order Firearm Certification
DC-621	<a href="#">Non-Disclosure Addendum</a>
DC-630	<a href="#">Motion to Amend or Review Order</a>
DC-652	<a href="#">Order Dissolving Protective Order</a>

## References

<a href="#">Va. Code § 18.2-60.3:</a>	Stalking, penalty
<a href="#">Va. Code § 19.2-152.8:</a>	Emergency protective orders authorized
<a href="#">Va. Code § 19.2-152.9:</a>	Preliminary protective orders
<a href="#">Va. Code § 19.2-152.10:</a>	Protective order
<a href="#">Va. Code § 19.2-390</a> amended:	Reports to be made by local law-enforcement officers, conservators of the peace, clerks of court, Secretary of the Commonwealth and Corrections officials to State Police; material submitted by other agencies.

## Appeals

In a general district court protective order case, either party may appeal the decision to the circuit court provided the appeal is noted in writing within ten calendar days from the date of judgment. If the tenth day falls on a Saturday, Sunday, or legal holiday, the last day to note an appeal will be the next day the court is open. The district court clerk shall contact the circuit court to determine whether the appeal will be heard on a date scheduled by the district court clerk with the circuit court clerk, or on the next docket call date, or a date set for district court appeals. Neither party is required to pay any filing fees nor is there an appeal bond in a protective order appeal unless the district court awarded attorney's fees to the appellant. The appeal is sent to the circuit court immediately. It is not necessary to hold the appeal until the expiration of the ten-day appeal period unless an appeal bond has been ordered.

Protective Orders remain in full force and effect until dissolved or modified by the court. An appeal from an order of protection issued pursuant to [Va. Code §19.2-152.10](#) shall be assigned a case number within two business days upon receipt of such appeal.

**Reminder:** The General District Court will continue to monitor the filing of the completed DC-649: Protective Order Firearm Certification by setting the 5-calendar day Administrative Hearing even if the Protective Order is appealed.

For details and step-by-step instructions for handling appeals and withdrawal of appeals, see the appendix on [Appeals](#).

### Protective Orders in Criminal Cases

A criminal conviction of stalking/sexual battery pursuant to [Va. Code § 18.2-60.3](#) will require the court to issue an order prohibiting contact between the defendant and the victim, victim’s family, or household member.

The following procedures should be followed when processing a district court form DC-385: Protective Order after a criminal conviction:

Step:	Description:
1.	<p>A criminal conviction for stalking entered by a court requires the court to issue an order prohibiting contact between the defendant and the victim or the victim’s family or household member <a href="#">Va. Code § 18.2-60.3</a>.</p> <p>No filing costs or service fees are assessed for the protective order <a href="#">Va. Code § 17.1-272 (B)</a>.</p> <p>If the court enters a protective order following a criminal conviction, clerk assigns a new case number and enters the Protective Order in the Civil division with case type <b>PO</b>. Enter the same hearing date and time as the criminal case. Plaintiff = Victim (<b>PO</b>); Defendant = Convicted Person (<b>PO</b>); Remarks = Criminal Conviction (<b>PO</b>).</p> <p>Finalize the case with <b>O</b> in the <b>Hearing Result</b> field and <b>G</b> (granted) in the <b>Case Disposition</b> field.</p>
2.	<p>Upon completion of <b>G</b> in the Case Disposition field, the VCIN Interface will display. Complete the appropriate data elements. This screen is a critical component of the protective order procedures as it interfaces with State Police to expedite entry of protective orders into VCIN.</p> <p>The clerk shall forthwith, but in all cases no later than the end of the business day, on which the order was issued, enter and transfer identifying information electronically, through GCMS, to the Virginia Criminal Information Network. See General District Case Management Systems User’s Guide, “Protective Order Interface” for instructions.</p>



Step:	Description:
3.	<p>A Protective Order may be issued for a period of up to two years. The protective order shall expire at the end of the last day identified for the two-year period and if no date is identified, it shall expire at the end of the two years following the date of issuance at 11:59 p. m.</p> <p>Issue district court form DC-385: Protective Order and district court form DC-621: <a href="#">Non-Disclosure Addendum</a>. Make service copies of the district court form DC-385: Protective Order and attach the DC-649: Protective Order Firearm Certification for service on the respondent. Forward forthwith to the primary law-enforcement agency responsible for entry into VCIN and service upon the respondent. The copy of district court form DC-621: <a href="#">Non-Disclosure Addendum</a> form is attached to alleged victim's copy only. Law enforcement should serve a copy on the defendant and victim immediately, before they leave.</p> <p>Any person who has been issued a protective order pursuant to <a href="#">Va. Code § 19.2-152.10</a> by any district court shall be issued a Hope Card, via the Hope Card Program. The Hope Card shall to the extent possible contain essential information about the protective order <a href="#">Va. Code 19.2-152.10:1</a>.</p> <p>Instructions for processing a completed Hope Card Application can be found at the following link:</p> <p><a href="#">Hope Card Instructions</a></p>
4.	<p>If the respondent returns the completed DC-649: Protective Order Firearm Certification immediately after service of the protective order, scan and file the document with the protective order.</p> <p>If the completed DC-649: Protective Order Firearm Certification is not returned at the protective order hearing, set a 5-calendar day administrative hearing to track the return of the completed DC-649: Protective Order Firearm Certification.</p> <p><b>Note:</b> The General District Court will continue to monitor the filing of the completed DC-649: Protective Order Firearm Certification even if the Protective Order is appealed.</p> <p>If on the 5-calendar day administrative hearing the DC-649: Protective Order Firearm Certification has not been completed and returned to the court by the respondent, the judge may request the issuance of a show cause for contempt of court. The judge may utilize the bottom portion of the DC-649: Protective</p>

Step:	Description:
	<p>Order Firearm Certification to order the show cause. The judge should indicate whether the show cause will be issued as civil or criminal and provide the statute.</p> <p>If the show cause is ordered enter as a subsequent action to the protective order with the case type of “<b>SC</b>”. Enter the Complainant as “<b>Upon Court’s Motion</b>”. Set for a hearing and send the show cause out for service.</p>
5.	<p>Mandatory non-disclosure of residential address, telephone number, or place of employment of person protected or family of such person is automatic and the protected person does not have to file district court form DC-301: <a href="#">Request for Confidentiality</a> to prevent disclosure.</p> <p><b>Caution:</b> Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or their family except as required by law, as necessary for law-enforcement purposes, or by order for good cause shown.</p> <p>Seal any case papers containing the protected information. Use district court form DC-392: Sealed Documents clasp envelopes supplied by OES Purchasing.</p> <p>A copy of the district court form DC-385: Protective Order may be filed with the criminal case in which it is issued.</p>
6.	<p>Either party may at any time file a district court form DC-630: <a href="#">Motion to Amend or Review Order</a> with the court requesting a hearing to dissolve or modify the order.</p> <p>No fees for service by the Sheriff are collected.</p> <p>The Clerk’s office enters the date and time of the hearing on the motion and prepares copies of the district court form DC-630: <a href="#">Motion to Amend or Review Order</a> for service on the parties clearly stating the date and time of the hearing. The copy of the district court form DC-621: <a href="#">Non-Disclosure Addendum</a> form is attached to the protected person’s copy only.</p> <p>The hearing shall be given precedence on the docket. All conditions and limitations remain in effect until the hearing on the motion.</p>

Step:	Description:
	<p>The motion will be entered as a subsequent action of the <b>PO</b> using case type <b>OT</b>. Route to the Civil Case Entry screen, enter the <b>PO</b> case number with the appropriate suffix, i.e., -01.</p> <p>Retrieve the original <b>PO</b> for the hearing. Update the GCMS <b>Hearing Disposition</b> screen of the <b>PO</b> (original case) as an administrative hearing with the date and time for the hearing on the motion.</p>
7.	<p>After the hearing on the motion (-01), update the GCMS <b>Hearing Disposition</b> screen with <b>O</b> in the <b>Hearing Result</b> field and <b>O</b> in the <b>Case Disposition</b> field. Make a notation in the “Further Case Info” as to the disposition of the motion, i.e., motion to dissolve granted. Add information in the “Further Case Info” field on both the original case and the subsequent action.</p> <p>If the <b>PO</b> is modified, the clerk’s office shall prepare a new district court form DC-385: Protective Order using the original case number of the <b>PO</b>. Attested copies shall be forwarded forthwith to the primary law enforcement agency responsible for service on both parties and entry into VCIN. The copy of district court form DC-621: <a href="#">Non-Disclosure Addendum</a> is attached to the Alleged Victim’s copy only.</p> <p>If the <b>PO</b> is dissolved or withdrawn, prepare district court form DC-652: <a href="#">Order Dissolving Protective Order</a> using the original case number of the <b>PO</b> in the <b>Case No</b> field. Attested copies shall be forwarded forthwith to the primary law enforcement agency responsible for service on both parties and entry into VCIN. The copy of district court form DC-621: <a href="#">Non-Disclosure Addendum</a> form is attached to the Alleged Victim’s copy only.</p> <p>If there is no change made to the existing <b>PO</b>, it is not necessary to make any changes to the original <b>PO</b>.</p> <p>The administrative hearing will drop off of the system.</p> <p>It may be possible to obtain service on the parties prior to them leaving the courthouse.</p>
8.	<p>Seal any case papers containing the protected information. Use district court form DC-392: Sealed Documents clasp envelopes supplied through OES Purchasing.</p> <p>The district court form DC-630: <a href="#">Motion to Amend Or Review Order</a> and related case papers will be filed with the criminal case in which it is issued.</p>

Step:	Description:
9.	<p>If the criminal conviction is appealed, the <b>PO</b> remains in effect <a href="#">Va. Code § 16.1-106</a>, but is part of the Circuit court de novo appeal.</p> <p><b>Reminder:</b> The General District Court will continue to monitor the filing of the completed DC-649: Protective Order Firearm Certification by setting the 5-calendar day Administrative Hearing <b>even</b> if the Protective Order is appealed.</p>
10.	<p>If the subject of the protective order has a concealed handgun permit, the permit shall be surrendered to the court that issued the protective order <a href="#">Va. Code § 18.2-308.1:4</a>. Clerk will retain permit with applicable case until the expiration date of the applicable protective order.</p> <p>Concealed handgun permit is to be returned, upon request, preferably in writing, upon expiration of protective order so long as the holder has not been convicted of a disqualifying offense.</p> <p>It is recommended that the Respondent appear in person with photo identification to request return of the Concealed Handgun permit upon expiration of the <b>PO</b>.</p> <p>The Clerk's office must verify that the protective order has expired or been terminated by court order by checking the applicable case and order documents. Photocopy the permit and notate date and time of return. File copy with the protective order.</p>

### Convictions for Violating Protective Order

Any person who violates any provision of a protective order issued pursuant to [Va. Code § 19.2-152.8](#), [Va. Code § 19.2-152.9](#), [Va. Code § 19.2-152.10](#) is guilty of a Class 1 misdemeanor. Conviction hereunder shall bar a finding of contempt for the same act. Upon conviction, the court shall, in addition to the sentence imposed, enter a protective order pursuant to [Va. Code § 19.2-152.10](#) for a specified period not to exceed two years [Va. Code § 18.2-60.4](#).

The following procedures should be followed when processing a district court form DC-385: Protective Order after a criminal conviction for violation of a protective order:

Step:	Description:
1.	<p>Upon conviction for violation of a protective order, the court shall enter a protective order for a specified period not to exceed two years. No filing costs or service fees are assessed for the protective order <a href="#">Va. Code § 19.2-152.10</a> and <a href="#">Va. Code § 17.1-272 (B)</a>.</p>

Step:	Description:
	<p>Clerk assigns a new case number and enters the Protective Order in the Civil division with a case type <b>PO</b>. Enter the same hearing date and time as the criminal case. Plaintiff = Victim (PO); Defendant = Convicted Person (PO); Remarks = Conviction Violate PO.</p> <p>Route to GCMS <b>Hearing Disposition</b> update screen and finalize the case with <b>O</b> in the <b>Hearing Result</b> field and <b>G</b> (granted) in the <b>Case Disposition</b> field.</p>
2.	<p>Upon completion of <b>G</b> in the Case Disposition field, the VCIN Interface will display. Complete the appropriate data elements. This screen is a critical component of the protective order procedures as it interfaces with State Police to expedite entry of protective orders into VCIN.</p> <p>The clerk shall forthwith, but in all cases no later than the end of the business day, on which the order was issued, enter and transfer identifying information electronically, through GCMS, to the Virginia Criminal Information Network. See General District Case Management Systems User's Guide, "Protective Order Interface" for instructions.</p> <p>Any person who has been issued a protective order pursuant to <a href="#">Va. Code § 19.2-152.10</a> by any district court shall be issued a Hope Card, via the Hope Card Program. The Hope Card shall to the extent possible contain essential information about the protective order <a href="#">Va. Code 19.2-152.10:1</a>.</p> <p>Instructions for processing a completed Hope Card Application can be found at the following link:</p> <p><a href="#">Hope Card Instructions</a></p>
3.	<p>A protective order may be issued for a period of up to two years. The protective order shall expire at the end of the last day identified for the two-year period and if no date is identified, it shall expire at the end of the two years following the date of issuance at 11:59 p.m.</p> <p>Issue the district court form DC-385: Protective Order and the district court form DC-621: <a href="#">Non-Disclosure Addendum</a>.</p> <p>Make service copies of the district court form DC-385: Protective Order and attach the DC-649: Protective Order Firearm Certification for service on the respondent. Forward forthwith to the primary law-enforcement agency responsible for entry into VCIN and service upon the respondent. The copy of</p>

Step:	Description:
	<p>district court form DC-621: <a href="#">Non-Disclosure Addendum</a> form is attached to victim's copy only.</p> <p>Law enforcement should serve a copy on the defendant and victim immediately, before they leave.</p>
4.	<p>If the respondent returns the completed DC-649: Protective Order Firearm Certification immediately after service of the protective order, scan and file the document with the protective order.</p> <p>If the completed DC-649: Protective Order Firearm Certification is not returned at the protective order hearing, set a 5calendar day administrative hearing to track the return of the completed DC-649: Protective Order Firearm Certification.</p> <p><b>Note:</b> The General District Court will continue to monitor the filing of the completed DC-649: Protective Order Firearm Certification even if the Protective Order is appealed.</p> <p>If on the 5-calendar day administrative hearing the DC-649: Protective Order Firearm Certification has not been completed and returned to the court by the respondent, the judge may request the issuance of a show cause for contempt of court. The judge may utilize the bottom portion of the DC-649: Protective Order Firearm Certification to order the show cause. The judge should indicate whether the show cause will be issued as civil or criminal and provide the statute.</p> <p>If the show cause is ordered enter as a subsequent action to the protective order with the case type of “SC”. Enter the Complainant as “<b>Upon Court's Motion</b>”. Set for a hearing and send the show cause out for service.</p>
5.	<p>Mandatory non-disclosure of residential address, telephone number, or place of employment of person protected or family of such person is automatic and the protected person does NOT have to file district court form DC-301: <a href="#">Request for Confidentiality</a> to prevent disclosure.</p> <p>Seal any case papers containing the protected information. Use district court form DC-392: Sealed Documents clasp envelopes supplied by OES Purchasing.</p> <p><b>Caution:</b> Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or their</p>

Step:	Description:
	<p>family except as required by law, as necessary for law-enforcement purposes, or by order for good cause shown.</p> <p>A copy of the district court form DC-385: Protective Order issued based on the criminal conviction remains part of the criminal case in which it is issued.</p>
6.	<p>Either party may at any time file a district court form DC-630: <a href="#">Motion to Amend or Review Order</a> with the court requesting a hearing to dissolve or modify the order. No fees for service by the Sheriff are collected.</p> <p>The Clerk's office enters the date and time of the hearing on the motion and prepares copies of the district court form DC-630: <a href="#">Motion to Amend or Review Order</a> for service on the parties clearly stating the date and time of the hearing. The copy of the district court form DC-621: <a href="#">Non-Disclosure Addendum</a> form is attached to the protected person's copy only.</p> <p>The hearing shall be given precedence on the docket.</p> <p>All conditions and limitations remain in effect until the hearing on the motion.</p> <p>The motion will be entered as a subsequent action of the <b>PO</b> using case type <b>OT</b>. Route to the Civil Case Entry screen, enter the <b>PO</b> case number with the appropriate suffix, i. e. -01.</p> <p>Retrieve the original <b>PO</b> for the hearing. Update the GCMS <b>Hearing Disposition</b> screen of the <b>PO</b> (original case) as an administrative hearing with the hearing date and time for the motion.</p>
7.	<p>After the hearing on the motion (-01), update the <b>GCMS Hearing Disposition</b> screen with <b>O</b> in the <b>Hearing Result</b> field and <b>O</b> in the <b>Case Disposition</b> field. Make a notation in the "Further Case Info" as to the disposition of the motion, i.e., motion to dissolve granted. Add information in the "Further Case Info" field on both the original case and the subsequent action.</p> <p>If the <b>PO</b> is modified, the clerk's office shall prepare a new district court form DC-385: Protective Order using the original case number of the <b>PO</b>. Attested copies shall be forwarded forthwith to the primary law enforcement agency responsible for service on both parties and entry into VCIN. The copy of district court form DC-621: <a href="#">Non-Disclosure Addendum</a> is attached to the Alleged Victim's copy only.</p> <p>If the <b>PO</b> is dissolved or withdrawn, prepare district court form DC-652: <a href="#">Order Dissolving Protective</a> ORDER using the original case number of the <b>PO</b> in the</p>

Step:	Description:
	<p><b>Case No</b> field. Attested copies shall be forwarded forthwith to the primary law enforcement agency responsible for service on both parties and entry into VCIN. The copy of district court form DC-621: <a href="#">Non-Disclosure Addendum</a> form is attached to the Alleged Victim's copy only.</p> <p>If there is no change made to the existing <b>PO</b>, it is not necessary to make any changes to the original <b>PO</b>.</p> <p>The administrative hearing will drop off of the system.</p> <p>It may be possible to obtain service on the parties prior to them leaving the courthouse.</p>
8.	<p>Seal any case papers containing the protected information. Use district court form DC-392: Sealed Documents clasp envelopes supplied through OES Purchasing.</p> <p>The district court form DC-630: <a href="#">Motion to Amend or Review Order</a> and related case papers will be filed with the criminal case in which it is issued.</p>
9.	<p>If the criminal conviction is appealed, the PO remains in effect <a href="#">Va. Code § 16.1-107</a>, but is part of the Circuit Court de novo appeal.</p> <p><b>Reminder:</b> The General District Court will continue to monitor the filing of the completed DC-649, Protective Order Firearm Certification by setting the 5-calendar day Administrative Hearing <b>even</b> if the Protective Order is appealed.</p>
10.	<p>If the subject of the protective order has a concealed handgun permit, the permit shall be surrendered to the court that issued the protective order <a href="#">Va. Code § 18.2-308.1:4</a>. Clerk will retain permit with applicable case until the expiration date of the applicable protective order.</p> <p>Concealed handgun permit is to be returned, upon request, preferably in writing, upon expiration of protective order so long as the holder has not been convicted of a disqualifying offense.</p> <p>Written request to return the Concealed Handgun Permit by mail must be notarized and a copy of the photo identification should be attached to the notarized request.</p> <p>It is recommended that the Respondent appear in person with photo identification to request return of the Concealed Handgun permit upon expiration of the <b>PO</b>.</p>



Step:	Description:
	The Clerk's office must verify that the protective order has expired or been terminated by court order by checking the applicable case and order documents. Photocopy the permit and notate date and time of return. File copy with the protective order.

### Forms

DC-385	Protective Order
DC-621	<a href="#">Non-Disclosure Addendum</a>
DC-392	Sealed Documents

### References

<a href="#">Va. Code § 18.2-60.3:</a>	Stalking; penalty
<a href="#">Va. Code § 19.2-152.10:</a>	Protective order in cases of stalking, sexual battery, and acts of violence.
<a href="#">Va. Code § 18.2-60.4:</a>	Mandatory issuance of Protective Order upon conviction of violating a protective order

### Foreign Protective Order

A foreign protective order is entitled to full faith and credit in Virginia and shall be enforced in the Commonwealth as if it were an order of the Commonwealth. The person entitled to protection under this foreign order may file an attested or exemplified copy of the order with the clerk of the appropriate district court [Va. Code § 19.2-152.10](#). The district court form DC-684: [Filing of Foreign Protective Order](#), may be used for this purpose.

Upon such a filing, the clerk shall forthwith forward an attested copy of the order to the primary law-enforcement agency responsible for service and entry of protective orders which shall, upon receipt, enter the name of the person subject to the order and other appropriate information required by the [Department of State Police](#) into the Virginia Criminal Information Network.

Upon inquiry by any law-enforcement agency of the Commonwealth, the clerk shall make a copy available of any foreign order filed with that court. A law-enforcement office may, in the performance of their duties, rely upon a copy of a foreign protective order or other suitable evidence that has been provided to them by any source and may also rely upon the statement of any person protected by the order that the order remains in effect.

The following procedures should be followed when processing the district court form DC-684: [Filing of Foreign Protective Order](#) and/or an attested or exemplified copy of a Foreign Protective Order.

Step:	Description:
1.	<p>Clerk's office receives the district court form DC-684: <a href="#">Filing of Foreign Protective Order</a> and/or an attested copy or exemplified copy of the Foreign Protective Order. No filing costs or service fees are assessed for the protective order <a href="#">Va. Code § 19.2-152.10</a> and <a href="#">Va. Code § 17.1-272 (B)</a>.</p> <p>Clerk assigns a new case number and enters the protective order in the Civil division using case type <b>PO</b>. Plaintiff= Petitioner; Defendant= Respondent; Remarks= Foreign Protective Order. Enter the date received as the hearing date and set a time.</p>
2.	<p>Route to the Civil <b>Hearing Disposition</b> screen and update with <b>O</b> in the <b>Hearing Result</b> field and <b>G</b> (granted) in the <b>Case Disposition</b> field.</p>
3.	<p>Upon completion of <b>G</b> in the <b>Case Disposition</b> field, the VCIN Interface will display. Complete the appropriate data elements. This screen is a critical component of the protective order procedures as it interfaces with the State Police to expedite entry of protective orders into VCIN.</p> <p>The court shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter, and transfer electronically, through GCMS, to the Virginia Criminal Information Network system the respondent's identifying information and the name, date of birth, sex, and race of each protected person. See General District Case Management Systems User's Guide, Protective Order Interface for instructions.</p> <p>It is not recommended that service be obtained on the respondent.</p>
4.	<p>Make an attested copy of the Foreign Protective Order and forward forthwith to the primary law enforcement agency responsible for service and entry of protective orders into VCIN.</p> <p>Upon receipt, law enforcement shall enter the name of the person subject to the order and other appropriate information required into VCIN.</p>
5.	<p>Mandatory non-disclosure of residential address, telephone number, or place of employment of person protected or family of such person is automatic and the protected person does not have to file district court form DC-301: <a href="#">Request for Confidentiality</a> to prevent disclosure.</p> <p><b>Caution:</b> Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or their family</p>

Step:	Description:
	<p>except as required by law, as necessary for law-enforcement purposes, or by order for good cause shown.</p> <p>Seal any case papers containing the protected information. Use district court form DC-392: Sealed Documents clasp envelopes supplied by OES Purchasing.</p> <p>The district court form DC-684: <a href="#">Filing of Foreign Protective Order</a> and attested copy of the Foreign Protective Order will be filed in the disposed civil court date file.</p>
6.	<p>Either party may at any time file a district court form DC-630: <a href="#">Motion to Amend or Review Order</a> with the court requesting a hearing to dissolve or modify the order. No fees for service by the Sheriff are collected.</p> <p>Follow the Clerk's office procedures for Protective Orders regarding the processing of the district court form DC-630: <a href="#">Motion to Amend or Review Order</a>.</p>

## Emergency Substantial Risk Order

An attorney for the Commonwealth or a law-enforcement officer may petition a judge of a circuit court, general district court, juvenile and domestic relations district court, or a magistrate to issue an ex parte emergency substantial risk order. The petition for the order must be supported by an affidavit. Upon a finding that there is probable cause to believe that a person poses a substantial risk of personal injury to themselves or others in the near future by the person's possession or acquisition of a firearm, the court shall issue an ex parte emergency substantial risk order.

The order shall prohibit the person who is subject to the order from purchasing, possessing, or transporting a firearm for the duration of the order. Upon service of an emergency substantial risk order, the person who is subject to the order shall be given the opportunity to voluntarily relinquish any firearm(s) in their possession.

An emergency substantial risk order shall expire at 11:59 p.m. on the fourteenth day following the issuance of the order or at 11:59 p.m. or the next day that the circuit court is in session.

An emergency substantial risk order is effective upon personal service on the person who is subject to the order. The order shall be served forthwith after issuance. A copy of the order, petition, and supporting affidavit shall be given to the person who is subject to the order together with a notice informing the person that they have a right to a hearing under [Va. Code § 19.2-152.14](#) and may be represented by counsel at the hearing.

The court or magistrate shall forthwith, but in all cases no later than the end of the business day on which the emergency substantial risk order was issued, enter, and transfer electronically

to the Virginia Criminal Information Network (VCIN) the identifying information of the person who is subject to the order provided to the court or magistrate. A copy of the order shall be forwarded forthwith to the primary law-enforcement agency responsible for service and entry of the order into the Virginia Criminal Information Network (VCIN). A copy of the substantial risk order shall be forwarded to the circuit court for the setting of the full hearing.

The law-enforcement agency that serves the emergency substantial risk order shall return to the circuit court, which shall be accompanied by a written inventory of all firearms relinquished.

The person who is subject to the order may at any time file with the **circuit court** a motion to dissolve the order.

### Clerk's Office Procedures for The Petition for an Emergency Substantial Risk Order

The following procedures should be followed when processing a district court form DC-4060: Petition for Emergency Substantial Risk Order:

Step:	Description:
1.	<p>The Attorney for the Commonwealth or law-enforcement officer files the district court form DC-4060: Petition for Emergency Substantial Risk Order.</p> <p>There are no fees for filing the district court form DC-4060: Petition for Substantial risk Order.</p>
2.	<p>Clerk assigns a new case number and enters the petition in the Civil Division with a Case Type “<b>SR</b>”. The Petitioner field will default to “<b>None</b>”.</p> <p>Enter a hearing date and time for the ex parte hearing on the GCMS <b>Hearing Disposition</b> screen. The hearing shall be held the same day the petition is filed.</p> <p>Print the DC-4061: Emergency Substantial Risk Order using the forms program prior to sending the petition in the courtroom.</p>
3.	<p>If the Emergency Substantial Risk Order is granted, update the case with <b>O</b> in the <b>Hearing Result</b> field and <b>G</b> (granted) in the <b>Case Disposition</b> field.</p> <p>The emergency substantial risk order shall expire at 11:59 p.m. on the fourteenth day following issuance of the order or 11:59 p.m. of the next day circuit court is in session.</p> <p>The clerk shall <b>forthwith</b>, but in all cases no later than the end of the business day, on which the order was issued, enter and transfer identifying information electronically, through GCMS, to the Virginia Criminal Information Network (VCIN).</p>

Step:	Description:
4.	Upon entry of the order make service copies of the district court form DC-4061: Emergency Substantial Risk Order. Forward forthwith to the primary law-enforcement agency responsible for entry into VCIN and service upon the respondent.
5.	Upon entry of the order make a copy and forward to the circuit court for setting of the full hearing.
6.	If the Petition for the Emergency Substantial Risk Order is denied, update the GCMS <b>Hearing Disposition</b> screen with <b>O</b> in the <b>Hearing Result</b> field and <b>D</b> (denied) in the <b>Case Disposition</b> field.
7.	Emergency substantial risk orders remain in effect until the full hearing in <b>circuit court</b> .  <b>Note:</b> The person who is subject to the emergency substantial risk order may at any time file with the <b>circuit court</b> a motion to dissolve the order.

### Administrative License Suspension pursuant [Va. Code § 46.2-391.2](#)

See Chapter 5, Driving Under the Influence (DUI), Administrative Suspension of Driver's License of this manual.

### Reinstatement of Driving Privileges – Failure to Satisfy Judgment

A person whose driver's license is suspended pursuant to [Va. Code § 46.2-417](#) for failure to pay a judgment and who is unable to locate the judgment creditor may now petition the court in which the judgment was entered for reinstatement of their driver's license [Va. Code § 46.2-427](#). The petition is lodged using district court form DC-472: [Petition for Reinstatement of Driving Privileges - Failure to Satisfy Judgment](#).

For such petitions to be granted, two conditions must be met. First, the petitioner must prove by a preponderance of the evidence that, after examining the records of the court in which judgment was entered and the records of the [Department of Motor Vehicles](#) and exercising due diligence, they were unable to locate the judgment creditor. If the judgment creditor is dead, the petitioner must prove that they were unable to identify the creditor's heirs or assigns or unable to determine where they are located. Second, the petitioner must pay into court an amount equal to the judgment plus court costs and accrued interest. Interest ceases to accrue when payment into court is made.

The court holds such payments for one year. If the payment is not claimed within this period, it is transmitted to the [State Treasurer](#) for disposal as unclaimed property.

When the two requirements for reinstatement are met, the court should transmit the order of reinstatement to the Commissioner of the [Department of Motor Vehicles](#) by mail. The order is entered using district court form DC-473: Order for Reinstatement of Driving Privileges - Failure to Satisfy Judgment.

**Petition for Reinstatement of Driving Privileges – Failure to Satisfy Judgment [Va. Code § 46.2-427](#)**

A judgment debtor whose driving privileges, registration certificates, and license plates have been suspended may petition the court that entered the judgment for reinstatement of their driving privileges, registration certificates, and license plates and the court may order reinstatement if the judgment has not been satisfied, provided the judgment debtor proves by a preponderance of the evidence that the judgment debtor (i) is unable, after examination of the records of the Department and the court reflecting that suspension and the exercise of due diligence, to locate the person to whom payment is due or, if the person to whom payment is due is dead, the judgment debtor is unable to identify either who are their heirs and assignees, or where they are located, and (ii) has paid into the court an amount equal to the judgment, court costs, and all interest that has accrued up to the date payment was made to the court. Any payment made to the court under this section shall be held for one year and, if unclaimed by the judgment creditor during that period, shall be transmitted by the court to the State Treasurer or their designee to be disposed as unclaimed property.

Upon receipt of such an order, the Commissioner shall reinstate the driving privileges, registration certificates, and license plates of the judgment debtor, provided the judgment debtor has given proof of their financial responsibility in the future and satisfied all other reinstatement requirements as provided in this chapter.

The following procedures should be followed:

Step:	Description:
1.	The petitioner prepares the district court form DC-472: Petition for Reinstatement of Driving Privileges – Failure to Satisfy Judgment.  Collect filing fees; however, do not collect sheriff fees as the debtor has previously been unable to locate the plaintiff. If petitioner wishes to pay the amount of judgment, interest, and court costs into the court, receipt to the entire amount to revenue code 509 (escrow).
2.	Clerk assigns a subsequent action case number and enters the petition in the Civil division with case type OT. Enter the hearing date and time. Plaintiff = Petitioner; Defendant = Plaintiff in original case.
3.	Set petition for hearing. It is not necessary to send out for service.

Step:	Description:
	Print the DC-473: Order For Reinstatement of Driving Privileges – Failure To Satisfy Judgment using the forms program prior to sending the petition in the courtroom.
4.	<p>After the hearing, finalize in GCMS using <b>O</b> and <b>O</b>. You may wish to make a notation in the Remarks as to whether the petition was granted or denied.</p> <p>At hearing, if the court grants the petition, provide petitioner with a certified copy of DC-473: Order For Reinstatement of Driving Privileges – Failure To Satisfy Judgment. The clerk should forward a certified copy to DMV as well.</p>
5.	<p><b>Appeal Procedures</b></p> <p>Appeal may be noted in writing within ten calendar days of judgment.</p> <p><b>Note:</b> Bond, if any and Circuit Court costs are due within thirty days of judgment, not appeal date.</p> <p>If case perfected, prepare file in accordance to local policy for delivery to the Circuit Court; and send check for fees and any funds in escrow account along with a completed district court form DC-25: Circuit Court Case Transmittal and Fees Remittance Sheet.</p> <p>See appendix on <a href="#">Appeals</a> for procedures.</p>

## Forms

DC-472	<a href="#">Petition For Reinstatement of Driving Privileges – Failure To Satisfy Judgment</a>
DC-473	Order For Reinstatement of Driving Privileges – Failure To Satisfy Judgment
DC-475	Notice of Appeal – Civil
DC-460	<a href="#">Civil Appeal Bond</a>
DC-25	Circuit Court Case Transmittal and Fees Remittance Sheet

## Petition for Restricted Drivers License – Failure to Satisfy Judgment [Va. Code § 46.2-427](#)

A judgment debtor whose driving privileges have been suspended may petition the court that entered the judgment for a restricted license to operate a motor vehicle during the period of suspension, and the court may, for good cause shown, order the issuance of a restricted license.

The following procedures should be followed:

Step:	Description:
1.	<p>The petitioner may file a <a href="#">DC-630: MOTION TO AMEND OR REVIEW AN ORDER</a> or a handwritten request for a Restricted Driver's License. The petition should prepare a DC-263: APPLICATION FOR RESTRICTED DRIVER'S LICENSE and a written request for a restricted driver's license.</p> <p>Collect filing fees; however, do not collect sheriff fees, as no service is required.</p>
2.	<p><b>If the judge requires a hearing</b>, the clerk assigns a subsequent action case number and enters the petition in the Civil division with case type OT. Enter the hearing date and time. Plaintiff = Petitioner; Defendant = Plaintiff in original case.</p>
3.	<p>Set the request for hearing. It is not necessary to send out for service.</p>
4.	<p>After the hearing, finalize in GCMS using <b>O</b> and <b>O</b>. You may wish to make a notation in the Remarks as to whether the petition was granted or denied.</p> <p>At the hearing, if the court grants the petition, prepare the DC-260: DRIVER'S LICENSE FORFEITURE/SUSPENSION AND RESTRICTED DRIVING ORDER using the original civil judgment case number. Transmit a copy of the restricted license to the Department of Motor Vehicles and attach the court copy the the original judgment.</p>

### Motion for Installment Payments – Civil Judgment [Va. Code § 46.2-420](#)

If the parties cannot agree, a judgment debtor, on five days' notice to the judgment creditor, may apply to the court in which the judgment was obtained for the privilege of paying it in installments. The court, without prejudice to other legal remedies which the judgment creditor may have, may so order, fixing the amounts and times of payment of the installments.

The following procedures should be followed:

Step:	Description:
1.	<p>The petitioner prepares a motion to be placed on the docket.</p> <p>Collect filing fees and sheriff's fee.</p>



Step:	Description:
2.	Clerk assigns a subsequent action case number and enters the petition in the Civil division with case type <b>OT</b> . Enter the hearing date and time. Plaintiff = Petitioner; Defendant = Plaintiff in original case.
3.	Set motion for hearing and send out for service.
4.	<p>After the hearing, finalize in GCMS using <b>O</b> and <b>O</b>. You may wish to make a notation in the Remarks field as to whether the petition was granted or denied.</p> <p>At hearing, if the court grants the petition, petitioner or their counsel will provide an order to the court. The clerk should forward a certified copy of the order to DMV.</p>
5	<p><b>Appeal Procedure</b></p> <p>Appeal may be noted in writing within ten calendar days of judgment.</p> <p><b>Note:</b> Bond, if any, and Circuit Court costs, including sheriff fees for service, are due within thirty days of <b>judgment</b>, not appeal date.</p> <p>If case perfected, prepare file in accordance to local policy for delivery to the Circuit Court; and send check for fees and any funds in escrow account along with a completed district court form DC-25: Circuit Court Case Transmittal and Fees Remittance Sheet.</p> <p>See appendix on <a href="#">Appeals</a> for procedures.</p>

## Violations Punished by Civil Penalties

### Zoning and Building Code Violations

In certain localities, zoning violations may be punished by civil penalties if the locality adopts a local zoning offenses prepayment schedule that may be used in lieu of criminal sanctions pursuant to either [Va. Code § 15.2-730](#) or [Va. Code § 15.2-2209](#). Such violations may be initiated on a district court form DC-412: [Warrant in Debt](#) filed by the local government together. An information sheet about such prepayments and/or pre-trial admission of liability/waiver of trial form should be provided by the county to be attached to the defendant's copy of the district court form DC-412: [Warrant in Debt](#). The clerk's office has no authorization to process these prepayments; all prepayments must be handled by the county treasurer or department of finance. If prepaid to the locality prior to trial, the attorney or other authorized representative of the county shall so advise the judge and request dismissal of the warrant in debt. In all other respects, such cases are handled like other suits in debt.

If the person charged does not elect to enter a waiver and admit liability, the court shall try the violation. Upon a finding of liability or admission of liability, the court may order the violator to abate or remedy the violation in compliance with the zoning ordinance within a period of time as determined by the court, but no later than six months of the date of admission or finding of liability. Each day the violation continues after the court-ordered abatement period has ended shall constitute a separate offense.

When civil penalties for a zoning ordinance total \$5,000 or more, the violation may be prosecuted as a criminal misdemeanor.

### **Fare Enforcement Inspectors**

It shall be unlawful for any person to board or ride a transit operation operated by an eligible entity when the person fails or refuses to pay the applicable fare or refuses to produce valid proof of payment of the fare upon request of a fare enforcement inspector.

For the purposes of fare enforcement inspectors, "eligible entity" means any transit operation in Planning District 8 that is owned or operated directly or indirectly by a political subdivision of the Commonwealth, or any governmental entity established by an interstate compact of which Virginia is a signatory.

Such violations may be initiated on a district court form DC-412: Warrant In Debt. An information sheet about such prepayments and/or pre-trial admission of liability/waiver of trial form should be provided by the county to be attached to the defendant's copy of the district court form DC-412: Warrant In Debt. The clerk's office has no authorization to process these prepayments; all prepayments must be handled by the local treasurer or department of finance. If prepaid to the locality prior to trial, the attorney or other authorized representative of the county shall so advise the judge and request dismissal of the warrant in debt. In all other respects, such cases are handled like other suits in debt.

Any person who violates this section shall be liable for a civil penalty of not more than \$100. Any person summoned for a violation may make an appearance in person or in writing by mail to the department of finance or the treasurer of the locality, or the designee of the department of finance or the treasurer, where the violation occurred as specified on the summons prior to the date fixed for trial in court. Any person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the violation charged. Such persons shall be informed of their right to stand trial and that a signature to an admission of liability will have the same force and effect as a judgment of court. If a person charged with a violation does not elect to enter a waiver of trial and admit liability, the violation shall be brought by the eligible entity or the locality in which the violation occurred and tried as a civil case in the general district court in the same manner and with the same right of appeal as provided for by law. In any trial for a violation authorized by this section, it shall be the burden of the eligible entity or locality in which the violation occurred to show the liability of the violator by a preponderance of the evidence. The penalty for failure to pay

the established fare on transit properties covered by another provision of law shall be governed by that provision and not by this section [Va. Code § 33.1-223.2:30](#).

### Bad Checks

See [Suits in Debt, Case Hearings, Bad Checks Cases](#) above.

### Fire Inspection Warrants [Va. Code § 27-98.1](#) to [Va. Code § 27-98.5](#)

The fire inspection warrant is similar in many ways to a criminal search warrant. There are several key differences that will be of interest to a judge.

- It does not have to be linked to a violation of law. It may be issued in certain instances where entry was refused for a routine inspection, even when no violation of law is suspected. It may also be issued when a violation of fire safety laws is suspected.
- Two different types of facts constituting probable cause can be applied to the issuance of a fire inspection warrant. If entry for a routine inspection is denied, then facts constituting probable cause for the issuance of this inspection warrant center on the legal standards for selecting the site for an inspection and the documentation as to how the selection process is executed. If entry is in connection with a specific violation, then facts constituting probable cause for the issuance of the inspection warrant center on the evidence of the violation.
- A judge or magistrate may issue the fire inspection warrant.
- The warrant may be issued to a fire marshal; however, if forcible entry is sought, then the warrant must be issued and executed jointly by a law enforcement officer and a fire marshal.
- The warrant may be effective for a shorter period of time (up to seven days) but may also be renewed or extended for an additional period (up to seven days). It must be returned to the issuing judge or magistrate, who sends it to circuit court.
- The judge or magistrate may receive information not in the affidavit by examining the affiant under oath to verify data in the affidavit. This information should be reduced to writing.
- Judicial review prior to its return is limited to:
  - Defense to a contempt action
  - Motion by owner or custodian of property with affidavit containing a substantial preliminary showing accompanied by an offer of proof that
  - A false statement (made knowingly and intentionally or with reckless disregard of the truth) was made by the affiant in the affidavit, and
  - The false statement was necessary to the finding of probable cause

The review is conducted expeditiously in camera (in private, not in open court).

After execution and return of the warrant, the validity of the warrant may be reviewed as a defense to the citation. It is confined to the face of the warrant and the affidavits unless the owner, operator or agent in charge makes a substantial showing by affidavit accompanied by an offer of proof that:

- A false statement (knowing and intentionally, or with reckless disregard for the truth) was made in support of the warrant, and
- The false statement was necessary to the finding of probable cause

This review is limited to determining whether there is substantial evidence in the record supporting the decision to issue the warrant.

In this process, the district court form DC-380: Affidavit for Fire Inspection Warrant and the district court form DC-381: Fire Inspection Warrant are to be used and filed with the Circuit Court after issuance. It is not recommended that a copy be retained.

## Chapter 8 – Civil Commitments

Civil Commitments include involuntary admissions of mentally ill/intellectual disability and medical emergency temporary detention.

Civil mental illness/intellectual disability proceedings and medical emergency consent proceedings may be heard by a judge of the general district or juvenile and domestic relations district court, or a special justice appointed by the chief judge of the applicable judicial circuit [Va. Code § 37.2-803](#).

The involuntary mental commitment process begins when a petition is filed, and alleges a person is mentally ill and in need of hospitalization. For proceedings in this chapter, whenever the term “mental illness” appears, it shall include substance abuse [Va. Code § 37.2-800](#).

The process may begin with a referral to the localities’ Community Service Board or may be initiated at the magistrate’s office. Some clerk’s offices will only receive paperwork after the proceedings and hearings are over, while in some offices the judges themselves may hold the hearing. These are the procedures for filing and indexing under each circumstance.

Transportation of a person who is the subject of an emergency custody order, temporary detention order, and a person under an involuntary commitment order may be provided by a person, facility, or agency, including a family member or friend, a representative of the Community Services Board (CSB), an employee of or person providing services pursuant to a contract with DBHDS, or other alternative transportation provider with staff trained to provide transportation in a safe manner.

No person who provides alternative transportation pursuant to these sections shall be liable to the person being transported for any civil damages for ordinary negligence in acts or omissions that result from providing such alternative transportation.

If an alternative transportation provider providing transportation of a person who is the subject of a temporary detention order becomes unable to continue providing transportation or maintaining custody of the person at any time after taking custody of the person, the primary law-enforcement agency for the jurisdiction in which the alternative transportation provider is located at the time they become unable to continue providing transportation or maintaining custody shall take custody of the person and shall transport the person to the facility of temporary detention.

The magistrate may change the transportation provider specified in a temporary detention order at any time prior to the initiation of transportation of a person who is the subject of a temporary detention order pursuant to this section. If the designated transportation provider is changed by the magistrate at any time after the temporary detention order has been executed but prior to the initiation of transportation, the transportation provider having custody of the person shall transfer custody of the person to the transportation provider subsequently

specified to provide transportation [Va. Code § 37.2-808](#), [Va. Code § 37.2-810](#), [Va. Code § 37.2-817.1](#), and [Va. Code § 37.2-829](#).

For information regarding inpatient psychiatric hospital admission of inmates from local correctional facility in accordance with [Va. Code § 19.2-169.6](#), please refer to Mental Condition of Defendant in the **Criminal Case Procedures** chapter in this manual.

## Involuntary Civil Commitment

The district court judge or special justice shall render a decision on the petition for involuntary admission after the appointed examiner has presented the report required by [Va. Code § 37.2-815](#), and after the community services board that serves the county or city where the person resides or, if impracticable, where the person is located or from the certified evaluator as defined in [Va. Code § 37.2-809](#) has presented a preadmission screening report, with the recommendations for that person's placement, care and treatment pursuant to [Va. Code § 37.2-816](#). These reports, if not contested, may constitute sufficient evidence upon which the district court judge or the special justice may base their decision [Va. Code § 37.2-817 \(A\)](#).

After observing the person and considering (i) the recommendations of any treating physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any past mental health treatment of the person, (iv) any examiner's certification, (v) any health records available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have been admitted including whether the person recently has been found unrestorable incompetent to stand trial after a hearing held pursuant to subsection E of [Va. Code § 19.2-169.1](#), if the judge or special justice finds by clear and convincing evidence that (a) the person has mental illness and that there exists a substantial likelihood that, as a result of the mental illness, the person will, in the near future, (1) cause serious physical harm to themselves or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any or (2) suffer serious harm due to their lack of capacity to protect themselves from harm or to provide for their basic human needs, (b) all available less restrictive treatment alternatives to involuntary inpatient treatment that would offer an opportunity for the improvement of the person's condition have been investigated and determined to be inappropriate, the judge or special justice shall by written order and specific findings so certify and order that the person be admitted to a facility for period of treatment not to exceed 30 days from the date of the court order. Such involuntary admission shall be to a facility designated by the community services board that serves the city or county in which the person was examined as provided in [Va. Code § 37.2-816](#).

If the community services board does not designate a facility at the commitment hearing, the person shall be involuntarily admitted to a facility designated by the Commissioner. Upon the expiration of an order for involuntary commitment, the person shall be released unless (A) they are involuntarily admitted by further petition and order of the court, which shall be for a period to not exceed 180 days from the date of the subsequent order, (B) they make application for treatment on a voluntary basis as provided for in [Va. Code § 37.2-805](#) or (C) they are ordered to

mandatory outpatient treatment following a period of inpatient treatment pursuant to [Va. Code § 37.2-817.01](#), [Va. Code § 37.2-817 \(C\)](#).

### Clerk and Court Procedures

Once executed, law enforcement files the return of the district court form DC-492: Emergency Custody Order, and/or the district court form DC-894A: Temporary Detention Order with the court. The clerk's office receives one or more of the following documents [Va. Code § 37.2-804.1](#):

- District court form DC-492: Emergency Custody Order
- District court form DC-894A: Temporary Detention Order
- District court form DC-4001: [Petition for Involuntary Admission for Treatment](#)

The patient may be hospitalized and the special justice, or Judge, has already conducted the hearing. District court forms DC-492: Emergency Custody Order and DC-894A: Temporary Detention Order may be filed, issued, served, or executed by electronic means, and signatures on those documents are to be treated as originals.

**Note:** All case papers are stamped received with the date and time.

It is recommended that each proceeding ECO, TDO, commitment hearing, and any subsequent hearings be all indexed as a subsequent case number to the first proceeding (case).

Step:	Description:
1.	<p><b>DC-492: Emergency Custody Order</b></p> <p>The magistrate issues the ECO, pursuant <a href="#">Va. Code § 37.2-808</a> or a court may <a href="#">issue pursuant to Va. Code § 19.2-271.6</a>. Any person for whom an emergency custody order is issued shall be taken into custody and transported to a convenient location to be evaluated to assess the need for hospitalization or treatment. The evaluation shall be made by a person designated by the Community Services Board or Behavioral Health Authority (BHA) who is skilled in the diagnosis and treatment of mental illness and who has completed a certification program approved by the Department.</p> <p>The person shall remain in custody until (i) a temporary detention order is issued in accordance with <a href="#">Va. Code § 37.2-809</a>, (ii) an order for temporary detention for observation, testing, or treatment is entered in accordance with <a href="#">Va. Code § 37.2-1104</a>, ending law enforcement custody, (iii) until the person is released, or (iv) the emergency custody order expires. An emergency custody</p>

Step:	Description:
	<p>order shall be valid for a period not to exceed eight hours from the time of execution <a href="#">Va. Code § 37.2-808</a>. For any person evaluated or treated and not issued a temporary detention order, the evaluator or treating healthcare professional shall, prior to release or expiration of custody, consider whether referral to a community-based outpatient stabilization program for voluntary treatment is appropriate.</p> <p>In addition to the eight-hour period of emergency custody set forth, if the individual is detained in a state facility pursuant to E of <a href="#">Va. Code § 37.2-809</a>, the state facility and an employee or designee of the CSB may, for an additional four hours, continue to attempt to identify an alternative facility that is able and willing to provide temporary detention and appropriate care to the individual.</p> <p>Any person taken into emergency custody shall be given a written summary of the emergency custody procedures and the statutory protections associated with those procedures <a href="#">Va. Code § 37.2-809</a>.</p> <p>An order for temporary detention for testing, observation or treatment pursuant to <a href="#">Va. Code § 37.2-1104</a> may be issued for a person who is also subject to an emergency custody order pursuant to <a href="#">Va. Code § 37.2-808</a>. The person may be detained by a hospital emergency room or other appropriate facility for testing, observation, and treatment for a period not to exceed 24 hours, unless extended by the court as part of an order pursuant to <a href="#">Va. Code § 37.2-1101</a>, in accordance with subsection B of <a href="#">Va. Code § 37.2-1104</a>.</p> <p>Index the ECO into GCMS using the Involuntary Civil Commitment Menu. Enter the appropriate hearing result code in the <b>Result</b> field:</p> <ul style="list-style-type: none"> <li>• <b>EU</b> – ECO not executed</li> <li>• <b>ES</b> – ECO served</li> </ul> <p>Upon entry of either of the above hearing results, GCMS will auto populate the appropriate case type of:</p> <ul style="list-style-type: none"> <li>• <b>EC</b> – Emergency Custody Order</li> </ul> <p>If the ECO is issued pursuant <a href="#">Va. Code § 19.2-271.6</a>, please utilize check box notating <b>“ECO issued pursuant § 19.2-271.6”</b>.</p>



Step:	Description:
	<p><b>Note:</b> If an emergency custody order is not executed within eight hours of its issuance, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is not open, to any magistrate serving that court.</p> <p>Index the Medical Emergency Temporary Detention Order issued using the Involuntary Civil Commitment Menu. Enter the appropriate hearing result code in the <b>Result</b> field:</p> <ul style="list-style-type: none"> <li>• <b>M</b> – Medical Emergency TDO Executed</li> <li>• <b>UM</b> – Medical Emergency TDO Not Executed</li> </ul> <p>Enter the appropriate case type of:</p> <ul style="list-style-type: none"> <li>• <b>MT</b> – Medical Emergency TDO</li> </ul> <p><b>Note:</b> In this instance enter the Medical Emergency TDO as a subsequent action to the ECO.</p>
2.	<p><b>DC-894A: Temporary Detention Order</b></p> <p>The district court form DC-894A: Temporary Detention Order may accompany a district court form DC-492: Emergency Custody Order or be filed on its own. It may be issued by magistrate and is returned to the court where it was issued. Must be executed within the time period specified in the order, not to exceed twenty-four (24) hours, while Community Service Board (CSB) conducts pre-screening evaluation to assess the need for hospitalization or treatment. An employee or a designee of the local CSB shall determine the facility of temporary detention.</p> <p>If a facility of temporary detention cannot be identified by the time of the expiration of the period of emergency custody, the individual shall be detained in a state facility for the treatment of individuals with mental illness and such facility shall be indicated on the temporary detention order.</p> <p>The CSB may change the facility of temporary detention and may designate an alternative facility at any point during the period of temporary detention. When this change takes place the DC-4044: <a href="#">Notice of Alternative Facility of Temporary Detention</a> shall be given to the clerk of the issuing court. When the custody of the person has been transferred from law enforcement or the</p>

Step:	Description:
	<p>alternative transportation provider, the CSB shall request and the magistrate shall enter an order specifying, an alternative transportation provider, if available, or local law enforcement agency to provide transport of the person to the alternative temporary detention facility. The DC-4046: <a href="#">Order for Transportation to Alternative Facility of Temporary Detention</a> is the document that would be utilized for in this instance.</p> <p>No person who provides alternative transportation pursuant to this section shall be liable to the person being transported for any civil damages for ordinary negligence in acts or omissions that result from providing such alternative transportation.</p> <p>If an alternative transportation provider providing transportation of a person who is the subject of a temporary detention order becomes unable to continue providing transportation or maintaining custody of the person at any time after taking custody of the person, the primary law-enforcement agency for the jurisdiction in which the alternative transportation provider is located at the time they become unable to continue providing transportation or maintaining custody shall take custody of the person and shall transport the person to the facility of temporary detention.</p> <p>The magistrate may change the transportation provider specified in a temporary detention order at any time prior to the initiation of transportation of a person who is the subject of a temporary detention order pursuant to this section. If the designated transportation provider is changed by the magistrate at any time after the temporary detention order has been executed but prior to the initiation of transportation, the transportation provider having custody of the person shall transfer custody of the person to the transportation provider subsequently specified to provide transportation. For the purposes of this subsection, "transportation provider" includes both a law-enforcement agency and an alternative transportation provider <a href="#">Va. Code §37.2-810</a>.</p> <p>When community service board employee or designee who is conducting the evaluation recommends that the person should not be subject to a temporary detention order, such employee or designee shall (i) inform the petitioner, the person who initiated emergency custody if such person is present, and an onsite treating physician of their recommendation; (ii) promptly inform such person who initiated emergency custody that the community services board will facilitate communication between the person and the magistrate if the person disagrees with recommendations of the employee or designee of the community services board who conducted the evaluation and the person who initiated emergency custody so requests; and (iii) upon prompt request made by the person who initiated emergency custody, arrange for such person who</p>

Step:	Description:
	<p>initiated emergency custody to communicate with the magistrate as soon as is practicable and prior to the expiration of the period of emergency custody.</p> <p>Any person detained or in custody shall be given a written summary of the temporary detention procedures and the statutory protections associated with those procedures <a href="#">Va. Code § 37.2-809</a>.</p> <p>Index into GCMS using the Involuntary Civil Commitment Menu. Enter the appropriate hearing result code in the <b>Result</b> field:</p> <ul style="list-style-type: none"> <li>• <b>TU</b> – TDO not executed</li> <li>• <b>T</b> – TDO served</li> </ul> <p>Upon entry of either of the above hearing results, GCMS will auto populate the appropriate case type of:</p> <ul style="list-style-type: none"> <li>• <b>TD</b> – Temporary Detention Order</li> </ul> <p><b>Note:</b> The duration of temporary detention shall not exceed 72 hours prior to a hearing. If the 72 hour period herein specified terminates on a Saturday, Sunday, or legal holiday, or of the individual has been admitted to a facility of temporary detention, day or part of day on which the clerk’s office is lawfully closed, the person may be detained, as herein provided, until the close of business on the next day that is not a Saturday, Sunday, or legal holiday or, if the individual has been admitted to a facility of temporary detention, day or part of day on which the clerk’s office is lawfully closed.</p> <p>All forms related to an alternative temporary detention facility are not indexed in case management; they are simply filed with the original temporary detention order.</p>
3.	<p><b>Commitment Hearing</b></p> <p>A judge or special justice can hold the commitment hearing; the original order is returned to the court in the jurisdiction where the commitment hearing is held. The commitment hearing shall be held, and order entered within seventy-two hours of the execution of the district court form DC-894A: Temporary Detention Order.</p> <p>The court shall give notice to the CSB 12 hours prior to commitment hearing. CSB contact information can be located via: <a href="http://www.vacsb.org">http://www.vacsb.org</a>.</p>

Step:	Description:
	<p>The order from a commitment hearing issued for involuntary admission or mandatory outpatient treatment and the certification of any person who has been the subject of a temporary detention order pursuant to <a href="#">Va. Code § 37.2-809</a> and who, after being advised by the judge or special justice agree to voluntary admission shall be filed by the judge or special justice with the clerk of the district courts for the county or city where the hearing took place as soon as practicable but not later than the close of business on the next business day following the completion of the hearing <a href="#">Va. Code § 37.2-819</a>. Court should receive district court form DC-4002: Order for Treatment and Audio Recording of Hearing. If a special justice holds the hearings, the clerk should also receive district court form DC-60: Involuntary Admission Hearing Invoice with commitment paperwork.</p> <p>Index into GCMS using the Involuntary Civil Commitment Menu. Enter the appropriate hearing result code in the <b>Result</b> field:</p> <ul style="list-style-type: none"> <li>• <b>DH</b> – Discharged by Facility (hearing)</li> <li>• <b>I</b> – Involuntary Commitment</li> <li>• <b>IM</b> – Involuntary Commitment with MOT</li> <li>• <b>MO</b> – Mandatory Outpatient Treatment</li> <li>• <b>TR</b> – Transfer</li> <li>• <b>V</b> – Voluntary Commitment</li> <li>• <b>X</b> – Certified</li> </ul> <p>Upon entry of any of the above hearing results, GCMS will auto populate the case type of:</p> <ul style="list-style-type: none"> <li>• <b>MC</b> – Mental Commitment Order</li> </ul> <p><b>Note:</b> If the district court form DC-4001: <a href="#">Petition for Involuntary Admission for Treatment</a> is accompanied by TDO, the district court form DC-4001 is not indexed. File with the TDO.</p> <p><b>Comments:</b> For further direction regarding instances when Mandatory Outpatient Treatment is ordered, please refer to the “Mandatory Outpatient Treatment” procedures.</p>
4.	<b>Audio Recording</b>

Step:	Description:
	<p>The judge or special justice shall make or cause to be made a tape or other audio recording of any hearings held under this chapter <a href="#">Va. Code § 37.2-800</a>, and shall submit the recordings to the clerk of the district court in the locality in which the hearing is held, to be retained in a confidential file <a href="#">Va. Code § 37.2-818</a>.</p> <p>It is recommended that the tape be labeled with the name of the person who was subject of the hearing, case number and date of hearing.</p> <p>The person who was subject of the hearing will file the district court form DC-4029: <a href="#">Application for Copy of Recording of Commitment Hearing</a> with the court. The patient is not required to waive their confidentiality in order to receive a copy of their audio recording of the civil commitment hearing.</p> <p>The clerk shall reproduce a copy of the tape requested and retain the original tape in the court's file as directed. These recordings shall be retained for at least three years from the date of the commitment hearing.</p>
5.	<p><b>CCRE (SP237)</b></p> <p>Upon receipt of any order from a commitment hearing ordering involuntary commitment or voluntary admission, only when preceded by issuance of a TDO, the clerk shall forward to <a href="#">Virginia State Police</a> form SP237 as soon as practicable, but no later than the close of business on the next following business day <a href="#">Va. Code § 37.2-819</a>.</p> <p>To comply with the statutory requirements, a copy of the original SP237 should be faxed to the VSP at 804-674-2268. The clerk is also required to mail the SP237 and a certified copy of the district court form DC-4002:</p> <p>Order for Treatment to the <a href="#">Virginia State Police</a>.</p> <p>Courts with scanning capabilities may scan the SP237 and the DC-4002:</p> <p>Order for Treatment via the State Police IT Exchange interface for transmission to the Virginia State Police. Documents transmitted via this interface are not required to be mailed.</p>
6.	<p><b>Confidentiality - Medical And Court Records</b></p>

Step:	Description:
	<p>File completed cases in numerical order by year and retain the case papers for a period of ten years <a href="#">Va. Code § 37.2-818 (B)</a>.</p> <p>Except as provided for in <a href="#">Va. Code § 37.2-819</a>, the court shall keep its copies of the recordings made pursuant to this section, relevant medical records, reports, and court documents pertaining to the hearing provided for in this chapter <a href="#">Va. Code § 37.2-800</a>, confidential.</p> <p>The person who is subject to the hearing may waive confidentiality by filing district court form DC-4032: <a href="#">Waiver of Confidentiality of Court Records-Commitment for Involuntary Treatment</a>. In the absence of such waiver, access to the dispositional order may only be provided upon court order.</p> <p>Persons seeking a copy of the dispositional order may file with the court district court form DC-4035: <a href="#">Petition for Access to Dispositional Order</a>. The judge or special justice will review the petition and enter order on the same form. The court may issue an order to disclose the dispositional order if it finds that such disclosure is in the best interest of the person who is the subject of the hearing or the public. The Executive Secretary of the Supreme court and anyone acting on their behalf shall be provided access to the court's records upon request. Such recordings, records, and documents shall not be subject of Virginia Freedom of Information Act.</p> <p>The Central Criminal Records Exchange, Virginia State Police, may share information regarding civil commitments with full-time or part-time employees of the State Police, police department and sheriff's office <a href="#">Va. Code § 19.2-389</a>.</p>
7.	<p><b>Appeal Of Involuntary Admission</b></p> <p>Any person involuntarily admitted pursuant to <a href="#">Va. Code § 37.2-814</a> through <a href="#">Va. Code 37.2-819</a> or certified as eligible for admission pursuant to <a href="#">Va. Code § 37.2-806</a> shall have the right to appeal the order to the circuit court in the jurisdiction where they were involuntarily admitted or certified or where the facility to which they were admitted is located. Choice of venue shall rest with the party noting the appeal. The court may transfer the case upon finding that the other forum is more convenient. An appeal shall be filed within 10 days from the date of the order and shall be given priority over all other pending matters before the court and heard as soon as possible, notwithstanding <a href="#">Va. Code § 19.2-241</a> regarding the time within which the court shall set criminal cases for trial. A petition for or the pendency of an appeal shall not suspend any order unless so ordered by a judge or special justice; however, a person</p>

Step:	Description:
	<p>may be released after a petition for or during the pendency of an appeal pursuant to <a href="#">Va. Code § 37.2-837</a> or <a href="#">Va. Code § 37.2-838</a>. If the person is released during the pendency of an appeal, the appeal shall be in accordance with the provisions set forth in <a href="#">Va. Code § 37.2-844</a> and <a href="#">Va. Code § 37.2-845</a>. No appeal bond or writ tax shall be required, and the appeal shall proceed without the payment of costs or other fees.</p> <p>The appeal shall be heard de novo in accordance with the provisions set forth in <a href="#">Va. Code § 37.2-802</a>, <a href="#">Va. Code § 37.2-804</a>, <a href="#">Va. Code § 37.2-804.1</a>, <a href="#">Va. Code § 37.2-804.2</a>, and <a href="#">Va. Code § 37.2-805</a>, and (I) <a href="#">Va. Code § 37.2-806</a> or (ii) <a href="#">Va. Code § 37.2-814</a> through <a href="#">Va. Code § 37.2-819</a>. <a href="#">Va. Code § 37.2-821</a>.</p> <p>The clerk of the court from which an appeal is taken shall immediately transmit the record to the appellate court.</p> <p>There is no DC form available for the appeal of a civil commitment.</p>

### Court and Clerk Procedures - Judge to Conduct Involuntary Commitment Hearing

The magistrate issues the ECO and TDO based upon a sworn petition, also filed at the magistrate's office, the documents are executed, delivered to the court, and the court schedules the commitment hearing.

Step:	Description:
1.	<p><b>District Court Form DC-492: Emergency Custody Order</b></p> <p>Index into GCMS using the Involuntary Civil Commitment Menu. Enter the appropriate hearing result code in the <b>Result</b> field:</p> <ul style="list-style-type: none"> <li>• <b>EU</b> – ECO not executed</li> <li>• <b>ES</b> – ECO served</li> </ul> <p>Upon entry of either of the above hearing results, GCMS will auto populate the appropriate case type of:</p> <ul style="list-style-type: none"> <li>• <b>EC</b> – Emergency Custody Order</li> </ul> <p>An order for temporary detention for testing, observation or treatment pursuant to <a href="#">Va. Code § 37.2-1104</a> may be issued for a person who is also subject to an emergency custody order pursuant to <a href="#">Va. Code § 37.2-808</a>. The person may be detained by a hospital emergency room or other</p>

Step:	Description:
	<p>appropriate facility for testing, observation, and treatment for a period not to exceed 24 hours, unless extended by the court as part of an order pursuant to <a href="#">Va. Code § 37.2-1101</a>, in accordance with subsection B of <a href="#">Va. Code § 37.2-1104</a>.</p> <p><b>District Court Form DC-490: Medical Emergency Temporary Detention Order</b></p> <p>Index the Medical Emergency Temporary Detention Order issued using the Involuntary Civil Commitment Menu. Enter the appropriate hearing result code in the <b>Result</b> field:</p> <ul style="list-style-type: none"> <li>• <b>M</b> – Medical Emergency TDO Executed</li> <li>• <b>UM</b> – Medical Emergency TDO Not Executed</li> </ul> <p>Enter the appropriate case type of:</p> <ul style="list-style-type: none"> <li>• <b>MT</b> – Medical Emergency TDO</li> </ul> <p><b>Note:</b> In this instance enter the Medical Emergency TDO as a subsequent action to the ECO.</p> <p>It is recommended that all case papers be date and time stamped.</p>
2.	<p><b>DC-894A: Temporary Detention Order</b></p> <p>TDO may accompany ECO or be filed on its own. Issued by a magistrate and must be executed within the time period specified in the Order, not to exceed twenty-four hours (24), while community services board conducts pre-screening evaluation to assess the need for hospitalization or treatment <a href="#">Va. Code § 37.2-809</a>.</p> <p>If a facility of temporary detention cannot be identified by the time of the expiration of the period of emergency custody, the individual shall be detained in a state facility for the treatment of individuals with mental illness and such facility shall be indicated on the temporary detention order.</p> <p>The CSB may change the facility of temporary detention and may designate an alternative facility at any point during the period of temporary detention. When this change takes place the DC-4044: <a href="#">Notice</a></p>



Step:	Description:
	<p><a href="#">of Alternative Facility of Temporary Detention</a> shall be given to the clerk of the issuing court. When the custody of the person has been transferred from law enforcement or the alternative transportation provider, the CSB shall request and the magistrate may enter an order specifying, an alternative transportation provider, if available, or local law enforcement agency to provide transport of the person to the alternative temporary detention facility. The DC-4046: <a href="#">Order for Transportation to Alternative Facility of Temporary Detention</a> is the document that would be utilized for in this instance.</p> <p>No person who provides alternative transportation pursuant to this section shall be liable to the person being transported for any civil damages for ordinary negligence in acts or omissions that result from providing such alternative transportation.</p> <p>If an alternative transportation provider providing transportation of a person who is the subject of a temporary detention order becomes unable to continue providing transportation or maintaining custody of the person at any time after taking custody of the person, the primary law-enforcement agency for the jurisdiction in which the alternative transportation provider is located at the time they become unable to continue providing transportation or maintaining custody shall take custody of the person and shall transport the person to the facility of temporary detention.</p> <p>The magistrate may change the transportation provider specified in a temporary detention order at any time prior to the initiation of transportation of a person who is the subject of a temporary detention order pursuant to this section. If the designated transportation provider is changed by the magistrate at any time after the temporary detention order has been executed but prior to the initiation of transportation, the transportation provider having custody of the person shall transfer custody of the person to the transportation provider subsequently specified to provide transportation <a href="#">Va. Code § 37.2-810</a>.</p> <p>When community service board employee or designee who is conducting the evaluation recommends that the person should not be subject to a temporary detention order, such employee or designee shall (i) inform the petitioner, the person who initiated emergency custody if such person is present, and an onsite treating physician of their recommendation; (ii) promptly inform such person who initiated emergency custody that the community services board will facilitate communication between the</p>

Step:	Description:
	<p>person and the magistrate if the person disagrees with recommendations of the employee or designee of the community services board who conducted the evaluation and the person who initiated emergency custody so requests; and (iii) upon prompt request made by the person who initiated emergency custody, arrange for such person who initiated emergency custody to communicate with the magistrate as soon as is practicable and prior to the expiration of the period of emergency custody.</p> <p>Any person detained or in custody shall be given a written summary of the temporary detention procedures and the statutory protections associated with those procedures <a href="#">Va. Code § 37.2-809</a>.</p> <p>Index into GCMS using the Involuntary Civil Commitment Menu. Enter the appropriate hearing result code in the <b>Result</b> field:</p> <ul style="list-style-type: none"> <li>• <b>TU</b> – TDO not executed</li> <li>• <b>T</b> – TDO served</li> </ul> <p>Upon entry of either of the above hearing results, GCMS will auto populate the case type of:</p> <ul style="list-style-type: none"> <li>• <b>TD</b> – Temporary Detention Order</li> </ul> <p><b>Note:</b> The duration of temporary detention shall not exceed seventy-two hours prior to a hearing. If the 72-hour period herein specified terminates on a Saturday, Sunday, or legal holiday, or day on which the court is lawfully closed, the person may be detained, as herein provided, until the close of business on the next day that is not a Saturday, Sunday, or legal holiday, or day on which the court is lawfully closed.</p> <p>All forms related to an alternative temporary detention facility are not indexed in case management; they are simply filed with the original temporary detention order.</p>
3.	<p><b>Prior To Commitment Hearing</b></p> <p>The clerk’s office shall schedule the hearing within seventy-two hours of the execution of the district court form DC-894A: Temporary Detention Order. If not already represented by counsel, the judge shall appoint an attorney to represent the person, and a district court form DC-493:</p>

Step:	Description:
	<p><a href="#">Explanation of Involuntary Commitment Process – Acknowledgment of Rights</a> shall be given to the person.</p> <p>At least 12 hours prior to the hearing, the court shall provide to the CSB that prepared the preadmission screening report the time and location of the hearing. If the representative of the CSB will be present by telephonic means the court shall provide the telephone number to the board. CSB contact information can be located via: <a href="http://www.vacsb.org">http://www.vacsb.org</a>.</p> <p>The petitioner shall be given adequate notice of place, date, and time of the commitment hearing. The petitioner shall be encouraged but not required to testify at the hearing, and the person whose involuntary admission is sought shall not be released solely on the basis of the petitioner's failure to attend or testify during the hearing <a href="#">Va. Code § 37.2-814 (F)</a>.</p> <p>The hearing may be conducted by electronic video and/or audio communication systems or may be conducted at the facility <a href="#">Va. Code § 37.2-804.1</a>. If held at the facility, the clerk's office must schedule the hearing in coordination with the facility. If the seventy-two-hour period terminates on a Saturday, Sunday or legal holiday, or any day the court is lawfully closed, the hearing may be held the next day that the court is lawfully open.</p> <p>The court shall require an examination of the person who is the subject of the petition. The examination shall be by a psychiatrist or psychologist or a licensed mental health professional. The examination shall be conducted in private.</p> <p>The clerk's office shall summons the examiner to certify the examination; or alternatively, may accept written certification.</p> <p>If filed, the examination report is to be date and time stamped.</p> <p>The court shall require a prescreening report from the community services board or behavioral health authority, within seventy-two hours. If filed, the prescreening report is to be date and time stamped.</p>
4.	<p><b>Commitment Hearing</b></p> <p>The judge shall inform the person of the opportunity for voluntary admission and treatment; if the Judge finds the person is incapable of accepting or unwilling to accept voluntary admission and treatment, the</p>

Step:	Description:
	<p>Judge shall inform the person of their right to a commitment hearing and right to counsel.</p> <p>The hearing is held and the Judge completes the district court form DC-4002: Order for Treatment. The order from a commitment hearing issued for involuntary admission or mandatory outpatient treatment and the certification of any person who has been the subject of a temporary detention order pursuant to <a href="#">Va. Code §37.2-809</a> and who, after being advised by the judge or special justice agree to voluntary admission shall be filed by the judge or special justice with the clerk of the district courts for the county or city where the hearing took place as soon as practicable but not later than the close of business on the next business day following the completion of the hearing <a href="#">Va. Code §37.2-819</a>.</p> <p>Index into GCMS using the Involuntary Civil Commitment Menu. Enter the appropriate hearing result code in the <b>Result</b> field:</p> <ul style="list-style-type: none"> <li>• <b>DH</b> – Discharged by Facility (Hearing)</li> <li>• <b>I</b> – Involuntary Commitment</li> <li>• <b>IM</b> – Involuntary Commitment with MOT</li> <li>• <b>MO</b> – Mandatory Outpatient Treatment</li> <li>• <b>TR</b> – Transfer</li> <li>• <b>V</b> – Voluntary Commitment</li> <li>• <b>X</b> – Certified</li> </ul> <p>Upon entry of any of the above hearing results, GCMS will auto populate the case type of:</p> <ul style="list-style-type: none"> <li>• <b>MC</b> – Mental Commitment Order</li> </ul> <p><b>Note:</b> If district court form DC-4002: Order for Treatment is accompanied by TDO, the DC-4002: Order for Treatment is indexed as a subsequent number from the TDO.</p> <p>For further direction with regard to instances when Mandatory Outpatient Treatment is ordered, please refer to the “Mandatory Outpatient Treatment” procedures.</p>
5.	<b>Audio Recording</b>

Step:	Description:
	<p>The judge or special justice shall make or cause to be made a tape or other audio recording of any hearings held under this chapter <a href="#">Va. Code § 37.2-800</a>, and shall submit the recordings to the clerk of the district court in the locality in which the hearing is held to be retained in a confidential file <a href="#">Va. Code § 37.2-818</a>.</p> <p>It is recommended the tape be labeled with the name of the person who was subject of the hearing, case number and date of hearing.</p> <p>These recordings shall be retained for at least three years from the date of the commitment hearing.</p> <p>The person who was subject of the hearing will file the district court form DC-4029: <a href="#">Application for Copy of Recording of Commitment Hearing</a> with the court. The patient is not required to waive their confidentiality in order to receive a copy of their audio recording of the civil commitment hearing.</p> <p>The clerk shall reproduce a copy of the tape requested and retain the original tape in the court's file as directed.</p>
6.	<p><b>CCRE – SP237</b></p> <p>Upon receipt of any order from a commitment hearing ordering involuntary commitment or voluntary admission, only when preceded by issuance of a TDO, the clerk shall forward to the VSP form SP237 as soon as practicable, but no later than the close of business on the next following business day <a href="#">Va. Code § 37.2-819</a>.</p> <p>To comply with the statutory requirements, a copy of the original SP237 should be faxed to the VSP at 804-674-2268.</p> <p>The clerk is also required to mail the SP237 and a certified copy of the district court form DC-4002: Order for Treatment to the <a href="#">Virginia State Police</a>.</p> <p>Courts with scanning capabilities may scan the SP237 and the DC-4002: Order for Treatment via the State Police IT Exchange interface for transmission to the Virginia State Police. Documents transmitted via this interface are not required to be mailed.</p> <p>Copies of the SP237 are retained in the file.</p>

Step:	Description:
7.	<p><b>Confidentiality – Medical And Court Records</b></p> <p>File completed case in numerical order by year and retain the case papers for a period of ten years <a href="#">Va. Code § 37.2-818 (B)</a>. Except as in <a href="#">Va. Code § 37.2-819</a>, the court shall keep its copies of the recordings made pursuant to this section, relevant medical records, reports, and court documents pertaining to the hearing provided for in, <a href="#">Va. Code § 37.2-800</a>, confidential.</p> <p>The person who is subject to the hearing may waive confidentiality by filing the district court form DC-4032: <a href="#">Waiver of Confidentiality of Court Records – Commitment for Involuntary Treatment</a>. In the absence of such waiver, access to the dispositional order only may be provided upon court order.</p> <p>Persons seeking a copy of the dispositional order may file with the court the district court form DC-4035: <a href="#">Petition for Access to Dispositional Order</a>. The judge or special justice will review the petition and enter order on same form. The court may issue an order to disclose the dispositional order if it finds that such disclosure is in the best interest of the person who is the subject of the hearing or the public. The Executive Secretary of the Supreme Court and anyone acting on their behalf shall be provided access to the court’s records upon request. Such recordings, records, and documents shall not be subject of Virginia Freedom of Information Act.</p> <p>The Central Criminal Records Exchange, Virginia State Police, may share information regarding civil commitments with full-time or part-time employees of the State Police, police department and sheriff’s office <a href="#">Va. Code § 19.2-389</a>.</p>
8.	<p><b>Appeal Of Involuntary Admission</b></p> <p>Any person involuntarily admitted pursuant to <a href="#">Va. Code § 37.2-814</a> through <a href="#">Va. Code § 37.2-819</a> or certified as eligible for admission pursuant to <a href="#">Va. Code § 37.2-806</a> shall have the right to appeal the order to the circuit court in the jurisdiction where they were involuntarily admitted or certified or where the facility to which they were admitted is located. Choice of venue shall rest with the party noting the appeal. The court may transfer the case upon finding that the other forum is more convenient. An appeal shall be filed within 10 days from the date of the order and shall be given priority over all other pending matters before the court and</p>

Step:	Description:
	<p>heard as soon as possible, notwithstanding <a href="#">Va. Code § 19.2-241</a> regarding the time within which the court shall set criminal cases for trial. A petition for or the pendency of an appeal shall not suspend any order unless so ordered by a judge or special justice; however, a person may be released after a petition for or during the pendency of an appeal pursuant to <a href="#">Va. Code § 37.2-837</a> or <a href="#">Va. Code § 37.2-838</a>. If the person is released during the pendency of an appeal, the appeal shall be in accordance with the provisions set forth in <a href="#">Va. Code § 37.2-844</a> and <a href="#">Va. Code § 37.2-845</a>. No appeal bond or writ tax shall be required, and the appeal shall proceed without the payment of costs or other fees.</p> <p>The appeal shall be heard de novo in accordance with the provisions set forth in <a href="#">Va. Code § 37.2-802</a>, <a href="#">Va. Code § 37.2-804</a>, <a href="#">Va. Code § 37.2-804.1</a>, <a href="#">Va. Code § 37.2-804.2</a>, and <a href="#">Va. Code § 37.2-805</a>, and (i) <a href="#">Va. Code § 37.2-806</a> or (ii) <a href="#">Va. Code § 37.2-814</a> through <a href="#">Va. Code § 37.2-819</a>. <a href="#">Va. Code § 37.2-821</a>.</p> <p>The clerk of the court from which an appeal is taken shall immediately transmit the record to the appellate court.</p> <p>There is no DC form available for the appeal of a civil commitment.</p>

### Fees and Costs

There are no clerk's fees or costs associated with the filing or appeal of the involuntary civil commitment process. The only fees and expenses are related to the payment of special justices, physicians, psychologists, other mental health professionals, or interpreters associated if needed.

Interpreters appointed for a non-English speaking person shall be compensated in accordance with the guidelines set by the Judicial Council of Virginia [Va. Code § 37.2-802](#). It is recommended that the sitting Judge sign the district court form DC-60: Involuntary Admission Hearing Invoice for payment of professionals utilized in the commitment hearings.

### Forms

DC-44	List of Allowances – Interpreter
DC-60	Involuntary Admission Hearing Invoice
DC-489	<a href="#">Medical Emergency Temporary Detention Petition</a>
DC-490	Medical Emergency Temporary Detention Order
DC-492	Emergency Custody Order

DC-493	<a href="#">Explanation of Involuntary Commitment Process – Acknowledgement of Rights</a>
DC-894A	Temporary Detention Order- Magistrate
DC-4000	Order for Alternative Transportation Provider
DC-4001	<a href="#">Petition for Involuntary Admission for Treatment</a>
DC-4002	Order For Treatment
DC-4029	<a href="#">Application for Copy of Recording of Commitment Hearing</a>
DC-4032	<a href="#">Waiver of Confidentiality of Court Records-Commitment for Mental Health Treatment</a>
DC-4035	<a href="#">Petition and Order for Access to Dispositional Order</a>
DC-4044	<a href="#">Notice of Alternative Facility of Temporary Detention</a>
DC-4046	<a href="#">Order for Transportation to Alternative Facility of Temporary Detention</a>
DC-4048	Order Changing Transportation Provider for Temporary Detention Order
CCRE (SP237)	Form may be obtained from the <a href="#">Virginia State Police</a>

## References

<a href="#">Va. Code § 37.2-801:</a>	Admission procedures; forms
<a href="#">Va. Code § 37.2-802:</a>	Interpreters in admission or certification proceedings.
<a href="#">Va. Code § 37.2-803:</a>	Special Justices to perform duties of Judge.
<a href="#">Va. Code § 37.2-804:</a>	Fees and expenses.
<a href="#">Va. Code § 37.2-804.1:</a>	Use of electronic communication.
<a href="#">Va. Code § 37.2-808:</a>	Emergency custody; issuance and execution of order.
<a href="#">Va. Code § 37.2-809:</a>	Involuntary temporary detention; issuance and execution of order.
<a href="#">Va. Code § 37.2-809.1:</a>	Facility of temporary detention.
<a href="#">Va. Code § 37.2-810:</a>	Transportation of person in the temporary detention process
<a href="#">Va. Code § 37.2-814:</a>	Commitment hearing for involuntary admission.
<a href="#">Va. Code § 37.2-815:</a>	Commitment hearing for involuntary admission; examination required.
<a href="#">Va. Code § 37.2-816:</a>	Commitment hearing for involuntary admission; preadmission screening report.
<a href="#">Va. Code § 37.2-817:</a>	Involuntary admission
<a href="#">Va. Code § 37.2-818:</a>	Commitment hearing for involuntary admission; recordings and records.
<a href="#">Va. Code § 37.2-819:</a>	Order of involuntary admission forwarded to CCRE
<a href="#">Va. Code § 37.2-821:</a>	Appeal of involuntary admission
<a href="#">Va. Code § 37.2-829:</a>	Transportation of person in civil admission process
<a href="#">Va. Code § 37.2-1104:</a>	Temporary detention in hospital for testing, observation, or treatment



See the [CMS User's Guide-Code Table Appendix](#)

## Procedures for Involuntary Mandatory Outpatient Treatment

Prior to ordering involuntary admission pursuant to [Va. Code § 37.2-817](#), a judge or special justices shall investigate and determine whether (i) mandatory outpatient treatment is appropriate as a less restrictive alternative to admission pursuant to subsection B of [Va. Code § 37.2-817.01](#) or (ii) mandatory outpatient treatment following a period of inpatient treatment is appropriate pursuant to subsection C of [Va. Code § 37.2-817.01](#).

After observing the person and considering (i) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any past mental health treatment of the person, (iv) any examiner's certification, (v) any health records available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have been admitted, if the judge or special justice finds by clear and convincing evidence that (a) the person has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (1) cause serious physical harm to themselves or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (2) suffer serious harm due to their lack of capacity to protect themselves from harm or to provide for their basic human needs, (b) less restrictive alternatives to involuntary inpatient treatment that would offer an opportunity for improvement of their condition have been investigated and are determined to be appropriate, as reflected in the initial outpatient treatment plan prepared in accordance with subsection F, (c) the person has the ability to adhere to the mandatory outpatient treatment plan, and (d) the ordered treatment will be delivered on an outpatient basis by the community services board or designated provider to the person, the judge or special justice shall by written order and specific findings so certify and order that the person be admitted involuntarily to mandatory outpatient treatment. Less restrictive alternatives shall not be determined to be appropriate unless the services are actually available in the community. The duration of mandatory outpatient treatment shall be determined by the court based on recommendations of the community services board but shall not exceed 180 days; in prescribing the terms of the order, including its length, the judge or special justice shall consider the impact on the person's opportunities and obligations, including education and employment. Upon expiration of an order for mandatory outpatient treatment, the person shall be released from the requirements of the order unless the order is continued in accordance with [Va. Code § 37.2-817.4](#).

Upon finding by clear and convincing evidence that, in addition to the findings described in subsection C of [Va. Code § 37.2-817](#) (i) the person has a history of lack of adherence to treatment for mental illness that has, at least twice within the past 36 months, resulted in the person being subject to an order for involuntary admission pursuant to subsection C of [Va. Code § 37.2-817](#) or being subject to a temporary detention order and then voluntarily admitting themselves in accordance with subsection B of [Va. Code § 37.2-814](#), except that such 36-month period shall not include any time during which the person was receiving inpatient psychiatric treatment or was incarcerated, as established by evidence admitted at the hearing, (ii) in view

of the person's treatment history and current behavior, the person is in need of mandatory outpatient treatment following inpatient treatment in order to prevent a relapse or deterioration that would be likely to result in the person meeting the criteria for involuntary inpatient treatment, (iii) the person has the ability to adhere to the comprehensive mandatory outpatient treatment plan, and (iv) the person is likely to benefit from mandatory outpatient treatment, the judge or special justice may order that, upon discharge from inpatient treatment, the person adhere to a comprehensive mandatory outpatient treatment plan.

The period of mandatory outpatient treatment shall begin upon discharge of the person from involuntary inpatient treatment, either upon expiration of the order for inpatient treatment pursuant to subsection C of [Va. Code § 37.2-817](#) or pursuant to [Va. Code § 37.2-837](#) or [Va. Code § 37.2-838](#). The duration of mandatory outpatient treatment shall be determined by the court on the basis of recommendations of the community services board, and the maximum period of mandatory outpatient treatment shall not exceed 180 days; in prescribing the terms of the order, including its length, the judge or special justice shall consider the impact on the person's opportunities and obligations, including education and employment.

The treating physician and facility staff shall develop the comprehensive mandatory outpatient treatment plan in conjunction with the community services board and the person. The comprehensive mandatory outpatient treatment plan shall include all of the components described in, and shall be filed with the court and incorporated into, the order for mandatory outpatient treatment following a period of involuntary inpatient treatment in accordance with subsection G. The community services board where the person resides upon discharge shall monitor the person's progress and adherence to the comprehensive mandatory outpatient treatment plan. Upon expiration of the order for mandatory outpatient treatment following a period of involuntary inpatient treatment, the person shall be released unless the order is continued in accordance with [Va. Code § 37.2-817.4](#).

At any time prior to the discharge of a person who has been involuntarily admitted pursuant to subsection C of [Va. Code § 37.2-817](#), the person, the person's treating physician, a family member or personal representative of the person, or the community services board serving the county or city where the facility is located, the county or city where the person resides, or the county or city where the person will receive treatment following discharge may file a motion with the court for a hearing to determine whether such person should be ordered to mandatory outpatient treatment following a period of inpatient treatment upon discharge if such person, on at least two previous occasions within 36 months preceding the date of the hearing, has been (i) involuntarily admitted pursuant to subsection C of [Va. Code § 37.2-817](#) or (ii) the subject of a temporary detention order and voluntarily admitted themselves in accordance with subsection B of [Va. Code § 37.2-814](#), except that such 36-month period shall not include any time during which the person was receiving inpatient psychiatric treatment or was incarcerated, as established by evidence admitted at the hearing. A district court judge or special justice shall hold the hearing within 72 hours after receiving the motion for a hearing to determine whether the person should be ordered to mandatory outpatient treatment following a period of involuntary inpatient treatment; however, if the 72-hour period expires on a

Saturday, Sunday, or legal holiday, or, if the individual has been admitted to a facility of temporary detention, day or part of day the clerk's office is lawfully closed, the hearing shall be held by the close of business on the next day that is not a Saturday, Sunday, or legal holiday.

The district court judge or special justice may enter an order for a period of mandatory outpatient treatment following a period of involuntary inpatient treatment upon finding that the person meets the criteria set forth in subsection C [Va. Code § 37.2-817.01](#).

### Clerk and Court Procedures

The procedures below detail the various stages that may be encountered when a patient is ordered to mandatory outpatient treatment.

Step:	Description:
1.	<p><b>Mandatory Outpatient Treatment</b></p> <p>The clerk's office may receive one or more of the following documents <a href="#">Va. Code § 37.2-804.1</a>.</p> <p>District court form DC-492: Emergency Custody Order; district court form DC-490: Medical Emergency Temporary Detention Order, district court form DC-894A: Temporary Detention Order; district court form DC-4001: <a href="#">Petition for Involuntary Admission for Treatment</a>, or district court form DC-4002: Order for Treatment</p> <p>The patient may be hospitalized and the special justice, or judge, has already conducted the hearing. District court form DC- 492: Emergency Custody Order, district court form DC-490: Medical Emergency Temporary Detention Order, district court form DC-894A: Temporary Detention Order, may be filed, issued, served, or executed by electronic means, and signatures on those documents are to be treated as originals.</p> <p>It is recommended that all case papers be date and time stamped.</p> <p>It is recommended that additional hearings arising from the first preceding (ECO, Medical Emergency TDO, TDO, or commitment hearing) be indexed as subsequent action(s).</p>
2.	<p><b>If District Court Form Dc-492: Emergency Custody Order Is Received</b></p> <p>Index into CMS using the Involuntary Civil Commitment Menu. Enter the appropriate hearing result code in the <b>Result</b> field <a href="#">Va. Code § 37.2-808:</a></p>

Step:	Description:
	<ul style="list-style-type: none"> <li>• <b>EU</b> – ECO not executed</li> <li>• <b>ES</b> – ECO served</li> </ul> <p>Upon entry of either of the above hearing results, GCMS will auto populate the appropriate case type of:</p> <ul style="list-style-type: none"> <li>• <b>EC</b> – Emergency Custody Order</li> </ul> <p>The magistrate issues ECO. Any person for whom an emergency custody order is issued shall be taken into custody and transported to a convenient location to be evaluated to assess the need for hospitalization or treatment. The evaluation shall be made by a person designated by the community services board (CSB) or behavioral health authority (BHA) who is skilled in the diagnosis and treatment of mental illness and who has completed a certification program approved by the Department of Behavioral Health and Developmental Services.</p> <p>The person shall remain in custody until (i) a temporary detention order is issued in accordance with <a href="#">Va. Code § 37.2-809</a>, (ii) an order for temporary detention for observation, testing or treatment is entered in accordance with <a href="#">Va. Code § 37.2-1104</a>, ending law enforcement custody, (iii) until the person is released, or (iv) the emergency custody order expires. An emergency custody order shall be valid for a period not to exceed eight hours from the time of execution. For any person evaluated or treated and not issued a temporary detention order, the evaluator or treating healthcare professional shall, prior to release or expiration of custody, consider whether a referral to a community-based outpatient stabilization program for voluntary treatment is appropriate.</p> <p>In addition to the eight-hour period of emergency custody set forth, if the individual is detained in a state facility pursuant to E of <a href="#">Va. Code § 37.2-809</a>, the state facility and an employee or designee of the CSB may, for an additional four hours, continue to attempt to identify an alternative facility that is able and willing to provide temporary detention and appropriate care to the individual. Any person taken into emergency custody shall be given a written summary of the emergency custody procedures and the statutory protections associated with those procedures <a href="#">Va. Code § 3.2-809</a>.</p> <p>An order for temporary detention for testing, observation or treatment pursuant to <a href="#">Va. Code § 37.2-1104</a> may be issued for a person who is also subject to an emergency custody order pursuant to <a href="#">Va. Code § 37.2-808</a>. The person may be detained by a hospital emergency room or other appropriate facility for testing, observation, and treatment for a period not to exceed 24 hours, unless</p>

Step:	Description:
	<p>extended by the court as part of an order pursuant to <a href="#">Va. Code § 37.2-1101</a>, in accordance with subsection B of <a href="#">Va. Code § 37.2-1104</a>.</p> <p><b>Note:</b> If an emergency custody order is not executed within eight hours of its issuance, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is not open, to any magistrate serving that court.</p> <p>Index the Medical Emergency Temporary Detention Order issued using the Involuntary Civil Commitment Menu. Enter the appropriate hearing code in the <b>Result</b> field:</p> <ul style="list-style-type: none"> <li>• <b>M</b> – Medical Emergency TDO Executed</li> <li>• <b>UM</b> – Medical Emergency TDO Not Executed</li> </ul> <p>Enter the appropriate case type of:</p> <ul style="list-style-type: none"> <li>• <b>MT</b> – Medical Emergency TDO</li> </ul> <p><b>Note:</b> In this instance enter the Medical Emergency TDO as a subsequent action to the ECO.</p>
3.	<p><b>If District Court Form Dc-894a: Temporary Detention Order Is Received</b></p> <p>Index into GCMS using the Involuntary Civil Commitment Menu. Enter the appropriate hearing result code in the Result field <a href="#">Va. Code § 37.2-809</a>:</p> <ul style="list-style-type: none"> <li>• <b>TU</b> – TDO not executed</li> <li>• <b>T</b> – T DO served</li> </ul> <p>Upon entry of either of the above hearing results, GCMS will auto populate the appropriate case type of:</p> <ul style="list-style-type: none"> <li>• <b>TD</b> – Temporary Detention Order</li> </ul> <p>The district court form DC- 894A: Temporary Detention Order may accompany district court form DC-492: Emergency Custody Order or be filed on its own. It may be issued by magistrate, judge or special justice and is returned to the court where it was issued. Must be executed within the time period specified in the order, not to exceed twenty-four hours, while community service board (CSB) conducts pre-screening evaluation to assess the need for hospitalization or treatment.</p>

Step:	Description:
	<p>If a facility of temporary detention cannot be identified by the time of the expiration of the period of emergency custody, the individual shall be detained in a state facility for the treatment of individuals with mental illness and such facility shall be indicated on the temporary detention order.</p> <p>The CSB may change the facility of temporary detention and may designate an alternative facility at any point during the period of temporary detention. When this change takes place the DC-4044: <a href="#">Notice of Alternative Facility of Temporary Detention</a> shall be given to the clerk of the issuing court. When the custody of the person has been transferred from law enforcement or the alternative transportation provider, the CSB shall request and the magistrate shall enter an order specifying, an alternative transportation provider, if available, or local law enforcement agency to provide transport of the person to the alternative temporary detention facility. The DC-4046: <a href="#">Order for Transportation to Alternative Facility of Temporary Detention</a> is the document that would be utilized for in this instance.</p> <p>No person who provides alternative transportation pursuant to this section shall be liable to the person being transported for any civil damages for ordinary negligence in acts or omissions that result from providing such alternative transportation.</p> <p>If an alternative transportation provider providing transportation or maintaining custody of a person who is the subject of a temporary detention order becomes unable to continue providing transportation or maintaining custody of the person at any time after taking custody of the person, the primary law-enforcement agency for the jurisdiction in which the alternative transportation provider is located at the time they become unable to continue providing transportation or maintaining custody shall take custody of the person and shall transport the person to the facility of temporary detention.</p> <p>The magistrate may change the transportation provider specified in a temporary detention order at any time prior to the initiation of transportation of a person who is the subject of a temporary detention order pursuant to this section. If the designated transportation provider is changed by the magistrate at any time after the temporary detention order has been executed but prior to the initiation of transportation, the transportation provider having custody of the person shall transfer custody of the person to the transportation provider subsequently specified to provide transportation <a href="#">Va. Code §37.2-810</a>.</p> <p>When community service board employee or designee who is conducting the evaluation recommends that the person should not be subject to a temporary</p>

Step:	Description:
	<p>detention order, such employee or designee shall (i) inform the petitioner, the person who initiated emergency custody if such person is present, and an onsite treating physician of their recommendation; (ii) promptly inform such person who initiated emergency custody that the community services board will facilitate communication between the person and the magistrate if the person disagrees with recommendations of the employee or designee of the community services board who conducted the evaluation and the person who initiated emergency custody so requests; and (iii) upon prompt request made by the person who initiated emergency custody, arrange for such person who initiated emergency custody to communicate with the magistrate as soon as is practicable and prior to the expiration of the period of emergency custody.</p> <p>Any person detained or in custody shall be given a written summary of the temporary detention procedures and the statutory protections associated with those procedures <a href="#">Va. Code § 37.2-809</a>.</p>
4.	<p><b>Commitment Hearing</b></p> <p>At least 12 hours prior to the hearing, the court shall provide to the CSB that prepared the preadmission screening report the time and location of the hearing. If the representative of the CSB will be present by telephonic means the court shall provide the telephone number to the board. CSB contact information can be located via: <a href="http://www.vacsb.org">http://www.vacsb.org</a>.</p> <p>A judge or special justice can hold the commitment hearing; the original paperwork is returned to the clerk's office in the jurisdiction where the commitment hearing was held. The commitment hearing shall be held, and order entered within seventy-two hours of the execution of the district court form DC-894A: Temporary Detention Order. The hearing may be conducted by electronic video and audio communication systems.</p> <p>The order from a commitment hearing issued for involuntary admission or mandatory outpatient treatment and the certification of any person who has been the subject of a temporary detention order pursuant to <a href="#">Va. Code § 37.2-809</a> and who, after being advised by the judge or special justice agree to voluntary admission shall be filed by the judge or special justice with the clerk of the district courts for the county or city where the hearing took place as soon as practicable, but not later than the close of business on the next business day following the completion of the hearing <a href="#">Va. Code § 37.2-819</a>.</p> <p>Court should receive commitment form and audio recording of hearing. If a special justice holds the hearings, the clerk should also receive district court</p>



Step:	Description:
	<p>form DC-60: Involuntary Admission Hearing Invoice with commitment paperwork.</p> <p>It is recommended that all case papers be date and time stamped. Index into GCMS using the Involuntary Civil Commitment Menu. Enter the appropriate hearing result code in the Result field:</p> <ul style="list-style-type: none"> <li>• <b>IM</b> – Involuntary Commitment with MOT</li> <li>• <b>MO</b> – Mandatory Outpatient Treatment</li> <li>• <b>MG</b> – MOT Pre-Discharge Hearing: MOT Granted</li> <li>• <b>MD</b> – MOT Pre-Discharge Hearing: MOT Denied</li> </ul> <p>Upon entry of the above hearing result, GCMS will auto populate the appropriate case type of:</p> <p><b>MC</b> Mental Commitment Order</p> <p>Upon receipt of any order from a commitment hearing ordering <b>mandatory outpatient treatment</b>, the clerk shall, prior to the close of the business day, certify and forward (fax – 804-674-2268) to VSP, the SP237. The clerk is also required to mail the SP237 and a certified copy of the district court form DC-4002: Order for Treatment and/or the DC-4056: Order for mandatory Outpatient Treatment – Discharge from Inpatient Treatment to the <a href="#">Virginia State Police</a> <a href="#">Va. Code § 37.2-819</a>.</p> <p>Courts with scanning capabilities may scan the SP237 and the DC-4002: Order for Treatment and or DC-4056: Order for mandatory Outpatient Treatment – Discharge from Inpatient Treatment via the State Police IT Exchange interface for transmission to the Virginia State Police. Documents transmitted via this interface are not required to be mailed.</p> <p>The CSB will be responsible for preparing preadmission screening report and communicating with patient’s resident CSB disposition of hearing and coordination of services.</p> <p>Copies of the CCRE are retained in the file.</p> <p><b>MOT</b> duration not to exceed 180 days. Any continuance of <b>MOT</b> not to exceed 180 days.</p> <p><b>Note:</b> Due to the various plans and documents that may be received when a patient is ordered to mandatory outpatient treatment it is recommended the</p>



Step:	Description:
	<p>court create a file folder for all patients recommended to mandatory outpatient treatment.</p> <p>Any person involuntarily admitted to an inpatient facility or ordered to mandatory outpatient treatment shall have a right to appeal the order to the circuit court in the jurisdiction where they were involuntarily admitted or ordered to mandatory outpatient treatment. See Appeal Procedures below.</p>
5.	<p><b>MOT – Plans: Initial/Comprehensive</b></p> <p>Upon receipt of dispositional order for mandatory outpatient treatment, the clerk shall provide a copy of the order to the person who is subject of the order, their attorney and to the CSB required to monitor the compliance with the plan <a href="#">Va. Code § 37.2-817 (I)</a>.</p> <p>The clerk should use the district court form DC-4020: <a href="#">Tracking Document for Sending or Receiving Mandatory Outpatient Treatment Order Upon Entry</a> when providing a copy of the order as required to the CSB. The clerk should fax the district court form DC-4020 to the CSB and attorney. The community services board shall acknowledge receipt of the order to the clerk of the court within five business days. The CSB should fax the acknowledgement back to the clerk. The copy for the person subject to hearing may be mailed.</p> <p>The CSB that completed the preadmission screening report will forward initial mandatory outpatient treatment plan to clerk.</p> <p>No later than five days, excluding Saturdays, Sundays, or legal holidays, after an order for mandatory outpatient treatment has been entered, the CSB where the person resides that is responsible for monitoring compliance with the order shall file a comprehensive MOT plan <a href="#">Va. Code § 37.2-817 (G)</a>.</p> <p>Upon approval, the plan is filed with the court and the clerk is to attach the comprehensive plan to the original dispositional order of commitment. The special justice or judge should give approval of the plan.</p> <p>Any subsequent substantive modification to the plan shall be filed with the court for review and attached to the order for mandatory outpatient treatment.</p>

### Other Possible Proceedings

The following actions are possible proceedings as it relates to mandatory outpatient treatment commitments. The following proceedings may or may not occur with each MOT commitment.

***Status Hearings***

The judge or special justice may schedule periodic status hearings for the purpose of obtaining information regarding the person's progress while the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment remains in effect. The clerk shall provide notice of the hearing to the person who is the subject of the order and the community services board responsible for monitoring the person's condition and adherence to the plan. Notice of the hearing can be accomplished by issuance of the DC-512: Notice of Hearing.

The person shall have the right to be represented by counsel at the hearing, and if the person does not have counsel the court shall appoint an attorney to represent the person. However, status hearings may be held without counsel present by mutual consent of the parties. The community services board shall offer to arrange the person's transportation to the hearing if the person is not detained and has no other source of transportation.

During a status hearing, the treatment plan may be amended upon mutual agreement of the parties. Contested matters shall not be decided during a status hearing, nor shall any decision regarding enforcement, rescission, or renewal of the order be entered [Va. Code § 37.2-817.1 \(H\)](#).

The clerk's office will receive the DC-4057: Status Hearing for Mandatory Outpatient treatment

Index the case in GCMS using the Involuntary Civil Commitment Menu. Enter the appropriate hearing result code in the **Result** field:

- **SH** – Status Hearing

Case Type:

- **OT** – Other

***Monitor and Court Review of Mandatory Outpatient Treatment***

If the community services board responsible for developing a comprehensive mandatory outpatient treatment plan pursuant to subsection B, C, or D [Va. Code § 37.2-817.01](#) determines that the services necessary for the treatment of the person's mental illness are not available or cannot be provided to the person in accordance with the order for mandatory outpatient treatment, it shall petition the court for rescission of the mandatory outpatient treatment order or order for mandatory outpatient treatment

following a period of involuntary inpatient treatment in accordance with the provisions of subsection D of [Va. Code § 37.2-817.1](#).

The CSB may file district court form DC-4005: [Petition for Review of Order for Mandatory Outpatient Treatment](#) with the court.

The clerk should coordinate with the special justice or judge to determine where and who will perform this hearing.

Clerk must provide notice of hearing to person subject to hearing, their attorney, and CSB responsible for developing the plan.

The clerk may use the district court form DC-512: [Notice of Hearing](#). The CSB and attorney may be given notice via fax. Notice to person subject to hearing should be served by law enforcement as personal or posted service.

Index the case in GCMS using the Involuntary Civil Commitment Menu. Enter the appropriate hearing result code in the **Result** field:

- **CD** - Continuance MOT denied
- **CR** - Continuance for MOT agreed
- **CT** - Continuance MOT granted
- **RH** - Review Hearing

Upon entry of any of the above hearing results, GCMS will auto populate the appropriate case type of:

- **PT** – Petition

### ***Transfer of Mandatory Outpatient Treatment***

The court may transfer jurisdiction of the case to the district court where the person resides at any time after the entry of the mandatory outpatient treatment order. The community services board responsible for monitoring the person's progress and adherence to the comprehensive mandatory outpatient treatment plan shall remain responsible for monitoring the person's progress and adherence to the plan until the community services board serving the locality to which jurisdiction of the case has been transferred acknowledges the transfer and receipt of the order to the clerk of the court on a form established by the Office of the Executive Secretary of the Supreme Court and provided by the court for this purpose. The community services board serving the locality to which jurisdiction of the case has been transferred shall acknowledge the transfer and receipt of the order within five business days.

The judge or special justice will complete district court form DC-4024: Order – Transfer of Jurisdiction.

The clerk will document the transfer on district court form DC-4024: Order – Transfer of Jurisdiction.

The clerk will then prepare the DC-4022: [Tracking Document for Sending or Receiving Mandatory Outpatient Treatment Order Upon Transfer](#) send the entire file including the recording of commitment hearing to the transfer court with notice to the CSB. The community services board serving the locality to which jurisdiction of the case has been transferred shall acknowledge the transfer and receipt within five business days. It is recommended the transferor court (transferring court) maintain a copy of the transferred file until notice of receipt is received from the transferee court [Va. Code 37.2-817.01 \(J\)](#).

### ***Monitoring: Court Review of Compliance of Mandatory Outpatient Treatment***

The community services board where the person resides shall monitor the person's progress and adherence to the comprehensive mandatory outpatient treatment plan prepared in accordance with [Va. Code § 37.2-817.01](#). Such monitoring shall include (i) contacting or making documented efforts to contact the person regarding the comprehensive mandatory outpatient treatment plan and any support necessary for the person to adhere to the comprehensive mandatory outpatient treatment plan, (ii) contacting the service providers to determine if the person is adhering to the comprehensive mandatory outpatient treatment plan and, in the event of material nonadherence, if the person fails or refuses to cooperate with efforts of the community services board or providers of services identified in the comprehensive mandatory outpatient treatment plan to address the factors leading to the person's material nonadherence, petitioning for a review hearing pursuant to this section. Service providers identified in the comprehensive mandatory outpatient treatment plan shall report any material nonadherence and any material changes in the person's condition to the community services board. Any finding of material nonadherence shall be based upon a totality of the circumstances.

The community services board responsible for monitoring the person's progress and adherence to the comprehensive mandatory outpatient treatment plan shall report monthly, in writing, to the court regarding the person's and the community services board's compliance with the provisions of the comprehensive mandatory outpatient treatment plan. If the community services board determines that the deterioration of the condition or behavior of a person who is subject to an order for mandatory outpatient treatment following a period of involuntary inpatient treatment pursuant to subsection C or D of [Va. Code § 37.2-817.01](#) or a mandatory outpatient treatment order pursuant to subsection B of [Va. Code § 37.2-817.01](#) is such that there is a substantial likelihood that, as a result of the person's mental illness, the person will, in the near future, (i) cause

serious physical harm to themselves or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (ii) suffer serious harm due to their lack of capacity to protect themselves from harm or to provide for their basic human needs, it shall immediately request that the magistrate issue an emergency custody order pursuant to [Va. Code § 37.2-808](#) or a temporary detention order pursuant to [Va. Code § 37.2-809](#). Entry of an emergency custody order, temporary detention order, or involuntary inpatient treatment order shall suspend but not rescind an existing order for mandatory outpatient treatment following a period of involuntary inpatient treatment pursuant to subsection C or D of [Va. Code § 37.2-817.01](#) or a mandatory outpatient treatment order pursuant to subsection B of [Va. Code § 37.2-817.01](#).

The district court judge or special justice shall hold a hearing within five days after receiving the petition for review of the comprehensive mandatory outpatient treatment plan; however, if the fifth day is a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the hearing shall be held by the close of business on the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed.

The clerk shall provide notice of the hearing to the person, the community services board, all treatment providers listed in the comprehensive mandatory outpatient treatment order or discharge plan, and the original petitioner for the person's involuntary treatment.

The clerk may use the district court form DC-512: [Notice of Hearing](#). The CSB, attorney, and treatment providers may be given notice via fax. Notice to person subject to hearing should be served by law enforcement as personal or posted service.

If the person is not represented by counsel, the court shall appoint an attorney to represent the person in this hearing and any subsequent hearing under this section or [Va. Code § 37.2-817.4](#), giving consideration to appointing the attorney who represented the person at the proceeding that resulted in the issuance of the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment. The same judge or special justice that presided over the hearing resulting in the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment need not preside at the nonadherence hearing or any subsequent hearings. The community services board shall offer to arrange the person's transportation to the hearing if the person is not detained and has no other source of transportation.

Any of the following may petition the court for a hearing: (i) the person who is subject to the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment; (ii) the community services board responsible for monitoring the person's progress and adherence to the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment; (iii) a treatment provider designated in the

comprehensive mandatory outpatient treatment plan; (iv) the person who originally filed the petition that resulted in the entry of the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment; (v) any health care agent designated in the advance directive of the person who is the subject of the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment; or (vi) if the person who is the subject of the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment has been determined to be incapable of making an informed decision, the person's guardian or other person authorized to make health care decisions for the person pursuant to [Va. Code § 54.1-2986](#).

A petition, DC-4005: [Petition for Review of Order for Mandatory Outpatient Treatment](#), filed pursuant to [Va. Code § 37.2-817.1 \(D\)](#) may request that the court do any of the following:

1. Enforce a mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment and require the person who is the subject of the order to adhere to the comprehensive mandatory outpatient treatment plan, in the case of material nonadherence.
2. Modify a mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment or a comprehensive mandatory outpatient treatment plan due to a change in circumstances, including changes in the condition, behavior, living arrangement, or access to services of the person who is the subject to the order; or
3. Rescind a mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment.

At any time after 30 days from entry of the mandatory outpatient treatment order pursuant to subsection B of [Va. Code § 37.2-817.01](#) or from the discharge of the person from involuntary inpatient treatment pursuant to an order under subsection C or D of [Va. Code § 37.2-817.01](#), the person may petition the court to rescind the order. The person shall not file a petition to rescind the order more than once during a 90-day period.

After observing the person and considering (i) the recommendations of any treating or examining physician or psychologist licensed to practice in the Commonwealth, if available, (ii) the person's adherence to the comprehensive mandatory outpatient treatment plan, (iii) any past mental health treatment of the person, (iv) any examiner's certification, (v) any health records available, (vi) any report from the community services board, and (vii) any other relevant evidence that may have been admitted at the hearing, the judge or special justice shall make one of the following dispositions:

1. In a hearing on any petition seeking enforcement of a mandatory outpatient treatment order, upon finding that continuing mandatory outpatient treatment is warranted, the court shall direct the person to fully comply with the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment and may make any modifications to such order or the comprehensive mandatory outpatient treatment plan that are acceptable to the community services board or treatment provider responsible for the person's treatment. In determining the appropriateness of the outpatient treatment specified in such order and the comprehensive mandatory outpatient treatment plan, the court may consider the person's material nonadherence to the existing mandatory treatment order.
2. In a hearing on any petition seeking modification of a mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment, upon a finding that (i) one or more modifications of the order would benefit the person and help prevent relapse or deterioration of the person's condition, (ii) the community services board and the treatment provider responsible for the person's treatment are able to provide services consistent with such modification, and (iii) the person is able to adhere to the modified comprehensive mandatory outpatient treatment plan, the court may order such modification of the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment or the comprehensive mandatory outpatient treatment plan as the court finds appropriate.
3. In a hearing on any petition filed to enforce, modify, or rescind a mandatory outpatient treatment order, upon finding that mandatory outpatient treatment is no longer appropriate, the court may rescind the order.

Index the case in GCMS using the Involuntary Civil Commitment Menu. Enter the appropriate hearing result code in the **Result** field:

- **RH** – Review Hearing

Upon entry of any of the above hearing results, GCMS will auto populate with the appropriate case type of:

- **PT** – Petition

The judge or special justice will enter the court's findings on the district court form DC-4007: [Order - Review of Order for Mandatory Outpatient Treatment](#).

***Appointment of Examiner for Review of Compliance***



If requested in a petition filed pursuant to subsection D [Va. Code § 37.2-817.1](#) or on the court's own motion, the court may appoint an examiner in accordance with [Va. Code § 37.2-815](#) who shall personally examine the person on or before the date of the review, as directed by the court, and certify to the court whether or not they have probable cause to believe that the person meets the criteria for mandatory outpatient treatment as specified in subsection B, C, or D of [Va. Code § 37.2-817.01](#), as may be applicable. The judge or special justice may enter an order for appointment of examiner; district court form DC-4008: Order of Appointment of Examiner-Examination for Involuntary Treatment may be utilized.

The examination shall include all applicable requirements of [Va. Code § 37.2-815](#). The certification of the examiner may be admitted into evidence without the appearance of the examiner at the hearing if not objected to by the person or their attorney. If the person is not incarcerated or receiving treatment in an inpatient facility, the community services board shall arrange for the person to be examined at a convenient location and time. The community services board shall offer to arrange for the person's transportation to the examination if the person has no other source of transportation and resides within the service area or an adjacent service area of the community services board.

If the person refuses or fails to appear for the examination, the CSB shall notify the court, or a magistrate if the court is not available, and the court or magistrate shall issue a mandatory examination order and *capias* directing the primary law enforcement in the jurisdiction where the person resides to transport the person to the examination. The person shall remain in custody until a temporary detention order is issued or until the person is released, but in no event shall the period exceed eight hours. The court or magistrate shall issue the district court form DC-4026: *Capias – Transport and Mandatory Examination Order* [Va. Code § 37.2-817.1 \(E\)](#).

If the person fails to appear for the hearing, the court may, after consideration of any evidence regarding why the person failed to appear at the hearing, (i) dismiss the petition, (ii) issue an emergency custody order pursuant to [Va. Code § 37.2-808](#), or (iii) reschedule the hearing pursuant to subsection D and issue a subpoena for the person's appearance at the hearing and enter an order for mandatory examination, to be conducted prior to the hearing and in accordance with subsection (E) [Va. Code § 37.2-817.1](#).

### ***Continuation of MOT Order***

At any time within 30 days prior to the expiration of a mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment, any person or entity that may file a petition for review of a mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment pursuant to subsection D of [Va.](#)



[Code § 37.2-817.1](#) may petition the court to continue the order for a period not to exceed 180 days.

Petitioner will file the district court form DC-4015: [Petition to Continue Mandatory Outpatient Treatment Order](#) with the court.

If the person who is the subject of the order and the monitoring community services board, if it did not initiate the petition, join the petition, the court shall grant the petition and enter an appropriate order without further hearing. If either the person or the monitoring community services board does not join the petition, the court shall schedule a hearing and provide notice of the hearing in accordance with subsection D of [Va. Code § 37.2-817.1](#).

Upon receipt of a contested petition for continuation, the court shall appoint an examiner who shall personally examine the person pursuant to subsection E of [Va. Code § 37.2-817.1](#). The community services board required to monitor the person's adherence to the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment shall provide a report addressing whether the person continues to meet the criteria for being subject to a mandatory outpatient treatment order pursuant to subsection B of [Va. Code § 37.2-817.01](#) or order for mandatory outpatient treatment following a period of involuntary inpatient treatment pursuant to subsection C or D of [Va. Code § 37.2-817.01](#) as may be appropriate [Va. Code § 37.2-817.4](#).

The judge or special justice shall enter an order for appointment of examiner; district court form DC-4008: Order of Appointment of Examiner-Examination for Involuntary Treatment may be utilized.

Court shall enter order on district court form DC-4017: Order – Continue Mandatory Outpatient Treatment Order.

Index the case in GCMS using the Involuntary Civil Commitment Menu. Enter the appropriate hearing result code in the **Result** field:

- **CD** – Continuance MOT denied
- **CR** – Continuance for MOT agreed
- **CT** – Continuance MOT granted
- **RH** – Review Hearing MOT

Upon entry of any of the above hearing results, GCMS will auto populate with the appropriate case type of:

- PT – Petition

### ***Appeal of Involuntary Admissions***

Any person involuntarily admitted to an inpatient facility or ordered to mandatory outpatient treatment pursuant to [Va. Code § 37.2-814](#), [Va. Code § 37.2-819](#) or certified as eligible for admission pursuant to [Va. Code § 37.2-806](#) shall have the right to appeal the order to the circuit court in the jurisdiction where they were involuntarily admitted or ordered to mandatory outpatient treatment or certified or where the facility to which they were admitted is located. Choice of venue shall rest with the party noting the appeal. The court may transfer the case upon finding that the other forum is more convenient.

An appeal shall be filed within 10 days from the date of the order and shall be given priority over all other pending matters before the court and heard as soon as possible, notwithstanding [Va. Code § 19.2-241](#) regarding the time within which the court shall set criminal cases for trial. A petition for or the pendency of an appeal shall not suspend any order unless so ordered by a judge or special justice; however a person may be released after a petition for or during the pendency of an appeal pursuant to [Va. Code § 37.2-837](#) or [Va. Code § 37.2-838](#). If the person is released during the pendency of the appeal, the appeal shall be in accordance with the provisions set forth in [Va. Code § 37.2-844](#) and [Va. Code § 37.2-846](#).

No appeal bond or writ tax shall be required, and the appeal shall proceed without payment of costs or other fees. The appeal shall be heard de novo in accordance with the provisions set forth in [Va. Code § 37.2-802](#), [Va. Code § 37.2-804](#), [Va. Code § 37.2-804.1](#), [Va. Code § 37.2-804.2](#), and [Va. Code § 37.2-805](#) and (i) [Va. Code § 37.2-806](#) or (ii) [Va. Code § 37.2-814](#) through [Va. Code § 37.2-819](#).

The clerk of the court from which an appeal is taken shall immediately transmit the record to the clerk of the appellate court.

**There is no DC form available for the appeal of a civil commitment.**

**Note:** The audiotapes are not sent with the file. A subpoena duces tecum must be filed requesting tapes to be forwarded to circuit court. Clerk retains copies for file.

### ***Audio Recording***

The judge or special justice shall make or cause to be made a tape or other audio recording of any hearings held under this chapter, [Va. Code § 37.2-800](#), and shall submit the recordings to the clerk of the district court in the locality in which the hearing is held to be retained in a confidential file.

It is recommended that the tape be labeled with the name of the person who was subject of the hearing, case number and date of hearing.

The person who was subject of the hearing shall be entitled, upon request, to obtain a copy of the tape or other audio recordings of such hearing by filing district court form DC-4029: [Application for Copy of Recording of Commitment Hearing](#) with the court. The patient is not required to waive their confidentiality in order to receive a copy of their audio recording of the civil commitment hearing. A recording is copied by the clerk and provided to the petitioner as determined by local policy.

These recordings shall be retained for at least three years from the date of the commitment hearing [Va. Code § 37.2-818](#).

### **CCRE – SP237**

Upon receipt of any order from a commitment hearing ordering involuntary commitment or voluntary admission, only when preceded by issuance of a TDO, the clerk shall forward to VSP the SP237 as soon as practicable, but no later than the close of business on the next following business day. Upon receipt of any order from a commitment hearing ordering mandatory outpatient treatment, the clerk of the court shall, prior to the close of the business day, certify and forward (fax) to the VSP, the SP237 at 804-674-2268. The clerk is also required to mail the SP237 and a certified copy of the district court form DC-4002: Order for Treatment to the [Virginia State Police](#).

The clerk shall, prior to the close of the business day, forward (fax) upon receipt to the VSP, the SP237 of any person who has been the subject of TDO pursuant to [Va. Code § 37.2-809](#), and who after being advised by the judge or special justice that they will be prohibited from possessing a firearm, subsequently agreed to voluntary admission pursuant to [Va. Code § 37.2-805](#). The clerk is also required to mail the SP237 and a certified copy of the district court form DC-4002: Order for Treatment to the VSP [Va. Code § 37.2-819](#).

Courts with scanning capabilities may scan the SP237 and the DC-4002: Order for Treatment via the State Police IT Exchange interface for transmission to the [Virginia State Police](#). Documents transmitted via this interface are not required to be mailed.

Copies of the SP237 are retained in the file.

### **Confidentiality – Medical and Court Records**

Except as provided for in this section and [Va. Code § 37.2-819](#), the court shall keep its copies of the recordings made pursuant to this section, relevant medical records, reports, and court documents pertaining to the hearing provided for in this chapter [Va. Code § 37.2-800](#), confidential [Va. Code § 37.2-818 \(B\)](#).

The person who is subject of the hearing may, in writing, waive the confidentiality provided herein by filing the district court form DC-4032: [Wavier of Confidentiality of Court Records - Commitment for Involuntary Treatment](#). In the absence of such waiver, access to the dispositional order only may be provided upon court order.

Any person seeking access to the dispositional order may file a written motion setting forth why such access is needed. District court form DC-4035: [Petition for Access to Dispositional Order](#) may be used. The judge or special justice will review the petition and enter order on same form. The court may issue an order to disclose the dispositional order if it finds that such disclosure is in the best interest of the person who is the subject of the hearing or the public. If access to the dispositional order is granted, the clerk shall provide a copy of the dispositional order only.

The Executive Secretary of the Supreme Court and anyone acting on their behalf shall be provided access to the court's records upon request. Such recordings, records, and documents shall not be subject of Virginia Freedom of Information Act.

The Central Criminal Records Exchange, Virginia State Police, may share information regarding civil commitments with full-time or part-time employees of the State Police, police department and sheriff's office [Va. Code §19.2-389](#).

File completed case in numerical order by year and retain the case papers for a period of 10 years.

### Fees and Costs

There are no Clerk's fees or costs associated with the filing or appeal of the involuntary civil commitment process. The only fees and expenses are related to the payment of special justices, physicians, psychologists, other mental health professionals, or interpreters if needed [Va. Code § 37.2-804](#). Interpreters appointed for a non-English speaking person shall be compensated in accordance with the guidelines set by the Judicial Council of Virginia [Va. Code § 37.2-802](#). It is recommended that the sitting Judge sign the district court form DC-60: Involuntary Admission Hearing Invoice for payment of professionals utilized in the commitment hearings.

### Forms

DC-44	List of Allowances- Interpreter
DC-60	Involuntary Admission Hearing Invoice
DC-489	<a href="#">Medical Emergency Temporary Detention Petition</a>
DC-490	Medical Emergency Temporary Detention Order
DC-492	Emergency Custody Order

DC-493	<a href="#">Explanation of Involuntary Commitment Process – Acknowledgement of Rights</a>
DC-894A	Temporary Detention Order- Magistrate
DC-4000	Order for Alternative Transportation Provider
DC-4001	<a href="#">Petition for Involuntary Admission for Treatment</a>
DC-4002	Order for Treatment
DC-4005	<a href="#">Petition for Review of Order for Mandatory Outpatient Treatment</a>
DC-4007	Order – Review of Order for Mandatory Outpatient Treatment
DC-4008	Order of Appointment of Examiner – Examination for Involuntary Treatment
DC-4010	<a href="#">Petition for Rescission of Mandatory Outpatient Treatment Order</a>
DC-4012	Order – Rescission of Mandatory Outpatient Treatment Order
DC-4015	<a href="#">Petition to Continue Mandatory Outpatient Treatment Order</a>
DC-4017	Order – Continue Mandatory Outpatient Treatment Order
DC-4020	<a href="#">Tracking Document for Sending or Receiving Mandatory Outpatient Treatment Order Upon Entry</a>
DC-4022	<a href="#">Tracking Document for Sending or Receiving Mandatory Outpatient Treatment Order Upon Transfer</a>
DC-4024	<a href="#">Order – Transfer of Jurisdiction Pursuant to Va. Code § 37.2-817 J</a>
DC-4026	Capias – Transport and Mandatory Examination Order
DC-4029	<a href="#">Application for Copy of Recording of Commitment Hearing</a>
DC-4032	<a href="#">Waiver of Confidentiality of Court Records – Commitment for Mental Health Treatment</a>
DC-4035	<a href="#">Petition and Order for Access to Dispositional Order</a> <a href="http://www.courts.state.va.us/forms/district/dc492.pdf">http://www.courts.state.va.us/forms/district/dc492.pdf</a>
DC-4044	<a href="#">Notice of Alternative Facility of Temporary Detention</a>
DC-4046	<a href="#">Order for Transportation to Alternative Facility of Temporary Detention</a>
DC-4048	Order Changing Transportation Provider for Temporary Detention Order
DC-4055	Motion for Mandatory Outpatient Treatment Upon Discharge from Inpatient Treatment
DC-4056	Order For Mandatory Outpatient Treatment Upon Discharge from Inpatient Treatment
DC-4057	Status Hearing for Mandatory outpatient Treatment
CCRE(SP237)	Form may be obtained from the <a href="#">Virginia State Police</a>

## Reference

<a href="#">Va. Code § 37.2-800:</a>	Applicability of chapter.
<a href="#">Va. Code § 37.2-808:</a>	Emergency custody; issuance and execution of order.
<a href="#">Va. Code § 37.2-809:</a>	Involuntary temporary detention; issuance and execution of order.

<a href="#">Va. Code §37.2-809.1:</a>	Facility of temporary detention.
<a href="#">Va. Code §37.2-810:</a>	Transportation of person in the temporary detention process.
<a href="#">Va. Code § 37.2-814:</a>	Commitment hearing for involuntary admission; written explanation; right to counsel; right of petitioner.
<a href="#">Va. Code § 37.2-815:</a>	Commitment hearing for involuntary admission; examination required.
<a href="#">Va. Code § 37.2-816:</a>	Commitment hearing for involuntary admission; preadmission screening report.
<a href="#">Va. Code § 37.2-817:</a>	Involuntary admission
<a href="#">Va. Code § 37.2-817.01:</a>	Mandatory Outpatient Treatment
<a href="#">Va. Code § 37.2-817.1:</a>	Monitoring and court review of mandatory outpatient treatment.
<a href="#">Va. Code § 37.2-817.4:</a>	Continuation of mandatory outpatient treatment order.
<a href="#">Va. Code § 37.2-818:</a>	Commitment hearing for involuntary admission; recordings and records.
<a href="#">Va. Code § 37.2-821:</a>	Appeal of involuntary admission or certification order.
<a href="#">Va. Code §37.2-829:</a>	Transportation of person in civil admission process.
<a href="#">Va. Code §37.2-1104:</a>	Temporary detention in hospital for testing, observation, or treatment.
See the <a href="#">CMS User's Guide-Code Table Appendix</a>	

## CCRE Reporting

Upon receipt of any order from a commitment hearing ordering involuntary commitment or voluntary admission, only when proceeded by the issuance of a TDO, the Clerk shall forward to the VSP form SP237 as soon as practicable, but no later than the close of business on the next following business day.

Upon receipt of any order from a commitment hearing ordering Mandatory Outpatient Treatment, the clerk shall forward VSP form SP237 prior to the close of that business day [Va. Code § 37.2-819](#).

Courts with scanning capabilities may scan the SP237 and the DC-4002: Order For Treatment via the State Police IT Exchange interface for transmission to the Virginia State Police. Documents transmitted via this interface are not required to be mailed.

The Central Criminal Records Exchange, Virginia State Police, may share information regarding civil commitments with full-time or part-time employees of the State Police, police department and sheriff's office [Va. Code §19.2-389](#).

### **Proceeding for Eligibility for Admission of Intellectually Disabled Person [Va. Code § 37.2-806](#)**

When a person alleged have an intellectual disability and is not capable of requesting their own admission to a facility for the training and treatment of the intellectually disabled as a voluntary patient, a parent, guardian or other responsible person may initiate a proceeding to certify such person's eligibility for admission.

Prior to initiating any such proceeding, the petitioner shall first obtain:

- A pre-screening report from the local community services board or behavioral health authority that recommends admission to a training center, and
- The approval of the training center to which it is proposed that the person shall be admitted

The proceeding shall be initiated by the filing of a petition alleging that the person has intellectual disability, is in need of training, treatment, or habilitation, and has been approved for admission.

No such person shall be detained pending a hearing except for observation and evaluation for a period not to exceed seventy-two hours.

A copy of the petition must be personally served on such person, the person's attorney, the person's guardian, or conservator.

An attorney shall be appointed for such person before the hearing, or the person may retain counsel at their own expense. Such person shall be allowed sufficient time to prepare a defense, obtain evidence at their own expense and summon witnesses. Such person shall attend the hearing unless their attorney waives the right and the judge finds one of the following statutory grounds for exclusion by a clear showing after personal observation:

- The person's attendance would subject them to substantial risk of physical or emotional injury, or
- The person's attendance would be so disruptive as to prevent the hearing from taking place.

Prior to the hearing, the judge shall summons either a physician or clinical psychologist who is licensed in Virginia and qualified in assessing persons with intellectual disability, or a community services board designee meeting the board's qualifications who, after assessing the person, shall certify that they have personally assessed the individual and have probable cause to believe that they do or do not have intellectual disability, is or is not in need of training, treatment or habilitation in a training center, and is or is not eligible for less restrictive service.



A written report may be given to the judge if the assessment was made within the last thirty days and there is no objection by the person or their attorney.

The judge must make all of the findings required by [Va. Code § 37.2-806 \(F\)](#) before entering an order certifying that the person is eligible for admission to a training center which include:

- The person is not capable of requesting their own admission.
- The facility has approved the proposed admission.
- There is no less restrictive alternative to training center admission, consistent with the best interests of the person who is the subject of the proceeding.
- The person has intellectual disability and is in need of training, treatment, or habilitation in a training center.

Certification of eligibility of admission is not the equivalent of judicial commitment for involuntary admission of the person. The certification authorizes the parent, guardian, or other responsible person to admit the person to a training center and authorizes the training center to accept the person [Va. Code § 37.2-806 \(G\)](#).

### **Medical Emergency Temporary Detention Proceedings [Va. Code § 37.2-1104](#) and [Va. Code § 53.1-40.1 \(F\)](#)**

This section addresses those situations in which an adult person is incapable of making, or incapable of communicating, an informed decision regarding treatment of a mental or physical condition, including intoxication which a licensed physician has probable cause to believe requires testing, observation, or treatment within the next twenty-four hours so as to prevent death, disability or to treat an emergency medical condition that requires immediate action to avoid harm, injury, or death. In such situations, [Va. Code § 53.1-40.1 \(F\)](#) sets forth special provisions that apply when the patient is a state prisoner. See also discussed Special Procedures for State Prisoners.

#### **Case Initiation [Va. Code § 37.2-1104](#)**

The court or, if the court is unavailable, a magistrate serving the jurisdiction where the respondent is located may, with the advice of a licensed physician who has attempted to obtain informed consent of an adult person to treatment of a mental or physical condition, issue an order authorizing temporary detention of the adult person in a hospital emergency department or other appropriate facility for testing, observation, or treatment upon a finding that (i) probable cause exists to believe the person is incapable of making or communicating an informed decision regarding treatment of a physical or mental condition due to a mental or physical condition, including intoxication and (ii) the medical standard of care calls for observation, testing, or treatment within the next twenty-four hours to prevent



injury, disability, death, or other harm to the person resulting from such mental or physical condition.

When a mental or physical condition to be treated appears to be a result of intoxication, a licensed physician who has attempted to obtain informed consent for an adult person for treatment of such mental or physical condition appearing to be a result of intoxication may seek an order from the magistrate or court in the jurisdiction where the respondent is located authorizing temporary detention of the adult person in a hospital emergency department or other appropriate facility for testing, observation, or treatment upon a finding that (i) probable cause exists to believe the person's intoxication has rendered the person incapable of making or communication an informed decision regarding treatment and (ii) the medical standard of care calls for observation, testing, or treatment within the next 24 hours to prevent injury, disability, death, or other harm to the person or another person resulting from such intoxication.

The duration of temporary detention pursuant to this section shall not exceed 24 hours, unless extended by the court as part of an order authorizing treatment under [Va. Code § 37.2-1101](#).

If before completion of authorized testing, observation, or treatment, the physician determines that a person subject to an order under this subsection has become capable of making and communicating an informed decision, the physician shall rely on the person's decision on whether to consent to further testing, observation, or treatment. If, before issuance of an order under this subsection or during its period of effectiveness, the physician learns of an objection by a member of the person's immediate family to the testing, observation, or treatment, they shall so notify the court or magistrate, who shall consider the objection in determining whether to issue, modify, or terminate the order.

A court or, if the court is unavailable, a magistrate serving the jurisdiction may issue an order authorizing temporary detention for testing, observation, or treatment for a person who is also the subject of an emergency custody order issued pursuant to [Va. Code § 37.2-808](#), if such person meets the criteria set forth. In any case in which an order for temporary detention for testing, observation, or treatment is issued for a person who is also the subject of an emergency custody order pursuant to [Va. Code § 37.2-808](#), the hospital emergency room or other appropriate facility in which the person is detained for testing, observation, or treatment shall notify the nearest community services board when such testing, observation, or treatment is complete, and the designee of the community services board shall, as soon as is practicable and prior to the expiration of the order for temporary detention issued, conduct an evaluation of the person to determine if they meet the criteria for temporary detention pursuant to [Va. Code § 37.2-809](#).

Petitions and orders for temporary detention may be filed, issued, served, or executed by electronic means, with or without the use of two-way electronic video and audio

communication. If an oral petition is made, the judge should recite back to the physician the information given to the judge.

### Case Hearings

The judge (or magistrate) reviews the petition taking into consideration any objections from the patient or immediate family members.

**Note:** Because of the emergency nature of these proceedings and the fact that the patient is usually unrepresented by counsel, the judge (or magistrate) may need to ask the physician questions concerning the patient's capability to grant informed consent and the standard of care; the judge (or magistrate) may also need, if they can communicate with this patient, to ask the patient questions concerning the patient's capability to grant informed consent. While personal observation of the patient by the judge (or magistrate) is desirable, the judge (or magistrate) may be unable, because of the emergency nature of the situation, to go on-site to talk to the patient themselves. In all cases, however, the judge (or magistrate) should attempt some form of personal contact with the patient and physician such as by telephone. For example, such questions may include:

- To the physician:
  - Why do you feel the patient is incapable of giving informed consent?
  - Is this a situation where the patient must be tested, observed, or treated within twenty-four hours?
  - What might happen to the patient if they do not receive this testing, observation, or treatment?
  - Explain the treatment to me.
  - Are there any side effects or dangers as a result of this treatment?
  - Is there a family, committee, legal guardian, etc.?
  - Who can I talk to or who can give permission on behalf of the patient?
  - Are you aware of any religious objections by the patient?
  - Does the patient suffer from dysphasia or some other communication condition?
- To the patient:
  - What is your name?
  - Where do you live?
  - Do you know what day it is?
  - What month and year is it?
  - Who is the President of the United States?

- What happened to you?
- Do you know why you are here?
- Has the doctor explained to you, their concern?
- Why will you not consent to testing, observation, or treatment?
- Do you understand what might happen if the doctor's concern proves founded?
- Do you have any religious objections to this testing, observation, or treatment?
- Do you suffer from dysphasia or some other communication condition?

After determining if there is probable cause to believe the petition's allegations, the judge (or magistrate) determines:

- If the patient is a person with dysphasia or some other communication condition who is competent and able to communicate. If the petition is filed *solely* due to this situation, the patient is statutorily able to give consent and the petition should be denied.
- If family members object to testing or treatment, the judge must take such objections into consideration in deciding the matter.

Upon completion of this process, the judge (or magistrate) may:

- Deny the petition and issue a district court form DC-490: Medical Emergency Temporary Detention Order to that effect.
- Grant the petition and issue a district court form DC-490: Medical Emergency Temporary Detention Order - grants the testing, observation and treatment that was requested.

When the physician does not physically appear before the judge (or magistrate) the contents of the order should be read over the telephone to the physician. The detention may not be for a period exceeding twenty-four hours unless extended by the court as part of an order authorizing treatment under [Va. Code § 37.2-1101](#), which requires appointment of counsel and a hearing.

Service of the district court form DC-490: Medical Emergency Temporary Detention Order (original, modified or terminated) should be by police or other law enforcement officer as soon as possible after the order is issued. One copy should be served on the patient while a second copy should be served on the physician. The original should be returned to the general district court for filing and indexing. The same filing and indexing shall be done for orders entered by special justices and magistrates.

### Post-trial Proceedings

If the physician learns of an objection by a member of the person's immediate family to the testing, observation or treatment, they shall so notify the judge (or magistrate), who shall consider the objection in determining whether to issue, modify or terminate the order.

In any case where a previously issued order is being modified or terminated by the judge (or magistrate), a second order should be issued citing the facts received. Use the district court form DC-490: Medical Emergency Temporary Detention Order for this purpose and, at the top of the form, check "Modified Order" or "Termination of Order." The judge (or magistrate) and physician should be in immediate verbal communication with each other following the entry of this changed order.

Any order issued under [Va. Code § 37.2-1104](#), by a judge (or magistrate) may be appealed de novo within ten days to the circuit court for the jurisdiction where the order was entered and any such order of a circuit court, either originally or on appeal, may be appealed within ten days to the Court of Appeals.

Index the case in GCMS using the Involuntary Civil Commitment Menu. Enter the appropriate hearing result code in the **Result** field:

- **M** – Medical Emergency TDO Executed
- **UM** – Medical Emergency TDO Not Executed

Enter the appropriate case type of:

- **MT** – Medical Emergency TDO

### Forms

DC-489	<a href="#">Medical Emergency Temporary Detention Petition</a>
DC-490	Medical Emergency Temporary Detention Order

## Medical and Mental Health Treatment of Prisoners Incapable of Giving Consent

### Case Initiation [Va. Code § 53.1-133.04](#)

The sheriff or administrator in charge of a local or regional correctional facility or their designee may petition the circuit court or any district court judge or any special justice, as defined in [Va. Code § 37.2-100](#), herein referred to as the court, of the county or city in which the prisoner is located for an order authorizing treatment of a prisoner confined in the local or regional correctional facility. Upon filing the petition, the petitioner or the court shall

serve a certified copy of the petition to the person for whom treatment is sought and, if the identity and whereabouts of the person's next of kin are known, to the person's next of kin.

The court shall authorize such treatment in a facility designated by the sheriff or administrator upon finding, on the basis of clear and convincing evidence, that:

- The prisoner is incapable, either mentally or physically, of giving informed consent to such treatment.
- That the prisoner does not have a relevant advanced directive, guardian, or other substitute decision maker; that the proposed treatment is in the best interests of the prisoner; and
- That the jail has sufficient medical and nursing resources available to safely administer the treatment and respond to any adverse side effects that might arise from the treatment. The facility designated for treatment by the sheriff or administrator may be located within a local or regional correctional facility if such facility is licensed to provide the treatment authorized by the court order.

### Case Hearing

Prior to the court's authorization of such treatment, the court shall appoint an attorney to represent the interests of the prisoner. Evidence shall be presented concerning the prisoner's condition and proposed treatment, which evidence may, in the court's discretion and in the absence of objection by the prisoner or the prisoner's attorney, be submitted by affidavit.

Any order authorizing treatment shall describe the treatment authorized and authorize generally such examinations, tests, medications, and other treatments as are in the best interests of the prisoner but may not authorize nontherapeutic sterilization, abortion, or psychosurgery. Such order shall require the licensed physician, psychiatrist, clinical psychologist, professional counselor, or clinical social worker acting within their area of expertise who is treating the prisoner to report to the court and the prisoner's attorney any change in the prisoner's condition resulting in restoration of the prisoner's capability to consent prior to completion of the authorized treatment and related services. Upon receipt of such report, the court may enter such order withdrawing or modifying its prior authorization as it deems appropriate. Any petition or order under this section may be orally presented or entered, provided that a written order is subsequently executed.

Prior to authorizing treatment pursuant to this section, the court shall find that there is no available person with legal authority under the Health Care Decisions Act ([Va. Code § 54.1-2981](#) et seq.) or under other applicable law to authorize the proposed treatment.

Any hearing held by a court pursuant to [Va. Code § 53.1-133.04](#) may be held in any courtroom available within the county or city wherein the prisoner is located or any

appropriate place that may be made available by the sheriff or administrator in charge of a local or regional correctional facility and approved by the judge. Nothing shall be construed as prohibiting holding the hearing on the grounds of a correctional facility or a hospital or a facility for the care and treatment of individuals with mental illness.

Any special justice, as defined in [Va. Code § 37.2-100](#), and any district court substitute judge who presides over hearings pursuant to the provisions of [Va. Code § 53.1-133.04](#) shall receive a fee as provided in [Va. Code § 37.2-804](#) for each proceeding under [Va. Code § 53.1-133.04](#) and their necessary mileage. However, if a commitment hearing under [Va. Code § 19.2-169.6](#) and the proceeding under [Va. Code § 53.1-133.04](#) are combined for hearing or are heard on the same day, only one fee shall be allowed.

Every physician or clinical psychologist who is not regularly employed by the Commonwealth who is required to serve as a witness for the Commonwealth in any proceeding under [Va. Code § 53.1-133.04](#) shall receive a fee as provided in [Va. Code § 37.2-804](#). Other witnesses regularly summoned before a judge shall receive such compensation for their attendance and mileage as is allowed witnesses summoned to testify before grand juries.

Every attorney appointed under [Va. Code § 53.1-133.04](#) shall receive a fee as provided in [Va. Code § 37.2-804](#) for each proceeding under [Va. Code § 53.1-133.04](#) for which they are appointed. However, if a commitment hearing under [Va. Code § 19.2-169.6](#) and the proceeding under [Va. Code § 53.1-133.04](#) are combined for hearing or are heard on the same day, only one fee shall be allowed.

### **Post-Trial Proceedings**

Any order of a judge/special justice may be appealed de novo within 10 days to the circuit court for the jurisdiction where the prisoner is located, and any order of a circuit court hereunder, either originally or on appeal, may be appealed within 10 days to the Court of Appeals, which shall give such appeal priority and hear the appeal as soon as possible. Whenever the director of any hospital or facility reasonably believes that treatment is necessary to protect the life, health, or safety of a prisoner, such treatment may be given during the period allowed for any appeal unless prohibited by order of a court of record wherein the appeal is pending.

Upon the advice of a licensed physician, psychiatrist, or clinical psychologist acting within their area of expertise who has attempted to obtain consent and upon a finding of probable cause to believe that a prisoner is incapable, due to any physical or mental condition, of giving informed consent to treatment and that the medical standard of care calls for testing, observation, or other treatment within the next 12 hours to prevent death, disability, or a serious irreversible condition, the court or, if the court is unavailable, a magistrate shall issue an order authorizing temporary admission of the prisoner to a hospital or other health care facility and authorizing such testing, observation, or other treatment. Such order shall expire

after a period of 12 hours unless extended by the court as part of an order authorizing treatment.

Index the case in GCMS using the Involuntary Civil Commitment Menu. Enter the appropriate hearing result code in the **Result** field:

- **M** – Medical Emergency TDO Executed
- **UM** – Medical Emergency TDO Not Executed

Enter the appropriate case type of:

- **MT** – Medical Emergency TDO

### Forms

DC-489	<a href="#">Medical Emergency Temporary Detention Petition</a>
DC-490	Medical Emergency Temporary Detention Order
DC-60	Involuntary Admission Hearing Invoice

### Special Procedures for State Prisoners

Under [Va. Code § 53.1-40.1 \(F\)](#), the following similar provisions apply in this process when applied to prisoners:

- A licensed physician, psychiatrist or clinical psychologist may petition for the order and need not be asking for it from a hospital emergency room.
- The petition only needs to address:
  - Whether the prisoner is incapable, due to any physical or mental condition, of giving informed consent, and
  - That the medical standard of care calls for testing, observation, or other treatment within the next twelve hours to prevent death, disability, or a serious irreversible condition.

### Judicial Authorization of Treatment for Mental or Physical Condition [Va. Code § 37.2-1101](#)

The order may be issued by a judge or, if a judge is unavailable, by a magistrate.

In addition to the previously described provisions for testing, observation and/or treatment on an “emergency” basis, a judge or special justice may conduct a proceeding regarding a claim for

the treatment for a mental or physical condition pursuant to Va. Code § 37.2-1101.

“Treatment” in this instance includes the provision, withholding, or withdrawal of a specific treatment or course of treatment upon a showing that the requirements of this section have been met. Judicial authorization for treatment is not required for a person for whom consent or authorization has been granted or issued or may be obtained in accordance with the Health Care Decisions Act, Va. Code § 54.1-2981 to Va. Code § 54.1-2993. An appropriate circuit court, district court judge or special justice may authorize, on behalf of an adult person, treatment for a mental or physical condition, if it finds by clear and convincing evidence that:

- There is no available person with legal authority under Article 8 (Va. Code § 54.1-2981 et seq.) of Chapter 29 of Title 54.1, under the regulations promulgated pursuant to Va. Code § 37.2-400, or under other applicable law to authorize the proposed treatment. A person who would have legal authority to authorize the proposed treatment shall be deemed to be unavailable if such person (i) cannot be contacted within a reasonable period of time in light of the immediately of the need for treatment for the person for whom treatment is sought (ii) is incapable of making an informed decision, (iii) is unable or unwilling to make a decision regarding authorization of proposed treatment or to serve as the legally authorized representative of the person for whom treatment is sought, and
- The person is incapable of making an informed decision, or incapable of communicating such a decision because of a physical or mental condition; and
- The proposed treatment is in the person’s best interest and is medically and ethically appropriate with respect to the medical diagnosis and prognosis and any other information provided by the attending physician.
- The court shall not authorize treatment that is contrary to the provisions of an advance directive executed by the person pursuant to Va. Code § 54.1-2983, or treatment that is contrary to specific preferences state by the person before becoming incapable of making an informed decision.

[Va. Code § 37.2-1102](#) sets forth the procedures that the court is prohibited from authorizing. To make such a determination, the following procedures apply:

- A petition is filed, no restrictions on who may a file petition, unlike restrictions on medical emergency or temporary detention petition as described in the prior part.
- The petitioner or the court sends a certified copy of petition to:
  - The person for whom treatment is sought
  - The next of kin, if identity and whereabouts are known and judge does not dispense with such notice when the subject is a patient at a hospital.



- The Court appoints an attorney unless the person for whom treatment is being sought is represented by counsel. [Va. Code § 37.2-1101 \(C\)](#). See [Va. Code § 37.2-1101 \(F\)](#) regarding the attorney's duties.

After counsel is appointed, the case is scheduled for a hearing, with the court notifying the following of the date and time for the hearing:

- The person for whom treatment is sought;
- Their next of kin, if known; and
- The petitioner, and
- Counsel appearing for any of the above Va. Code § 37.2-1101 (D).

Use the district court form DC-430: Summons for Hearing for this case, including documenting the hearing date. Note that [Va. Code § 37.2-1101](#) requires the Court to notify the above-listed people but does not state that such notice be by service of process. If treatment is necessary to prevent imminent or irreversible harm, the court in its discretion may dispense with the requirement of providing notice.

Prior to authorizing treatment, the court must find:

- That there is no legally authorized representative available to give consent.
- That the person for whom treatment is sought is incapable either of making an informed decision regarding treatment or is physically or mentally incapable of communicating such a decision.
- That the person who is the subject of the petition is unlikely to become capable of making an informed decision or of communicating an informed decision within the time required for decision; and
- That the proposed treatment is in the best interest of the patient and is medically and ethically appropriate with respect to the medical diagnosis and prognosis and any other information provided by the attending physician. However, the court shall not authorize a proposed treatment that is proven by a preponderance of the evidence to be contrary to the person's religious beliefs or basic values unless such treatment is necessary to prevent death or a serious irreversible condition.
- The court shall not authorize treatment that is contrary to the provisions of an advance directive executed by the person pursuant to [Va. Code § 54.1-2983](#), or treatment that is contrary to specific preferences state by the person before becoming incapable of making an informed decision.

The court shall take into consideration the right of the person to rely on nonmedical, remedial treatment in the practice of religion in lieu of medical treatment.

Nothing in the provisions of [Va. Code § 37.2-1101](#) shall be construed to limit the authority of a treating physician or other service provider to administer treatment without judicial authorization when necessary to stabilize the condition of the person or whom treatment is sought in an emergency [Va. Code § 37.2-1101 \(I\)](#).

The judge's dispositional powers and limitations on allowable relief are provided in [Va. Code § 37.2-1101 \(H\)](#).

Any report received from the treating physician post-judgment pursuant to [Va. Code § 37.2-1101 \(H\)](#) shall be delivered to the judge prior to the report being filed in the case papers.

**Note:** No employee of the Department or a community services board, behavioral health authority, or local government department with a policy-advisory community services board; a community services board, behavioral health authority, or local government with a policy-advisory community services board contractor; or any other public or private program or facility licensed or funded by the Department shall serve as a legally authorized representative for a consumer being treated in any Department, community services board, behavioral health authority, local government department with a policy-advisory community services board or other licensed or funded public or private program or facility, unless the employee is a relative or legal guardian of the consumer [Va. Code § 37.2-401](#). The facility or other services board will be required to file a request for judicial authorization of treatment:

- Index into GCMS using the Involuntary Civil Commitment Menu. Enter the appropriate hearing result code in the **Result** field:
  - **JG** – Judicial Authorization Granted
  - **JD** – Judicial Authorization Denied

Enter the appropriate case type of:

- **OT** – Other

### Forms

DC-489 (A)	<a href="#">Medical Treatment and Detention Petition</a>
DC-490 (A)	Order for Medical Treatment

## Chapter 9 – Fees and Prepayments

### Civil Fees Schedules and Codes

#### Civil Case Processing Fees

Fee: \$36.00

Reference: [Va. Code § 16.1-69.48:2](#)

#### J&DR Court Processing Fees for Custody and Visitation Cases

Only one fee is required for all custody and visitation petitions initiated simultaneously by one petitioner.

Fee: \$25.00

Reference: [Va. Code § 16.1-69.48:5](#)

#### Legal Aid Services Fund

Fee: \$10.00

Reference: [Va. Code § 17.1-278](#)

#### Courthouse Maintenance Fee

See local ordinance for amount. Combined total fees may not exceed \$4.00 for the Law Library and Courthouse Maintenance fees.

Fee: \$2.00 maximum

Reference: [Va. Code § 17.1-281](#)

#### Law Library Fee

See local ordinance for amount. Combined total fees may not exceed \$4.00 for the Law Library and Courthouse Maintenance fees.

Fee: \$4.00 maximum

Reference: [Va. Code § 42.1-70](#)

#### Civil Appeal

***Not exceeding \$49,999***

Fee: \$100.00

\$5.00 writ tax

Reference: [Va. Code § 17.1-275\(A\) \(13\)](#), [Va. Code § 58.1-1727](#)

***\$49,999.01 to \$100,000***

Fee: \$200.00  
\$15.00 writ tax

**Note:** Writ tax on appeals from \$49,999.01 to \$50,000 is \$5.00

Reference: [Va. Code § 17.1-275\(A\) \(13\)](#), [Va. Code § 58.1-1727](#)

***\$100,000.01 to \$500,000***

Fee: \$250.00  
\$25.00 writ tax

Reference: [Va. Code § 17.1-275\(A\) \(13\)](#), [Va. Code § 58.1-1727](#)

***\$500,000.01 and up***

Filing fees on an appeal of a civil case may be calculated using the [Online Circuit Court Civil Filing Fee Calculation](#). Select civil case type: General District Appeal and complete necessary fields. For a breakdown of the filing fees, click on “Show Calculation Details”.

Fee: \$300.00  
\$25.00 writ tax

Reference: [Va. Code § 17.1-275\(A\) \(13\)](#), [Va. Code § 58.1-1727](#)

**Copying Charge**

***First two (2) pages***

Fee: \$1.00 maximum  
Reference: [Va. Code § 16.1-69.48:2](#)

***Each extra page***

Fee: \$.50 maximum  
Reference: [Va. Code § 16.1-69.48:2](#)

**Service of Process**

Commissioner of DMV (each person to be served)

Fee: \$28.00

Reference: [Va. Code § 8.01-310](#), [Va. Code § 2.2-409](#)

***Secretary of the Commonwealth (each person to be served)***

Fee: \$28.00

Reference: [Va. Code § 2.2-409](#)

***Sheriff***

Fee is paid by plaintiff for any of the following:

Fee: \$12.00

- Service on any person, firm or corporation (listed)
- Summoning a witness and garnishee
- Service of an order of the court other than protective order
- Making return of writ of Fi.Fa. where no levy made, or forthcoming bond is taken
- Serving on any person an attachment or capias (requested by party)
- Summoning witness in custody or visitation case

Fee: \$25.00

- Service and publication of any notice of publicly advertised sale
- Service of writ of possession
- Note: additional defendants - \$12.00
- Service of declaration of ejectment on any person, firm or corporation
- Note: additional defendants - \$12.00
- Levying an execution or distress warrant or attachment
- Levying upon current money, bank notes, goods or chattels of a judgment debtor pursuant to [Va. Code § 8.01-478](#)

Fee: \$75.00 - Serving any papers returnable out of state

Reference: [Va. Code § 17.1-272](#)

**High Constable**

Norfolk and Virginia Beach cases only.

Fee: Set by city

Reference: [Va. Code § 17.1-273](#)

## **Criminal and Traffic Fee Schedules and Codes**

### **Traffic Infraction Costs**

Fee: \$51.00

If the defendant has been assessed a fee for one of multiple charges and is later convicted of another charge arising from the same incident that has a higher fee, the difference between the two fees must be assessed.

Reference: [Va. Code § 16.1-69.48:1\(D\)](#)

### **Non-drug Misdemeanor Costs**

Fee: \$61.00

If the defendant has been assessed a fee for one of multiple charges and is later convicted of another charge arising from the same incident that has a higher fee, the difference between the two fees must be assessed.

Reference: [Va. Code § 16.1-69.48:1\(B\)](#)

### **Multiple DUI Fee**

Conviction after one or more prior convictions within 10 years.

Fee: \$50.00

Reference: [Va. Code § 18.2-270.01](#)

### **Drug Misdemeanor Costs**

Fee: \$136.00

Reference: [Va. Code § 16.1-69.48:1\(C\)](#)

### **Courthouse Maintenance Fee**

See local ordinance for exact amount.

Fee: \$2.00 Maximum per charge

Reference: [Va. Code § 17.1-281](#)

### **Internet Crimes Against Children Fund**

Assessed on misdemeanor and felony convictions and deferred findings.

Fee: \$15.00

Reference: [Va. Code § 17.1-275.12](#)

### **Blood Test Fees**

#### ***Driving While Intoxicated – Withdrawal***

Fee: \$25.00 maximum

Reference: [Va. Code § 18.2-268.8](#), [Va. Code § 46.2-341.26:8](#)

#### ***Sexually Transmitted Infection (certain offenses) – Analysis***

Fee: See FMS User's Guide

Reference: [Va. Code § 18.2-346.1](#)

### **Computer Forensic Analysis**

Fee: Up to \$100 per computer analyzed

Reference: [Va. Code § 16.1-69.48:1.02](#), [Va. Code § 17.1-275.11:1](#)

### **DNA Analysis**

Fee: \$38.00 (113) and \$15.00 (233)

Reference: [Va. Code § 19.2-310.2](#)

### **Commonwealth's Attorney Fee**

Fee: \$5.00

No fee for appearing in misdemeanor cases in general district court. Fee split between locality and state.

Reference: [Va. Code § 15.2-1627.2](#), [Va. Code § 15.2-1627.3](#)

### **Court-Appointed Attorney/Public Defender Compensation**

Misdemeanor/felony preliminary certified to Circuit Court felony-final disposition in DC (reduced to misdemeanor, dismissed, nolle prosequi, etc.).

Fee: Misdemeanor: \$120 maximum plus expense

Class III to Class VI: \$445.00 Maximum  
Class II: \$1235.00 Maximum  
Unclassified Felony: \$0-1235 Maximum

If a defendant is charged with a felony, the charge is reduced at the preliminary hearing to a misdemeanor and the defendant is convicted of that misdemeanor in district court, the attorney is eligible for compensation up to the cap for the originally charged felony.

Reference: [Va. Code § 19.2-163](#), [Va. Code § 16.1-267](#)

### **Failure to appear unless good cause shown**

Fee: \$35.00

Reference: [Va. Code § 16.1-69.48:1 \(A\)](#)

### **Appearance of analyst to testify when compelled by defendant**

See Civil Fee Schedules & Codes regarding sheriff's fee for serving capias in connection with interrogatories.

Fee: \$50.00

Reference: [Va. Code § 19.2-187.1](#)

### **Non-consecutive Jail Fee**

Fee: Collected by sheriff and to be paid to locality

Reference: [Va. Code § 53.1-131.1](#)

### **Transportation Trust Fund**

Fee: \$2,750 maximum  
\$11,000 maximum

Reference: [Va. Code § 46.2-341.20:5](#), [Va. Code § 46.2-341.20:6](#)

### **Unpaid Check/Credit Card Fee**

Fee: \$50.00

Reference: [Va. Code § 19.2-353.3](#)

### **Fee for Deferred and Installment Payment Agreements**

*Agreements in excess of ninety days from date of conviction*

Fee: \$10.00 maximum



Reference: [Va. Code § 19.2-354](#)

### **Ignition Interlock Systems Penalty**

Fee: \$20.00

Reference: [Va. Code § 18.2-270.1](#)

### **Weighing Fee**

Fee: \$2.00

Reference: [Va. Code § 46.2-1137](#)

### **Alcohol Safety Action Program (ASAP)**

*ASAP fee (assessed but not Collected by court)*

Fee: \$250.00-300.00

Reference: [Va. Code § 18.2-271.1](#)

### **Court Security Fee**

Requires local ordinance. Assess per case.

Fee: \$20.00 maximum

Reference: [Va. Code § 53.1-120](#)

### **Electronic Summons System**

Requires local ordinance for each city, county or town. Assess on cases occurring in city, county or town who passed ordinance.

Fee: \$5.00 maximum

Reference: [Va. Code § 17.1-275.5](#), [Va. Code § 17.1-279.1](#)

### **Jail Admissions Fee**

Requires local ordinance. Assess per sentencing event for multiple cases when a defendant is admitted to City, County, or Regional Jail following conviction.

Fee: \$25.00 maximum

Reference: [Va. Code § 15.2-1613.1](#)

### **Local Regional Justice Training Academy Fee**

Fee: Set by locality. Only applies to certain localities

Reference: [Va. Code § 9.1-106](#)

## **Methamphetamine Lab Clean Up Costs /Human Occupancy Certification**

### ***Commonwealth***

If property is owned in whole or in part by defendant, the court shall order defendant to pay clean up, removal, repair, and human occupancy certification costs.

Fee: Varies

Reference: [Va. Code § 18.2-248](#), [Va. Code § 18.2-248.04](#)

### ***Local***

Requires local ordinance. Person convicted of manufacture of methamphetamine shall be liable for costs associated with clean up.

Fee: Varies

Reference: [Va. Code § 15.2-1716.2](#)

## **Uniform Fine Schedule**

### **Prepayable Traffic Offenses**

This section is pursuant to Rule 3B:2 of the [Rules of Supreme Court](#). Please refer to these Rules for the Uniform Fine Schedules. Refer to General District Case Management System User's Guide, "Quick Reference Guides – Reading the Rule" for instructions on how to read a rule.

### **Prepayable Non-Traffic Offenses**

This section is pursuant to Rule 3C:2 of the [Rules of Supreme Court](#). Please refer to these Rules for the Uniform Fine Schedules. Refer to General District Case Management System User's Guide, "Quick Reference Guides – Reading the Rule" for instructions on how to read a rule.

## Chapter 10 – Records Retention, Destruction and Expungements

### Authorities

To assist the District Court Clerks in records management, it is suggested that a careful review be made of the following statutory provisions and policy statement to ensure that all court records are retained and destroyed in accordance with the required procedures:

#### Definitions; construction of references to period of years [Va. Code § 16.1-69.53](#)

As used in this article, the following terms shall have the following meanings:

- **Court records** shall include case records, financial records and administrative records as defined in this section.
- **Case records** shall mean all documents, dockets, and indices.
- **Documents** shall mean all motions for judgment, bills of complaint, answers, bills of particulars, other pleadings, interrogatories, motions in writing, warrants, summonses, petitions, proof of service, witness summonses and subpoenas, documents received in evidence, transcripts, orders, judgments, writs, and any other similar case-related records and papers in the possession of the district courts and filed with the pleadings in the case.
- **Financial records** shall mean all papers and records related to the receipt and disbursement of money by the district court.
- **Administrative records** shall mean all other court papers and records not otherwise defined.

Whenever a reference to a period of years for the retention of documents is made in this section, it shall be construed to commence on January 2 of the first year following (i) the final adjudication of a civil case or (ii) the final disposition in all other cases, unless otherwise specified herein. In foster care cases, the final disposition date is the date of transfer of custody to a local board of social services or a child welfare agency.

#### General provisions [Va. Code § 16.1-69.54](#)

Each district court shall retain and store its court records as provided in this article. The Committee on District Courts, after consultation with the Executive Secretary of the Supreme Court of Virginia, shall determine the methods of processing, retention, reproduction and disposal of records and information in district courts, including records required to be retained in district courts by statute.

Whenever a court record has been reproduced for the purpose of record retention under this article, such original may be disposed of upon completion of the Commonwealth's audit

of the court records unless approval is given by the Auditor of Public Accounts for earlier disposition. In the event of such reproduction, the reproduction of the court record shall be retained in accordance with the retention periods specified in this section. The reproduction shall have the same force and effect as the original court record and shall be given the same faith and credit to which the original itself would have been entitled in any judicial or administrative proceeding.

Electronic case papers, whether originating in electronic form or converted to electronic form, shall constitute the official record of the case. Such electronic case papers shall also fulfill any statutory requirement that requires an original, original paper, paper, record, document, facsimile, memorandum, exhibit, certification, or transcript if such electronic case papers are in an electronic form approved by the Executive Secretary of the Supreme Court. When case papers are transmitted between the district and circuit courts and there is an agreement between the chief judge of the applicable district court and the clerk of the circuit court for the electronic transmission of case papers, the case papers shall be transmitted between the courts by an electronic method approved by the Executive Secretary of the Supreme Court, with the exception of any exhibit that cannot be electronically transmitted. The clerk in the appellate court may also request that any paper trial records be forwarded to such clerk.

#### **Destruction of court records [Va. Code § 16.1-69.57](#)**

The clerk of each district court shall destroy the court records upon expiration of the appropriate retention period as set forth in [Va. Code § 16.1-69.55](#) and [Va. Code § 16.1-69.56](#) and consistent with the requirements of confidentiality for juvenile records. All court records should be destroyed by a method which renders the court records illegible, such as, shredding or burning. Likewise, magistrates shall destroy records retained in the office of the magistrate upon the expiration of the appropriate retention period as set forth in [Va. Code § 16.1-69.56](#).

To assist the courts in their record-keeping functions these requirements are grouped by type of document and separated into the following classifications:

- Administrative Records
- Financial Records
- Case Records
- Civil Records
- Criminal and Traffic Records
- Expungement/Destruction

## Retention Provisions

### Administrative Records

Retention Period--three (3) years. Includes:

- Correspondence
- Substitute judges
- General
- Job Applications
- Invoices, Purchase Orders and Statements

Destruction Provisions--destroy in fourth year

Example: 2017 Purchase Requisitions -retain through 2020, destroy in 2021.

### Financial Records

#### *Manual financial records*

The following manual financial records may be destroyed after they are three years old, provided the [Auditor of Public Accounts](#) has submitted an Audit Report for the time frame to be destroyed and there were no shortages or misappropriation of funds still under review.

#### *Automated financial records*

Destruction of automated financial records is to be in accordance with the guidelines established in the District Financial Management System User's Guide.

It is the responsibility of the court to ensure financial reports are printed and maintained in accordance with the established retention schedule below. **Important:** The term 'after audit' means keep the report until the audit report is received from the [Auditor of Public Accounts](#) and all audit points have been satisfied. The term 'monthly closing' includes reconciling the bank statement and resolving all accounting problems.

#### *Retention Table*

- Receipts:
  - o PCR Receipt Copies- Retain until monthly closing then destroy.
  - o PCR Reports - Retain until monthly closing then destroy.

- Voided Receipt Copies -Retain until 6 months after APA audit then destroy.
- Corrected Receipt Copies - Retain until 6 months after APA audit then destroy.
- Credit Card Receipts -Retain until 6 months after APA audit then destroy.
- Credit Card Report Copy - Retain until 6 months after APA audit then destroy.
- Manual Receipt Copies
- Daily FAS Reports:
  - Refer to the FMS User’s Guide for additional information
  - Daily Receipt Register (BR02) - Retain until 6 months after APA audit then destroy.
  - All Reports from Month End - Retain until 6 months after APA audit then destroy.
  - All Other Daily Reports - Retain until monthly closing then destroy.
  - DC-225 Report (BU53) - Retain 10 years after printing then destroy.
- All Yearly FAS Reports:
  - R07 Statement of Financial Condition- Retain 6 month after APA audit.
  - BR16 Unclaimed Property and Unclaimed Restitution- Retain 5 years if monies were remitted. Retain 10 years if monies were not remitted [Va. Code§ 55.1-2524](#).

**Note:** Exception – TSO Letter Report (BR54) must be retained 3 years after printing.

- Supporting Documentation
  - Bank statements, cancelled checks - Retain 3 years after APA audit then destroy
  - Bank Deposit Slips - Retain 3 years after APA audit then destroy
  - Treasury Form 270 (BU11) and printed E-Pay Payment Receipt - Retain 3 years after APA audit then destroy.
  - List of Allowances (DC-40, DC-41) - Retain 3 years after APA audit then destroy.
- Cover Sheet
  - Retain until 6 months after APA audit then destroy.
  - Clerk of the Court and bookkeeper must sign and date the cover sheet each day to certify all daily FAS report content and transactions are authorized and reviewed. The court must attach all required documentation to the cover sheet.

### Full GDIS (General District Imaging System) Courts

At the direction of the chief judge of a general district court, the clerk of that court may cause any or all papers or documents pertaining to civil and criminal cases that have been ended to be destroyed if such records, papers, or documents will no longer have administrative, fiscal, historical, or legal value to warrant continued retention, provided such records, papers, or documents have been microfilmed or converted to an electronic format. Such documents shall be placed in conveniently accessible files and provisions made for examining and using the same. The provisions of this subsection shall not apply to the documents for misdemeanor cases under [Va. Code § 16.1-253.2](#), [Va. Code § 18.2-57.2](#), [Va. Code § 18.2-60.4](#), [Va. Code § 18.2-67.4](#), [Va. Code § 18.2-67.4:1](#), [Va. Code § 18.2-67.4:2](#), [Va. Code § 18.2-346](#), [Va. Code § 18.2-346.01](#), [Va. Code § 18.2-347](#), [Va. Code § 18.2-348](#), [Va. Code § 18.2-349](#), [Va. Code § 18.2-370](#), [Va. Code § 18.2-370.01](#), [Va. Code § 18.2-374](#), [Va. Code § 18.2-386.1](#), [Va. Code § 18.2-387](#), and [Va. Code § 18.2-387.1](#), which shall be retained as provided in subsection A [Va. Code § 16.1-69.55](#).

A copy of the order entered by the Chief Judge should be provided to the Department of Judicial Services. Additional information concerning necessary batch reports is found in the CMS User's Guide.

### Civil Case Records

Civil Cases, including civil commitments and other proceedings under Title 37.2; decided on or after January 1, 1985

- General Rule
  - Retain documents, indices, and manual dockets for ten (10) years from final disposition
  - Destroy documents, indices, and dockets in eleventh year
  - Examples:
    1. 2013 Documents - retain through 2023, destroy in 2024
    2. 2013 Indices - retain through 2023, destroy in 2024
- Exceptions (documents only)
- All documents in civil proceedings in district court which are dismissed, including dismissal under [Va. Code § 8.01-335](#), or in which no service of process is had within twenty-four months of the last return date - retain until the completion of the Commonwealth's audit of the court records, then destroy.
- Extension of statute of limitations
- Transfer of documents to Circuit Court - note transfer and transfer date to Circuit Court in CMS. Treat the record as provided in the General Rule, above.

- Mental commitments - if the subject of the petition or their attorney requests that the documents be kept confidential, the documents are to be placed in an envelope that is marked with the case number and the word “CONFIDENTIAL” on both sides, then closed and filed in numerical order with other case papers - destroy in eleventh year.

### Criminal and Traffic Case Records

- General Rule:
  - Retain documents, indices, and manual dockets for ten (10) years from final disposition. (Also applies to indices and dockets of cases decided prior to 1984 where documents were transferred to Circuit Court).
  - Destroy manual documents, indices, and documents in eleventh year.
  - Example:
    1. 2012 documents - retain until 2022, destroy in 2023
    2. 2010 documents - retain until 2020, destroy in 2021
- Exception - Procedures for expungement of criminal records in accordance with [Va. Code § 19.2-392.2](#) et seq. when defendant was not found guilty. See “Expungement Procedures” below.
- Exception - Pursuant to [Va. Code § 16.1-69.55](#), in misdemeanor cases under [Va. Code § 16.1-253.2](#), [Va. Code § 18.2-57.2](#), or [Va. Code § 18.2-60.4](#) all documents must be retained for twenty (20) years from the final hearing date.
- Exception – Pursuant to [Va. Code § 16.1-69.55](#), in misdemeanor cases under [Va. Code § 18.2-67.4](#), [Va. Code § 18.2-67.4:1](#), [Va. Code § 18.2-67.4:2](#), [Va. Code § 18.2-346](#), [Va. Code § 18.2-346.01](#), [Va. Code § 18.2-347](#), [Va. Code § 18.2-348](#), [Va. Code § 18.2-349](#), [Va. Code § 18.2-370](#), [Va. Code § 18.2-370.01](#), [Va. Code § 18.2-374](#), [Va. Code § 18.2-386.1](#), [Va. Code § 18.2-387](#), and [Va. Code § 18.2-387.1](#), all documents shall be retained for 50 years.
- Exception - In all cases involving sexually violent offenses, as defined in [Va. Code § 37.2-900](#), all documents shall be retained for 50 years.

### Civil Commitment – Audio Recording Tape

These recordings shall be retained for at least three years from the date of the commitment hearing. [Va. Code § 37.2-818](#).

Digital information that must be destroyed may be shipped to the Information Security Officer at the following address:

Information Security Officer



SCV - 6<sup>th</sup> Floor  
100 N. 9<sup>th</sup> Street  
Richmond, Virginia 23219

## Unlawful Detainer Expungement [Va. Code § 8.01-130.01](#)

If an action for unlawful detainers filed on or after July 1, 2024, in general district court is dismissed and the 30-day period following such dismissal has passed or a voluntary nonsuit is taken on any defendant and the six-month period following such nonsuit has passed, provided that no order of possession has been entered in the case, the court shall, without further petition or hearing, enter an order requiring the expungement of the court records. The court shall not automatically expunge records in an unlawful detainer action where a judgment is entered in favor of the defendant; however, the defendant may file a petition, and the court shall, without a hearing, enter an order requiring the expungement of the court records.

For unlawful detainer actions commenced before July 1, 2024, where the court still has records, if the action was dismissed and the 30-day period following such dismissal has passed or a voluntary nonsuit of the action was taken and the six-month period following the nonsuit has passed, provided that no order of possession has been entered in the case, the defendant may file a petition on a form created by the Supreme Court in the general district court in which the underlying unlawful detainer action was filed requesting expungement of the court records relating to the unlawful detainer. The petition shall provide the date that the order of dismissal, entry of judgment in favor of the defendant, or nonsuit was entered, the address of the property that was the subject of the unlawful detainer action, and the name of the plaintiff in the unlawful detainer action.

Upon finding that the unlawful detainer action was dismissed and the 30-day period following such dismissal has passed or a nonsuit was taken and the six-month period following such nonsuit has passed, and no order of possession was entered, the court shall, without a hearing, enter an order requiring the expungement of the court records.

When an unlawful detainer filed on or after July 1, 2024, meets the statutory requirements, the GCMS (General District Case Management System) and GDIS (General District Imaging System) will automatically expunge the qualifying cases. The GCMS User Guide will provide additional information for the [Unlawful Detainer Expungement Process](#).

**Note:** Once eligible cases have automatically expunged from GCMS and GDIS, the clerk shall destroy the original case papers. Any case requiring manual expungement from GCMS, GDIS, and the case file should be rescanned after the redaction of the individual(s) who qualifies for expungement.

### Expungement Ordered for All Defendants

Clerk receives petition(s) from all defendants listed on an unlawful detainer with a

disposition of nonsuit or dismissed, no order of possession was entered, and the 30-day period following the dismissal or the six-month period following the nonsuit has passed, the court shall, without a hearing, enter an order requiring the expungement of the court records.

Step:	Description:
1.	Clerk receives DC-425: Petition(s) For Expungement of Unlawful Detainer. Do not enter the petition into the General District Case Management System (GCMS) or scan into the General District Imaging System (GDIS).
2.	Clerk provides the DC-425: Petition(s) For Expungement of Unlawful Detainer, and the DC-426: Order(s) of Expungement for Unlawful Detainer and the original Unlawful Detainer to judge for review.
3.	Clerk is required to send a certified copy of the DC-425: Petition(s) For Expungement for Unlawful Detainer, along with a certified copy of the DC-426: Order(s) of Expungement of Unlawful Detainer to the petitioner(s).
4.	Clerk will expunge original case from GDIS. See <a href="#">General District Imaging System User's Guide</a> .
5.	Clerk will delete/expunge the Unlawful Detainer from GCMS. See <a href="#">General District Case Management System User's Guide</a> .
6.	<p>The clerk shall keep the DC-426: Order(s) of Expungement for Unlawful Detainer in an administrative file in alphabetical order for three (3) years. Clerk shall destroy the petition(s) and original case papers.</p> <p><b>Important:</b> Only the petitioner(s) and the petitioner's attorney may receive a copy of the DC-426: Order of Expungement for Unlawful Detainer retained in the administrative file. Please verify the identity of the petitioner before providing a copy of the order.</p> <p>For Appeal Procedures, See <b>Appeals</b> Below.</p>
7.	If the petition is denied, scan the petition and order to the unlawful detainer in GDIS, and attach to the petition and order to the original case papers.

### Expungement Ordered for Fewer than All Defendants

Clerk receives petition(s) from fewer than all defendants listed on an Unlawful Detainer with a disposition of nonsuit or dismissed, no order of possession was entered, and the 30-day period following the dismissal or the six-month period following the nonsuit has passed, the court shall, without a hearing, enter an order requiring the expungement of the court records.

Step:	Description:
1.	Clerk receives DC-425: Petition(s) For Expungement of Unlawful Detainer from the defendant(s). Do not enter the petition into the General District Case Management System (GCMS) or scan into the General District Imaging System (GDIS).
2.	Clerk provides the DC-425: Petition(s) For Expungement of Unlawful Detainer, and the DC-426: Order(s) of Expungement of Unlawful Detainer, and the original Unlawful Detainer to judge for review.
3.	Clerk is required to send a certified copy of the DC-426: Order(s) of Expungement of Unlawful Detainer, along with a certified copy of the DC-425: Petition(s) For Expungement of Unlawful Detainer to the petitioner(s).
4.	Clerk deletes the name(s) of the qualifying defendant(s) from the Unlawful Detainer from the General District Case Management System (GCMS). A manual deletion of services for the qualifying defendant(s) must occur from the Services screen. See <a href="#">General District Case Management System User's Guide</a> .
5.	Clerk redacts all references to the qualifying defendant(s) from the original case papers.
6.	The redacted case must be re-scanned into GDIS. Using the "Re-scan Case" feature will replace the existing case with the redacted case.  File the original case papers back in the ended cases file.
7.	The clerk shall keep the DC-426: Order(s) of Expungement for Unlawful Detainer in an administrative file in alphabetical order for three (3) years. Clerk shall destroy the petition(s).  <b>Important:</b> Only the petitioner(s) and the petitioner's attorney may receive a copy of the DC-426: Order of Expungement for Unlawful Detainer retained in the administrative file. Please verify the identity of the petitioner before providing a copy of the order.  For Appeal Procedures, See <b>Appeals</b> Below.
8.	If the petition is denied, scan the petition and order to the unlawful detainer in GDIS, and attach to the petition and order to the original case papers.

### Unlawful Detainer that has been Appealed

Step:	Description:
1.	Clerk receives DC-425: Petition(s) For Expungement of Unlawful Detainer from the defendant(s).

Step:	Description:
2.	Collect writ tax and circuit filing fees.
3.	Send petition(s) to the circuit court.
4.	If the petition(s) is granted in circuit court and a copy of the DC-426: Order(s) of Expungement of Unlawful Detainer is returned to General District Court, expunge the Unlawful Detainer as directed by the DC-426: Order(s) of Expungement of Unlawful Detainer.
5.	Clerk verifies the original case was deleted from the General District Imaging System (GDIS) upon appeal. If the case remains in GDIS, delete the case from GDIS. See <a href="#">General District Imaging System User's Guide</a> .
6.	If the expungement order includes all defendants listed on the unlawful detainer, the clerk will delete/expunge the original case from the General District Case Management System (GCMS). See <a href="#">General District Case Management System User's Guide</a> .
7.	If the expungement order includes fewer than all defendants listed on the unlawful detainer, clerk deletes all references of the qualifying defendant(s) from the General District Case Management System (GCMS). A manual deletion of services for the qualifying defendant(s) must occur from the Services screen. See <a href="#">General District Case Management System User's Guide</a> .
8.	<p>The clerk shall keep the DC-426: Order(s) of Expungement for Unlawful Detainer in an administrative file in alphabetical order for three (3) years.</p> <p>Clerk shall destroy the petition(s).</p> <p><b>Note:</b> Since the unlawful detainer was previously appealed, no case paper should remain in the general district court. If any case papers, including a copy of the case, have been retained they must be destroyed and all images related to the Unlawful Detainer, should be deleted from the General District Imaging System (GDIS).</p> <p><b>Important:</b> Only the petitioner(s) and the petitioner's attorney may receive a copy of the DC-426: Order(s) of Expungement for Unlawful Detainer retained in the administrative file. Please verify the identity of the petitioner before providing a copy of the order.</p>

### Appeal of Denied Petition for Unlawful Detainer Expungement

Step:	Description:
1.	Clerk receives DC-475: Notice of Appeal- Civil, completed by the petitioner

Step:	Description:
2.	Collect writ tax
3.	<p>Send to Circuit Court:</p> <ul style="list-style-type: none"> <li>• DC-475: Notice of Appeal</li> <li>• DC-25: Circuit Court Case Transmittal and Fees Remittance Sheet listing the District Court Case Number of the underlying Unlawful Detainer with a <b>Case Type</b> as “<b>Other</b>”</li> <li>• A <b>copy</b> of the DC-425: Petition for Expungement of Unlawful Detainer</li> <li>• A <b>copy</b> of the DC-426: Order of Expungement of Unlawful Detainer</li> <li>• A <b>copy</b> of the Unlawful Detainer.</li> </ul>
4.	<p>If the petition is granted to all defendants in circuit court and a DC-426: Order of Expungement of Unlawful Detainer, is returned to general district court, expunge the Unlawful Detainer as directed by the DC-426: Order of Expungement of Unlawful Detainer.</p> <p>If the petition is granted to fewer than all defendants in circuit court and a DC-426: Order of Expungement of Unlawful Detainer, is returned to general district court, the clerk deletes all references of the qualifying defendant(s) from the General District Case Management System (GCMS). A manual deletion of services for the qualifying defendant(s) must occur from the Services screen. See <a href="#">General District Case Management System User’s Guide</a>.</p>
5.	<p>The clerk shall keep the DC-426: Order of Expungement of Unlawful Detainer in an administrative file in alphabetical order for three (3) years.</p> <p>Clerk shall destroy the petition(s), any case papers, and images related to the Unlawful Detainer, when all defendants are listed on the order of expungement.</p> <p>When fewer than all defendants are listed on the order of expungement, the clerk shall destroy the petition(s) and follow the same redaction instructions beginning Step 4 thru Step 6 above “When a clerk receives petition(s) from fewer than all defendants.”</p>

Step:	Description:
	<b>Important:</b> Only the petitioner(s) and the petitioner’s attorney may receive a copy of the DC-426: Order of Expungement of Unlawful Detainer retained in the administrative file. Please verify the identity of the petitioner before providing a copy of the order.

[Va. Code § 19.2-76.1](#) Submission of quarterly reports concerning unexecuted felony and misdemeanor warrants and other criminal process; destruction; dismissal. See Chapter 3, Criminal Case Processing.

### Relief under Writ of Vacatur [Va. Code § 19.2-327.19](#)

Issuance of a writ of vacatur for victims of human trafficking establishes a procedure for victims of human trafficking to file a petition of vacatur in circuit court to have certain convictions vacated and the police and court records expunged for such convictions.

If a writ of vacatur is granted, an order of expungement for the qualifying offense shall be entered by the circuit court. Upon entry of the order of expungement, the clerk of court shall cause a copy of the writ of vacatur, the order of expungement, and the complete set of petitioner's fingerprints to be forwarded to the Department of State Police, which shall expunge the qualifying offense.

If the circuit court enters a writ of vacatur, the petitioner shall be entitled to a refund of all fines and penalties paid in relation to the qualifying offense that was vacated. If the clerk of the court where the conviction was entered is in possession of any records detailing any fines and penalties paid by the petitioner for a qualifying offense that was vacated, the petitioner shall be entitled to a refund of such amount.

Pursuant to Va. Code § 19.2-327.18 for the hearing of the petition for vacatur, prior to any decision to grant the writ, the circuit court shall determine whether any restitution is unpaid under the terms of the sentence for the qualifying offense. If the court grants the writ, the petitions shall be forever discharged from any such restitution obligation, and the victim of the qualifying offense shall be eligible to petition for awards pursuant to Chapter 21.1 (§ 19.2-368.1 *et seq.*) and his claim for restitution reimbursement shall be deemed to accrue on the date the court grants the writ.

If the clerk of the court where the conviction was entered is no longer in possession of any records detailing any fines and penalties paid by the petitioner for a qualifying offense that was vacated, a refund shall be provided only upon a showing by the petitioner of the amount of fines and penalties paid in the form of an official court issued receipt.

**Note:** If an Individual Account exists for the charge that is being expunged, refund any fines and penalties that have been paid on the account and remove any remaining amounts due,

including restitution pursuant to Va. Code § 19.2-327.18(D). The refund does not include any monies paid toward restitution, costs, or forfeitures. Follow the **FAS Refund Procedures** via **FAS Help**. (The court may wish to contact the General District Team for assistance when adjusting the balance in the individual account.)

If no Individual Account exists for the charge that is being expunged, the petitioner must present an official court receipt to receive a refund of any monies paid to the court.

When the order for expungement is received from the Virginia State Police, follow the current expungement process as follows:

### **Expungement of Police and Court Records - Adults [Va. Code § 19.2-392.2](#)**

An action to delete all police and court reports, including electronic records, pertaining to a criminal or traffic case when any of the following has occurred: acquittal nolle prosequi, dismissal, absolute pardon, an individual's name is used without consent and authorization, or case is dismissed because the person arrested is not the person named on the summons, warrant, or indictment.

Expungement is not available for those persons whose criminal case resulted in deferred dismissal following a finding of evidence sufficient to convict the defendant. Dismissals pursuant to [Va. Code § 19.2-151](#) are eligible for expungement. **Note:** When a record is expunged the record is not destroyed but removed from public access and sealed.

#### **Petition filed in Circuit Court even if the case was disposed of in District Court.**

Order of expungement entered by Circuit Court, forwarded to [Division of State Police](#) who ultimately notifies District Court of expungement requirement. Do not proceed with expungement procedures until notified by State Police to do so.

**Special Note:** The clerk should maintain a separate reference index to identify all cases expunged and sealed. A list with the envelope #, defendant name, expungement date and destruction date. This reference index should be kept in a separate area for reference if needed.

Step:	Description:
1.	Clerk receives a letter from State Police requesting notification of compliance with expungement procedures. See <a href="#">Va. Code § 9.1-134</a> .
2.	Clerk deletes original case from GCMS. See General District Case Management System User's Guide

Step:	Description:
3.	Docket sheet information must be redacted. Docket sheets for cases contained in the automated systems should not be retained and are required to be destroyed; however, if docket sheets, indices or any other hearing disposition report are retained, the entries of the case identifying the individual, charge and disposition must be eliminated with heavy black ink.:
4.	<p>Clerk places original case documents, including expungement letter from Virginia State Police and Circuit Court order, in an envelope which is physically sealed and writes on the outside of the envelope the case number, and date enclosed materials are to be destroyed based on the retention schedule specified in <a href="#">Va. Code § 16.1-69.55</a>.</p> <p>Stamp or print the following on the envelope:</p> <p>Expunged pursuant to <a href="#">Va. Code § 19.2-392.2</a> (A) by order of the Circuit Court on (date) by (Signature of Clerk/Deputy Clerk). This record to be unsealed only on court order.</p>
5.	Clerk places sealed envelope in secure storage area that is not accessible to public. Clerk places number on the envelope for reference index. See special note.
6.	<p>Clerk sends written notification of compliance within 60 days of receipt of State Police request for expungement to Virginia State Police:</p> <p>Manager, Central Criminal Records Exchange            Virginia State Police            P. O. Box 27472            Richmond, Virginia 23261-7472</p>

### Petition filed in applicable District Court

ID used without consent or authorization by another person charged or arrested using such name or identification. Petition may be filed in the court which disposed of the charge.

**Special Note:** The clerk should maintain a separate reference index to identify all cases expunged and sealed. A list with the envelope #, defendant name, expungement date and destruction date. This reference index should be kept in a separate area for reference if needed.

Step:	Description:
1.	Clerk receives DC-363: Petition Or Motion For Expungement. The petition/motion shall include one complete set of fingerprints obtained from a law enforcement agency. No person shall be required to pay any fees for the



Step:	Description:
	<p>filing of a petition. Petitioner provides a copy of petition to a law enforcement agency to obtain fingerprint card <a href="#">Va. Code § 19.2-392.2 (E)</a>.</p> <p><b>Comments:</b> Petition/motion should be accompanied by certified or attested copy of warrant or summons, if available, and contain:</p> <p>case number, date of arrest, name of arresting agency specific charge to be expunged, date of final disposition, petitioner’s name and date of birth and full name of person, if known, who used petitioner’s name when charge was made.</p> <p>Petitioner may list multiple charges to be expunged on one petition.</p>
2.	<p>Clerk sets date for hearing on petition for no less than sixty days and provides petitioner with two copies of petition listing case number and court date .</p> <p><b>Note:</b> Commonwealth Attorney has twenty-one days from service in which to object to expungement or may give written notice to the court that he does not object to the petition.</p>
3.	<p>Enter the hearing date and time for the petition on the original case as an administrative hearing.</p> <p>Key the administrative hearing date on the next hearing line directly below the final hearing date. Place <b>AH</b> in the Hearing Type field next to the administrative hearing date and time.</p>
4.	<p>Clerk issues DC-512: Notice of Hearing, to the sheriff for service on the Commonwealth’s Attorney along with a copy of the petition.</p> <p><b>Comments:</b> Based on local policy, complainant may be notified by court upon filing of petition or Commonwealth Attorney may subpoena complainant. Commonwealth Attorney may file answer or objection within twenty-one days of service or simply endorse petitioner’s order of expungement.</p>
5.	<p>Original conviction information should not be changed until expungement order processing.</p>
6.	<p>If expungement is ordered, issue DC-365: Expungement Order. Clerk is required to send a certified copy of the order, along with a certified copy of the DC-363: Petition or Motion For Expungement to VSP <a href="#">Va. Code § 19.2-392.2 (I)</a>.</p> <p>Upon completion of the hearing, the court shall return the fingerprint card to the petitioner. However, if the petition has not been previously sent to Virginia State Police by law enforcement, the fingerprint card must be retained and forwarded by the court with a copy of the petition and order.</p>

Step:	Description:
	<p>If no hearing is conducted, upon the entry of an order of expungement or an order denying the petition for expungement, the court shall cause the fingerprint card to be destroyed unless, within 30 days of the date of the entry of the order, the petitioner requests the return of the fingerprint card in person from the clerk of the court or provides the clerk of the court a self-addressed, stamped envelope for the return of the fingerprint card.</p> <p>In order to track the 30-day time period, enter an administrative hearing as a reminder to review the file and destroy the fingerprints if they have not been returned to the petitioner.</p> <p>The clerk should not expunge any documents or records until State Police instructs the clerk to do so in writing.</p> <p><b>Comments:</b> Following the termination of appeal period send certified copy of DC-365: Expungement Order, along with certified copy of DC-363: Petition or Motion For Expungement to:</p> <p>Manager, Central Criminal Records Exchange Virginia State Police P. O. Box 27472 Richmond, Virginia 23261-7472</p>
7.	<p>Clerk receives a letter from State Police requesting notification of compliance with expungement procedures <a href="#">Va. Code § 9.1-134</a>.</p> <p><b>Note:</b> Once Virginia State Police has processed the expungement, they will forward the letter/order along with the fingerprints to you to perform the expungement. After you complete the expungement, return the fingerprint card to the petitioner, and notify State Police that the expungement has been completed.</p>
8.	<p>Clerk deletes expunged case(s) from GCMS. See General District Court Case Management System User's Guide.</p>
9.	<p>If docket sheet has been retained, information must be redacted.</p> <p><b>Comments:</b> Docket sheets for cases contained in the automated systems should not be retained and are required to be destroyed. However, if docket sheets, indices or any other hearing disposition report are retained, the entries of the case identifying the individual, charge and disposition must be eliminated with heavy black ink.</p>

Step:	Description:
10.	<p>Financial and other records.</p> <p><b>Comments:</b> Zero out fines and costs in the individual account that were assessed on the original case to be expunged if an order of expungement is issued. If the original charge transmitted to DMV, an amended abstract noting “ID fraud – case reopened and dismissed” must be prepared and forwarded to DMV to remove the charge from the record. Seal or redact any printed financial report where the expunged case appears.</p>
11.	<p>Clerk places original case documents including DC-363: Petition or Motion for Expungement and DC-365: Expungement Order in an envelope which is physically sealed and writes on the outside of the envelope the case number, and date enclosed materials are to be destroyed based on the retention schedule specified in <a href="#">Va. Code § 16.1-69.55</a>.</p> <p>Stamp or print the following on the envelope:</p> <p>“Expunged pursuant to § 19.2-392.2 (A) by order of the Circuit Court on (date) by (Signature of Clerk/Deputy Clerk). This record to be unsealed only on court order.”</p> <p>Maintain sealed envelopes in secure storage area, which is not accessible to public. Destroy following expiration of retention period for the original case specified in <a href="#">Va. Code § 16.1-69.55</a> or <a href="#">Va. Code § 16.1-306</a>. Adult traffic or criminal records are kept ten years from disposition. An order of expungement can be voided for up to three years from the date of entry. Therefore, the expunged record must be kept until the three-year period expires even if the ten-year destruction date occurs first <a href="#">Va. Code § 19.2-392.2</a>.</p>
12.	<p>Clerk sends written notification of compliance within 60 days of receipt of State Police request for expungement to VSP:</p> <p>Manager, Central Criminal Records Exchange Virginia State Police P. O. Box 27472 Richmond, Virginia 23261-7472</p>

**Wrong Person Arrested on Warrant or Summons/Charge Dismissed due to wrong arrest pursuant to [Va. Code § 19.2-392.2 \(H\)](#)**

**Special Note:** The clerk should maintain a separate reference index to identify all cases expunged and sealed. A list with the envelope #, defendant name, expungement date and destruction date. This reference index should be kept in a separate area for reference if needed.

Step:	Description:
1.	<p>Clerk receives DC-363: Petition or Motion for Expungement. The petition/motion shall include one complete set of fingerprints obtained from a law enforcement agency.</p> <p>No person shall be required to pay any fees for the filing of a petition <a href="#">Va. Code § 19.2-392.2 (H)</a>, <a href="#">Va. Code § 19.2-392.2 (E)</a>.</p> <p><b>Comments:</b> DC-363: <a href="#">Petition or Motion for Expungement</a>, may be used or the person filing the motion may write letter of request.</p>
2.	<p>Clerk sets date for hearing on petition. Provide a copy of the Petition to the Commonwealth's Attorney.</p> <p><b>Comments:</b> Clerk should provide petitioner with a copy of petition listing case number and court date.</p>
3.	<p>Enter the hearing date and time for the petition on the original case as an administrative hearing.</p> <p>Key the administrative hearing date on the next hearing line directly below the final hearing date. Place <b>AH</b> in the Hearing Type field next to the administrative hearing date and time.</p>
4.	<p>If expungement is ordered, issue DC-365: Expungement Order. Clerk is required to send a certified copy of the order and petition to VSP <a href="#">Va. Code § 19.2-392.2 (I)</a>.</p> <p><b>Comments:</b> Following the termination of appeal period send a certified copy of DC-365: Expungement Order, along with a certified copy of the DC-363: Petition or Motion for Expungement to:</p> <p>Manager, Central Criminal Records Exchange Virginia State Police P. O. Box 27472 Richmond, VA 23261-7472</p>
5.	<p>The clerk should not expunge any documents or records until State Police instructs the clerk to do so in writing.</p>
6.	<p>Clerk receives a letter from State Police requesting notification of compliance with expungement procedures <a href="#">Va. Code § 9.1-134</a>.</p> <p><b>Note:</b> Once Virginia State Police has processed the expungement, they will forward the letter/order along with the fingerprints to you to perform the</p>

Step:	Description:
	expungement. After you complete the expungement, return the fingerprint card to the petitioner, and notify State Police that the expungement has been completed.
7.	Clerk deletes the expunged case(s) from GCMS. See General District Case Management System User's Guide.
8.	<p>If docket sheet has been retained, information must be redacted.</p> <p><b>Comments:</b> Docket sheets for cases contained the automated systems should not be retained and are required to be destroyed; however, if docket sheets, indices or any other hearing disposition report are retained, the entries of the case identifying the individual, charge and disposition must be eliminated with heavy black ink.</p>
9.	<p>Clerk places original case documents including DC-363: Petition or Motion for Expungement and DC-365: Expungement Order in an envelope which is physically sealed and writes on the outside of the envelope the case number, and date enclosed materials are to be destroyed based on the retention schedule specified in <a href="#">VA. Code § 16.1-69.55</a>.</p> <p><b>Comments:</b> Stamp or print the following on the envelope:</p> <p>Expunged pursuant to <a href="#">Va. Code § 19.2-392.2 (A)</a> by order of the Circuit Court on (date) by (Signature of Clerk/Deputy Clerk). This record to be unsealed only on court order.</p> <p>Maintain sealed envelopes in secure storage area, which is not accessible to the public.</p> <p>Destroy following expiration of retention period for the original case specified in <a href="#">Va. Code § 16.1-69.55</a> or <a href="#">Va. Code 16.1-306</a>. Adult traffic or criminal records are kept ten years from disposition. An order of expungement can be voided for up to three years from the date of entry. Therefore, the expunged record must be kept until the three-year period expires even if the ten-year destruction date occurs first <a href="#">Va. Code § 19.2-392.2</a>.</p>
10.	<p>Clerk sends written notification of compliance within 60 days of receipt of State Police request for expungement to VSP:</p> <p>Manager, Central Criminal Records Exchange Virginia State Police P. O. Box 27472 Richmond, Virginia 23261-7472</p>

### Expungement of Original Charge only (Partial Expungement); Dressner v. Commonwealth, 285 Va. 1 (2013)

Order of expungement entered by Circuit Court, forwarded to Division of State Police who ultimately notifies District Court of expungement requirement. Do not proceed with expungement procedures until notified by State Police to do so.

**Special Note:** The clerk should maintain a separate reference index to identify all cases expunged and sealed. A list with the envelope #, defendant name, expungement date and destruction date. This reference index should be kept in a separate area for reference if needed.

Step:	Description:
1.	Clerk receives a letter from State Police requesting notification of compliance with expungement procedures. See <a href="#">Va. Code § 9.1-134</a> .
2.	Clerk amends original charge in GCMS to reflect amended charge. See General District Case Management System User's Guide.
3.	Copy the original charging documents. Redact the original charging information from the copied documentation, including code section violated and verbiage. Care should be taken to ensure that original charge is redacted from all copied case documents.  <b>Comments:</b> If you are an imaging court, rescan the case papers once all required information has been redacted.
4.	Clerk places the original case documents, including expungement letter from Virginia State Police and Circuit Court order, in an envelope which is physically sealed and writes on the outside of the envelope the case number, and date enclosed materials are to be destroyed based on the retention schedule specified in <a href="#">Va. Code § 16.1-69.55</a> .  Stamp or print the following on the envelope:  Expunged pursuant to § 19.2-392.2 (A) by order of the Circuit Court on (date) by (Signature of Clerk/Deputy Clerk). This record to be unsealed only on court order.
5.	Clerk places sealed envelope in secure storage area that is not accessible to public. Clerk places number on the envelope for reference index. See special note.

Step:	Description:
	<b>Comments:</b> Docket sheets for cases contained the automated systems should not be retained and are required to be destroyed; however, if docket sheets, indices or any other hearing disposition report are retained, the entries of the case identifying the individual, charge and disposition must be eliminated with heavy black ink.
6.	Clerk sends written notification of compliance within 60 days of receipt of State Police request for expungement to VSP:  Manager, Central Criminal Records Exchange Virginia State Police P. O. Box 27472 Richmond, Virginia 23261-7472

### Petition to Access Expunged Record [Va. Code § 19.2-392.3](#)

Upon a verified petition requesting access to an expunged court or police record that is filed by the person who was charged with the offense that was ordered to be expunged, with notice to the attorney for the Commonwealth, the court may enter an order allowing that person and their counsel to review and copy the expunged court or police record. However, no agency or entity shall be required to allow the person or their counsel to review or copy the expunged court or police record if such record has been destroyed.

Any person who willfully violates this section is guilty of a Class 1 misdemeanor. However, unless otherwise prohibited by law, any person who opens, reviews, or discloses information from an expunged court or police record after being provided a copy of such record by the person who was charged with the offense that was ordered to be expunged, or by counsel for such person, shall not be in violation of this section

Step:	Description:
1.	Clerk receives a CC-1474(A), Petition and Order to Access Expunged Record. The petition should be entered in the Civil division of GCMS.  Index in GCMS using the following codes: <ul style="list-style-type: none"> <li>• CASE TYPE: <b>OT</b> – Other</li> <li>• Petitioner is Plaintiff; Commonwealth of Virginia is the Defendant.</li> <li>• Do not add any information in the “Further Case Information,” “Remarks,” or “Additional Information” fields.</li> <li>• Scan petition into GDIS, tag and seal. Place the CC-1474(A), Petition in a DC-392, Sealed Documents Envelope.</li> </ul>

Step:	Description:
2.	Clerk will provide a copy to the Commonwealth’s Attorney and set for hearing.
3.	If the petition is granted, the petitioner will be given access to the case. Provide a copy to the petitioner upon request. Place a copy of the Petition and Order with the expunged case and reseal and file.  Finalize the case in <b>GCMS</b> with “O” and “O.”
4.	Clerk places the original CC-1474(A) in a DC-392, Sealed Documents Envelope and file in the ended case files.
5.	Upon appeal collect writ tax/costs.

### Forms

CC-1474(A)	Petition and Order to Access Expunged Record
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### References

[Va. Code § 19.2-392.2 et seq.](#)

### Voided Expungement

Any order entered where the court or parties failed to strictly comply with the procedures set forth or the court enters an order of expungement contrary to law, shall be voidable upon motion and notice made within three years of the entry of such order.

Step:	Description:
1.	Clerk will receive a letter from Virginia State Police directing that the expungement order has been voided.  <b>Comments:</b> The clerk should not unseal any documents or records until State Police instructs the clerk to do so in writing.
2.	Go to secure storage area and pull the correct expungement. Enter the information back in GCMS. It will be necessary to change the file date.
3.	File case papers back in their original location.
4.	Clerk sends written notification of compliance within 60 days of receipt of State Police request for reinstatement of expungement to VSP.



**Forms**

DC-363	<a href="#">Petition or Motion for Expungement</a>
DC-365	Expungement Order
DC-512	Notice of Hearing

**References**

[Va. Code § 19.2-392.2](#) et seq.

## Appendices

## Appendix A – Civil Forms and Fees

Please refer to the [Civil Fees Matrix](#) in the Quick Reference Materials Section of the Judicial Services web page or to the [General District Court Civil Filing Fee Calculation](#) for the most up-to-date information.

### DC-325: Request for Witness Subpoena

[Va. Code § 8.01-407](#), [Va. Code § 17.1-617](#), [Va. Code § 19.2-267](#); [Rule](#): 3A:12, 7A:12, 8:13

#### Description

This form is used to request that a witness appear in court.

#### Fees & Other Monies Assessed

Type:	Revenue Code:	Amount Charged:	References:
Process & Service Fees	206	\$12 per service collected in civil cases only	<a href="#">Va. Code § 17.1-272</a>
High Constable	230	Determined by local ordinance in locality with a high constable/applies only to civil papers to be served in localities with high constables	<a href="#">Va. Code § 17.1-273</a>

No fees are charged for filing or serving of any protective order. Also, service fees are not collected for issuing subpoenas or subpoena duces tecum in protective order hearings [Va. Code § 19.2-152.10](#) and [Va. Code § 17.1-272\(C\)](#).

### DC-326: [Subpoena for Witnesses](#)

[Va. Code § 8.01-407](#), [Va. Code § 16.1-265](#), [Va. Code § 17.1-617](#), [Va. Code § 19.2-267](#); [Rule](#): 3A:12, 7A:12, 8:13

#### Description

This subpoena is served by an authorized officer on a witness, requiring them to appear in court on behalf of a plaintiff or defendant in a civil case.

### Fees & Other Monies Assessed

Type:	Revenue Code:	Amount Charged:	References:
Process & Service Fees	206	\$12 per service collected in civil cases only	<a href="#">Va. Code § 17.1-272</a>
High Constable	230	Determined by local ordinance in locality with a high constable/applies only to civil papers to be served in localities with high constables	<a href="#">Va. Code § 17.1-273</a>

**Important:** No fees are charged for filing or serving of any protective order. Also, service fees are not collected for issuing subpoenas or subpoena duces tecum in protective order hearings [Va. Code § 19.2-152.10](#) and [Va. Code § 17.1-272\(C\)](#).

### DC-336: [Subpoena Duces Tecum](#)

[Va. Code § 16.1-89](#), [Va. Code § 16.1-131](#), [Va. Code § 16.1-265](#); [Rule](#): 3A: 12, 4:9(c)

#### Description

This form is used to require a custodian, or someone acting on the custodian's behalf, to produce the items listed on the subpoena. It may also request the custodian to appear in person in court with the items subpoenaed. This form is used in civil cases only. If the subpoena is for medical records DC-350: [Notice to Health Care Entities-Subpoena Duces Tecum for Health Records](#), should be attached to DC-336.

### Fees & Other Monies Assessed

Type:	Revenue Code:	Amount Charged:	References:
Process & Service Fees	206	\$12 per service collected in civil cases only	<a href="#">Va. Code § 17.1-272</a>
High Constable	230	Determined by local ordinance in locality with a high constable/applies only to civil	<a href="#">Va. Code § 17.1-273</a>

		papers to be served in localities with high constables	
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**Important:** No fees are charged for filing or serving of any protective order. Also, service fees are not collected for issuing subpoenas or subpoena duces tecum in protective order hearings [Va. Code § 19.2-152.10](#) and [Va. Code § 17.1-272\(C\)](#).

### **DC-350: [Notice to Health Care Entities -Subpoena Duces Tecum for Health Records Va. Code § 32.1-127.1:03](#)**

#### **Description**

The Virginia Code requires that, when the health records of a pro se party or non-party individual witness are subpoenaed from the health care entity, a notice must be provided to the individual. The specific language of the notice is set out in the statute. This form contains the language required by the statute. **Note:** This is a master form and should be attached to the DC-336: [Subpoena Duces Tecum](#).

#### **Fees & Other Monies Assessed**

Type:	Revenue Code:	Amount Charged:	References:
Process & Service Fees	206	\$12 per service collected in civil cases only	<a href="#">Va. Code § 17.1-272</a>
High Constable	230	Determined by local ordinance in locality with a high constable/applies only to civil papers to be served in localities with high constables	<a href="#">Va. Code § 17.1-273</a>

### **DC-368: Motion to Reopen (Criminal/ Traffic)/Motion to Rehear (Civil)/Motion for New Trial (Civil) [Va. Code § 8.01-322](#), [Va. Code § 16.1-97.1](#), [Va. Code § 16.1-133.1](#), [Va. Code § 20-66](#)**

#### **Description**

This form is used when an applicant wishes to have the court re-open a case.

#### **Fees & Other Monies Assessed**

Type:	Revenue Code:	Amount Charged:	References:
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Process & Service Fees	206	\$12 per service collected in civil cases only	<a href="#">Va. Code § 17.1-272</a>
High Constable	230	Determined by local ordinance in locality with a high constable/applies only to civil papers to be served in localities with high constables	<a href="#">Va. Code § 17.1-273</a>

**DC-382: Emergency Protective Order** [Va. Code § 19.2-152.8](#)**Description**

A magistrate or a judge of the circuit, general district, or juvenile and domestic relations district court has the authority to issue an emergency protective order in cases where an individual engages in any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury.

**Fees & Other Monies Assessed**

Fees not assessed.

**DC-384: Preliminary Protective Order** [Va. Code § 19.2-152.9](#)**Description**

This order may be entered after a hearing on a petition for a preliminary protective order. The order is good for a period of fifteen days and is effective when served on the respondent. The address and telephone number of the alleged victim should not be entered in the service box on the reverse of this form. This information is to be kept confidential. Form DC-621: [Non-Disclosure Addendum](#) should be used to collect this information.

**Fees & Other Monies Assessed**

Fees not assessed.

**DC-385: Protective Order** [Va. Code § 19.2-152.10](#)**Description**

This order may be entered after a hearing on a petition for a protective order, without the entry of a preliminary protective order. The order may be entered for a period of two years.

**Note:** The address and telephone number of the petitioner should not be entered in the

service box on the reverse of this form. This information is to be kept confidential. Form DC-621: [Non-Disclosure Addendum](#) should be used to collect this information.

**Fees & Other Monies Assessed**

Fees not assessed.

**DC-400: Mediation Orientation Order of Referral [Va. Code § 8.01-576.5](#)****Description**

This form is to be used when a court refers the parties before it to a dispute resolution evaluation.

**Fees & Other Monies Assessed**

Fees not assessed.

**DC-401: Order for Appointment of Guardian Ad Litem [Va. Code § 8.01-9](#)****Description**

This form may be used in all types of cases in general district court where there is a need to appoint a guardian *ad litem*.

- Fees & Other Monies Assessed
- Fees not assessed

**DC-402: [Warrant in Debt – Small Claims Division](#) [Va. Code § 16.1-79](#), [Va. Code § 16.1-122.3](#)****Description**

This form is used when the plaintiff wants to file a civil claim for a judgment for money in the small claims division of the general district court. A case may be filed in the small claims division only when the amount claimed is \$5,000 or less. The amount charged excludes interest, attorney's fees, and costs. The law library fee is not assessed against the Commonwealth, any political subdivision, or the Federal government [Va. Code § 42.1-70](#).

**Fees & Other Monies Assessed**

Total CHMF and law library fee cannot exceed \$6.

Type:	Revenue Code:	Amount Charged:	References:
Processing Fee	118	\$26	<a href="#">Va. Code § 16.1-69.48:2</a>
Courts Technology Fund	170	\$10	<a href="#">Va. Code § 16.1-69.48:2</a>
CHCF	228	Not to exceed \$3 where amount in controversy exceeds \$500	<a href="#">Va. Code § 17.1-281</a>
CHMF	229	Not to exceed \$2	<a href="#">Va. Code § 17.1-281</a>
Law Library	219	Not to exceed \$4	<a href="#">Va. Code § 42.1-70</a>
Legal Aid	123	\$9	<a href="#">Va. Code § 17.1-278</a>
	147	\$1	
Process & Service Fees	206	\$12 per service	<a href="#">Va. Code § 17.1-272</a>
High Constable	230	Determined by local ordinance in locality with a high constable applies only to civil papers to be served in localities with high constables	<a href="#">Va. Code § 17.1-273</a>

**DC-404: [Warrant in Detinue – Small Claims Division](#) [Va. Code § 16.1-79](#)**

**Description**

This form is used when the plaintiff wants to file a civil claim for the return of property in the small claims division of the general district court. A case may be filed in the small claims division only when the value of the property sought is worth \$5,000 or less.

**Fees & Other Monies Assessed**

Total CHMF and law library fee cannot exceed \$6.



Type:	Revenue Code:	Amount Charged:	References:
Processing Fee	118	\$26	<a href="#">Va. Code § 16.1-69.48:2</a>
Courts Technology Fund	170	\$10	<a href="#">Va. Code § 16.1-69.48:2</a>
CHCF	228	Not to exceed \$3 where amount in controversy exceeds \$500	<a href="#">Va. Code § 17.1-281</a>
CHMF	229	Not to exceed \$2	<a href="#">Va. Code § 17.1-281</a>
Law Library	219	Not to exceed \$4	<a href="#">Va. Code § 42.1-70</a>

Type:	Revenue Code:	Amount Charged:	References:
Legal Aid	123	\$9	Va. Code <a href="#">§ 17.1-278</a>
	147	\$1	
Process & Service Fees	206	\$12 per service	Va. Code <a href="#">§ 17.1-272</a>
High Constable	230	Determined by local ordinance in locality with a high constable applies only to civil papers to be served in localities with high constables	Va. Code <a href="#">§ 17.1-273</a>

### DC-405: Petition To Test Blood-Borne Pathogens [Va. Code § 32.1- 45.2](#)

#### Description

This is a master form. It is to be used when an employee of a public safety agency or a victim or witness to a crime wishes to petition the court to have someone else undergo testing for HIV or Hepatitis B or C virus where consent for testing has been withheld.

**Fees & Other Monies Assessed**

Fees not assessed.

**DC-406: [Petition to Require Blood Test Va. Code § 32.1-45.1](#)**

**Description**

This is a master form. This form is used when certain individuals have been exposed to bodily fluids of another and wishes to petition the court to have the other person undergo testing for HIV or Hepatitis B or C virus where consent for testing has been withheld.

**Fees & Other Monies Assessed**

Fees not assessed.

**DC-407: [Request for Hearing – Exemption Claim Va. Code § 8.01-546.1](#)**

**Description**

This form is to be used when a judgment debtor requests a hearing to determine if certain assets are exempt from the judgment creditor. It is to be attached to debtor's copy of Interrogatory, Detinue Seizure Order, Distress Warrant, Attachment Summons, Writ of Fieri Facias, and Writ of Possession and Fi Fa in Detinue.

**Fees & Other Monies Assessed**

Fees not assessed.

**DC-408: Plaintiff's Bond for Judgment on Lost Note or Other Instrument [Va. Code § 8.01-32](#)**

**Description**

This form is to be used when a plaintiff has obtained judgment against the defendant on the basis of a past-due lost bond, note, or other written evidence of debt; however, the plaintiff must post a bond with the court payable to the defendant.

**Fees & Other Monies Assessed**

Fees not assessed.

## DC-410: Affidavit for Service of Process on the Secretary of the Commonwealth [Va. Code § 8.01-301](#)

### Description

This form is prepared by a party seeking service of process through the [Secretary of the Commonwealth](#). Payment for this service is made directly to the Secretary of the Commonwealth.

### Fees & Other Monies Assessed

Fee(s) are made payable to the Secretary of the Commonwealth and plaintiff mails to:

Secretary of the Commonwealth  
Service of Process Department  
P.O. Box 2542  
Richmond, VA 23218-2452

Type:	Revenue Code:	Amount Charged:	References:
Service Fee(s)	N/A	\$28.00 per service	<a href="#">Va. Court § 2.2-409</a> <a href="#">Va. Court § 8.01-310</a>

## DC-411: Service Other Than By Virginia Sheriff [Va. Code § 8.01-32](#)

### Description

Private process servers use this form to provide proof of service. The form is attached to the original process.

### Fees and Other Monies Assessed

Process servers determine their own fees.

## DC-412: [Warrant in Debt Va. Code § 16.1-79](#)

### Description

In this action, a person is suing to recover an unpaid debt owed to them by the defendant(s) named in the suit. The amount of the suit cannot exceed \$50,000. The amount charged excludes interest, attorney's fees, and costs.

### Fees & Other Monies Assessed

Total CHMF and law library fee cannot exceed \$6.

### Fees & Other Monies Assessed

Total CHMF and law library fee cannot exceed \$6.

Type:	Revenue Code:	Amount Charged:	References:
Processing Fee	118	\$26	<a href="#">Va. Code § 16.1-69.48:2</a>
Courts Technology Fund	170	\$10	<a href="#">Va. Code § 16.1-69.48:2</a>
CHCF	228	Not to exceed \$3 where amount in controversy exceeds \$500	<a href="#">Va. Code § 17.1-281</a>
CHMF	229	Not to exceed \$2	<a href="#">Va. Code § 17.1-281</a>
Law Library	219	Not to exceed \$4	<a href="#">Va. Code § 42.1-70</a>
Legal Aid	123	\$9	<a href="#">Va. Code § 17.1-278</a>
	147	\$1	
Process & Service Fees	206	\$12 per service	<a href="#">Va. Code § 17.1-272</a>
High Constable	230	Determined by local ordinance in locality with a high constable applies only to civil papers to be served in localities with high constables	<a href="#">Va. Code § 17.1-273</a>

### DC-413: [Certificate of Mailing Posted Service Va. Code § 8.01-296 \(2\)\(b\)](#)

#### Description

This form indicates how the plaintiff notified the defendant of the suit.

### Fees & Other Monies Assessed

Fees not assessed.

### DC-414: [Warrant in Detinue](#)

[Va. Code § 8.01-114](#), [Va. Code § 8.01-121](#), [Va. Code § 16.1-79](#)

### Description

A proceeding to recover personal property unlawfully withheld from the plaintiff. Detinue seizure is issued after a hearing by a magistrate or judge. The suit cannot exceed \$50,000.

### Fees & Other Monies Assessed

Total CHMF and law library fee cannot exceed \$6.

Type:	Revenue Code:	Amount Charged:	References:
Processing Fee	118	\$26	<a href="#">Va. Code § 16.1-69.48:2</a>
Courts Technology Fund	170	\$10	<a href="#">Va. Code § 16.1-69.48:2</a>
CHCF	228	Not to exceed \$3 where amount in controversy exceeds \$500	<a href="#">Va. Code § 17.1-281</a>
CHMF	229	Not to exceed \$2	<a href="#">Va. Code § 17.1-281</a>
Law Library	219	Not to exceed \$4	<a href="#">Va. Code § 42.1-70</a>
Legal Aid	123	\$9	<a href="#">Va. Code § 17.1-278</a>
	147	\$1	
Process & Service Fees	206	\$12 per service	<a href="#">Va. Code § 17.1-272</a>
High Constable	230	Determined by local ordinance in locality with a high constable applies only to civil papers to be served in localities with high constables	<a href="#">Va. Code § 17.1-273</a>

**DC-415: [Detinue Seizure Petition Va. Code § 8.01-114](#)**

**Description**

A petition in detinue for pretrial seizure pursuant to this article may be filed during the pendency of a detinue proceeding that commenced on a warrant or motion for judgment and no additional civil fees are collected except for any sheriff service fees.

**Fees & Other Monies Assessed**

Total CHMF and law library fee cannot exceed \$6.

Type:	Revenue Code:	Amount Charged:	References:
Processing Fee	118	\$26	<a href="#">Va. Code § 16.1-69.48:2</a>
Courts Technology Fund	170	\$10	<a href="#">Va. Code § 16.1-69.48:2</a>
CHCF	228	Not to exceed \$3 where amount in controversy exceeds \$500	<a href="#">Va. Code § 17.1-281</a>
CHMF	229	Not to exceed \$2	<a href="#">Va. Code § 17.1-281</a>
Law Library	219	Not to exceed \$4	<a href="#">Va. Code § 42.1-70</a>
Legal Aid	123	\$9	<a href="#">Va. Code § 17.1-278</a>
	147	\$1	
Process & Service Fees	206	\$12 per service	<a href="#">Va. Code § 17.1-272</a>
High Constable	230	Determined by local ordinance in locality with a high constable applies only to civil papers to be served in localities with high constables	<a href="#">Va. Code § 17.1-273</a>

## DC-416: Detinue Seizure Order

[Va. Code § 8.01-114](#), [Va. Code § 8.01-115](#), [Va. Code § 8.01-116](#), [Va. Code § 8.01-117](#), [Va. Code § 8.01-119](#)

### Description

This form commands the sheriff to seize property and summon the defendant to appear in court.

### Fees & Other Monies Assessed

Type:	Revenue Code:	Amount Charged:	References:
Processing & Service Fees	206	\$25 per service	<a href="#">Va. Code § 17.1-272 (B)</a>

## DC-418: [Affidavit - Default Judgment - Servicemembers Civil Relief Act Va. Code § 8.01-15.2](#)

### Description

When a defendant does not make an appearance in any civil action or proceeding, the court shall not enter a judgment by default until the plaintiff files this affidavit to determine whether or not the defendant is in the military service.

### Fees & Other Monies Assessed

Fees not assessed.

## DC-419: Motion and Order for Voluntary Nonsuit [Va. Code § 8.01-380](#)

### Description

This form is used when the plaintiff wishes to take more than one nonsuit against the same party to the proceeding. The court, in the event additional nonsuits are allowed, may assess costs and reasonable attorneys' fees against the nonsuiting party.

### Fees & Other Monies Assessed

Total CHMF and law library fee cannot exceed \$6.

Type:	Revenue Code:	Amount Charged:	References:
Processing Fee	118	\$26	<a href="#">Va. Code § 16.1-69.48:2</a>
Courts Technology Fund	170	\$10	<a href="#">Va. Code § 16.1-69.48:2</a>
CHCF	228	Not to exceed \$3 where amount in controversy exceeds \$500	<a href="#">Va. Code § 17.1-281</a>
CHMF	229	Not to exceed \$2	<a href="#">Va. Code § 17.1-281</a>
Law Library	219	Not to exceed \$4	<a href="#">Va. Code § 42.1-70</a>
Legal Aid	123	\$9	<a href="#">Va. Code § 17.1-278</a>
	147	\$1	
Process & Service Fees	206	\$12 per service	<a href="#">Va. Code § 17.1-272</a>
High Constable	230	Determined by local ordinance in locality with a high constable applies only to civil papers to be served in localities with high constables	<a href="#">Va. Code § 17.1-273</a>

**DC-421: [Summons for Unlawful Detainer Va. Code § 8.01-126](#)****Description**

This type of suit arises when a defendant unlawfully detains a house, land, or tenement that they are renting or leasing from the plaintiff. The plaintiff may sue for return of the premises and may also ask for unpaid rent, for damages caused by the unlawful detention, and for attorney's fees.

**Fees & Other Monies Assessed**

Total CHMF and law library fee cannot exceed \$6.

Type:	Revenue Code:	Amount Charged:	References:
Processing Fee	118	\$26	<a href="#">Va. Code § 16.1-69.48:2</a>



Type:	Revenue Code:	Amount Charged:	References:
Courts Technology Fund	170	\$10	<a href="#">Va. Code § 16.1-69.48:2</a>
CHCF	228	Not to exceed \$3 where amount in controversy exceeds \$500	<a href="#">Va. Code § 17.1-281</a>
CHMF	229	Not to exceed \$2	<a href="#">Va. Code § 17.1-281</a>
Law Library	219	Not to exceed \$4	<a href="#">Va. Code § 42.1-70</a>
Legal Aid	123	\$9	<a href="#">Va. Code § 17.1-278</a>
	147	\$1	
Process & Service Fees	206	\$12 per service	<a href="#">Va. Code § 17.1-272</a>
High Constable	230	Determined by local ordinance in locality with a high constable applies only to civil papers to be served in localities with high constables	<a href="#">Va. Code § 17.1-273</a>

**DC-423: Distress Petition** [Va. Code § 8.01-130.4](#)**Description**

This type of civil action arises when a defendant-tenant refuses or fails to make rent payments to the landlord of the premises, and the landlord wants to take pre-trial action to insure the payment of rent. The plaintiff is attempting to preserve this right to recover the rent by having the court “distrain,” or seize, enough of the defendant’s property or debts to pay the rent due. The process is issued after a hearing by a magistrate or judge.

**Fees & Other Monies Assessed**

Total CHMF and law library fee cannot exceed \$6.

Type:	Revenue Code:	Amount Charged:	References:
Processing Fee	118	\$26	<a href="#">Va. Code § 16.1-69.48:2</a>
Courts Technology Fund	170	\$10	<a href="#">Va. Code § 16.1-69.48:2</a>
CHCF	228	Not to exceed \$3 where amount in controversy exceeds \$500	<a href="#">Va. Code § 17.1-281</a>
CHMF	229	Not to exceed \$2	<a href="#">Va. Code § 17.1-281</a>
Law Library	219	Not to exceed \$4	<a href="#">Va. Code § 42.1-70</a>
Legal Aid	123	\$9	<a href="#">Va. Code § 17.1-278</a>
	147	\$1	
Process & Service Fees	206	\$12 per service	<a href="#">Va. Code § 17.1-272</a>
High Constable	230	Determined by local ordinance in locality with a high constable applies only to civil papers to be served in localities with high constables	<a href="#">Va. Code § 17.1-273</a>

**DC-424: Distress Warrant** [Va. Code § 8.01-130.4](#)**Description**

This type of civil action arises when a defendant-tenant refuses or fails to make rent payments to the landlord of the premises. The plaintiff is attempting to preserve this right to recover the rent by having the court “distrain,” or seize, enough of the defendant’s property or debts to pay the rent due.

**Fees & Other Monies Assessed**

Type:	Revenue Code:	Amount Charged:	References:
Processing Fee	206	\$25 per service	<a href="#">Va. Code § 17.1-272 (B)</a>

## DC-428: Warrant In Debt – Interpleader [Va. Code § 16.1-79](#)

### Description

A third party, whose property is held by a judgment debtor, may wish to protect their interests in the property through this process (interpleader). The value of the property should not exceed \$50,000.

### Fees & Other Monies Assessed

Total CHMF and law library fee cannot exceed \$6.

Type:	Revenue Code:	Amount Charged:	References:
Processing Fee	118	\$26	<a href="#">Va. Code § 16.1-69.48:2</a>
Courts Technology Fund	170	\$10	<a href="#">Va. Code § 16.1-69.48:2</a>
CHCF	228	Not to exceed \$3 where amount in controversy exceeds \$500	<a href="#">Va. Code § 17.1-281</a>
CHMF	229	Not to exceed \$2	<a href="#">Va. Code § 17.1-281</a>
Law Library	219	Not to exceed \$4	<a href="#">Va. Code § 42.1-70</a>
Legal Aid	123	\$9	<a href="#">Va. Code § 17.1-278</a>
	147	\$1	
Process & Service Fees	206	\$12 per service	<a href="#">Va. Code § 17.1-272</a>
High Constable	230	Determined by local ordinance in locality with a high constable applies only to civil papers to be served in localities with high constables	<a href="#">Va. Code § 17.1-273</a>

## DC-429: Tenant's Assertion and Complaint [Va. Code § 55.1-1244](#)

### Description

This form is to be used when a tenant wishes to pay their rent into the court to require the landlord to make certain repairs to the rental property. The court holds the funds in an escrow account (509). This is a master form.

### Fees & Other Monies Assessed

Total CHMF and law library fee cannot exceed \$6.

Type:	Revenue Code:	Amount Charged:	References:
Processing Fee	118	\$26	<a href="#">Va. Code § 16.1-69.48:2</a>
Courts Technology Fund	170	\$10	<a href="#">Va. Code § 16.1-69.48:2</a>
CHCF	228	Not to exceed \$3 where amount in controversy exceeds \$500	<a href="#">Va. Code § 17.1-281</a>
CHMF	229	Not to exceed \$2	<a href="#">Va. Code § 17.1-281</a>
Law Library	219	Not to exceed \$4	<a href="#">Va. Code § 42.1-70</a>
Legal Aid	123	\$9	<a href="#">Va. Code § 17.1-278</a>
	147	\$1	
Process & Service Fees	206	\$12 per service	<a href="#">Va. Code § 17.1-272</a>
High Constable	230	Determined by local ordinance in locality with a high constable applies only to civil papers to be served in localities with high constables	<a href="#">Va. Code § 17.1-273</a>

**DC-430: Summons for Hearing [Va. Code § 32.1-164\(J\)](#)**

**Description**

This form may be used by the Virginia Department of Health in filing a violation of sewage handling and disposal regulation. There are no fees collected when the Commonwealth of Virginia is the plaintiff.

This form is also used to give notice of garnishment to joint bank account holders (only charge service fees for this). Additionally, this form may still be used for other processes, as needed.

**Fees & Other Monies Assessed**

Fees not assessed.

**DC-431: Tenant's Petition for Relief From Unlawful Exclusion [Va. Code § 55.1-1243](#)**

**Description**

This form is used when a tenant wishes to obtain an order from a general district court to recover possession and/or require the landlord to resume any interrupted service.

**Fees & Other Monies Assessed**

Total CHMF and law library fee cannot exceed \$6.

Type:	Revenue Code:	Amount Charged:	References:
Processing Fee	118	\$26	<a href="#">Va. Code § 16.1-69.48:2</a>
Courts Technology Fund	170	\$10	<a href="#">Va. Code § 16.1-69.48:2</a>
CHCF	228	Not to exceed \$3 where amount in controversy exceeds \$500	<a href="#">Va. Code § 17.1-281</a>
CHMF	229	Not to exceed \$2	<a href="#">Va. Code § 17.1-281</a>
Law Library	219	Not to exceed \$4	<a href="#">Va. Code § 42.1-70</a>
Legal Aid	123	\$9	<a href="#">Va. Code § 17.1-278</a>
	147	\$1	

Type:	Revenue Code:	Amount Charged:	References:
Process & Service Fees	206	\$12 per service	<a href="#">Va. Code § 17.1-272</a>
High Constable	230	Determined by local ordinance in locality with a high constable applies only to civil papers to be served in localities with high constables	<a href="#">Va. Code § 17.1-273</a>

### DC-432: Affidavit for Summons in Interpleader [Va. Code § 16.1-119](#)

#### Description

This form is to be used when the court has taken some action affecting the property. This form is used by a person not having custody of the property claimed by different parties to start a case or, in an existing case, to turn the property over to the court and let the real parties of interest litigate the issues. Requires court to prepare form DC-433: Summons in Interpleader and Order for Postponement of Sale.

**Note:** Service fees only will be collected on the DC-433: Summons in Interpleader and Order for Postponement of Sale.

#### Fees & Other Monies Assessed

Fees not assessed.

### DC-433: Summons in Interpleader and Order for Postponement of Sale [Va. Code § 16.1-119](#)

#### Description

This form is used in conjunction with the DC-432: [Affidavit for Summons in Interpleader](#). It is used to protect a third party's interest in property when the court has taken some action affecting the property. This form is used by a person not having custody of the property claimed by different parties to start a case or, in an existing case, to turn the property over to the court and let the real parties of interest litigate the issues.

**Fees & Other Monies Assessed**

Type:	Revenue Code:	Amount Charged:	References:
Process & Service Fees	206	\$12 per service	<a href="#">Va. Code § 17.1-272</a>
High Constable	230	Determined by local ordinance in locality with a high constable applies only to civil papers to be served in localities with high constables.	<a href="#">Va. Code § 17.1-273</a>

**DC-434: Motion to Set Aside Default Judgment [Va. Code § 8.01-428](#)**

**Description**

This motion is used to set aside a default judgment for various reasons.

**Fees & Other Monies Assessed**

Type:	Revenue Code:	Amount Charged:	References:
Process & Service Fees	206	\$12 per service	<a href="#">Va. Code § 17.1-272</a>
High Constable	230	Determined by local ordinance in locality with a high constable applies only to civil papers to be served in localities with high constables	<a href="#">Va. Code § 17.1-273</a>

**DC-435: [Affidavit and Petition for Order of Publication Va. Code § 8.01-296](#)**

**Description**

This form is to be used when interested parties to a case cannot be located and the petitioner wishes to provide them notice.

**Fees & Other Monies Assessed**

Fees not assessed.

**DC-436: Order of Publication** [Va. Code § 8.01-316](#)

**Description**

This form is to be used when interested parties to a case cannot be located and the petitioner wishes to provide them notice. This form is accompanied by the DC-435: [Affidavit and Petition for Order of Publication](#). **Note:** The petitioner must pay the costs of publication directly to the appropriate entity. A bond is necessary for the amount of the action in question.

**Fees & Other Monies Assessed**

Fees not assessed.

**DC-437: [Notice of Change of Address Va. Code § 16.1-88.03](#)**

**Description**

This form is to be used by pro se litigants in certain civil proceedings to promptly notify the clerk of court and any adverse parties of address changes. Post a sign in the clerk's office to notify litigants that this form is available on-demand and via the internet. Provide to pro se defendant and attach this form to DC-421: [Summons for Unlawful Detainer](#) when issued for service on the defendant.

**Fees & Other Monies Assessed**

Fees not assessed.

**DC-440: [Summons to Answer Interrogatories Va. Code § 8.01-506](#)**

**Description**

This form is used when one party in a lawsuit wishes to compel another party to answer questions. It is frequently used by creditors to determine what assets a debtor may have to pay a judgment.

**Fees & Other Monies Assessed**

Total CHMF and law library fee cannot exceed \$6.



Type:	Revenue Code:	Amount Charged:	References:
Processing Fee	118	\$26	<a href="#">Va. Code § 16.1-69.48:2</a>
Courts Technology Fund	170	\$10	<a href="#">Va. Code § 16.1-69.48:2</a>
CHCF	228	Not to exceed \$3 where amount in controversy exceeds \$500	<a href="#">Va. Code § 17.1-281</a>
CHMF	229	Not to exceed \$2	<a href="#">Va. Code § 17.1-281</a>
Law Library	219	Not to exceed \$4	<a href="#">Va. Code § 42.1-70</a>
Legal Aid	123	\$9	<a href="#">Va. Code § 17.1-278</a>
	147	\$1	
Process & Service Fees	206	\$12 per service	<a href="#">Va. Code § 17.1-272</a>
High Constable	230	Determined by local ordinance in locality with a high constable applies only to civil papers to be served in localities with high constables	<a href="#">Va. Code § 17.1-273</a>

**DC-445: [Attachment Petition Va. Code § 8.01-537](#), [Va. Code § 16.1-105](#)****Description**

This form is to be used when a plaintiff is suing to seize specific property in which the defendant has an interest in order to satisfy a potential judgment in favor of the plaintiff. An attachment is used when there is reasonable cause to believe that statutory grounds for attachment may exist pursuant to [Va. Code § 8.01-534](#). Process is issued by a magistrate or judge after a hearing. Once this form is filed, a DC-446: Attachment Summons is prepared by the court.

### Fees & Other Monies Assessed

Fees not assessed.

**Note:** Costs and service fees are collected on the DC-446: Attachment Summons.

## DC-446: Attachment Summons [Va. Code § 8.01-546](#)

### Description

This form is prepared by the court or magistrate when a plaintiff is suing to seize specific property in, which the defendant has an interest, in order to satisfy a potential judgment in favor of the plaintiff and the plaintiff has submitted a DC-445: [Attachment Petition](#). An attachment is used when there is reasonable cause to believe that statutory grounds for attachment may exist pursuant to [Va. Code § 8.01-533](#) or [Va. Code § 8.01-534](#). District courts have jurisdiction to try and decide attachment cases when the plaintiff's claim does not exceed \$50,000 exclusive of interest and attorney's fees.

### Fees & Other Monies Assessed

Total CHMF and law library fee cannot exceed \$6.

**Note:** Costs and service fees are not collected on the DC-445: [Attachment Petition](#).

Type:	Revenue Code:	Amount Charged:	References:
Processing Fee	118	\$26	<a href="#">Va. Code § 16.1-69.48:2</a>
Courts Technology Fund	170	\$10	<a href="#">Va. Code § 16.1-69.48:2</a>
CHCF	228	Not to exceed \$3 where amount in controversy exceeds \$500	<a href="#">Va. Code § 17.1-281</a>
CHMF	229	Not to exceed \$2	<a href="#">Va. Code § 17.1-281</a>
Law Library	219	Not to exceed \$4	<a href="#">Va. Code § 42.1-70</a>

Type:	Revenue Code:	Amount Charged:	References:
Legal Aid	123	\$9	<a href="#">Va. Code § 17.1-278</a>
	147	\$1	
Process & Service Fees	206	\$25 per case	<a href="#">Va. Code § 17.1-272</a>
High Constable	230	Determined by local ordinance in locality with a high constable applies only to civil papers to be served in localities with high constables	<a href="#">Va. Code § 17.1-273</a>

**DC-447: [Plaintiff's Bond for Levy or Seizure Va. Code § 8.01-537.1](#)****Description**

The judgment plaintiff must post a bond before a DC-416: Detinue Seizure Order, DC-424: Distress Warrant, or a DC-446: Attachment Summons can be issued. If the plaintiff seeks only pretrial levy on property and a bond with approved surety or cash bond is posted, the amount of the bond shall be at least the estimated fair market value of the property to be levied. If a property bond is posted, the amount of the bond shall be at least double the estimated fair market value of the property to be levied. If the plaintiff is seeking pretrial seizure of property, the amount of the bond shall be at least double the estimated fair market value of the property to be seized.

**Fees & Other Monies Assessed**

Fees not assessed.

**Note:** Indemnifying Bond: [Virginia Code § 17.1-627](#). "Premium on indemnifying bond taxed as costs. In case of any attachment or any levy pursuant to a judgment, where the attaching or judgment creditor is required to give bond to indemnify and save harmless the officer executing such attachment or levy, the clerk shall tax in the costs of the proceeding wherein such attachment is had or judgment is entered the reasonable costs of such bond, such costs to be recovered as provided in § 17.1-601."

**DC-448: [Defendant's Bond for Levy or Seizure](#)**

[Va. Code § 8.01-116](#), [Va. Code § 8.01-526](#), [Va. Code § 8.01-553](#), [Va. Code § 8.01-130.7](#)

**Description**

The judgment debtor (defendant) must execute this bond before the defendant or other possessor may retain the property after being served with a DC-416: Detinue Seizure Order, a DC-424: Distress Warrant, or a DC-446: Attachment Summons.

**Fees & Other Monies Assessed**

Fees not assessed.

**DC-450: [Suggestion For Summons In Garnishment Va. Code § 8.01-511](#)**

**Description**

A garnishment may be used when a judgment debtor has sufficient income (not subject to exemption), debts owed to them, money in the bank, or other money in the hands of a third party from whom the judgment creditor may reasonably expect to obtain a satisfaction of the judgment by the garnishment process. The judgment debtor is the person who is required to pay the judgment. The garnishee is the third party who holds money for or owes money to the judgment debtor. Often, the garnishee is the judgment debtor's employer.

**Fees & Other Monies Assessed**

Total CHMF and law library fee cannot exceed \$6.

Type:	Revenue Code:	Amount Charged:	References:
Processing Fee	118	\$26	<a href="#">Va. Code § 16.1-69.48:2</a>
Courts Technology Fund	170	\$10	<a href="#">Va. Code § 16.1-69.48:2</a>
CHCF	228	Not to exceed \$3 where amount in controversy exceeds \$500	<a href="#">Va. Code § 17.1-281</a>

Type:	Revenue Code:	Amount Charged:	References:
CHMF	229	Not to exceed \$2	<a href="#">Va. Code § 17.1-281</a>
Law Library	219	Not to exceed \$4	<a href="#">Va. Code § 42.1-70</a>
Legal Aid	123	\$9	<a href="#">Va. Code § 17.1-278</a>
	147	\$1	
Process & Service Fees	206	\$12 per service	<a href="#">Va. Code § 17.1-272</a>
High Constable	230	Determined by local ordinance in locality with a high constable applies only to civil papers to be served in localities with high constables	<a href="#">Va. Code § 17.1-273</a>

**DC-451(a): [Garnishment Statute Va. Code § 34-29](#)****Description**

This form has been revised to reflect an increase in disposable earnings exempt from garnishment from 30 to 40 times the weekly minimum wage.

**Note:** Master form. Handed out upon request.

**Fees & Other Monies Assessed**

Fees not assessed.

**DC-451: [Garnishment Summons Va. Code § 8.01-511](#), [Va. Code § 8.01-512.3](#)****Description**

This summons is served on the judgment debtor and the third-party, the garnishee. The following forms are attached to the summons: DC-450: [Suggestion for Summons in Garnishment](#), DC-454: [Request for Hearing – Garnishment Exemption Claim](#), DC-455: [Garnishee Information Sheet](#), and DC-456: [Garnishee's Answer](#).

**Fees & Other Monies Assessed**

Fees not assessed.

**DC-453: Garnishment Disposition** [Va. Code § 8.01-516.1](#), [Va. Code § 8.01-520](#)

**Description**

This form is designed to provide a formal mechanism for documenting out-of-court settlements of garnishment actions and for notifying the garnishee to release the garnished funds and is an easily prepared order of payment.

**Fees & Other Monies Assessed**

Fees not assessed.

**DC-454: [Request for Hearing – Garnishment Exemption claim Va. Code § 8.01-516.1](#), [Va. Code § 8.01-520](#)**

**Description**

This form gives information to the judgment debtor about funds that are exempt from being garnished. Hearing is set within seven (7) business days from the date of filing.

**Fees & Other Monies Assessed**

Fees not assessed.

**DC-455: [Garnishee Information Sheet](#)**

[Va. Code § 8.01-512.4](#), [Va. Code § 34-29](#)

**Description**

This form is designed to help the garnishee calculate the amount to be withheld and the priority in which garnishments are to be honored.

**Fees & Other Monies Assessed**

Fees not assessed.

**DC-456: [Garnishee's Answer Va. Code § 8.01-515](#)**

**Description**

This form helps garnishees provide an answer to a garnishment summons.

**Fees & Other Monies Assessed**

Fees not assessed.

**DC-458: [Notice of Satisfaction Va. Code § 16.1-94.01](#)**

**Description**

A judgment creditor can complete this form and file it with the court to note the satisfaction of a judgment. It is not a mandatory form. The judgment creditor may file a notice of satisfaction in another format as long as it contains the required information. The judgment creditor must provide notice of satisfaction within thirty days from receipt of payment by the judgment debtor.

**Fees & Other Monies Assessed**

Fees not assessed.

**DC-459: [Motion for Judgment to be Marked Satisfied Va. Code § 16.1-94.01](#)**

**Description**

This is a master form that may be used when a judgment debtor files a motion to have a judgment marked satisfied. This form is not mandatory if all necessary information is included in another format.

**Fees & Other Monies Assessed**

Total CHMF and law library fee cannot exceed \$6.

Type:	Revenue Code:	Amount Charged:	References:
Processing Fee	118	\$26	<a href="#">Va. Code § 16.1-69.48:2</a>
Courts Technology Fund	170	\$10	<a href="#">Va. Code § 16.1-69.48:2</a>

Type:	Revenue Code:	Amount Charged:	References:
CHCF	228	Not to exceed \$3 where amount in controversy exceeds \$500	<a href="#">Va. Code § 17.1-281</a>
CHMF	229	Not to exceed \$2	<a href="#">Va. Code § 17.1-281</a>
Law Library	219	Not to exceed \$4	<a href="#">Va. Code § 42.1-70</a>
Legal Aid	123	\$9	<a href="#">Va. Code § 17.1-278</a>
	147	\$1	
Process & Service Fees	206	\$12 per service	<a href="#">Va. Code § 17.1-272</a>
High Constable	230	Determined by local ordinance in locality with a high constable applies only to civil papers to be served in localities with high constables	<a href="#">Va. Code § 17.1-273</a>

**DC-460, [Civil Appeal Bond](#)**

[Va. Code § 16.1-107](#), [Va. Code § 16.1-108](#), [Va. Code § 16.1-296](#)

**Description**

This form is used in a civil appeal to show the amount of the appeal bond and the surety. Writ tax is receipted to account code 509 Escrow Funds and the civil appeal bond amount is receipted to account code 503 Civil Bonds. **Note:** Personal checks are not accepted for bond amounts.

**Fees & Other Monies Assessed**

Fees not assessed.



**DC-462: [Plaintiff's Bond – Lien of Mechanic for Repairs Va. Code § 43-33](#)**

**Description**

This bond form is required before DC-463: Summons and Order of Possession – Lien of Mechanic for Repairs, can be issued to regain possession of the property prior to trial. The bond is receipted under account code 503.

**Fees & Other Monies Assessed**

Fees not assessed.

**DC-463: Summons - Lien of Mechanic for Repairs [Va. Code § 43-33](#)**

**Description**

In this type of action, the plaintiff is the customer trying to get their property while the defendant is the mechanic holding the property to be sure that they get paid. This may be used to handle mechanic's lien suits triable in general district court. However, the plaintiff cannot get their property back before trial unless the plaintiff posts a bond with the court DC-462: [Plaintiff's Bond - Lien of Mechanic for Repairs](#).

**Fees & Other Monies Assessed**

Total CHMF and law library fee cannot exceed \$6.

Type:	Revenue Code:	Amount Charged:	References:
Processing Fee	118	\$26	<a href="#">Va. Code § 16.1-69.48:2</a>
Courts Technology Fund	170	\$10	<a href="#">Va. Code § 16.1-69.48:2</a>
CHCF	228	Not to exceed \$3 where amount in controversy exceeds \$500	<a href="#">Va. Code § 17.1-281</a>
CHMF	229	Not to exceed \$2	<a href="#">Va. Code § 17.1-281</a>
Law Library	219	Not to exceed \$4	<a href="#">Va. Code § 42.1-70</a>

Type:	Revenue Code:	Amount Charged:	References:
Legal Aid	123	\$9	<a href="#">Va. Code § 17.1-278</a>
	147	\$1	
Process & Service Fees	206	\$12 per service	<a href="#">Va. Code § 17.1-272</a>
High Constable	230	Determined by local ordinance in locality with a high constable applies only to civil papers to be served in localities with high constables	<a href="#">Va. Code § 17.1-273</a>

### DC-465: Abstract of Judgment [Va. Code § 8.01-449](#), [Va. Code § 8.01-461](#)

#### Description

This master form is used by a court to certify that a judgment was rendered by it. The form can be taken to another court for docketing the judgment.

#### Fees & Other Monies Assessed

Fees not assessed.

### DC-467: Writ of Fieri Facias

[Va. Code § 8.01-466](#), [Va. Code § 8.01-474](#), [Va. Code § 8.01-499](#), [Va. Code § 8.01-500](#)

#### Description

This action causes a lien to be put on the judgment debtor's property and authorizes a sheriff, or any authorized officer, to seize the personal property and/or monies owned by a judgment debtor in order to satisfy a judgment. This form should not be used with DC-440: [Summons to Answer Interrogatories](#), which contains a writ of fieri facias section. This form should not be used with DC-451: [Garnishment Summons](#), which contains a writ of fieri facias section unless the judgment creditor indicates that they intend to levy, seize, and sell property pursuant to the writ of fieri facias.

### Fees & Other Monies Assessed

Total CHMF and law library fee cannot exceed \$6.

Type:	Revenue Code:	Amount Charged:	References:
Process & Service Fees	206	\$25 per case if levy made or \$12 per service if no levy is requested	<a href="#">Va. Code § 17.1-272</a>
High Constable	230	Determined by local ordinance in locality with a high constable applies only to civil papers to be served in localities with high constables	<a href="#">Va. Code § 17.1-273</a>

### DC-468: Writs of Possession and Fieri Facias in Detinue [Va. Code § 8.01-470](#), [Va. Code § 8.01-472](#)

#### Description

In this action, a sheriff, or other authorized officer, is directed to seize property being held by a defendant that belongs to the plaintiff. If any of the property is not found with the defendant, the sheriff is directed to collect its alternate value from the goods, chattels, and current money of the defendant.

### Fees & Other Monies Assessed

Total CHMF and law library fee cannot exceed \$6.

Type:	Revenue Code:	Amount Charged:	References:
Process & Service Fees	206	\$25 per service	<a href="#">Va. Code § 17.1-272</a>
High Constable	230	Determined by local ordinance in locality with a high constable applies	<a href="#">Va. Code § 17.1-273</a>

Type:	Revenue Code:	Amount Charged:	References:
		only to civil papers to be served in localities with high constables	

**DC-469, [Request for Writ of Eviction in Unlawful Detainer Proceedings Va. Code § 8.01-471, Va. Code § 8.01-472](#)**

**Description**

This form requests the court to issue a Writ of Eviction against the defendants and also authorizes the sheriff or other authorized officer to take possession of property being withheld from the plaintiff.

**Fees & Other Monies Assessed**

Total CHMF and law library fee cannot exceed \$6.

Type:	Revenue Code:	Amount Charged:	References:
Process & Service Fees	206	\$25 for first defendant plus \$12 for each additional defendant	<a href="#">Va. Code § 17.1-272</a>

**DC-470: [Forthcoming Bond Va. Code § 8.01-526](#)**

**Description**

This form acknowledges that the judgment debtor has been served with a Writ of Fieri Facias or a Distress Warrant and by which the debtor posts a bond that covers the value of the property in question.

**Fees & Other Monies Assessed**

Fees not assessed.

**DC-472: Petition for Reinstatement of Driving Privileges – Failure to Satisfy Judgment Va. Code § 46.2-427**

**Description**

A person whose driver's license is suspended pursuant to [Va. Code § 46.2-417](#) for failure to pay a judgment and who is unable to locate the judgment creditor may now petition the court in which the judgment was entered for reinstatement of their driver's license on this master form.

**Fees and Other Monies Assessed**

The petitioner should pay the judgment, interest that has accrued on the judgment, and attorney's fees, in addition to court costs, receipted under the escrow code 509 in addition to the following filing fees.

Total CHMF and law library fee cannot exceed \$6.

Type:	Revenue Code:	Amount Charged:	References:
Processing Fee	118	\$26	<a href="#">Va. Code § 16.1-69.48:2</a>
Courts Technology Fund	170	\$10	<a href="#">Va. Code § 16.1-69.48:2</a>
CHCF	228	Not to exceed \$3 where amount in controversy exceeds \$500	<a href="#">Va. Code § 17.1-281</a>
CHMF	229	Not to exceed \$2	<a href="#">Va. Code § 17.1-281</a>
Law Library	219	Not to exceed \$4	<a href="#">Va. Code § 42.1-70</a>
Legal Aid	123	\$9	<a href="#">Va. Code § 17.1-278</a>
	118	\$26	<a href="#">Va. Code § 16.1-69.48:2</a>
Process & Service Fees	170	\$10	<a href="#">Va. Code § 16.1-69.48:2</a>

Type:	Revenue Code:	Amount Charged:	References:
High Constable	228	Not to exceed \$3 where amount in controversy exceeds \$500	<a href="#">Va. Code § 17.1-281</a>

### **DC-473: Order for Reinstatement of Driving Privileges – Failure to Satisfy Judgment** [Va. Code § 46.2-427](#)

#### **Description**

A court's order to allow the reinstatement of a judgment debtor's driving privileges, which have been suspended as a result of an unsatisfied judgment. This is a master form.

#### **Fees & Other Monies Assessed**

Fees not assessed.

### **DC-475: Notice of Appeal – Civil** [Va. Code § 16.1-106](#), [Va. Code § 16.1-107](#)

#### **Description**

In a general district court civil case where the dispute is greater than \$50.00, the losing party may appeal the judgment of the lower court to the circuit court provided the appeal is noted in writing within ten calendar days from the date judgment was entered.

#### **Fees and Other Monies Assessed**

No filing fees are required; however, the appellant will be required to post a civil appeal bond secured by cash or surety, if necessary, and to pay the writ tax and costs.

### **DC-477: [Petition for Judicial Certification of Eligibility for Admission Va. Code § 37.2-806](#)**

#### **Description**

When a person alleged to have intellectual disability is not capable of requesting their own admission to a facility for the training and treatment of the intellectually disabled as a voluntary patient, a parent, guardian, or other responsible person may initiate a proceeding to certify such person's eligibility for admission using this form.

**Fees & Other Monies Assessed**

Fees not assessed.

**DC-478: Certification of Eligibility for Admission [Va. Code § 37.2-805](#)**

**Description**

The court certifies on this form that the respondent is eligible for admission to a facility for the training and treatment of the intellectually disabled.

**Fees & Other Monies Assessed**

Fees not assessed.

**DC-479: [Petition and Order for Sale of Property Va. Code § 43-34](#)**

**Description**

Certain statutory lien holders (innkeepers, livery stable, garage and marina keepers, mechanics, and bailees) may bring a civil action to obtain a court order authorizing the sale of personal property held under a statutory lien to satisfy the debt for which the lien arose. In district court actions, the right to file such an action arises if the value of the property exceeds \$10,000 but does not exceed \$50,000.

**Fees & Other Monies Assessed**

Total CHMF and law library fee cannot exceed \$6.

Type:	Revenue Code:	Amount Charged:	References:
Processing Fee	118	\$26	<a href="#">Va. Code § 16.1-69.48:2</a>
Courts Technology Fund	170	\$10	<a href="#">Va. Code § 16.1-69.48:2</a>
CHCF	228	Not to exceed \$3 where amount in controversy exceeds \$500	<a href="#">Va. Code § 17.1-281</a>
CHMF	229	Not to exceed \$2	<a href="#">Va. Code § 17.1-281</a>

Type:	Revenue Code:	Amount Charged:	References:
Law Library	219	Not to exceed \$4	<a href="#">Va. Code § 42.1-70</a>
Legal Aid	123	\$9	<a href="#">Va. Code § 17.1-278</a>
	147	\$1	
Process & Service Fees	206	\$12 per service	<a href="#">Va. Code § 17.1-272</a>
High Constable	230	Determined by local ordinance in locality with a high constable applies only to civil papers to be served in localities with high constables	<a href="#">Va. Code § 17.1-273</a>

**DC-480: Case Disposition** [Va. Code § 16.1-79](#)**Description**

If a case originated on a motion for judgment, the judgment would normally be entered on this form.

**Fees & Other Monies Assessed**

Fees not assessed.

**DC-481: Show Cause Summons (Civil)** [Va. Code § 16.1-69.24](#), [Va. Code § 16.1-278.16](#), [Va. Code § 8.01-519](#), [Va. Code § 19.2-358](#), [Va. Code § 8.01-508](#), [Va. Code § 8.01-564](#), [Va. Code § 8.01-565](#)**Description**

This form is issued by direction of the court, either by specific case or by a written local policy or guideline, when the remedy sought is to compel compliance with the court's direction in lieu of punishing the defendant for failure to comply with the court's order and may be issued in any criminal or traffic case. The appropriate Virginia Code section should always be cited on the form.

**Fees & Other Monies Assessed**

Total CHMF and law library fee cannot exceed \$6.



Type:	Revenue Code:	Amount Charged:	References:
Process & Service Fees	206	N/A if issued on motion of the court \$12 per service at the plaintiff's request	<a href="#">Va. Code § 8.01-508</a> <a href="#">Va. Code § 8.01-564</a> <a href="#">Va. Code § 8.01-565</a>
High Constable	230	Determined by local ordinance in locality with a high constable applies only to civil papers to be served in localities with high constables	<a href="#">Va. Code § 17.1-273</a>

**DC-482: Show Cause Summons (Bond Forfeiture-Civil)** [Va. Code § 19.2-143](#), [Va. Code § 19.2-148](#)

**Description**

This form is used to initiate a bond forfeiture for a defendant who was admitted to bail and who failed to appear in court, as well as for the surety or sureties.

**Fees & Other Monies Assessed**

Fees not assessed.

**Note:** See Attorney General Opinion to the Hon. Robert R. Carter, dated November 30, 1993; Due process requires that surety be given opportunity to show cause why bail bond should not be forfeited to Commonwealth when principal has failed to appear. Bond forfeiture proceedings in criminal cases are civil in nature. Court costs ordinarily imposed against losing party in civil case may be assessed against surety in such proceeding, when judgment entered for Commonwealth; statutory costs assessable only in criminal cases may not be imposed. Revocation of bail and forfeiture of bond do not involve conviction; costs and fees payable to Criminal Injuries Compensation Fund only upon conviction in certain cases are not assessable in bail bond forfeiture proceeding.

**DC-483: Capias: Attachment of the Body (Civil)** [Va. Code § 8.01-508](#), [Va. Code § 8.01-519](#), [Va. Code § 8.01-564](#), [Va. Code § 8.01-565](#), [Va. Code § 16.1-69.24](#), [Va. Code § 16.1-278.16](#), [Va. Code § 18.2-456](#), [Va. Code § 19.2-358](#)

**Description**

This form is used by direction of the court, either by specific case or by a written local policy or guideline, when the remedy sought is to compel compliance with the court's direction, in lieu of punishing the defendant for failure to comply with the court's order.

**Fees & Other Monies Assessed**

Total CHMF and law library fee cannot exceed \$6.

Type:	Revenue Code:	Amount Charged:	References:
Process & Service Fees	206	N/A if issued on motion of the court \$12 per service at plaintiff's request	<a href="#">Va. Code § 8.01-508</a> <a href="#">Va. Code § 8.01-564</a> <a href="#">Va. Code § 8.01-565</a>
High Constable	230	Determined by local ordinance in locality with a high constable applies only to civil papers to be served in localities with high constables	<a href="#">Va. Code § 17.1-273</a>

**DC-488: Medical Emergency Custody Order** [Va. Code § 37.2-1103 \(A\)](#)

**Description**

In a situation where an adult person is incapable of making, or incapable of communicating, an informed decision regarding treatment of a mental or physical disorder, which a licensed physician has probable cause to believe requires testing, observation, or treatment within the next twenty-four hours so as to prevent death, disability, or a serious irreversible condition, this form is used by a judge or magistrate to determine that the respondent be taken into emergency custody.

**Fees & Other Monies Assessed**

Fees not assessed.

**DC-489: [Medical Emergency Temporary Detention Petition Va. Code § 37.2-1104, Va. Code § 53.1-40.1 \(F\), Va. Code § 53.1-133.04 \(G\)](#)**

**Description**

This master form addresses those situations in which an adult person is incapable of making, or incapable of communicating, an informed decision regarding treatment of a mental or physical disorder, which a licensed physician has probable cause to believe requires testing, observation, or treatment within the next twenty-four hours, or twelve hours for prisoners, so as to prevent death, disability, or a serious irreversible condition.

**Fees & Other Monies Assessed**

Fees not assessed.

**DC-490: Medical Emergency Temporary Detention Order [Va. Code § 37.2-1104, Va. Code § 53.1-40.1 \(F\), Va. Code § 53.1-133.04 \(G\)](#)**

**Description**

The master form is used to record the finding of a judge or magistrate following a hearing on a petition of a medical emergency temporary detention.

**Fees & Other Monies Assessed**

Fees not assessed.

**DDC-491: [Medical Emergency Custody Petition Va. Code § 37.2-1104](#)**

**Description**

Based upon the opinion of a licensed physician that an adult person is incapable of making an informed decision as a result of a physical injury or illness and that the medical standard of care indicates that testing, observation, and treatment are necessary to prevent imminent and irreversible harm, a magistrate may issue, for good cause shown, an emergency custody order for such adult person to be taken into custody and transported to a hospital emergency room for such testing, observation, or treatment. This is a master form, effective July 1, 2005.

### **Fees & Other Monies Assessed**

Fees not assessed.

## **DC-492: Emergency Custody Order [Va. Code § 16.1-340](#), [Va. Code § 19.2-182.9](#), [Va. Code § 37.2-808](#)**

### **Description**

In cases where a person is incapable of volunteering or unwilling to volunteer for treatment, a magistrate may issue an order of emergency custody requiring any person in their judicial district to be taken into custody and transported to a convenient location to be evaluated by a person designated by the community services board who is skilled in the diagnosis and treatment of mental illness and who has completed a certification program approved by the [Department of Mental Health, Mental Retardation and Substance Abuse Services](#), in order to assess the need for hospitalization. This order must be based on probable cause that the person is mentally ill and in need of hospitalization and that the person presents an imminent danger to themselves or others as a result of mental illness, or is so seriously mentally ill as to be substantially unable to care for themselves. The respondent must remain in custody until a magistrate issues a temporary mental detention order or until the evaluator finds that the respondent does not meet the criteria for detention. The period of custody may not exceed six hours from the time the order is executed. If the order of emergency custody is not executed within four hours of its issuance, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is not open, to any judge or magistrate of that court.

### **Fees & Other Monies Assessed**

Fees not assessed.

**Note:** Fees for physicians, psychologists, and any other mental health professionals who are required to serve as witnesses and who are not regularly employed by the Commonwealth are set forth in [Va. Code § 37.2-804](#).

## **DC-493: [Explanation of Involuntary Commitment Process – Acknowledgement of Rights Va. Code § 37.2-814](#)**

### **Description**

The court is required by this code section to give a respondent a written explanation of their right to counsel, to present evidence in their own behalf, to be present at the hearing and to testify, and to appeal any certification to the circuit court where a trial by jury may be had. If possible, the form should be explained to the respondent by respondent's counsel.

**Fees & Other Monies Assessed**

Fees not assessed.

**DC-494: Temporary Detention Order [Va. Code § 16.1-340](#), [Va. Code § 19.2-169.6](#),  
[Va. Code § 19.2-177.1](#), [Va. Code § 19.2-182.9](#), [Va. Code § 37.2-809](#)**

**Description**

The purpose of a temporary detention order is to detain a person believed to be mentally ill for a specified time period in an institution approved pursuant to regulations of the Board of Mental Health, Mental Retardation and Substance Abuse Services. This detention allows for a more in-depth evaluation by mental health officials in preparation for a formal commitment hearing to be conducted by a judge. If an order of temporary detention is not executed within twenty-four hours of its issuance, or within a shorter period as specified in the order, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is not open, to any judge or magistrate thereof.

**Fees & Other Monies Assessed**

Fees not assessed.

**DC-495: [Petition and Affidavit for Good Cause/for Injunction of Mandamus – Freedom of Information Act Va. Code § 2.2-3713](#)**

**Description**

This form can be used for handling a request for an injunction or a writ of mandamus to enforce a claim under the Virginia Freedom of Information Act. A formal petition or some other writing may also be used. The petition is filed in the general district or circuit court by the person seeking to enforce these rights.

**Fees & Other Monies Assessed**

Total CHMF and law library fee cannot exceed \$6.

Type:	Revenue Code:	Amount Charged:	References:
Processing Fee	118	\$26	<a href="#">Va. Code § 16.1-69.48:2</a>
Courts Technology Fund	170	\$10	<a href="#">Va. Code § 16.1-69.48:2</a>
CHCF	228	No CHCF is assessed since there is no amount in controversy	<a href="#">Va. Code § 17.1-281</a>
CHMF	229	Not to exceed \$2	<a href="#">Va. Code § 17.1-281</a>
Law Library	219	Not to exceed \$4	<a href="#">Va. Code § 42.1-70</a>
Legal Aid	123	\$9	<a href="#">Va. Code § 17.1-278</a>
	147	\$1	
Process & Service Fees	206	\$12 per service	<a href="#">Va. Code § 17.1-272</a>
High Constable	230	Determined by local ordinance in locality with a high constable applies only to civil papers to be served in localities with high constables	<a href="#">Va. Code § 17.1-273</a>

## DC-496: Order Granting Petition for Injunction of Writ of Mandamus [Va. Code § 2.2-3713](#)

### Description

This form should be used to either grant or deny the requested relief.

### Fees & Other Monies Assessed

Fees not assessed.

**DC-497: Subpoena for Witness (Civil) – Attorney Issued Va. Code § 8.01-407, Va. Code § 16.1-265**

**Description**

This is a form for a subpoena for witness that may be issued directly by a party's attorney. It can be used only in civil cases. It cannot be used in habeas corpus proceedings, delinquency proceedings, child abuse and neglect proceedings, protective order proceedings in cases of domestic violence or stalking, proceedings to contest an administrative license suspension under [Va. Code § 46.2-391.2](#), and proceedings pursuant to petitions for writs of prohibition or mandamus. The service fees should be paid to the court where the case is pending.

**Fees & Other Monies Assessed**

Total CHMF and law library fee cannot exceed \$6.

Type:	Revenue Code:	Amount Charged:	References:
Process & Service Fees	206	\$12 per service collected on civil cases only	Va. Code <a href="#">§ 17.1-272</a>
High Constable	230	Determined by local ordinance in locality with a high constable applies only to civil papers to be served in localities with high constables	Va. Code <a href="#">§ 171-273</a>

**DC-498: Subpoena Duces Tecum (Civil) – Attorney Issued [Va. Code § 8.01-413](#), [Va. Code § 16.1-89](#), [Va. Code § 16.1-265](#)**

**Description**

This is a form for a subpoena duces tecum that may be issued directly by a party's attorney who is an active member in good standing of the Virginia State Bar. It can be used only in civil cases. It cannot be used in habeas corpus proceedings, delinquency proceedings, child abuse and neglect proceedings, protective order proceedings in cases of domestic violence or stalking, proceedings to contest an administrative license suspension under Va. Code § 46.2-391.2 and proceedings pursuant to petitions for writs of prohibition or mandamus. The service fees should be paid to the court where the case is pending.

### Fees & Other Monies Assessed

Total CHMF and law library fee cannot exceed \$6.

Type:	Revenue Code:	Amount Charged:	References:
Process & Service Fees	206	\$12 per service collected on civil cases only	<a href="#">Va. Code § 17.1-272</a>
High Constable	230	Determined by local ordinance in locality with a high constable applies only to civil papers to be served in localities with high constables	<a href="#">Va. Code § 17.1-273</a>

### DC-499: [Motion and Order for Release of Vehicle Va. Code §§ 46.2-301.1 and 46.2-867.1](#)

#### Description

This form is supplied by the clerk of the general district court to any person who seeks the return of a vehicle that has been administratively impounded for 30 days pursuant to [Va. Code § 46.2-301.1](#) or for 20 days pursuant to [Va. Code § 46.2-867.1](#).

### Fees & Other Monies Assessed

Fees not assessed.



## Appendix B – Criminal & Traffic Fines and Fees

### Fines and Fees (A-C)

#### Abandoned, Unattended, or Immobile (Stolen) Vehicle Costs

**Description**

Costs assessed for recovering expenses to remove or store a stolen vehicle.

**Fees and Costs Assessed**

Revenue Code:	Amount Charged/ Assessed:	References:
13S 202	Actual expenses	<a href="#">Va. Code § 46.2-1209;</a> <a href="#">Chart of Allowances</a>

**Note:** Use revenue 202 only if locality paid for services and locality is to be reimbursed by the Commonwealth.

**When/How Collected**

Where it is shown that the vehicle was abandoned by the owner or is stolen or illegally used by a person other than the owner, the costs for removal/storage is taxed against the convicted defendant/owner. In this instance, the Commonwealth is not responsible for the cost of towing/storage.

If the identity of the owner cannot be determined or the owner was not the violator or if the owner/defendant is found not guilty, the cost for removal/storage is paid by the Commonwealth. In this instance, the vendor (towing company) may submit a bill accompanied by a completed DC-40, LIST OF ALLOWANCES, for submission to the Office of the Executive Secretary for further processing. The vendor is subsequently reimbursed by the Commonwealth (State Treasurer).

#### Add-On Fees/Costs

Fees/Costs authorized to be added to amounts assessed for Fixed Traffic/Criminal Infraction/Misdemeanor Fees.

**Description**

Fees/Costs assessed in addition to Fixed Fees.

***Fees and Costs Assessed***

Type:	Revenue Code:	Amount Charged/ Assessed:	References:
Bad Check/Credit Card Fee	135	\$50.00	<a href="#">Va. Code § 19.2-353.3</a>
Blood Withdrawal Fee	133 or 233	Not to exceed \$25.00	<a href="#">Va. Code § 18.2-268.8</a> ; <a href="#">Va. Code § 46.2-341.26:8</a>
Charitable Gaming Civil Penalty	490	Not to exceed \$50,000.00	<a href="#">Va. Code § 18.2-340.36:1</a>
Court appointed Attorney or Public Defender	120 or 217 or Town Cost Code	Misdemeanor convictions, certified misdemeanor ancillary offenses & felonies certified to circuit court - \$120.00 maximum plus allowable expenses	<a href="#">Va. Code § 16.1-267</a> ; <a href="#">Va. Code § 19.2-163</a> ; <a href="#">Va. Code § 19.2-163.4:1</a> ; <a href="#">Chart of Allowances</a>
Court Reporter	13F	Costs and expenses as applicable. Payment to be approved by circuit judge authorizing transcription.	<a href="#">Va. Code § 19.2-166</a> ; <a href="#">Va. Code § 19.2-185</a> ; <a href="#">Va. Code § 19.2-336</a>
Courthouse Construction Fee	228	Not to exceed \$3.00	<a href="#">Va. Code § 17.1-281</a>
Courthouse Security Fee	244	Not to exceed \$20.00	<a href="#">Va. Code § 53.1-120</a>
Driving Under the Influence Fee	13B	\$100.00	<a href="#">Va. Code § 16.1-69.48:1.01</a>

Type:	Revenue Code:	Amount Charged/ Assessed:	References:
DNA Analysis	13D/233	\$38.00 (13D) and \$15.00 (233)	<a href="#">Va. Code § 16.1-253.2;</a> <a href="#">Va. Code § 18.2-57;</a> <a href="#">Va. Code § 18.2-60.3;</a> <a href="#">Va. Code § 18.2-60.4;</a> <a href="#">Va. Code § 18.2-67.4;</a> <a href="#">Va. Code § 18.2-67.4:1;</a> <a href="#">Va. Code § 18.2-67.4:2;</a> <a href="#">Va. Code § 18.2-67.5;</a> <a href="#">Va. Code § 18.2-102;</a> <a href="#">Va. Code § 18.2-119;</a> <a href="#">Va. Code § 18.2-121;</a> <a href="#">Va. Code § 18.2-130;</a> <a href="#">Va. Code § 18.2-370.6;</a> <a href="#">Va. Code § 18.2-387;</a> <a href="#">Va. Code § 18.2-387.1;</a> <a href="#">Va. Code § 46.2-460(E)</a>

Type:	Revenue Code:	Amount Charged/ Assessed:	References:
DUI Blood - State Analysis Fee	133	\$25.00	<a href="#">Va. Code § 18.2-268.8</a>
Electronic Summons Fee	241, 262, 267, 272, 277, 282, 287, 292, 297, 2B2, 2B7, 2X0, 165	Not to exceed \$5.00	<a href="#">Va. Code § 17.1-279.1</a> <a href="#">Va. Code § 17.1-275.14</a>
Fire Suppression Costs	021	Varies	<a href="#">Va. Code § 10.1-1141</a> <a href="#">Va. Code § 10.1-1142</a>
Game or Fish Replacement Fee	134	Varies	<a href="#">Va. Code § 29.1-551</a>
Guardian ad Litem Fee appointment for a minor witness	122 or 2GL or Town Cost Code	Varies	<a href="#">Va. Code § 8.01-396.2</a>
Sexually Transmitted Infection Blood Test	133	Analysis - amount for testing varies. Amount varies for blood withdrawal.	<a href="#">Va. Code § 18.2-346.1</a>

Type:	Revenue Code:	Amount Charged/ Assessed:	References:
Hunting, Trapping, Fishing Without a License	134	Fee equal to cost of required license	<a href="#">Va. Code § 29.1-335</a>
Ignition Interlock Device Costs	13C	\$20.00	<a href="#">Va. Code § 18.2-270.1</a>
Internet Crimes Against Children Fund	001	\$15.00 - assess on each felony or misdemeanor conviction/deferred disposition	<a href="#">Va. Code § 17.1-275.12</a>
Jail Admissions Fee	234	Not to exceed \$25.00	<a href="#">Va. Code § 15.2-1613.1</a>
Local Criminal Justice Training Academy Fee	243	Amount Set by Local Ordinance	<a href="#">Va. Code § 9.1-106</a>
Motorboat and Water Safety Fund	030	\$100 civil penalty	<a href="#">Va. Code § 29.1-735.2</a>
Reimbursement of Medical Fees	13Q	Varies	<a href="#">Va. Code § 19.2-165.1</a>
Remote Alcohol Monitoring Device	13K	\$20.00	<a href="#">Va. Code § 18.2-270.1</a>
Sexually Transmitted Infections- Blood Test	133	Varies	<a href="#">Va. Code § 18.2-61.1</a>
Time to Pay Fee	137	\$10.00	<a href="#">Va. Code § 19.2-354</a>
Trauma Center Fund	192	\$50.00	<a href="#">Va. Code § 18.2-270.01</a>
Trial in Absence Fee	121	\$35.00	<a href="#">Va. Code § 16.1-69.48:1</a>

Type:	Revenue Code:	Amount Charged/ Assessed:	References:
Virginia Health Care Fund	108	\$25.00	<a href="#">Va. Code § 15.2-2826</a>
Virginia Prevention of Sex Trafficking Fund	002	\$100 (misdemeanor) \$500 (felony)	<a href="#">Va. Code § 16.1-69.48:6</a> <a href="#">Va. Code § 17.1-275.13</a>
Uninsured Motorist Fund	007	\$600.00	<a href="#">Va. Code § 46.2-684.1</a>
Weighing Fee	125	\$2.00	<a href="#">Va. Code § 46.2-1137</a>
Witness Fees	13L or 237	Mileage, tolls, expenses <a href="#">Va. Code § 2.2-2823</a>	<a href="#">Va. Code § 17.1-611</a> ; <a href="#">Va. Code § 17.1-612</a> ; <a href="#">Va. Code § 19.2-329</a> ; <a href="#">Va. Code § 19.2-330</a>
Witness Fee - Testimony Certificate of Analysis	13M	\$50.00 - assessed upon conviction if accused demands at hearing or trial the presence of person who performed analysis that is detailed in Certificate of Analysis	<a href="#">Va. Code § 19.2-187.1</a>

***When/How Collected***

Convictions, including prepayments.

Any non-statutory specific authority orders or deferred dispositions, taken under advisement with conditions or evidence sufficient (See Attorney General Opinion to the Honorable Joel C. Cunningham, dated 12/21/01; General district court clerk is not

required, nor authorized, to determine whether deferred judgment order is statutorily authorized prior to assessing applicable costs.)

DNA sample is not collected, and no DNA fee assessed upon deferral unless later there is a conviction. Driver Improvement/Mature Driver Motor Vehicle Crash Prevention Course cases [Va. Code § 16.1-69.48:1](#)

Proof of compliance with law under [Va. Code § 46.2-104](#), [Va. Code 46.2-324](#), [Va. Code 46.2-613](#), [Va. Code 46.2-646](#), [Va. Code 46.2-711](#), [Va. Code 46.2-715](#), [Va. Code 46.2-716](#), [Va. Code 46.2-752](#), [Va. Code 46.2-1000](#), [Va. Code 46.2-1003](#), [Va. Code 46.2-1052](#), [Va. Code 46.2-1053](#), and [Va. Code 46.2-1158.02](#). Payment of license tax subsequent to summons under [Va. Code § 3.2-6536](#). Rabies vaccination subsequent to summons under [Va. Code § 3.2-6521](#).

Specific statutory deferred disposition, taken under advisement with conditions or evidence sufficient orders pursuant to:

<a href="#">Va. Code § 4.1-305:</a>	Purchase/Possess Alcohol under twenty-one
<a href="#">Va. Code § 16.1-278.8:</a>	Delinquency
<a href="#">Va. Code § 16.1-278.9:</a>	Abuse and lose offenses - DUI, purchase/possess alcohol, misdemeanor/felony drugs, drink or possess alcohol on public school grounds, drunk in public, use/possess handgun, concealed handgun, or street sweeper
<a href="#">Va. Code § 18.2-57.3:</a>	Family Assault
<a href="#">Va. Code § 18.2-251:</a>	First Time Drug Offender
<a href="#">Va. Code § 19.2-151:</a>	Accord and Satisfaction orders
<a href="#">Va. Code § 19.2-303.2:</a>	Property First Offenses - Defendant without previous felony conviction <a href="#">Va. Code § 18.2-119</a> through <a href="#">Va. Code § 18.2-167.1</a> .
<a href="#">Va. Code § 19.2-303.6:</a>	Deferred Disposition in a Criminal Case; Persons with Autism or Intellectual Disabilities.
<a href="#">Va. Code § 19.2-298.02:</a>	Deferred Disposition in a Criminal Case

### ASAP - Alcohol Safety Action Program Fee

#### *Description*

Fee for entrance into a driver alcohol rehabilitation program as ordered by the court for violation of [Va. Code § 29.1-738](#), [Va. Code § 18.2-266](#), and [Va. Code § 46.2-341.24](#) or any local ordinance similar thereto.

***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
N/A	\$250.00 - \$300.00	<a href="#">Va. Code § 18.2-271.1</a> ; <a href="#">Va. Code § 29.1-738.5 (B)</a>

**Note:** Upon a positive finding that the defendant is indigent, the court may reduce or waive the fee. In addition to the costs of the proceeding, fees as may reasonably be required of defendants referred for intervention under any such program may be charged.

***When/How Collected***

ASAP fees are assessed but not collected by the court and are not added to the defendant's costs. The defendant remits payment directly to the local program.

**Bad Check/Credit/Debit Card Fee**

***Description***

Fee charged when a defendant tenders a check for payment of fines and/or costs and the check is returned unpaid by the banking institution upon which it is drawn or pays with a credit/debit card which is disallowed. **Note:** This fee is not assessed on bad checks received for civil case filings.

***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
135	\$50.00	<a href="#">Va. Code § 19.2-353.3</a>

***When/How Collected***

Taxed against the defendant as additional costs.



## Blaze Orange/Blaze Pink Clothing

### *Description*

During any firearms deer season, except during the special season for hunting deer with a muzzle-loading rifle only, in counties and cities designated by the Board, every hunter and every person accompanying a hunter shall (i) wear a blaze orange or blaze pink hat, except that the bill or brim of the hat may be a color or design other than solid blaze orange or blaze pink, or blaze orange or blaze pink upper body clothing, that is visible from 360 degrees or (ii) display at least 100 square inches of solid blaze orange or blaze pink material at shoulder level within body reach visible from 360 degrees. This section does not apply when (i) hunting waterfowl from stationary or floating blinds, (ii) hunting waterfowl over decoys, (iii) hunting waterfowl in wetlands as defined in [Va. Code § 28.2-1300](#), (iv) hunting waterfowl from a boat or other floating conveyance, (v) participating in hunting dog field trials permitted by the Board of Department of Wildlife Resources, or (vii) hunting with a bow and arrow in areas where the discharge of firearms is prohibited by state law or local ordinance.

### *Fees and Costs Assessed*

Revenue Code:	Amount Charged/ Assessed:	References:
110	\$25.00	<a href="#">Va. Code § 29.1-530.1</a>

### *When/How Collected*

Taxed against the defendant upon conviction.

## Blood Test Fee - DUI Cases

### *Description*

Fees associated with chemical test(s) to determine the alcohol and/or drug content of blood when a defendant is charged with a violation of [Va. Code § 18.2-266](#) (Driving Under the Influence) or of a similar ordinance of any city, county or town. Analysis of the first blood sample is performed by Consolidated Laboratories. A second blood sample analysis may be conducted by an independent (private) laboratory upon request of the defendant. The defendant pays the fees for testing the second sample directly to the lab. If the defendant is indigent, the Commonwealth of Virginia will pay for the testing of the second sample. The clerk's office should not receive an invoice directly from the laboratories that perform the analysis for payments of testing the second vial of blood. If the defendant has court appointed counsel, including public defender, counsel pays the testing fee and submits these testing fees (not to exceed \$50) as an expense on the DC-40 voucher, to be paid by the Commonwealth for state cases and the locality for local cases.

Documentation supporting the invoice amount is required to be submitted with the DC-40 voucher.

### ***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
133	Blood withdrawal - not to exceed \$25.00	<a href="#">Va. Code § 18.2-268.8</a> ;
233	Consolidated Lab analysis (1 <sup>st</sup> vial) - \$25.00	<a href="#">Va. Code § 46.2-341.26:8</a>

**Note:** Use Revenue Code 233 only if the locality pays for blood withdrawal and the court reimburses the locality.

### ***When/How Collected***

Assessed against defendant upon conviction.

## **Blood Test Fee - Sexually Transmitted Infection**

### ***Description***

Fee associated with chemical testing of blood to determine if a defendant is infected with a sexually transmitted infection. Such testing, which may be conducted by the [Virginia Division of Consolidated Laboratories](#) or other approved labs, may occur in the following situations:

- When the defendant is convicted of prostitution as prohibited by [Va. Code § 18.2-346](#), [Va. Code § 18.2-346.01](#), or any crime against nature as prohibited by [Va. Code § 18.2-361](#). Upon conviction, such person shall be provided the option to submit to testing for sexually transmitted infections pursuant to [Va. Code § 18.2-346.1](#).

### ***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
133	Amounts for testing and blood withdrawal varies. Assess amount charged for testing and withdrawal.	<a href="#">Va. Code § 18.2-346.1</a>

### ***When/How Collected***

Taxed against and collected from defendant upon conviction.

**Blood Test Fee - HLA (Paternity Cases)*****Description***

Fees associated with chemical test(s) to determine paternity. The court, before which the question of paternity arises, upon the motion of either party, may direct and order the alleged father, the mother and child to submit to such blood-grouping test.

***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
133	Varies	<a href="#">Va. Code § 20-49.3</a>

***When/How Collected***

The court shall require the party requesting such test to pay the costs. However, if such person is indigent, the Commonwealth shall pay for the test.

**Blood Test Fee – Sexually Transmitted Infections*****Description***

Fee associated with testing of blood to determine if any person charged with any crime involving sexual assault; any offense against children as prohibited by Va. Code § [18.2-361](#), Va. Code § [18.2-366](#), Va. Code § [18.2-370](#), and Va. Code § [18.2-370.1](#), or any assault and battery where the complaining witness was exposed to body fluids of the person so charged in a manner that may, according to the then-current guidelines of the Centers for Disease Control and Prevention, transmit a sexually transmitted infection.

***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
133	Amounts for testing and blood withdrawal varies. Assess amount charged for testing and withdrawal.	<a href="#">Va. Code § 18.2-61.1</a>

***When/How Collected***

Taxed against and collected from defendant upon conviction.

## Bond Forfeiture

### *Description*

Money/property that was previously posted as security for a bail bond and later forfeited as a result of the defendant's failure to meet the terms and conditions of their bail and recognizance.

### *Fees and Costs Assessed*

Revenue Code:	Amount Charged/ Assessed:	References:
201 or appropriate primary locality (county/city) Revenue Code	N/A	<a href="#">Va. Code § 19.2-143</a> et seq.

### *When/How Collected*

When any defendant or juvenile who posted a cash bond and failed to appear is tried in their absence and is convicted, the court shall apply the cash bond to the payment of fines and costs assessed on that case. Any remaining funds shall be forfeited without further notice.

If the defendant or juvenile who posted a cash bond failed to appear, but is not tried in their absence, the bond shall be forfeited promptly without further notice.

When a person fails to perform the condition of appearance, a hearing shall be held upon reasonable notice to all parties affording them opportunity to show cause why all or part of the recognizance should not be forfeited.

## Charitable Gaming Civil Penalty

### *Description*

Any person or organization, whether permitted or qualified pursuant to this article or not, that (i) conducts charitable gaming without first obtaining a permit to do so, (ii) continues to conduct such games after revocation or suspension of such permit, or (iii) otherwise violates any provisions of this article shall, in addition to any other penalties provided, be subject to a civil penalty of not less than \$25,000 and not more than \$50,000 per incident. Any civil penalties collected pursuant to this section shall be payable to the State Treasurer for remittance to the Department of Agriculture and Consumer Services.

### *Fees and Costs Assessed*

Revenue Code:	Amount Charged/ Assessed:	References:
490	Varies	<a href="#">Va. Code § 18.2-340.36:1</a>

***When/How Collected***

Assessed against defendant upon conviction.

**Child Safety Restraint Device Penalty*****Description***

Penalty assessed upon conviction for failure to properly restrain a child in a safety device while operating a motor vehicle.

***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
114	\$50.00 for violation of <a href="#">Va. Code § 46.2-1095</a> or \$20.00 penalty for failure to carry a statement of exemption in violation of <a href="#">Va. Code § 46.2-1096</a> . No court costs shall be assessed for violation of this section	<a href="#">Va. Code § 46.2-1095</a> ; <a href="#">Va. Code § 46.2-1096</a> ; <a href="#">Va. Code § 46.2-1097</a> ; <a href="#">Va. Code § 46.2-1098</a>

***When/How Collected***

Assess as civil penalty upon conviction and collect from defendant. All civil penalties collected pursuant to this section shall be paid into the Child Restraint Device Special Fund as provided for in [Va. Code § 46.2-1097](#).

**Cigarettes: Tax-Paid Contraband Cigarettes*****Description***

A civil penalty of (i) \$2.50 per pack, but no more than \$5,000, for a first offense; (ii) \$5 per pack, but no more than \$10,000, for a second such offense committed within a 36-month period; and (iii) \$10 per pack, but no more than \$50,000, for a third or subsequent such offense committed within a 36-month period for violations relating to possession with

intent to distribute tax-paid, contraband cigarettes. The civil penalties shall be assessed and collected by the Department as other taxes are collected.

***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
520	Civil penalty	<a href="#">Va. Code § 58.1-1017.1</a>

**Note:** The civil penalty may be collected directly by the Department of Taxation; or if ordered payable to the court, receipt these funds as restitution (revenue account code 520) and subsequently disburse to the Department of Taxation.

***When/How Collected***

If ordered by court, collect as restitution (520) and forward to:

Department of Taxation  
Tobacco Unit  
PO Box 715  
Richmond, VA 23218  
(804) 371-0730

**Computer Analysis Fee**

***Description***

A fee to be assessed in an amount equal to the actual cost of the computer forensic analysis not to exceed \$100 for each computer.

***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
520	Not to exceed \$100 per computer	<a href="#">Va. Code § 16.1-69.48:1.02</a> ; <a href="#">Va. Code § 17.1-275.11:1</a>

**Note:** The court may receipt these funds as restitution (revenue account code 520) and subsequently disburse funds so collected to the requesting law-enforcement agency. At

the court's discretion or as otherwise ordered by the court, the defendant may make payment directly to the law-enforcement.

### ***When/How Collected***

Upon a finding of guilt of any charge or charges in which any computer forensic analysis revealed evidence used at trial of a defendant, the defendant may be assessed an amount equal to the actual cost of the computer forensic analysis not to exceed \$100 for each computer. DC-362: Motion and Affidavit Requesting Costs for Computer Forensic Analysis to be submitted by law enforcement.

## **Confiscated Monies/Property**

### ***Description***

Money/property confiscated at arrest and, upon conviction of the defendant, ordered to be forfeited to the Commonwealth or other agency.

### ***Fees and Costs Assessed***

Revenue Code:		References:
111	Non-drug related forfeiture of money	<a href="#">Va. Code § 19.2-386.1</a> through <a href="#">Va. Code § 19.2-386.31</a>
509	Use only if court directs that the proceeds of seized property be remitted to another agency, e.g. local law enforcement	

### ***When/How Collected***

Costs of sale of seized property are collected directly by the sheriff or law enforcement agency. Any remaining money is forwarded to the clerk who remits it to the Commonwealth.

## **Court Appointed Attorney Costs**

### ***Description***

Costs of attorney appointed by the court to represent an indigent defendant. These costs cover the attorney's time and allowable expenses and materials.

### ***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
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120 (State Charges)		<a href="#">Va. Code § 16.1-267</a> ;
217 (Local Charges)	See <a href="#">Chart of Allowances</a> and <a href="#">Court Appointed Counsel Guidelines &amp; Procedures Manual</a> .	<a href="#">Va. Code § 19.2-163</a>
261, 266, 271, 276, 281, 286, 291 (Town Charges)		<a href="#">Chart of Allowances</a> <a href="#">Court Appointed Counsel Guidelines &amp; Procedures Manual</a>

**Note:** When Court Appointed Counsel represents an indigent charged with repeated violations of the same section of the Code of Virginia, with each violation arising out of the same incident, occurrence, or transaction, counsel shall be compensated in an amount not to exceed the fee prescribed for the defense of a single charge, if tried as part of the same judicial proceeding.

#### ***When/How Collected***

Taxed against the defendant upon conviction. To receive reimbursement, the court appointed attorney must submit a DC-40: List of Allowances to the court, preferably at the time of sentencing.

For appointment of multiple charges, the judge should designate the amount for each charge when approving the DC-40: List of Allowances. This will allow the clerk to assess the proper amount against the defendant for each conviction as required by [Va. Code § 19.2-163](#). If the amount per charge is not designated for appointment of multiple charges, then the clerk should prorate that amount to all charges equally by dividing the total amount awarded the court-appointed attorney by the number of charges represented. Please refer to the [Court Appointed Counsel Guidelines & Procedures Manual](#) for additional guidance.

**Note:** If the defendant is charged with a violation of a Commonwealth of Virginia statute, the court shall direct the Commonwealth of Virginia to pay approved court appointed attorney costs. If the defendant is charged with a violation of a county, city or town ordinance, the court shall direct the appropriate locality to pay approved court appointed attorney costs.

A statement submitted by an attorney for payment due them for indigent representation or representation of a child pursuant to [Va. Code § 16.1-266](#) shall, after submission of the



statement, be forwarded forthwith by the clerk to the Commonwealth, county, city or town, as the case may be, responsible for payment. [Va. Code § 19.2-163](#).

When the court appoints counsel to represent a child under [Va. Code § 16.1-267 \(A\)](#) or appoints counsel as guardian ad litem to represent a child in an abuse or neglect case pursuant to [Va. Code § 16.1-266 \(A\)](#) and the parents or another party with a legitimate interest therein who has filed a petition with the court are found to be financially able to pay for the attorney and refuse to do so, the court shall assess costs against the parents or the other party as noted above in the amount awarded the attorney by the court. DJS recommends that counsel should assess court-appointed counsel fees incurred in a civil show cause case for failure to pay child support under [Va. Code § 16.1-266 \(D\)](#). (Legal Research letter dated 9/30/2002 - Steven Dalle Mura).

Waiver on compensation cap for court-appointed attorneys - provides that court appointed counsel, who are not public defenders, may request a waiver of the limitations on compensation up to a certain specified additional amount depending on the charges being defended when the effort expended, the time reasonably necessary for the representation, the novelty and difficulty of the issue, or circumstances that warrant such a waiver. To receive reimbursement, the court appointed attorney must submit a DC-40: List of Allowances, Attorney Time Sheet, and a DC-40A: Application and Authorization for Waiver of Fee Cap to the court, preferably at the time of sentencing. The determination of whether to grant such a waiver shall be subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia. Counsel may request an additional waiver exceeding these amounts and the presiding judge shall determine whether an additional waiver is justified.

If the judge determines that the additional waiver is justified, he shall forward the request to the chief judge of the circuit or district court for approval. If the presiding judge determines that the request for an additional amount is not justified in whole or in part, the presiding judge must provide the reasons for such determination in writing to the requesting attorney. If the request has been approved in part, include a copy of such writing when forwarding the request as approved to the chief judge of the circuit or district court for approval. If the chief judge of the circuit or district court, upon review of the request as approved, determines that any part of the request for an additional amount is not justified, the chief judge shall provide the reasons for such determination in writing to the presiding judge and the requesting attorney. If the Executive Secretary of the Supreme Court of Virginia certifies that funds appropriated to pay for such waivers become insufficient, no further waivers shall be approved. In the event the defendant is convicted, and a waiver of the compensation cap has been requested, the court shall only assess against the defendant an amount equal to the pre-waiver cap as part of the cost of prosecution.

Maximum Compensation:	Offense:
\$120 plus approved expenses	Misdemeanor in District Court & Juvenile cases under <a href="#">Va. Code § 16.1-266</a>
\$120 plus approved expenses	Felony Certified to Circuit Court/Misdemeanor Ancillary Offense Certified to Circuit Court
\$445 plus approved expenses	Class III through VI Felony disposed of in District Court - Final disposition reduced to misdemeanor, dismissed, nolle prosequi, etc.
\$1,235 plus approved expenses	Class II Felony or Unclassified Felony with punishment greater than twenty years
Request for Waiver	Waiver of the limitations on compensation up to a certain specified additional amount depending on the charges being defended when the effort expended, the time reasonably necessary for the representation, the novelty and difficulty of the issue, or other circumstances warrant such a waiver. In the event the defendant is convicted, and a waiver of the compensation cap has been requested, the court shall only assess against the defendant an amount equal to the pre-waiver cap as part of the cost of prosecution.

### Court Processing Fee - Fixed Costs

#### *Description*

Processing fee assessed in misdemeanor and traffic violation cases heard in district court.

#### *Fees and Costs Assessed*

Revenue Code:		Amount Charged/ Assessed:	References:
460	Fixed Traffic Infraction Fee	\$51.00 per charge	<a href="#">Va. Code § 16.1-69.48:1</a>  Attorney General's Opinion to the Honorable J.R.
461	Fixed Misdemeanor Fee - Non-Drug Criminal & Traffic Misdemeanor	\$61.00 per charge	

462	Fixed Drug Misdemeanor Fee	\$136.00 per charge	Zepkin, dated 5/30/91
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***When/How Collected***

The district court assesses these fees on the summons or misdemeanor warrant upon conviction or statutorily specified deferred disposition or complied with law cases in addition to any other costs specifically provided by statute [Va. Code § 16.1-69.48:1](#).

**Protocols:** A defendant with multiple charges arising from the same incident (same offense date and time) and tried as a single appearance (same court date and time) shall be assessed one fixed fee only. If the multiple charges as noted above involve a combination of infractions, misdemeanors, and/or drug misdemeanors, the higher of the applicable fixed fee is assessed. The other case documents should be cross referenced regarding fee assessments as follows: "See case number \_\_\_\_\_ for fixed fee assessment of \$\_\_\_\_\_ (amount)."

**Note:** A judge has no authority to suspend costs upon conviction (Attorney General Opinion to Honorable Dale W. LaRue 8/13/64) and a judge may not assess court costs when a charge has been dismissed except where specifically allowed by statute (Attorney General Opinion to Honorable George B. Dillard, dated 6/15/1977).

**Court Reporter Fee*****Description***

Assess the sitting fee and costs of transcript, when a court reporter is appointed to report proceedings, to transcribe the report or record when appropriate, to an indigent defendant in felony case. Each judge of a court of record having jurisdiction over criminal proceedings shall be authorized, in all felony cases and habeas corpus proceedings to appoint a court reporter to report proceedings or to operate mechanical or electrical devices for recording proceedings, to transcribe the report or record of such proceedings, to perform any stenographic work related to such report, record or transcript including work pertinent to the court's findings of fact and conclusions of law pertinent thereto. Such reporter shall be paid by the Commonwealth on a per diem or work basis as appropriate out of the appropriation for criminal charges.

**Note:** The DC-40: List of Allowances or Electronic Voucher Payment System Voucher submitted by the court reporter should be approved by the circuit court judge entering the order appointing the court reporter.

***Fees and Costs Assessed***

Revenue Code:		References:
13F	Actual costs and expenses (if applicable)	<a href="#">Va. Code § 19.2-166</a> ; <a href="#">Va. Code 19.2-336</a>

***When/How Collected***

Taxed against and collected from defendant upon conviction or upon statutorily authorized complied with law or deferred disposition.

**Courthouse Construction Fee (CHCF)*****Description***

Any county or city, which, on or after January 1, 2008, operated a courthouse not in compliance with the current safety and security guidelines contained in the Virginia Courthouse Facility Guidelines, as certified by the Department of General Services upon application to the Department by the county or city, and which cannot be feasibly renovated to correct such non-compliance, through its governing body, may assess an additional sum not in excess of \$3 as part of the costs in (i) each civil action filed in the district or circuit courts located within its boundaries and (ii) each criminal or traffic case in its district or circuit court in which the defendant is charged with a violation of any statute or ordinance. Such additional fee assessed under this subsection shall not be assessed in any civil action if the amount in controversy is \$500 or less.

***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
228	As directed by local statute (not to exceed \$3)	<a href="#">Va. Code § 17.1-281</a>

***When/How Collected***

Taxed against and collected from defendant upon conviction or upon statutorily authorized complied with law or deferred disposition and in each civil action filed where the amount in controversy exceeds \$500.

**Courthouse Maintenance Fund Fee (CHMF)*****Description***

Fee assessed as part of fixed fees/costs in misdemeanor and traffic cases and used by the local governing body for the construction, renovation or maintenance of the courthouse, jail and/or other court-related facility and to defray increases in the cost of heating, cooling, electricity, and ordinary maintenance. The assessment provided for herein shall be in addition to any other fees prescribed by law. The assessment shall be required in each felony, misdemeanor, or traffic infraction case, regardless of the existence of a local ordinance requiring its payment.

***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
229	Included in District court fixed fees.	<a href="#">Va. Code § 16.1-69.48:1</a> ; <a href="#">Va. Code § 17.1-281</a>

***When/How Collected***

Taxed against and collected from defendant upon conviction or upon statutorily authorized complied with law or deferred disposition.

**Courthouse Security Fund (CHSF)**

***Description***

Fee assessed as part of costs in felony, misdemeanor, and traffic cases and used by the local governing body subject to appropriation by the governing body to the sheriff's office for the funding of courthouse security personnel. If a town provides court facilities for a county, the governing body of the county (not the clerk's office) shall return to the town a portion of the assessments collected based on the number of criminal and traffic cases originating and heard in the town. The imposition of such assessment must be by ordinance of the local governing body. The effective date of the fee is based on the effective date of the ordinance. Each court should obtain a copy of the ordinance before the fee is assessed. Funds collected through the assessment of the CHSF fee shall only be used to fund courthouse security personnel and equipment used in connection with courthouse security.

***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
244	An amount as determined by each local governing body but not in excess of \$20.00 per case shall be added on in addition to any fixed fee.	<a href="#">Va. Code § 53.1-120 (D)</a> Local Ordinance

***When/How Collected***

Taxed against and collected from a defendant upon conviction or upon statutorily authorized complied with law or deferred disposition.

**Criminal History Fee*****Description***

A magistrate collects this fee from a bail bondsman who requests a defendant's Virginia criminal history record issued pursuant to [Va. Code § 19.2-389](#). The magistrate receipts this payment to revenue code 116 and forwards this payment to the General District Court for the locality in which the magistrate is located. The court will receipt these funds via a GGM receipt to revenue code 116 and transmits these funds to the state treasury in the usual manner. On the "account of" line, the court should record the name of the bondsman who paid the fee. On the "received of" line, the court should record the name of the magistrate who transmitted the collection and provide a copy of the receipt to the magistrate.

***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
116	\$15.00 per criminal history requested is paid by bail bondsman to magistrate, who then transmits collected funds to the General District Court in which the magistrate is located.	<a href="#">Va. Code § 19.2-120 (F)</a>

***When/How Collected***

Court receives fees collected by magistrates from bail bondsmen who request a defendant's Virginia criminal history record. **Note:** Court receipts funds transmitted by magistrate using GGM receipt.

**Criminal Injury Compensation Fund Fee (CICF)*****Description***

Fee assessed as part of fixed costs upon conviction of a felony or misdemeanor and collected for deposit in CICF. Such monies are available to victims of certain crimes to cover their losses.

***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
132	The appropriate amount is included in the District Court Fixed Fees as provided for in <a href="#">Va. Code § 16.1-69.48:1</a> .	<a href="#">Va. Code § 16.1-69.48:1</a> ; <a href="#">Va. Code § 19.2-368.18(B)</a>

***When/How Collected***

Taxed against and collected from defendant upon conviction or upon statutorily authorized complied with law or deferred disposition.

**Criminal Justice Training Academy Fund (LOCAL)*****Description***

A locality who does not participate in a regional criminal justice training academy and if the locality was operating a certified independent criminal justice academy as of July 1, 2010, may charge a fee similar to the Regional Training Justice Academy fee. Any and all funds from such local fee shall support the local academy. The court should have a copy of the local ordinance on file.

***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
243	Varies per Local Ordinance	<a href="#">Va. Code § 9.1-106</a>

***When/How Collected***

Taxed against and collected from defendant upon conviction or upon statutorily authorized complied with law or deferred disposition.

**Criminal Justice Training Academy Fund (LOCAL)*****Description***

A locality who does not participate in a regional criminal justice training academy and if the locality was operating a certified independent criminal justice academy as of July 1, 2010, may charge a fee similar to the Regional Training Justice Academy fee. Any and all funds from such local fee shall support the local academy. The court should have a copy of the local ordinance on file.

***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
243	Varies per Local Ordinance	<a href="#">Va. Code § 9.1-106</a>

***When/How Collected***

Taxed against and collected from defendant upon conviction or upon statutorily authorized complied with law or deferred disposition.

**Criminal Justice Training Academy Fund (Regional)*****Description***

Fee assessed upon conviction for traffic and misdemeanor cases in the district court.

***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
143	Included in the District Court fixed fees as provided in <a href="#">Va. Code §16.1-69.48:1</a> .	<a href="#">Va. Code § 9.1-106</a> ; <a href="#">Va. Code § 16.1-69.48:1</a>

***When/How Collected***

Taxed against and collected from defendant upon conviction or upon statutorily authorized complied with law or deferred disposition.

**Fines and Fees (D-J)**



## Deferred Disposition Costs

### *Description*

Assessment of the fees/costs provided for in [Va. Code § 16.1-69.48:1](#) shall be based on ...”(v) a deferral of proceedings pursuant to [Va. Code § 4.1-305](#), [Va. Code § 16.1-278.8](#), [Va. Code § 16.1-278.9](#), [Va. Code § 18.2-57.3](#), [Va. Code § 18.2-251](#), [Va. Code § 19.2-303.2](#), [Va. Code § 19.2-303.6](#), or [Va. Code § 19.2-298.02](#).”

### *Fees and Costs Assessed*

Revenue codes and Amount Assessed varies. Costs/fees should be assessed and collected as outlined in [Va. Code § 16.1-69.48:1](#) and include any applicable add-on costs/fees.

References:	
<a href="#">Va. Code § 4.1-305</a>	Purchase/Possess Alcohol under 21
<a href="#">Va. Code § 16.1-69.48:1</a>	Costs/fees
<a href="#">Va. Code § 16.1-278.8</a> ; <a href="#">Va. Code § 16.1-278.9</a>	Delinquency
<a href="#">Va. Code § 18.2-57.3</a>	Family Assault
<a href="#">Va. Code § 18.2-251</a>	First Time Drug Offender
<a href="#">Va. Code § 19.2-303.2</a>	First Time Property Offenses <a href="#">Va. Code § 18.2-119</a> through <a href="#">Va. Code § 18.2-167.1</a> Defendants without previous felony conviction
<a href="#">Va. Code § 19.2-303.4</a>	Payment of costs when proceedings deferred, and defendant placed on probation.
<a href="#">Va. Code § 19.2-303.6</a>	Deferred disposition in a criminal case; persons with autism or intellectual disabilities.
<a href="#">Va. Code § 19.2-298.02</a>	Deferred disposition in a Criminal Case

***When/How Collected***

Assessed against and collected from defendant upon any deferred disposition including those pursuant to the above referenced statutes. DNA sample is not collected, and no DNA fee assessed upon deferral unless later there is a conviction.

**DNA Analysis*****Description***

Provides that every person convicted of a misdemeanor violation of [Va. Code § 16.1-253.2](#), [Va. Code § 18.2-57](#), [Va. Code § 18.2-60.3](#), [Va. Code § 18.2-60.4](#), [Va. Code § 18.2-67.4](#), [Va. Code § 18.2-67.4:1](#), [Va. Code § 18.2-67.4:2](#), [Va. Code § 18.2-67.5](#), [Va. Code § 18.2-102](#), [Va. Code § 18.2-119](#), [Va. Code § 18.2-121](#), [Va. Code § 18.2-130](#), [Va. Code § 18.2-370.6](#), [Va. Code § 18.2-387](#), [Va. Code § 18.2-387.1](#), or [Va. Code § 18.2-460\(E\)](#) or of any similar ordinance of any locality shall have a sample of their blood, saliva or tissue taken for DNA analysis. If a sample has been previously taken from the person as indicated by the Local Inmate Data System (LIDS), no additional sample shall be taken [Va. Code § 19.2-310.2](#), [Va. Code § 19.2-310.7](#).

***Fees and Costs Assessed***

The fee shall be assessed upon conviction and one time per defendant rather than on each case tried. If a sample has been previously taken from the person as indicated by the Local Inmate Data System (LIDS), no additional sample shall be taken.

Revenue Code:	Amount Charged/ Assessed:	References:
13D (Commonwealth) 233 (Locality)	The fee is \$53 with \$38.00 going to the Commonwealth (13D) and \$15.00 going to the locality (233)	<a href="#">Va. Code § 16.1-253.2</a> ; <a href="#">Va. Code § 18.2-57</a> ; <a href="#">Va. Code § 18.2-60.3</a> ; <a href="#">Va. Code § 18.2-60.4</a> ; <a href="#">Va. Code § 18.2-67.4</a> ; <a href="#">Va. Code § 18.2-67.4:1</a> ; <a href="#">Va. Code § 18.2-67.4:2</a> ; <a href="#">Va. Code § 18.2-67.5</a> ; <a href="#">Va. Code § 18.2-119</a> ; <a href="#">Va. Code § 18.2-102</a> ; <a href="#">Va. Code § 18.2-121</a> ; <a href="#">Va. Code § 18.2-130</a> ; <a href="#">Va. Code § 18.2-370.6</a> ; <a href="#">Va. Code § 18.2-387</a> ; <a href="#">Va. Code § 18.2-387.1</a> ; <a href="#">Va. Code § 18.2-460(E)</a> ; or any similar ordinance of any locality

***When/How Collected***

Taxed against and collected from defendant upon conviction. DNA sample is not collected and no DNA fee assessed upon deferral unless later there is a conviction.

A defendant's noted appeal or intent to appeal does not prohibit the collection of the DNA sample upon conviction.

### **Driver Improvement Clinic Fee/Mature Driver Motor Vehicle Crash Prevention Course**

#### ***Description***

Fee for entrance into a driver improvement education and training program designed to assist problem drivers; or fee to attend a mature driver motor vehicle crash prevention course.

#### ***Fees and Costs Assessed***

Revenue Code is not applicable.

Amount Charged/ Assessed:	References:
Fee varies depending on program	<a href="#">Va. Code § 16.1-69.48:1</a> ; <a href="#">Va. Code § 46.2-502</a> ; <a href="#">Va. Code § 46.2-505</a>

#### ***When/How Collected***

Driver Improvement Clinic Fees/Mature Driver Motor Vehicle Crash Prevention Course fees should not be collected by the court but rather should be paid directly by the defendant. **Note:** The court may require a defendant to successfully complete a driver improvement clinic, traffic school, or a mature driver motor vehicle crash course in lieu of a finding of guilty. Should this be the case, the defendant would still be taxed all other fees and costs as if they were convicted.

### **Drive-Off from Retail Motor Fuel Establishment**

#### ***Description***

No person shall drive a motor vehicle off the premises of an establishment at which motor fuel offered for retail sale was dispensed into the fuel tank of such motor vehicle unless payment for such fuel has been made. Any person who violates this section shall be liable for a civil penalty not to exceed \$250.00.

#### ***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
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110	Civil Penalty not to exceed \$250.00 plus court costs. Prosecution for larceny is not precluded.	<a href="#">Va. Code § 46.2-819.2</a>
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***When/How Collected***

Assessed against and collected from defendant upon conviction of the below referenced statute.

**Drug Analysis (Forensic Lab) Costs*****Description***

Costs of forensic analysis of drugs seized as evidence in a case.

***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
13E	Included in the District Court misdemeanor fixed fees as provided for in <a href="#">Va. Code § 16.1-69.48:1</a> .	<a href="#">Va. Code § 16.1-69.48:1</a> Attorney General Opinion to Davila, dated 11/23/77 (1977-78, pg. 95)

***When/How Collected***

Taxed against and collected from defendant upon conviction of each and any misdemeanor charge, whether or not originally charged as a felony, for a violation of any provision of Article 1, [Va. Code § 18.2-247](#) et seq. of Chapter 7 of Title 18.2, or upon a deferred disposition of proceedings in the case of any and each misdemeanor charge, whether or not originally charged as a felony, deferred pursuant to the terms and conditions of [Va. Code § 18.2-251](#).

A certificate of analysis must be filed in order to collect these costs from the defendant.

**Note:** The costs for forensic laboratory analyses are neither billed to the circuit court nor processed for reimbursement by the Office of the Executive Secretary. Instead, such costs, when recovered from the defendant, are paid into the state's general fund via receipting the payment under revenue code 13E.

**Drug Enforcement Jurisdiction Fund (DEJF) Fee*****Description***

Fee assessed upon conviction or statutorily authorized deferred disposition of a misdemeanor or traffic infraction case. Such monies are subsequently deposited in a special non-reverting fund administered by the [Department of Criminal Justice Services](#). The fund is intended to provide additional resources to supplement the efforts of local officials in the apprehension and prosecution of persons engaged in drug-trafficking activities.

***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
140	Included in the District Court misdemeanor fixed fees as provided for in <a href="#">Va. Code § 16.1-69.48:1</a> .	<a href="#">Va. Code § 9.1-105</a> ; <a href="#">Va. Code § 15.2-1715</a> ; <a href="#">Va. Code § 16.1-69.48:1</a>

***When/How Collected***

Taxed against and collected from defendant upon conviction or upon statutorily authorized complied with law or deferred disposition.

**Drug Offender Assessment Fund (DOAF)**

***Description***

Fee assessed upon a conviction of any misdemeanor drug offense under any provision of Article 1, [Va. Code § 18.2-247](#) et. seq. of Chapter 7 of Title 18.2 and upon each misdemeanor disposition under [Va. Code § 18.2-251](#) as part of the Fixed Drug Misdemeanor Fee.

***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
107	\$75 for each drug conviction/disposition is included in the Fixed Misdemeanor Drug fee.	<a href="#">Va. Code § 16.1-69.48:3</a>

***When/How Collected***

Taxed against and collected from the defendant upon conviction or upon disposition under [Va. Code § 18.2-251](#).

**Duck Blinds in Disrepair*****Description***

Requires a person who holds a duck blind license for a stationary blind located in the City of Virginia Beach to immediately notify the Department of Wildlife Resources (the Department) when their blind has been abandoned or does not meet the duck blind standards.

Any person who violates any provision of this section or any regulation promulgated hereunder shall be subject to a civil penalty of \$100. All civil penalties assessed under this section shall be deposited in the Motorboat and Water Safety Fund of the Game Protection Fund and used as provided for in [Va. Code § 29.1-701](#).

***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
030	\$100.00	<a href="#">Va. Code § 29.1-345.2</a>

***When/How Collected***

Taxed against and collected from a defendant upon each conviction of this section. Do not assess court costs.

**Electronic Summons Fee*****Description***

Any county, city, or town, through its governing body, may assess an additional sum not in excess of \$5 as part of the costs in each criminal or traffic case in the district or circuit courts located where such cases are brought in which the defendant is charged with a violation of any statute or ordinance, which violation in the case of towns arose within the town. The correct fee will be assessed to the individual account to match the local fine code. The imposition of such assessment shall be by ordinance of the governing body, which may provide for different sums in circuit courts and district courts. The assessment shall be collected by the clerk of the court in which the action is filed, remitted to the treasurer of the appropriate county, city, or town, and held by such treasurer subject to disbursements by the governing body to a local law-enforcement agency solely to fund software, hardware, and associated equipment costs for the implementation and maintenance of an electronic summons system. The imposition of a town assessment shall replace any county fee that would otherwise apply.

Additionally, a fee of \$5 shall be assessed as court costs in each criminal or traffic case in which the Virginia State Police issued the summons, ticket, or citation. All fees collected pursuant to this section shall be deposited into the state treasury and credited to the Virginia State Police Electronic Summons System Fund.

### ***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
241, 262, 267, 272, 277, 282, 287, 292, 297, 2B2, 2B7, 2X0	As directed by local ordinance (Not to exceed \$5.00)	<a href="#">Va. Code § 17.1-279.1</a>
165	A fee of \$5 shall be assessed as court costs in each criminal or traffic case in which the Virginia State Police issued the summons, ticket, or citation.	<a href="#">Va. Code § 17.1-275.14</a>

### ***When/How Collected***

Taxed against and collected from a defendant upon conviction or upon statutorily authorized complied with law or deferred disposition.

## **Expert Assistance Fee**

### ***Description***

The fee charged for an expert assistance to be assessed back to the defendant upon conviction or upon certification to circuit court.

### ***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
13M	In any case in which an expert assistant is ordered and such person is convicted, or such case is certified to the circuit court, such fee shall be taxed against the person as part of the costs of prosecution and, if collected, shall be paid to the Commonwealth.	<a href="#">Va. Code § 19.2-332</a> , <a href="#">Va. Code § 19.2-336</a>

### ***When/How Collected***

Fee is taxed to the defendant as part of costs upon conviction or upon certification to the circuit court.

## Extradition Costs

### *Description*

Costs and expenses associated with the transport of any defendant who is charged with an offense in Virginia but who is located in another state.

### *Fees and Costs Assessed*

Revenue Code:	Amount Charged/ Assessed:	References:
13G (If applicable)	Actual costs and expenses (if applicable)	<a href="#">Va. Code § 19.2-112</a> <a href="#">Chart of Allowances</a>

### *When/How Collected*

Commonwealth of Virginia shall pay all extradition expenses and costs. The local law enforcement agency that transported the defendant generally submits a voucher for expenses directly to the Office of the Executive Secretary for processing.

Extradition costs are added to court costs as an add-on cost if the person extradited is found guilty, or if the person was extradited after illegally leaving the Commonwealth while on parole or probation pursuant to [Va. Code § 19.2-112 \(B\)](#). Should a court-appointed attorney or public defender be appointed to represent the defendant and the defendant later decides to waive extradition proceedings, the court-appointed attorney's or public defender's fee taxed against the defendant provided the court-appointed attorney submits a DC-40: List of Allowances or the public defender submits a DC-52: [Public Defender Timesheet](#) preferably at the time of sentencing to the court. Should the defendant pay the costs for extradition, the clerk should receipt such payments under revenue code 13G.

## Fine - Local

### *Description*

Monetary penalty for violation of a local law/ordinance.

### *Fees and Costs Assessed*

Revenue Code:	Amount Charged/ Assessed:	References:
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201 (city or county) 260, 265, 270, 275, 280, 285, 290, 295 (town)	As ordered by the court.	<a href="#">Va. Code § 19.2-340</a> Local Ordinances
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***When/How Collected***

Taxed against and collected from the defendant upon conviction.

**Fine - State*****Description***

Monetary penalty for violation of state law.

***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
110	As ordered by the court.	<a href="#">Va. Code § 19.2-340</a>

***When/How Collected***

Taxed against and collected from defendant upon conviction.

**Fire Suppression Costs*****Description***

Fee assessed in District court for the full amount of all expenses incurred by the Commonwealth for extinguishing such fire.

***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
021	Varies	<a href="#">Va. Code § 10.1-1141</a> <a href="#">Va. Code § 10.1-1142</a>

***When/How Collected***

Assessed against and collected from defendant upon conviction of a violation of [Va. Code § 10.1-1141](#), [Va. Code § 10.1-1142](#), and credited to the Forestry Operations Fund.

**Game Replacement Fee*****Description***

Fee assessed in District court on game and fish violations. Such fees are based upon the replacement cost of game or fish illegally taken.

***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
134	Game Replacement fees are recommended by, and a copy of the schedule may be obtained from the <a href="#">Department of Wildlife Resources</a>	<a href="#">Va. Code § 29.1-551</a>

***When/How Collected***

Assessed against and collected from defendant upon conviction of a violation of [Va. Code § 29.1-523](#), [Va. Code § 29.1-525.1](#), [Va. Code § 29.1-530.2](#), [Va. Code § 29.1-548](#), [Va. Code § 29.1-550](#), or [Va. Code § 29.1-552](#). The Comptroller shall credit such payments to the game protection fund.

**Guardian ad Litem Fee when appointment for a Minor Witness*****Description***

Fee assessed in District court when the judge appoints a guardian ad litem for a minor witness.

***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
122 (Commonwealth) 2GL (Locality)	Varies	<a href="#">Va. Code § 8.01-396.2</a>

***When/How Collected***

Assessed against and collected from defendant upon conviction.

## Highway Litter Fine

### *Description*

Fine assessed when defendant is convicted of littering, a Class 1 misdemeanor.

### *Fees and Costs Assessed*

Revenue Code:	Amount Charged/ Assessed:	References:
128	Up to \$1,000.00 as ordered by the court	<a href="#">Va. Code § 33.1-346</a> ; <a href="#">Va. Code § 33.1-346.1</a> ; <a href="#">Va. Code § 10.1-1418</a> ; <a href="#">Va. Code § 10.1-1419</a> ; <a href="#">Va. Code § 10.1-1424</a>

**Note:** If “clean up” costs are also ordered to be paid, see [Va. Code § 10.1-1424](#), such costs, if to be paid to a party other than the Commonwealth, should be receipted and disbursed under Revenue Code 509 - Escrow Collection for Others.

### *When/How Collected*

Assessed and taxed as costs against defendant upon conviction in the District court. The revenue is remitted to the State Treasurer for the construction and maintenance of state highways, except as ordered by the judge under [Va. Code § 33.1-346.1](#).

## HOT Lane Penalties – Failure to Pay Toll

### *Description*

Provides a civil penalty for a violation of [Va. Code § 33.2-503-3](#) when vehicle is found to have used a toll facility without payment of the required toll. For violations on any toll road, there is a cap of \$2,200 on civil penalties and administrative fees for a first conviction.

### *Fees and Costs Assessed*

In addition to the unpaid toll, all accrued administrative fees, and applicable court costs in each case, a civil penalty as outlined below shall be assessed upon conviction if the matter proceeds to court.

Revenue Code:	Amount Charged/ Assessed:		References:
290, 256 (Interest assessed on cases for HOT Lanes violations)	\$50.00	1 <sup>st</sup> offense	<a href="#">Va. Code § 33.2-503-3</a>
	\$100.00	2 <sup>nd</sup> offense	
	\$250.00	3 <sup>rd</sup> offense within two years from the second offense	
	\$500.00	4 <sup>th</sup> and any subsequent offense within three years from the second offense	

***When/How Collected***

Assessed and collected upon conviction if the matter proceeds to court. **Note:** The court shall remand penalties, the unpaid toll, and administrative fees assessed for violation of this section to the treasurer or director of finance of the county or city in which the violation occurred for payment to the HOT lanes operator for expenses associated with operation of the HOT lanes.

**HOV Lane Violations*****Description***

The [Commonwealth Transportation Board](#) may designate one or more lanes of any highway in the interstate, primary, or secondary highway systems as high-occupancy vehicle lanes (HOV). Any person driving a motor vehicle in a designated HOV lane in violation of this statute shall be guilty of a traffic infraction, which shall not be a moving violation. Penalties for violations within the boundaries of Planning District Eight will be different from the penalties for violations in other regions.

***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:		References:
110	\$100.00	For driving in violation of HOV lane restrictions in regions other than Planning District Eight.	<a href="#">Va. Code § 33.2-501</a>
	For Planning District Eight Only:		
	\$125.00	1 <sup>st</sup> offense for driving in violation of HOV lane restrictions.	

	\$250.00	2 <sup>nd</sup> offense within five years from first offense for driving in violation of HOV lane restrictions.
	\$500.00	3 <sup>rd</sup> offense within five years from a first offense for driving in violation of HOV lane restrictions.
	\$1000.00	4 <sup>th</sup> offense within five years from a first offense for driving in violation of HOV lane restrictions.

***When/How Collected***

Assessed upon conviction of defendant.

**Hunting, Trapping & Fishing without A License Fee*****Description***

A person convicted of hunting, trapping or fishing without a license where such license is required under [Va. Code § 29.1-335](#) shall pay to the clerk a fee equal to the cost of the required license to be paid to the state treasury and credited to the game protection fund.

**Note:** The purchase of a license subsequent to an arrest or notice of summons to appear in court for hunting, trapping, or fishing without a license shall not relieve the person from penalties specified in this section.

***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
134	Fee equal to the cost of required license. License Fees can be found below: <a href="https://www.dwr.virginia.gov/fishing/regulations/licenses/">https://www.dwr.virginia.gov/fishing/regulations/licenses/</a>	<a href="#">Va. Code § 29.1-335</a>

***When/How Collected***

Taxed against and collected from a defendant upon conviction.

### Ignition Interlock System Penalty

In addition to any penalty provided by law for a conviction under [Va. Court § 18.2-51.4](#) or [18.2-266](#) or a substantially similar ordinance of any county, city or town, any court of proper jurisdiction shall, as a condition of a restricted license, prohibit an offender from operating a motor vehicle that is not equipped with a functioning, certified ignition interlock system for any period of time not to exceed the period of license suspension and restriction, not less than 12 consecutive months without alcohol-related violations of the interlock requirements. The court shall, for a conviction under [Va. Code § 18.2-51.4](#), a second or subsequent offense of [Va. Code § 18.2-266](#) or a substantially similar ordinance of any county, city or town, or as a condition of license restoration pursuant to subsection C of [Va. Code § 18.2-271.1](#) or [Va. Code § 46.2-391](#), require that such a system be installed on each motor vehicle, as defined in [Va. Code § 46.2-100](#), owned by or registered to the offender, in whole or in part, for such period of time. Such condition shall be in addition to any purposes for which a restricted license may be issued pursuant to [Va. Code § 18.2-271.1](#). The court may order the installation of an ignition interlock system to commence immediately upon conviction. A fee of \$20 to cover court and administrative costs related to the ignition interlock system shall be paid by any such offender to the clerk of the court.

**Note:** The [Department of Motor Vehicles](#) shall publish a list of certified ignition interlock systems and shall ensure that such systems are available throughout the Commonwealth.

#### *Fees and Costs Assessed*

Revenue Code:	Amount Charged/ Assessed:	References:
13C	\$20.00	<a href="#">Va. Code § 18.2-270.1 (B)</a>

#### *When/How Collected*

This fee applies only to misdemeanors and traffic cases. It is charged in addition to the appropriate fixed fees. It is assessed on each conviction where an ignition interlock device is ordered. The fee is charged only one time per case. Taxed and collected from the defendant upon conviction/deferred disposition.

### Internet Crimes against Children Fund

#### *Description*

In addition to all other statutorily authorized fees, an additional fee of \$15.00 shall be assessed as court costs upon each felony or misdemeanor conviction/deferred dispositions and shall be deposited into the state treasury and credited to the Internet Crimes against Children Fund (Revenue Code 001).

***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
001	\$15.00	<a href="#">Va. Code § 17.1-275.12</a>

***When/How Collected***

Taxed against and collected from a defendant upon each felony or misdemeanor conviction/deferred dispositions.

**Internet Crimes against Children Fund*****Description***

In addition to all other statutorily authorized fees, an additional fee of \$15.00 shall be assessed as court costs upon each felony or misdemeanor conviction/deferred dispositions and shall be deposited into the state treasury and credited to the Internet Crimes against Children Fund (Revenue Code 001).

***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
001	\$15.00	<a href="#">Va. Code § 17.1-275.12</a>

***When/How Collected***

Taxed against and collected from a defendant upon each felony or misdemeanor conviction/deferred dispositions.

**Interest on Unpaid Fine and/or Costs*****Description***

Interest accrued on the unpaid balance of fines and/or costs imposed in a criminal case or traffic infraction. Whenever interest on any unpaid fine and/or costs accrues, it shall accrue at the judgment rate of interest set forth in [Va. Code § 6.2-302](#).

***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:		References:
109 (Commonwealth) 242 (city or county) 250, 251, 252, 253, 254, 255, 256, 257 (town)	6%	From 7/1/04 to present	<a href="#">Va. Code § 6.2-302</a> ; <a href="#">Va. Code § 19.2-305.4</a> ; <a href="#">Va. Code § 19.2-353.5</a> ; <a href="#">Va. Code § 19.2-354</a>
	9%	From 7/1/91 to 6/30/04 (All new account assessments effective 7/1/96 & after)	
	\$4	Interest charge per \$50 unpaid for each year or portion thereof unpaid from 7/1/88 to 6/30/96	
	8%	From 7/1/87 through 6/30/91	
	12%	From 1/1/85 through 6/30/87	
	10%	From 7/1/81 through 6/30/83	
	8%	From 10/1/77 through 6/30/81	

See also:

- Attorney General Opinion to Davis, dated 3/23/89 (1989, page 194)
- Attorney General Opinion to Marshall, dated 2/14/86 (1985-86, pg. 190)
- Attorney General Opinion to Zepkin, dated 10/15/85 (1985-86, pg. 136)
- Attorney General Opinion to Parrish, dated 10/16/86 (1986-87, pg. 187)

### ***When/How Collected***

Interest is to be assessed on the unpaid balance when forty days have passed since final judgment or the defendant's release from incarceration. Interest does not accrue on unpaid fine and/or cost during a defendant's incarceration on that specific charge or when the court has ordered a deferred payment or when the defendant is making timely court-ordered installment payments. Additionally, a defendant may move any court in which they owe fines and costs imposed in a criminal case to waive any interest that accrued on such fines and costs during any term of incarceration and that such waiver



shall be granted upon certification of the person's incarceration by the official in charge of the facility where such person was incarcerated.

The court, when ordering restitution (revenue account code 520) pursuant to [Va. Code § 19.2-305](#) or [Va. Code § 19.2-305.1](#), may provide in the order for interest on the amount so ordered from the date of the loss or damage at the rate specified in [Va. Code § 6.2-302](#).

If interest is specified, but no date is given, interest will be figured from the date of sentencing.

### **Interpreter Fee - for Deaf in Civil Proceedings**

#### ***Description***

In any civil proceeding in which a speech-impaired or hearing-impaired person is a party or witness, the court may appoint a qualified interpreter to assist such person in the proceeding. The court shall appoint an interpreter for any speech-impaired or hearing-impaired person who requests this assistance. Interpreters for the deaf in these proceedings shall be procured through the [Virginia Department for the Deaf and Hard of Hearing](#).

#### ***Fees and Costs Assessed***

N/A

### **Interpreter Fee - Criminal Cases**

#### ***Description***

Fee charged by an interpreter for appearance in court on behalf of non-English speaking or deaf/mute individuals (defendant, victim, witness).

#### ***Fees and Costs Assessed***

Interpreter fees are not assessed in criminal cases. Please refer to the [Chart of Allowances](#) and [Va. Code § 19.2-164](#), [Va. Code § 19.2-164.1](#).

### **Jail Admission Fee**

#### ***Description***

This add-on fee is assessed as part of costs in felony, misdemeanor, and traffic cases where a defendant is admitted to a county, city, or regional jail following conviction. After collection by the clerk, the fee is paid to the local treasurer and shall be used by the local

sheriff's office and regional jails to defray the costs of processing arrested persons into local or regional jails. The imposition of such assessment must be by ordinance of the local governing body. Each court should obtain a copy of the ordinance before the fee is assessed.

### ***Fees and Costs Assessed***

This fee applies to situations where the defendant is sentenced to local confinement or admittance to jail while awaiting transfer to the [Department of Corrections](#). The fee does not apply to persons who are remanded to custody for the sole purpose of finger printing and/or DNA sampling.

The fee applies to felony, misdemeanor, and traffic cases and should be assessed ONE time per sentencing event rather than on each case or count tried on a particular day.

An amount as determined by each local governing body.

Revenue Code:	Amount Charged/ Assessed:	References:
234	Not to exceed \$25.00 for any individual.	<a href="#">Va. Code § 15.2-1613.1</a> Local Ordinance(s)

### ***When/How Collected***

Taxed against and collected from defendant upon conviction.

## **Fines and Fees (I-Z)**

### **Liquidated Damages**

#### ***Description***

Money assessed when a vehicle (truck) is found to exceed statutory weight limits.

#### ***Fees and Costs Assessed***

Pursuant to [Va. Code § 46.2-1131](#), [Va. Code § 46.2-1133](#), and [Va. Code § 46.2-1134](#), [Va. Code § 46.2-1135](#), [Va. Code § 46.2-1138.1](#), liquidated damage amounts are set by statute and ordered by the judge. However, the following fees/costs may be collected in conjunction with a liquidated damages case:

Revenue Code:	Amount Charged/ Assessed:
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110 or 201	Fine, if applicable
112	District court fee
13R	Weighing costs, if applicable
125	\$2.00 Weighing Fee

***When/How Collected***

The [Department of Motor Vehicles](#) or Town will send the court a copy of the Overweight Citation, which indicates the hearing date. The District Court places citation on Civil Docket for appropriate hearing date and indexes the case. No notice or service of process is required since DMV or Town informs the defendant and the charging officer, notifying each of the hearing date. Upon conclusion of the case, the disposition is sent to DMV or Town on Form DC-480: Case Disposition along with a copy of the citation. **Note:** The court does not collect money on the judgment. Refer all payments to DMV or Town.

**Medical Costs for Gathering Evidence*****Description***

Costs of medical examination of victim to obtain physical evidence where the victim has been sexually abused or assaulted.

***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
13P	Varies	<a href="#">Va. Code § 19.2-165.1</a> <a href="#">Chart of Allowances</a>

**Note:** The Commonwealth Attorney submits invoice with appropriate supporting documentation to the Supreme Court of Virginia for payment.

***When/How Collected***

Upon conviction of the defendant in any such case, the court shall order that the defendant is to reimburse the Commonwealth for payment of such medical fees. It is necessary for the Commonwealth Attorney to advise the court of such fees certified for payment to the Supreme Court of Virginia (documentation to be placed with defendant's file). For multiple defendants, the Commonwealth Attorney should submit a separate form showing the amount to be prorated to each defendant.

**Methamphetamine Lab Clean-Up Costs (Commonwealth)*****Description***

Provides that if property owned by a person convicted of manufacture of methamphetamine is damaged, destroyed, or otherwise rendered unusable as a result of such methamphetamine manufacture, the court shall order the person to pay the reasonable estimated or actual expenses associated with clean-up, removal, or repair of the affected property or, if actual or estimated expenses cannot be determined, the sum of \$10,000, to the methamphetamine clean-up fund.

***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
151	Varies	<a href="#">Va. Code § 18.2-248</a> , <a href="#">Va. Code § 18.2-248.04</a>

***When/How Collected***

If recovered from defendant, receipt under revenue code 151.

**Methamphetamine Lab Clean-Up Costs (Local)*****Description***

Allows locality to provide by ordinance that any person convicted for manufacture of methamphetamine shall be liable to the locality or other law-enforcement entity for the expense in cleaning up any methamphetamine lab related to the conviction.

***Fees and Costs Assessed***

Use the applicable local revenue cost code. See [Va. Code § 15.2-1716.2](#).

***When/How Collected***

Law allows for assessment in criminal or by separate civil action. Assess as restitution under applicable local revenue cost code.

**Motorboat and Water Safety Fund*****Description***

Any person who violates any provision of this section or any regulation promulgated hereunder shall be subject to a civil penalty of \$100. All civil penalties assessed under this

section shall be deposited in the Motorboat and Water Safety Fund of the Game Protection Fund and used as provided for in [Va. Code § 29.1-701](#).

***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
030	\$100.00	<a href="#">Va. Code § 29.1-735.2</a>

***When/How Collected***

Taxed against and collected from a defendant upon each conviction of this section. Assess misdemeanor court costs excluding Revenue Code 001, Internet Crimes against Children Fund.

**Possession of Marijuana – Civil**

***Description***

Any person who violates this section is subject to a civil penalty of no more than \$25. A violation of this section is a civil offense.

***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
107	\$25.00	<a href="#">Va. Code § 4.1-1100(B)</a> <a href="#">Va. Code § 46.2-341.20:7</a>

***When/How Collected***

Taxed and collected from a defendant upon each conviction of this section. Any civil penalties collected pursuant to this section shall be deposited into the Drug Offender Assessment and Treatment Fund established pursuant to [Va. Code § 18.2-251.02](#).

No court costs shall be assessed for violations of this section.

**Prepayable Traffic Infractions**

***Description***

A schedule of Commonwealth and Local traffic infractions designated by the Supreme Court as pre-payable, and which includes the amount of fine and costs necessary to prepay without court appearance (Rules of Court). This schedule shall be uniform in its

application throughout the Commonwealth. As per [Va. Code § 16.1-69.40:1 \(A\)](#), such designated infractions shall include violations of [Va. Code § 46.2-878.2](#) and [Va. Code § 46.2-1242](#) or any parallel local ordinances. A person charged with a traffic offense that is listed as pre-payable in the Uniform Fine Schedule may prepay their fines and costs without court appearance whether or not they were involved in an accident. Offenses that are not pre-payable shall include:

- Indictable offenses
- DUI cases
- Reckless driving
- Leaving the scene of an accident
- Driving with suspended or revoked license
- Driving without being licensed to drive

Fines imposed under local traffic infraction ordinances that do not parallel provisions of state law and fulfill the criteria set out in [Va. Code § 16.1-69.40:1 \(A\)](#) may be pre-payable if such ordinances appear in a schedule entered by order of the Circuit Court. The judges of each Circuit may establish a schedule of the fines, within the limits prescribed by local ordinances, to be imposed for pre-payment of local ordinances designating each offense specifically. Upon entry of such order, the Circuit Court shall forward it within ten days to the Supreme Court of Virginia and shall be applied in a uniform manner throughout the circuit.

### ***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
Varies	Fine as set forth in the Uniform Fine Schedule plus all assessable costs.	<a href="#">Va. Code § 16.1-69.40:1</a> , <a href="#">Va. Code § 46.2-1300</a> Uniform Fine Schedule - Prepayable Traffic Offenses General District Court Manual, "Fees and Prepayments"

**Note:** The schedule is applied uniformly throughout the Commonwealth. A clerk or magistrate may not impose a fine and cost different from the amounts shown on the schedule. The schedule does not restrict the fine a judge may impose for an offense listed on the schedule in any case for which there is a court hearing

### ***When/How Collected***

An appearance may be made in person, by making a VIPNET payment over the internet, or in writing by mail to a clerk of court or in person before a magistrate, prior to any date fixed for trial in court. Any person so appearing may enter a waiver of trial and a plea of guilty and pay the fine and costs established for the offense charged. The person shall be informed prior to plea and payment of their right to stand trial, that their signature to a plea of guilty will have the same force and effect as judgment of court, and that the record of conviction will be sent to the Commissioner of the [Department of Motor Vehicles](#) or the appropriate offices of the State where the person received their license to drive.

## Photocopying Fees

### *Description*

A fee charged by the District Court for making a copy of any paper of record.

### *Fees and Costs Assessed*

Revenue Code:	Amount Charged/ Assessed:	References:
131	\$1.00 each maximum for first 2 pages \$.50 each maximum for each additional page	<a href="#">Va. Code § 16.1-69.48:2</a>

### *When/How Collected*

Fee is charged upon making copy of any paper of record, to go out of the clerk's office, to anyone who is not a participant in the case. **Note:** Do not charge for providing copies requested by State Police or other law-enforcement officers as part of an active criminal investigation, any attorney of record, Commonwealth's Attorney's office, probation officers and other like officers of the court.

## Psychological Evaluation Fee Assessment

### *Description*

A fee charged for a psychological evaluation to be assessed back to the defendant upon conviction or upon certification to circuit court.

### *Fees and Costs Assessed*

Revenue Code:	Amount Charged/ Assessed:	References:

13A	In any case in which a psychological evaluation is ordered and such person is convicted, or such case is certified to the circuit court, such fee shall be taxed against the person as part of the costs of prosecution and, if collected, shall be paid to the Commonwealth. The fee should also be assessed in the same manner when the case is deferred.	<a href="#">Va. Code § 19.2-175,</a> <a href="#">Va. Code § 19.2-336</a>
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***When/How Collected***

Fee is taxed to the defendant as part of costs upon conviction or upon certification to the circuit court.

**Public Defender Costs*****Description***

Costs of legal services provided a defendant by the local public defender's office. **Note:** Public Defenders are salaried Commonwealth employees.

***Fees and Costs Assessed***

In any case in which a public defender represents an indigent person charged with an offense and such person is convicted, such sum as would have been allowed a court appointed attorney as compensation and as reasonable expenses shall be taxed against the person defended upon conviction as part of the costs of prosecution and, if collected, shall be paid to the Commonwealth.

Revenue Code:	Amount Charged/ Assessed:	References:
120 (State) 217/261 (Local)	See Court Appointed Counsel Guidelines & Procedures Manual published yearly by the Office of the Executive Secretary.	<a href="#">Va. Code § 19.2-163.4:1</a> <a href="#">Court Appointed Counsel Guidelines &amp; Procedures Manual</a>

***When/How Collected***

These costs are taxed against and collected from the defendant upon conviction. The public defender, while salaried by the [Virginia Indigent Defense Commission](#), should submit for court approval a DC-52: [Public Defender Timesheet](#) preferably at the time of sentencing. The DC-52 is then placed and retained in the file as record of costs to be assessed and paid by the defendant upon conviction.



**Note:** Public Defender costs are not submitted to the Office of the Executive Secretary for reimbursement. The court should then follow one of the following sets of procedures:

If the Public Defender is used to defend a local violation, the clerk bills the locality for the public defender costs. The locality remits payment to the court, which receipts the payment under the Commonwealth revenue code 120. If the defendant is convicted and makes payment on these costs, the clerk receipts the defendant's payment under revenue code 217.

If it is a state violation that the Public Defender is used to defend, any payments made by the defendant would be receipted under revenue code 120 and transmitted to the State Treasurer.

## Refund of Bond Forfeitures

### *Description*

If a defendant or juvenile appears in the court within sixty days after a bond is forfeited, the Judge may remit part or all of any bond previously forfeited and order a refund by the local treasurer where funds forfeited.

If good cause is shown, the court may order a refund of part or all of a cash bond not ultimately applied to fines and costs if a rehearing is granted.

If the court learns that the defendant or juvenile is incarcerated in another state or county within forty-eight months of the finding of default, thereby preventing the defendant or juvenile delivery or appearance within that period, the court shall remit any bond previously ordered forfeited.

### *Fees and Costs Assessed*

Refund Procedure:	References:
<p><b>Prepare court order, which should include the following:</b></p> <ul style="list-style-type: none"> <li>State facts regarding conviction, circumstances requiring refund (subsequent rehearing, dismissal, appeal, etc.). State that the bond/fine of \$_____ and costs of \$_____ were paid to the local treasurer where funds were forfeited.</li> <li>The order should order the clerk of court to initiate action to refund bond/fine and costs to "name and address" of defendant.</li> </ul>	<p><a href="#">Va. Code § 19.2-143</a></p>

<ul style="list-style-type: none"> <li>Order the local treasurer to remit refund directly to defendant.</li> </ul> <p><b>If the bond was forfeited to a locality send the following information to the appropriate local treasurer:</b></p> <ul style="list-style-type: none"> <li>Copy of court order</li> <li>Copy of FAS journal voucher recording the forfeiture</li> <li>Copy of the bond receipt</li> <li>Cover letter with court contact person indicated</li> </ul> <p><b>File copies of all the above with defendant's case papers.</b></p>	
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### **Reimbursement of Expenses by Locality Incurred in Responding to Traffic Incidents by Law Enforcement, Volunteer Fire Department, Rescue Squad, etc.**

#### ***Description***

A locality may provide, by ordinance, that a person convicted of DUI or other specified traffic statutes, [Va. Code § 18.2-51.4](#), [Va. Code § 18.2-266](#), [Va. Code § 18.2-266.1](#), [Va. Code § 29.1-738](#), [Va. Code § 29.1-738.02](#), [Va. Code § 46.2-852](#) et seq., [Va. Code § 46.2-300](#) et seq., and [Va. Code § 46.2-894](#), shall be liable for restitution at the time of sentencing to the locality or responding law enforcement or volunteer fire or rescue squad when providing an appropriate emergency response to any accident or incident related to such violation.

#### ***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
520 Restitution	Up to \$1000 per incident for reimbursement of reasonable expenses incurred. Agency or locality can bill per minute or submit a bill for a flat fee of \$350.00 - bill should be presented at time of trial.	<a href="#">Va. Code § 15.2-1716</a>

**Note:** Agency or locality may also sue in a separate civil action for such reasonable expenses incurred.

#### ***When/How Collected***

If assessed to defendant at time of trial, receipt as restitution under revenue account code 520 and pay to the appropriate locality/agency.

## Restitution

### *Description*

Money ordered by the court to be paid by the defendant to reimburse the victim for loss caused by the defendant, victim, or estate. The Court may order the payment of interest payable at the judgment rate of interest starting from the date of the loss or sentencing. Notwithstanding any other provision of law, any person who, on or after July 1, 1995, commits, and is convicted of, a crime in violation of any provision in Title 18.2 shall make at least partial restitution for any property damage or loss caused by the crime or for any medical expenses or expenses directly related to funeral or burial incurred by the victim or their estate as a result of the crime, may be compelled to perform community services and, if the court so orders, shall submit a plan for doing that which appears to be feasible to the court under the circumstances [Va. Code § 19.2-305.1](#).

If the Criminal Injury Compensation Fund has made payment on behalf of the victim for any loss, damage, or expenses included in the restitution order, then upon written notification to the court restitution payments shall be disbursed to CICF first until paid in full. CICF should be added as a recipient for the amount requested and the victim's account shall be adjusted appropriately. If any portion of the restitution amount requested by CICF has been previously paid to the victim, notify CICF of the available awarded amount.

### *Fees and Costs Assessed*

Revenue Code:	Amount Charged/ Assessed:	References:
520 (Restitution)  441 (Restitution Interest)	Determined by judge	<a href="#">Va. Code § 6.2-302</a> , <a href="#">Va. Code § 19.2-305.1</a> , <a href="#">Va. Code § 19.2-305.2</a>

**Note:** Interest will not accrue unless specified in the Court's order.

### *When/How Collected*

Taxed against defendant upon conviction. If restitution is ordered to be paid by the defendant to the victim of a crime and that victim can no longer be located or identified, the clerk shall deposit any such restitution collected to the Criminal Injury Compensation Fund for the benefit of the victim.

## Safety Lap Belts and Shoulder Harness

### *Description*

Any driver, and any other person at least 18 years of age occupying a seat of a motor vehicle is required to use safety lap belts & shoulder harnesses while vehicle is in motion on any public highway. Any driver transporting a child at least four years of age but less than eighteen years of age in the front seat of the motor vehicle shall cause such child to wear the appropriate safety belt system.

### *Fees and Costs Assessed*

Revenue Code:	Amount Charged/ Assessed:	References:
110	\$25.00 - Any person who violates this section shall be subject to a civil penalty of \$25.00 to be paid into the state treasury and credited to the Literary Fund (revenue code 110). No assignment of points shall be made, and no court costs shall be assessed for violations of this section.	<a href="#">Va. Code § 46.2-1094</a>

**Note:** The governing body of the City of Lynchburg may adopt an ordinance not inconsistent with the provisions of this section requiring the use of safety belt systems. The penalty shall not exceed a fine or civil penalty of \$25.00 (if Revenue Code 237 is not appropriate for the collecting locality, use Revenue Code for local fines).

### *When/How Collected*

Taxed against defendant upon conviction.

## Smoke with Minor in Vehicle

### *Description*

Any person who smokes in a motor vehicle, whether in motion or at rest, when a minor under the age of fifteen is in the motor vehicle is subject to a civil penalty of \$100.

### *Fees and Costs Assessed*

Revenue Code:	Amount Charged/ Assessed:	References:
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110	\$100.00 - Any person who violates this section shall be subject to a civil penalty of \$100.00 to be paid into the state treasury and credited to the Literary Fund (revenue code 110). No assignment of points shall be made, and no court costs shall be assessed for violations of this section.	§ 46.2-810.1
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***When/How Collected***

Taxed against defendant upon conviction.

**Sentencing (Supervision) Fee*****Description***

Fee for payment towards the cost of defendant's confinement, supervision, or participation in a home/electronic incarceration program as a condition of their sentence.

***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
13N	Fee is included in the District Court Fixed Misdemeanor Fees.	<a href="#">Va. Code § 53.1-150, Va. Code § 16.1-69.48:1</a>

***When/How Collected***

Assessed to and collected from defendant upon conviction.

**Time to Pay (TTP) Deferred/Installment Agreements*****Description***

If a defendant is unable to pay a fine, restitution, forfeiture, penalty, and costs owed within ninety days of sentencing, the court shall order the defendant to pay monies owed in deferred payments or installments.

If such sum is not paid in full by the date ordered, the court shall proceed in accordance with [Va. Code § 19.2-358](#). The clerk shall give notice to the defendant that upon failure to pay as ordered, they may be fined or imprisoned pursuant to [Va. Code § 19.2-358](#). The failure of the defendant to enter into a deferred payment or installment payment agreement with the court or the failure of the defendant to make payments as ordered

by the agreement shall allow the [Department of Taxation](#) to act in accordance with [Va. Code § 19.2-349](#) to collect monies owed.

The court shall establish a program and may provide an option for the defendant to discharge some or all of the fine and costs owed by earning credits for the performance of community service work (i) before or after imprisonment or (ii) in accordance with the provisions of [Va. Code § 19.2-316.4](#), [Va. Code § 53.1-59](#), [Va. Code § 53.1-60](#), [Va. Code § 53.1-128](#), [53.1-129](#), or [Va. Code § 53.1-131](#) during imprisonment. The program shall specify the rate at which credits are earned and provide for the manner of applying earned credits against the fine and costs. The court assessing the fine or cost against a person shall inform such person of the availability of earning credit toward discharge of the fine or costs through the performance of community service work under this program and provide such person with written notice of terms and conditions of this program.

### ***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
137	\$10.00 fee charged for each payment plan - a payment plan may include multiple charges.	<a href="#">Va. Code § 19.2-349</a> , <a href="#">Va. Code § 19.2-354</a> , <a href="#">Va. Code § 19.2-358</a>

### ***When/How Collected***

If the defendant is unable to make payment within ninety days of sentencing or deferred disposition cases where costs are owed, the court may assess a one-time fee not to exceed \$10.00 to cover the costs of management of the defendant's account. The defendant must execute a DC-210: Acknowledgement of Suspension or Revocation of Driver's License. **Note:** Do not re-assess a Time-To-Pay Fee if a new TTP agreement is created to replace a previously issued TTP agreement.

Only one \$10 TTP fee should be assessed for an accounts receivable when a deferred or installment agreement is established. If any of the debts incorporated into one DC-210 agreement previously had a \$10 TTP fee assessed, then there should not be an additional TTP fee assessed on the new agreement (reference the previous assessment).

Applies to all juveniles:

- If charge brought on petition and time to pay fine is requested.
- If charge brought by uniform summons and time to pay fine and/or costs is requested.

- The time to pay fee does not apply to GAL Assessment Order, court-appointed attorney assessed to parents, and paternity testing cost.
- Do not collect time to pay fee if payment is made within ninety days of sentencing.

Assess per signed Deferred/Partial Payment Agreement exceeding ninety-day Due Date (except in GAL assessment vs. parents/ guardian).

Batch multiple cases on same agreement date on one agreement to pay form. Photocopy the agreement and place copy with each case paper included in the agreement. If the defendant requests more than ninety days from the date of sentencing in which to make payment, complete the Acknowledgement of Suspension portion of form DC-210.

### **Toll Roads Penalties - Failure to Pay Toll**

#### ***Description***

Provides a civil penalty for a violation of [Va. Code § 46.2-819.1](#) and [Va. Code § 46.2-819.3](#) when vehicle is found to have used a toll facility without payment of the required toll. For violations on any toll road, there is a cap of \$2,200 on civil penalties and administrative fees for a first conviction.

#### ***Fees and Costs Assessed***

In addition to the unpaid toll, all accrued administrative fees, and applicable court costs in each case, a civil penalty as outlined below shall be assessed upon conviction if the matter proceeds to court.

Revenue Code:		Amount Charged/ Assessed:		References:
161	For V-DOT cases charged under <a href="#">Va. Code § 46.2-819.1</a>	\$50.00	1 <sup>st</sup> offense	<a href="#">Va. Code § 46.2-819.1</a> , <a href="#">Va. Code § 46.2-819.3</a>
194	For V-DOT cases charged under <a href="#">Va. Code § 46.2-819.3</a>	\$100.00	2 <sup>nd</sup> offense within one year from the first offense	
295	For Privately Operated Toll Facilities	\$250.00	3 <sup>rd</sup> offense within two years from the second offense	

257	Interest assessed on cases for Privately Operated Toll Facilities	\$500.00	4 <sup>th</sup> and any subsequent offense within three years from the second offense	
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***When/How Collected***

Assessed and collected upon conviction if the matter proceeds to court. **Note:** Privately operated toll revenue accounts 257 and 295 are disbursed to the appropriate toll facility operator.

**Transportation Trust Fund*****Description***

Civil penalty not to exceed \$2,750 to be collected in Transportation Trust Fund (164) for violations of texting while operating a commercial motor vehicle [Va. Code § 46.2-341.20:5](#), and for violations of require/allow use of wireless device while operating a commercial motor vehicle [Va. Code § 46.2-341.20:6](#).

***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
164	Civil penalty not to exceed \$2750 for violations of <a href="#">Va. Code § 46.2-341.20:5</a> Civil penalty not to exceed \$11,000 for violations of <a href="#">Va. Code § 46.2-341.20:6</a>	<a href="#">Va. Code § 46.2-341.20:5</a> , <a href="#">Va. Code § 46.2-341.20:6</a>

***When/How Collected***

Assessed to and collected from defendant upon conviction.

**Trauma Center Fund*****Description***

There is hereby established in the state treasury a special non-reverting fund to be known as the Trauma Center Fund. The Fund shall consist of any moneys paid into it by virtue of



operation of subsection A hereof and any moneys appropriated thereto by the General Assembly and designated for the Fund.

The [Department of Health](#) shall award and administer grants from the Trauma Center Fund to appropriate trauma centers based on the cost to provide emergency medical care to victims of automobile accidents. The [Department of Health](#) shall develop, on or before October 1, 2004, written criteria for the awarding of such grants that shall be evaluated and, if necessary, revised on an annual basis.

#### ***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
192	\$50.00	<a href="#">Va. Code § 18.2-270.01(A)</a>

#### ***When/How Collected***

The court shall order any person convicted of a violation of one of the following code sections [Va. Code § 18.2-36.1](#); [Va. Code § 18.2-51.4](#); [Va. Code § 18.2-266](#); [Va. Code § 18.2-266.1](#); [Va. Code § 46.2-341.24](#) who has been previously convicted of one or more of any of those sections or any ordinance, any law of another state, or any law of the United States substantially similar to the provisions of those sections within ten years of the date of the current offense to pay \$50.00 to the Trauma Center Fund.

### **Trial in Absence (TIA) Fee**

#### ***Description***

An add-on fee taxed as costs whenever a defendant fails to appear.

#### ***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
121	\$35.00	<a href="#">Va. Code § 16.1-69.48:1(A)</a>

**Note:** No defendant with multiple charges arising from a single incident shall be taxed the fee in this section more than once for a single appearance or trial in absence related to that incident. A defendant with charges which arise from separate incidents shall be taxed a fee for each incident even if the charges from the multiple incidents are disposed of in a single appearance or trial in absence.

#### ***When/How Collected***

Assess and collect against defendant who fails to appear in court. Fee is not applicable if payment is made before court date or if the defendant requests a trial in absence in writing or if the defendant, after a hearing, shows good cause for failing to appear.

### Uninsured Motorist Fund

#### *Description*

A fine assessed for a violation relating to exempted vehicles.

#### *Fees and Costs Assessed*

Revenue Code:	Amount Charged/ Assessed:	References:
007	\$600.00	<a href="#">Va. Code § 46.2-684.1</a>

#### *When/How Collected*

Assessed to and collected from defendant upon conviction. Infraction court costs are assessed.

### Virginia Health Care Fund

#### *Description*

A civil penalty assessed for a violation of the Clean Air Act.

#### *Fees and Costs Assessed*

Revenue Code:	Amount Charged/ Assessed:	References:
108	\$25.00	<a href="#">Va. Code § 15.2-2826</a>

#### *When/How Collected*

Civil penalty is assessed under account code 108 (Virginia Health Care Fund) for convictions of the Clean Air Act. No court costs are assessed.

### Virginia Crime Victim Witness Fund (CVWF)

#### *Description*

Fee assessed upon conviction of a felony, misdemeanor, or traffic infraction case. Such monies are subsequently deposited in a special fund to support victim witness services programs prescribed under [Va. Code § 19.2-11.1](#).

***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
140	Fee amount is included in District Court fixed fees as per <a href="#">Va. Code § 16.1-69.48:1</a> .	<a href="#">Va. Code § 16.1-69.48:1</a> , <a href="#">Va. Code § 19.2-11.1</a> , <a href="#">Va. Code § 19.2-11.3</a>

***When/How Collected***

The fee is charged as part of the fixed fees assessed upon conviction or upon statutorily authorized complied with law or deferred disposition.

**Virginia Prevention of Sex Trafficking Fund**

***Description***

Fee assessed to promote the awareness of and preventive training and education relating to Sex Trafficking.

***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
002	\$100 (misdemeanor) \$500 (felony)	<a href="#">Va. Code § 16.1-69.48:6</a> , <a href="#">Va. Code § 17.1-275.13</a>

***When/How Collected***

Any person convicted/deferred of a misdemeanor violation of [Va. Code § 18.2-346.01](#) or of [Va. Code § 18.2-348](#) or [Va. Code § 18.2-349](#) shall be ordered to pay a \$100 fee, and any person convicted of a violation of clause (ii), (iii), or (iv) of [Va. Code § 18.2-48](#), or of [Va. Code § 18.2-368](#), or any felony violation of the laws pertaining to commercial sex trafficking or prostitution offenses pursuant to Article 3, [Va. Code § 18.2-344](#) et seq. of Chapter 8, with the exception of [Va. Code § 18.2-361](#), shall be ordered to pay a \$500 fee.

All fees collected pursuant to this section shall be deposited into the Virginia Prevention of Sex Trafficking Fund to be used in accordance with [Va. Code § 9.1-116.4](#).

## Weighing Costs

### *Description*

Costs and fees assessed to recover monies expended for towing and/or reloading a vehicle detained for weighing.

### *Fees and Costs Assessed*

See also “Liquidated Damages” & “Weighing Costs”

Revenue Code:	Amount Charged/ Assessed:	References:
13R	Expenses incurred	<a href="#">Va. Code § 46.2-1137</a>

### *When/How Collected*

Expenses incurred in having the vehicle weighed may be taxed as costs to be imposed upon the operator who failed or unreasonably refused to drive their vehicle to such weighing area, when they have been convicted of such failure or refusal and an overweight violation.

## Weighing Fee

### *Description*

Fee assessed when the driver of a vehicle is convicted, forfeits bail, or purchases an increased license as a result of being weighed and found to be driving an overweight vehicle.

### *Fees and Costs Assessed*

See also “Liquidated Damages” & “Weighing Costs”

Revenue Code:	Amount Charged/ Assessed:	References:
125	\$2.00	<a href="#">Va. Code § 46.2-1137</a>

### *When/How Collected*

If the driver of an overloaded vehicle is convicted, forfeits bail, or purchases an increased license as a result of being weighed and found to be driving an overweight vehicle, the court in addition to all other penalties shall assess and collect a weighing fee of \$2.00

from the owner or operator of the vehicle and shall forward such fee to the State Treasurer.

## **Witness Fees**

### ***Description***

Fees and/or expenses paid to certain witnesses summoned by the Commonwealth or locality to appear in a criminal proceeding.

### ***Fees and Costs Assessed***

All witnesses summoned for the Commonwealth shall be entitled to receive for each day's attendance all necessary ferriage and tolls, and such reimbursement for their daily mileage as prescribed in [Va. Code § 2.2-2823](#). Court submits for DC-40: [List Of Allowances](#) for witness fees to Commonwealth or if local case to local treasurer.

Revenue Code:	Amount Charged/ Assessed:	References:
13L (Commonwealth) 237 (Local)	Assess as costs upon conviction or upon deferred disposition as authorized by <a href="#">Va. Code § 16.1-69.48:1</a>	<a href="#">Va. Code § 2.2-2823</a> , <a href="#">Va. Code § 2.2-2825</a> , <a href="#">Va. Code § 17.1-611</a> , <a href="#">Va. Code § 19.2-329</a> through, <a href="#">Va. Code § 19.2-335</a>  <a href="#">Chart of Allowances</a>  Attorney General Opinion to Bickers, dated 8/16/78 (1978-79, pg. 333)

### ***When/How Collected***

If recovered from defendant, receipt under revenue code 13L for state and revenue code 237 for locality.

## **Witness Fees - Testimony Certificate of Analysis**

### ***Description***

Fee assessed upon conviction if accused demands at hearing or at trial the presence of the person, or designee who performed the analysis as detailed in the Certificate of Analysis.

### ***Fees and Costs Assessed***

Revenue Code:	Amount Charged/ Assessed:	References:
13M	\$50.00	<a href="#">Va. Code § 19.2-187.1</a>

***When/How Collected***

Assessed upon conviction if accused demands at hearing or at trial the presence of the person who performed analysis noted on the Certificate of Analysis.

## Appendix C – Appeals

### Civil Appeals

If any party timely notices an appeal, the notice of appeal shall be deemed a timely notice of appeal by any other party on a final order or judgment entered in the same or a related action arising from the same conduct, transaction, or occurrence as the underlying action; however, all parties will be required to timely perfect their own respective appeals by giving a bond and the writ tax and costs, if any, in accordance with [Va. Code § 16.1-107](#).

If an appeal is noted and perfected after the sheriff has served the notice of intent to execute a writ of eviction, the party noting or noting and perfecting the appeal shall notify the sheriff of the appeal.

If the appeal has not been perfected by posting a required appeal bond or paying required costs, or within ten days after entry of the judgment or order when no appeal bond or costs are required to perfect the appeal, the appeal may be withdrawn by filing in the district court that entered the judgment or order and serving, in person or by first-class mail, on all parties or their counsel a written notice of intent to withdraw the appeal. When the appeal is withdrawn in the district court, the judgment or order of the district court shall have the same effect as if no appeal had been noted [Va. Code § 16.1-106.1](#).

Once the appeal has been perfected by posting a required appeal bond or by payment of the costs, or after ten days have elapsed since the entry of the judgment or order when no appeal bond or costs are required to perfect the appeal, any withdrawal of the appeal must occur in Circuit Court.

Upon the timely perfection of an appeal from a judgment of a general district court, pursuant to [Va. Code § 16.1-106](#), a party may suffer a nonsuit as otherwise set forth in this section, and such nonsuit shall annul the judgment of the general district court [Va. Code § 8.01-380](#).

If a party files an appeal of a district court order of protection entered pursuant [Va. Code § 19.2-152.10](#), the district court clerk shall contact the circuit court to determine whether the hearing on the appeal shall be set by the circuit court on a date scheduled by the district court clerk with the circuit court clerk, or on the next docket call date, or a date set for district court appeals [Va Code § 16.1-112](#). Neither party is required to pay any filing fees nor is there an appeal bond in a protective order appeal, unless the district court awarded attorney's fees to the appellant. The appeal is sent to the circuit court immediately. It is not necessary to hold the appeal until the expiration of the ten-day appeal period, unless an appeal bond has been ordered.

**Reminder:** The General District Court will continue to monitor the filing of the completed DC-649: Protective Order Firearm Certification even if the Protective Order is appealed.

Step:	Description:
1.	Verify that the appeal has been noted in writing (Rule 7A:13 of the <a href="#">Rules of Supreme Court</a> ) within ten calendar days from the date judgment was entered. Use district court form DC-475: Notice of Appeal – Civil.
2.	Note the appeal in GCMS
3.	<p>Appellant may request to be declared indigent to avoid posting bond or paying appeal fees. The DC-409: Petition to Proceed Without the Payment of Fees- Civil should be utilized upon this request. If appellant is deemed indigent forward case papers to circuit court for appeal.</p> <p><b>Comments:</b> Follow local policy for declaration of indigency. Indigency may not be requested on civil cases of trespass, ejectment, or any action involving the recovery of rent (unlawful detainers); with the exception of any unlawful detainer brought by a public housing authority which exempts indigent defendants from the requirement of posting a bond to appeal <a href="#">Va. Code § 16.1-107</a>. Do not collect writ tax and costs on any protective order appeal.</p>
4.	<p>Require the appellant to perfect the appeal by posting a civil appeal bond secured by cash, surety bond, bank check, or by draft from the escrow account of the appealing party’s attorney within thirty days from the date of judgment and prepare district court form DC-460: <a href="#">Civil Appeal Bond</a>. <a href="#">Va. Code § 16.1-107</a>, except when in forma pauperis status is granted. The minimum bond amount should be the amount of the district court judgment (principal, interest, district court costs, attorney’s fees) and the circuit court cost. Note the date the appeal was perfected in GCMS.</p> <p>The writ tax and costs (circuit clerk’s fee and any local law library fee), including all fees for service of process of the notice of appeal in the circuit court, within thirty days from the date of judgment. **</p> <p>**Exception - 10 days for unlawful detainer except in the case of an unlawful detainer against a former owner based on foreclosure against the owner, appeal bond shall be posted within 30 days from the date of judgment.</p> <p><b>Comments:</b> The appeal bond is not automatically double the amount of the district court judgment, but may be set at a higher amount than calculated in Step 3 to account for additional interest, the possibility of a higher judgment,</p>



Step:	Description:
	<p>etc. The Judge may set or establish the bond. The sufficiency of the surety is decided by determining if the surety can pay the bond when the case is not perfected or, if perfected, when the appellant loses. The money shall be transmitted in cash, by check of the court, surety bond, bank check, or by draft from the escrow account of the appealing party's attorney to the clerk of the court to which the appeal is taken. There are some situations when an appeal bond is not required. An appeal bond is not required from a plaintiff in a civil case where the defendant has not asserted a counterclaim, the Commonwealth or when an appeal is proper to protect the estate of a decedent, an infant, a convict, or an insane person, or the interest of a county, city, town, or transportation district created pursuant to the Transportation District Act of 1964, <a href="#">Va. Code § 33.2-1900</a> et seq. of Title 33.2. In a case where a defendant with indemnity coverage through a policy of liability insurance appeals, the bond required shall not exceed the amount of the judgment that is covered by a policy of indemnity coverage.</p> <p><b>Important:</b> Do not collect an appeal bond on a protective order appeal unless the district court awarded attorney's fees to the appellant <a href="#">Va. Code § 16.1-107</a>.</p>
5.	<p>Receipt Writ Tax and costs into Revenue Code 509 (Escrow). Receipt appeal bond into Revenue Code 503. Disburse funds by court check to the Clerk of the Circuit Court.</p> <p>See District Financial Management System User's Guide, "Disbursements," for further instructions.</p> <p><b>Comments:</b> Please refer to <a href="#">Circuit Court Civil Filing Fee Calculation</a> on the Virginia Judicial System website for fees for Circuit Court Service of Process. Notice to Appellee: You may wish to verify this information with the Circuit Court Clerk of your locality. It is important that the appellate costs be accurately collected for Circuit Court jurisdictional purposes.</p> <p>Use the written information to inform litigants of the appellate fee requirements for perfection of the appeal.</p>
6.	<p>Upon perfection of the appeal, the clerk issues district court form DC-323: Recall of Process to recall any writs of fieri facias or garnishments that have been issued but not yet returned and enters the perfection date in CMS. If the garnishment has been served, the judgment creditor should file district court</p>

Step:	Description:
	<p>form DC-453: Garnishment Disposition asking for release of the garnishment. If not done by the judgment creditor, then district court form DC-512: Notice of Hearing should be issued to be served on the judgment creditor, judgment debtor, and garnishee, with the reason being “why the garnishment summons should not be dismissed due to perfection of appeal.” The disposition should be noted either in the disposition part of district court form DC-451: <a href="#">Garnishment Summons</a> or by order as appropriate.</p>
7.	<p>After the appeal has been perfected, transmit the case documents, copy of PCR receipt showing date appellate fees paid, General District Court check for appellate fees and district court form DC-25: Circuit Court Case Transmittal and Fees Remittance Sheet to the Circuit Court Clerk immediately or weekly in accordance with normal revenue transmittal procedures. Keep a photocopy of pertinent documents in accordance with local policy</p> <p><b>Comments:</b> Once the appeal has been perfected by posting a required appeal bond or by payment of the costs, or after ten days have elapsed since the entry of the judgment or order when no appeal bond or costs are required to perfect the appeal, any withdrawal of the appeal must occur in Circuit Court.</p> <p>There is no refund of processing fees paid by the judgment creditor.</p> <p>If no appeal bond required or bond declared insufficient, district court orders the defective bond be cured within a period no longer than the initial period of time for posting the bond. (Ten days unlawful detainer, thirty days all other civil appeals) <a href="#">Va. Code § 16.1-109</a>.</p>

## Forms

DC-25	Circuit Court Case Transmittal and Fees Remittance Sheet
DC-323	Recall of Process
DC-409	Petition to Proceed Without the Payment of Fees- Civil
DC-453	Garnishment Disposition
DC-460	Civil Appeal Bond

DC-475	Notice of Appeal- Civil
DC-512	Notice of Hearing

### References

<a href="#">Va. Code § 16.1-106.1:</a>	Withdrawal of Appeal in civil cases
<a href="#">Va. Code § 16.1-107:</a>	Requirements for Appeal
<a href="#">Va. Code § 16.1-108:</a>	Bond should be transmitted in cash, by check of the court, surety bond, bank check, or by draft from the escrow account of the appealing party's attorney to the clerk of the court to which the appeal is taken.

### Traffic and Criminal Appeals

A person convicted of a misdemeanor in district court may appeal the conviction to the circuit court within ten calendar days of the conviction date [Va. Code § 16.1-132](#). The ten-day period begins to run on the day following the conviction. If the tenth day falls on Saturday, Sunday or legal holiday or any day on which the clerk's office is closed as authorized by statute, the appeal may be noted on the next day that the clerk's office is authorized to be open. See [Va. Code § 1-210](#), the appeal may be noted by the appellant or their attorney.

**Note:** The case papers must not be transferred to the circuit court until the expiration of the ten-day appeal period.

Two exceptions to this ten-day limitation apply. First, it does not apply to pre-trial appeals of bail decisions pursuant to [Va. Code § 19.2-124](#). Second, if an appellant prepays the fine and costs on a prepayable misdemeanor and then advises the court of a desire to "appeal" prior to the return date (date of court appearance on summons), the request should be treated as a request to withdraw the guilty plea and is tried as if there had been no prepayment.

Because the appeal process for traffic cases is the same as for criminal cases, the following procedures should be followed for both.

**Note:** Because all Commercial Motor Vehicle offenses transmit to the Department of Motor Vehicles on the day of conviction, when an appeal is noted on a CMV conviction an amended abstract should be sent to the DMV to notify them of the appeal. The amended abstract should contain the language "Please vacate this CMV conviction, transmitted upon conviction, as the defendant has now noted an appeal."

Step:	Description:
1.	<p>Determine if written notice of the appeal has been received within the time allowed. Use district court form DC-370: Notice of Appeal – Criminal unless another writing is used. The appeal may be noted by delivery of the written notice in person to the clerk’s office, or by mail, or by facsimile machine. The writing may be signed by either the defendant or their attorney.</p> <p><b>Comments:</b> Only the circuit court has the authority to determine its own jurisdiction over a given matter appealed from district court. Therefore, if a person attempts to file an appeal late and insists upon it being filed after notification that it has been more than ten days after the conviction; the appeal should nonetheless be accepted and sent to circuit court.</p>
2.	<p>Attach notice of appeal to the case papers, enter the appeal date on the GCMS H/D update screen</p>
3.	<p>If the defendant is returned to jail, prepare district court form DC-356: Disposition Notice adding the fact that appeal is noted and terms of recognizance or bond as set by the judge.</p> <p><b>Comments:</b> The Code of Virginia does not require the posting of a bond in order to appeal a criminal or traffic case. However, the judge will most likely require security on bail for jailable offenses as a condition for being free on bail while the appeal is pending.</p>
4.	<p>If the appellant is to be released pending the trial on the appeal in circuit court, require the appellant to execute a written promise to appear (recognizance) in circuit court unless the judge allows continuation of the pre-existing bail. A written promise to appear is contained in district court form DC-370: Notice of Appeal – Criminal. If the Judge sets additional bail terms or district court form DC-370: Notice of Appeal – Criminal was not used, then use district court form DC-330: Recognizance.</p> <p><b>Comments:</b> The written promise to appear (recognizance) must be signed by the defendant, and if any, sureties. For district court form DC-370: Notice of Appeal - Criminal to function as a recognizance, it must be signed by the appellant.</p> <p>Set trial date or docket call date in circuit court based on local agreed-upon written policies.</p>

Step:	Description:
5.	Receipt cash bond under account code 502. <b>Note:</b> If court is closed, such surety as set by the judge may be taken by a magistrate
6.	Remove the OWED amounts on the FAS individual account if set up.  <b>Comments:</b> All court costs are to be assessed on the case papers in a finding of guilt, even if the case is appealed in Court. This will ensure that Circuit Court will assess all necessary costs and fines.
7.	If previously paid, issue a refund check for fines and costs to the defendant, or “received of”. Refer to District Court Financial Management System (FMS) User’s Guide, disbursement section for procedures to issue the check. APL will appear in the action code field on the individual account once an appeal date is entered into GCMS.
8.	Send all case papers, pleadings, and evidence along with district court form DC-370: Notice of Appeal - Criminal and if applicable any appeal bond required and posted, together with district court form DC-25: Circuit Court Case Transmittal and Fees Remittance Sheet or the automated Cases Appealed/Transferred/Certified Report at the expiration of the ten-day appeal period.  <b>Comments:</b> It is not recommended that the clerk’s office retain copies of the case papers.

## Appeal of Bail Prior to Trial

If an appeal on the judge’s bail decision is taken prior to trial, the same appeal provisions described above will apply except as follows:

Step:	Description:
1.	The defendant should complete district court form DC-370: Notice of Appeal – Criminal. There is no maximum ten-day appeal period on bail decisions.
2.	If the defendant is returned to jail use district court form DC-355: Order for Continued Custody or, if the defendant previously was not in jail, use district court form DC-352: Commitment Order to hold the defendant in custody while the appeal is being decided in circuit court.

Step:	Description:
3.	<p data-bbox="337 275 1328 390">Make a certified copy of the underlying case records; send certified copies to circuit court with the original district court form DC-370: Notice of Appeal – Criminal.</p> <ul data-bbox="378 464 1333 705" style="list-style-type: none"> <li data-bbox="378 464 1333 579">• The court should not send the original underlying criminal case papers to circuit court. The copies may be filed in the circuit court immediately.</li> <li data-bbox="378 594 1333 705">• The appealing party may request that the court stay their bail decision. If a stay is requested, the DC-370: Notice of Appeal – Criminal should be presented to the court immediately for ruling.</li> </ul> <p data-bbox="337 772 1370 1056">If the court grants bail in cases where there is a presumption against bail and the Commonwealth notes its appeal, the court shall stay the imposition of its order; however, the stay is limited to five days. If the court’s bail decision is appealed, the appealing party completes the DC-370: Notice of Appeal – Criminal. If a stay of the bail decision is requested, the DC-370: Notice of Appeal – Criminal should be presented to the court immediately for ruling <a href="#">Va. Code §19.2-124</a>.</p> <p data-bbox="337 1129 1354 1329">If the stay is granted, the amount of the original bond set by the magistrate, if any, should be shown on the DC-355: Order for Continued Custody, and a notation in the “Other” field to include when the stay expires. Attach a copy of the DC-370: Notice of Appeal – Criminal to the DC-355: Order for Continued Custody to provide information to the magistrate.</p> <p data-bbox="337 1402 1377 1560">If the stay is not granted, the amount of the bond set by the court should be shown on the DC-355: Order for Continued Custody. Make a notation in the <b>Other</b> field stating that the bail decision is appealed and attach a copy of the DC-370: Notice of Appeal – Criminal to the Continuance Order.</p> <p data-bbox="337 1623 1349 1850">The bail decision of the higher court on such appeal, unless the higher court orders otherwise, shall be remanded to the court in which the case is pending for enforcement and modification. The court in which the case is pending shall not modify the bail decision of the higher court, except upon a change in the circumstances subsequent to the decision of the higher court <a href="#">Va. Code §19.2-124</a>.</p>

**Forms**

DC-352	Commitment Order
DC-355	Order for Continued Custody
DC-370	Notice of Appeal – Criminal

**References**

<a href="#">Va. Code § 19.2-124</a>	Appeal from bail, bond, or recognizance order
<a href="#">Va. Code § 19.2-132</a>	Motion to increase amount of bond fixed by judicial officer

**Appeal of Order for Sexually Transmitted Infections**

The following is the recommended procedure when an appeal on the judge's decision to require testing for sexually transmitted infections is noted.

Step:	Description:
1.	Any person who is subject to a testing order may appeal the order within ten days of <b>receiving notice of the order</b> . The defendant should complete district court form DC-370: Notice of Appeal – Criminal.
2.	Make a certified copy of the underlying case records; send certified copies to circuit court with the original district court form DC-370: Notice of Appeal – Criminal.
3.	The appeal must be filed in the circuit court immediately. Any hearing conducted shall be held in camera as soon as practicable. The order shall be sealed. The order of the circuit court shall be final and non-appealable. Va. Code § 18.2-61.1 (C).

**Forms**

DC-3010	Request for Sexually Transmitted Infection Testing Pursuant to Va. Code § 18.2-61.1.
CC-1390	Order for DNA or Sexually Transmitted Infections Testing
DC-370	Notice of Appeal – Criminal

## References

<a href="#">Va. Code § 18.2-61.1</a>	Testing of certain persons for sexually transmitted infections.
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## Withdrawal of Appeal

Any person convicted in a juvenile and domestic relations district court, or a court of limited jurisdiction of an offense not felonious may, at any time before the appeal is heard, withdraw an appeal which has been noted, pay the fine and costs to such court, and serve any sentence which has been imposed.

A person withdrawing an appeal shall give written notice of withdrawal to the court and counsel for the prosecution prior to the hearing date of the appeal. If the appeal is withdrawn more than ten days after conviction, the circuit court shall forthwith enter an order affirming the judgment of the lower court and the clerk shall tax the costs as provided by statute. Fines and costs shall be collected by the circuit court, and all papers shall be retained in the circuit court clerk's office.

Where the withdrawal is within ten days after conviction, no additional costs shall be charged, and the judgment of the lower court shall be imposed without further action of the circuit court [Va. Code § 16.1-133](#).

Step:	Description:
1.	The defendant should complete district court form DC-370: Notice of Appeal – Criminal. There is no maximum ten-day appeal period on bail decisions.
2.	If the defendant is returned to jail use district court form DC-355: Order for Continued Custody or, if the defendant previously was not in jail, use district court form DC-352: Commitment Order to hold the defendant in custody while the appeal is being decided in circuit court.

## Forms

DC-25	Circuit Court Case Transmittal and Fees Remittance Sheet
DC-330	Recognizance
DC-356	Disposition Notice
DC-580	Notice of Appeal – Criminal



**References**

<a href="#">Va. Code § 1-210:</a>	Statutory authorization governing the time frame to note an appeal.
<a href="#">Va. Code § 16.1-132:</a>	Statutory authorization to note an appeal.
<a href="#">Va. Code § 16.1-133:</a>	Withdrawal of appeal.
<a href="#">Va. Code § 19.2-124:</a>	Statutory authorization for pre-trial appeals of bail decisions.

## Appendix D – Service of Process

### Child and Spousal Support

Processing garnishment orders for child support and/or alimony:

<https://ecfr.io/Title-05/pt5.1.581>

### Civilian Employees

Commercial Garnishment of Federal Employees' pay:

<https://ecfr.io/Title-05/pt5.1.582>

### Armed Services

In order to have wages withheld from a member of the armed services, creditors will have to complete the involuntary allotment application for DD, Form 2563, and send it to the appropriate address as provided in 32 C.F.R. 113.6(b)(1). A thorough reading of the regulations contained in Part 13 of 32 C.F.R. is advised regarding the requirement of the involuntary allotment procedure:

<https://ecfr.io/Title-32/pt32.1.113>

### Postal Workers

Serving a garnishment on the U.S. Postal Service can be accomplished by personal service, or service by certified or registered mail to the authorized agent as provided in 39 C.F.R. 491.1:

<https://ecfr.io/Title-39/pt39.1.491>

## Appendix E – Manual Updates

### Chapter 3- Criminal Case Processing

Date:	Section:	Description:
July 1, 2025	Bail Determination	Added language “or any felony punishable my mandatory minimum term of confinement for life” pursuant to HB2322.
July 1, 2025	Release on Bail	Added to considerations of bail, pregnant, recently given birth or nursing pursuant to HB2328.
July 1, 2025	Introduction	Added information the court shall not require any new bond for release of a person convicted who has noted an appeal pursuant to HB2652.
July 1, 2025	Search Warrants	Added language “subscriber data” pursuant to HB2546.
July 1, 2025	Deferred, Modified or Installment Payment	Updated to include \$25.00 per month or higher based on defendants’ ability to pay and \$25.00 or less if indigent pursuant to HB1661. Changed and added language to mirror Chapters 4 and 5.

### Chapter 4 – Traffic Case Procedures

Date:	Section:	Description:
July 1, 2025	Dismissal by Compliance with Law	Updated to add § 46.2-300 and § 46.2-301 to CWL statutes prior to trial and at trial pursuant to HB1643.
July 1, 2025	Deferred, Modified or Installment Payment	Changed and added language on inability to pay fines and cost to mirror Chapters 3 and 5 pursuant to HB1661.

### Chapter 5 –DUI Case Processing and Restricted Driver’s License

Date:	Section:	Description:
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July 1, 2025	Impoundment of Motor Vehicle, Exhibition Driving	Added language to include twenty-day impoundment for exhibition driving to impoundment directions. Linked new code section to reference table Pursuant to HB2036.
July 1, 2025	Ignition Interlock Systems	Updated requirements for Ignition Interlock from 6 months to twelve months pursuant SB1392. Added language to allow ignition interlock prior to conviction pursuant to SB1006.
July 1, 2025	Deferred, Modified or Installment Payment	Changed and added language on inability to pay fines and cost to mirror Chapters 3 and 4 pursuant to HB1661.

## Chapter 6 – Civil Case Procedures

Date:	Section:	Description:
July 1, 2025	Case Initiation	Updated return dates on WD and MJ from sixty to 90 days pursuant to SB761.
July 1, 2025	Jurisdiction	Updated jurisdictional limits from \$25,000 to \$50,000 per SB1291.
July 1, 2025	Post-Trial Procedures/Appeal	Added language to include no appeal bond required for indigent defendants on unlawful detainer action brought by Housing Authority pursuant to HB2415/SB1221.
July 1, 2025	Enforcement of Statutory Liens	Changes case type from “OT” to “PS” for Petition and Order for Sale of Property.
July 1, 2025	Government Entities	Added language about corporation authorized to do business in Va and linked code § 8.01-301 (1-4) pursuant to SB1412.
July 1, 2025	Unlawful Detainer	Added direction for Eviction Diversion Program HB1623/SB830.

## Chapter 7 – Miscellaneous Civil Case Procedures

Date:	Section:	Description:
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July 1, 2025	Preliminary Protective Orders	Updated Preliminary Protective Order instruction to include Military Protective Order information pursuant to SB957.
July 1, 2025	Bond Forfeiture	Updated jurisdictional limits for civil cases in pursuant to SB1291.
July 1, 2025	Bankruptcy	Changed bankruptcy directions, updated system change direction, i.e. "checking" bankruptcy box in GCMS.

## Chapter 8 – Civil Commitments

Date:	Section:	Description:
July 1, 2025	Clerk and Court Procedures	Added language re: healthcare professional shall consider referral to outpatient program pursuant to SB819.

## Chapter 10 – Records Retention, Destruction and Expungements

Date:	Section:	Description:
July 1, 2025	Writ of Vacatur	Added direction regarding a Writ of Vacatur pursuant to the changes in HB2393/SB1460. Changed "commercial sex trafficking" to "human trafficking".
July 1, 2025	Petition to Access Expunged Record	Added direction for Petition to Access Expunged Record pursuant to HB2723/SB1466.
July 1, 2025	Eviction Diversion Program	Added direction regarding the Eviction Diversion Program pursuant to HB1623/SB830.

## Appendix B – Criminal & Traffic Fines and Fees

Date:	Section:	Description:
July 1, 2025	Add-On Fees/Costs – When and How Collected	Added 46.2-300 & 46.2-301 to CWL pursuant to HB1643.

July 1, 2025	Safety Lap Belts and Shoulder Harness	Changed language requiring seatbelts for all occupants pursuant to HB2475.
July 1, 2025	Ignition Interlock System Penalty	Changed ignition interlock from six to 12 months pursuant to HB1392.

**Appendix C - Appeals**

Date:	Section:	Description:
July 1, 2025	Civil Appeals	Added information exempting an indigent defendant's requirement to post a bond when the Unlawful Detainer is brought by the public housing authority pursuant to HB2415.

## Glossary

<b>Abstract of Conviction</b>	An official copy of the contents of a criminal or traffic verdict and sentence.
<b>Abstract of Judgment</b>	An official copy of the contents of a civil judgment.
<b>Accord and Satisfaction</b>	An agreement between the parties whereby a claim or charge may be dismissed by the court upon a payment or other consideration given to the person injured.
<b>Accused</b>	The person against whom an accusation is made; one who is charged with a crime or traffic infraction.
<b>Action</b>	Proceeding in a court by which one party prosecutes another for the enforcement or protection of a right, or the redress or prevention of a civil wrong.
<b>Adjudicate</b>	To pass on judicially, to decide, settle, or decree.
<b>Admissible</b>	Pertinent and proper to be considered in reaching a decision. Refers to the evidence considered in determining the issues to be decided in any judicial proceeding.
<b>Adversary Proceeding</b>	One having opposing parties; contested, as distinguished from a hearing in which only one party appears.
<b>Affiant</b>	The person who makes and signs an affidavit.
<b>Affidavit</b>	A written, printed, or videotaped declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before an officer having authority to administer such oath.
<b>Affirm</b>	To ratify, make firm, confirm, establish, reassert. Alternate procedure to swearing under an oath.
<b>Aggravating Factor</b>	A fact or circumstance associated with a criminal act that makes it more serious or injurious.
<b>Aggrieved Party</b>	One whose legal right is invaded by an act complained of.
<b>Alias</b>	"Otherwise called," indicating one was called by one or the other of two names.
<b>Alleged</b>	Claimed; asserted; charged.

<b>Amend</b>	To change.
<b>Answer</b>	A pleading by which defendant in civil suit at law endeavors to resist the plaintiff's demand by stating facts. The defendant may deny the claims of the plaintiff, or agree to them, and may introduce new matter.
<b>Appeal</b>	Taking a case that has been decided in a court of inferior jurisdiction to one of superior jurisdiction, for the purpose of obtaining a review.
<b>Appeal Bond</b>	A type of bond set by the court and filed by the appellant who had a civil judgment entered against him to forestall issuance of execution until the cause can be passed upon and disposed of by the superior court.
<b>Appellant</b>	The party who takes an appeal from one court to another.
<b>Appellee</b>	The party who must respond to the appellant.
<b>Arraign</b>	Arraignment of an accused consists of calling upon him by name, reading to him the charges in the arrest documents, demanding of him whether he pleads guilty or not guilty or, in misdemeanors, <i>nolo contendere</i> , and entering his plea. This hearing may be combined with right to counsel hearing.
<b>Arrest</b>	To deprive a person of his liberty by legal authority.
<b>Attachment</b>	The act or process of taking, apprehending, or seizing persons or property, by virtue of a writ, summons, or other judicial order, and bringing the same into the custody of the law; used either for the purpose of bringing a person before the court, of acquiring jurisdiction over the property seized, to compel an appearance, to furnish security for debt or costs, or to arrest a fund in the hands of a third person who may become liable to pay it over.
<b>Bail</b>	The release of a person from legal custody by a written agreement that he shall appear at the time and place designated and submit himself to the jurisdiction of the court and observe the requirements set forth in the recognizance.



<b>Bail Forfeiture</b>	Order by the court that the surety pay to the court the amount of security pledged for failure of an accused to comply with the requirements of the bond. The court in turn pays the funds to the jurisdiction whose laws were violated.
<b>Bill of Particulars</b>	A written statement or specification of the details of the demand for which an action at law is brought.
<b>Bifurcated Trial</b>	A trial that is divided into two stages, such as for guilt and punishment or for liability and damages. Civil cases are bifurcated into separate liability and damages proceedings.
<b>Bond</b>	A certificate or evidence of a debt with a sum fixed as a penalty, which contains a written agreement binding the parties to pay the debt, conditioned, however, that the payment of the penalty may be avoided by the performance of certain acts by one or more of the parties.
<b>Bondsman</b>	A professional surety who has entered into a bond as surety.
<b>Breach</b>	The breaking or violating of a law, right, or duty, either by commission or omission.
<b>Capias</b>	A type of arrest document issued by the court charging the offender with a violation of a court order or court process of contempt of court.
<b>CCRE</b>	Central Criminal Records Exchange: an abbreviation of the name of the report prepared by court clerk's offices and sent to the State Police.
<b>Child in Need of Services</b>	A child whose behavior, conduct, or condition poses a risk of harm to himself or another person.
<b>Child in Need of Supervision</b>	A child who is habitually absent from school or who abandons his family or guardian in a manner that requires intervention by the court to protect the child's welfare.
<b>Civil Action</b>	A case brought for determination enforcement or protection of a right, or redress; or prevention of a wrong; every action other than a criminal action.
<b>Codicil</b>	An amendment to a will. Wills are handled by the circuit courts.

<b>Commissioner in Chancery</b>	A neutral attorney appointed by the court to gather facts, conduct depositions, and create a report to the court setting forth the facts along with recommendations regarding the case. Commissioners in Chancery are appointed by circuit courts for certain circuit court cases.
<b>Commonwealth's Attorney</b>	The name of the public officer who is elected in each city or county to conduct criminal prosecutions on behalf of the state.
<b>Complaint - Criminal</b>	A charge brought before a judicial officer having jurisdiction, that a person named has committed a specified offense.
<b>Contempt of Court</b>	Any act that is calculated to embarrass, hinder, or obstruct the court in administration of justice, or which is calculated to lessen its authority or its dignity.
<b>Continuance</b>	A postponement of further proceedings in a hearing, trial, or other judicial proceeding until a later date.
<b>Contract</b>	A legally enforceable agreement between two or more parties made orally or in writing.
<b>Contributory Negligence</b>	A legal doctrine that states that, in a civil action based on negligent conduct, the plaintiff may not recover from the defendant if the plaintiff was also negligent.
<b>Convict</b>	To find a person guilty of a criminal charge.
<b>Counterclaim</b>	A claim presented by a defendant in opposition to deduction from the claim of the plaintiff whether or not it arises from the matters in question in plaintiff's action.
<b>Court Order</b>	A command or mandatory direction of a judge which is made during a case. Also includes a command of the judge which establishes courtroom or administrative procedures.
<b>Crime</b>	A positive or negative act in violation of penal law; an offense against the state classified either as a felony or misdemeanor.

<b>Cross-Claim</b>	An expansion of the original action in which a claim is brought by a defendant against a third party not originally sued by the plaintiff in the same action or against a co-defendant or both concerning matters in question in the original action.
<b>Cross-Examination</b>	The examination of a witness upon a trial or hearing, or upon taking a deposition, by the party opposed to the one who put him on the witness stand to testify.
<b>Custody</b>	The detainment of a person by virtue of lawful process or authority; actual imprisonment.
<b>Custody Case</b>	In J & DR court or circuit court, the type of proceedings in which the court determines which parent, other adult or agency shall have physical control over a child.
<b>Damages</b>	Money awarded by the court to a person harmed by the unlawful or negligent act of another.
<b>Decree</b>	An order of the court in an equity matter. Decrees are issued by circuit courts.
<b>Default</b>	An omission of that which ought to be done. Failure to act. Also, failure of the defendant in a civil case to appear and contest the claim.
<b>Defendant</b>	The party against whom relief or recovery is sought in a court action or suit. Sometimes used to designate the accused in criminal or traffic cases.
<b>Demurrer</b>	A motion to dismiss a case because the claim is legally insufficient.
<b>Deposition</b>	The testimony of a witness taken upon oral examination, after notice to the adverse party, not in open court, but in pursuance of a notice to take testimony issued by the party wanting the deposition. The adverse party has the right to attend and cross-examine. Testimony is reduced to writing and duly authenticated, and intended to be used in connection with the trial of an action in court. These are used in circuit court.
<b>Deputy Clerk</b>	A subordinate employee to the clerk who is empowered to act in the place of the clerk in the official business of the court.

<b>Detention</b>	The holding of a person in custody or confinement.
<b>Detinue</b>	A form of action that exists for the recovery of personal property (or their alternative value) from one who acquired possession together with damages for the detention.
<b>Direct Examination</b>	The initial questioning of a witness by the party who called the witness.
<b>Disclaim</b>	To refuse or deny.
<b>Discovery</b>	Procedures by which one party to a lawsuit may obtain information relevant to the case that is held or known by the other party.
<b>Dismissal</b>	An order disposing of an action, suit, etc., without trial.
<b>Disposition</b>	Determination of the final arrangement or settlement of a case following judgment.
<b>Distress</b>	The creation of a lien on or seizure of personal property belonging to a tenant to ensure collection of rent.
<b>Divorce</b>	Legal dissolution of a marriage by the court. Divorce cases are handled by circuit courts.
<b>Docket</b>	A record of all cases and actions scheduled to be heard in court, whether or not the matter is actually heard in a court on a particular day.
<b>Docket Book</b>	The chronological collection of all docket sheets of a court.
<b>Docket Sheet</b>	A form containing the docket. More than one docket sheet may be needed to contain one day's docket.
<b>Elements</b>	Facts or circumstances that define a crime, each of which must be proven beyond a reasonable doubt in order to result in a conviction.
<b>Eminent Domain</b>	The power of the government to take private property for public use, with compensation. The procedure for taking property under eminent domain is called condemnation, and is reviewed by circuit courts.
<b>Enjoin</b>	To order a person to cease performing a certain act. Circuit courts may enjoin a person from acting in certain cases.

<b>Equity</b>	A body of civil law concerned with doing justice where money is inadequate or inappropriate as a remedy. Examples of equitable actions include divorce and injunctions. Equity cases are handled by circuit courts.
<b>Escrow</b>	Money or other property held upon agreement of the parties by a neutral third party, and released according to the agreement upon the fulfillment of its terms.
<b>Estate</b>	The property owned by a person, in his or her name, at the time of the person's death. Estates and wills are handled by circuit courts.
<b>Eviction</b>	The legal process by which one recovers land or a dwelling from another.
<b>Evidence</b>	All the means by which a matter of fact, the truth of which is submitted for investigation, is established or disproved.
<b>Ex Parte</b>	A judicial proceeding, order, injunction, etc., is said to be ex parte when it is taken or granted at the instance and for the benefit of one party only, and without notice to, any person adversely interested.
<b>Execute</b>	To enforce a civil judgment by seizure and either transfer or liquidation of the judgment debtor's assets through post-trial judicial process.
<b>Execution of Judgment</b>	The process of putting into effect the judgment of the court in civil cases; usually by garnishment or levy, through post-trial, statutory enforcement procedures requiring the forcible removal and disposal of the property of the losing party.
<b>Executor</b>	A person named in a will who administers the estate of a deceased person. An executor must "qualify" before the circuit court where the will is filed.
<b>Expungement</b>	A process by which a record, or a portion thereof, is officially erased or removed after the defendant is not convicted. Criminal record expungement requests are heard by circuit courts, and, under certain conditions, by the general district court.

<b>Extradition</b>	The surrender by one state to another of an individual accused or convicted of an offense outside its own territory and within the territorial jurisdiction of the other, which, being competent to try and punish him, demands the surrender.
<b>Felony</b>	A crime punishable by death or confinement in the penitentiary. See <a href="#">Va. Code § 18.2-10</a> for classification of felonies and the punishment for each classification.
<b>Fiduciary</b>	A person who has a legal and ethical duty to act in the best interests of another person. Examples include an executor or a guardian.
<b>Finding</b>	The result of the deliberations of a court.
<b>Forfeiture</b>	A deprivation or destruction of a property right in consequence of the nonperformance of some obligation or condition.
<b>Garnishee</b>	One garnished; a person against whom process of garnishment is issued; one who has money or property in his possession belonging to a judgment debtor, or who owes the judgment debtor a debt, which money, property, or debt is attached in his hands, with notice to him not to deliver or pay over to the judgment debtor the amount claimed in the garnishment summons until the judgment in the suit is entered.
<b>Garnishment</b>	A statutory post-judgment proceeding in which a third party who holds property, money or credits belonging to the judgment debtor is required to surrender such property, money or credits (to the extent of the judgment) to the court or sheriff for application against the judgment awarded against the judgment debtor.
<b>Grand Jury</b>	A special type of jury assembled to investigate whether criminal charges should be brought. Grand jury proceedings are supervised by circuit courts.
<b>Guardian Ad Litem</b>	A lawyer appointed to defend or prosecute a case on behalf of a party who is incapacitated by a young age or other condition.

<b>Guilty</b>	Responsible for committing a criminal offense or a traffic infraction. The word used by an accused in pleading to the charges when he confesses to committing the crime of which he is charged. It is also used by the judge if he finds that the accused committed a criminal offense or a traffic infraction.
<b>Habeas Corpus</b>	A writ commanding the person holding a prisoner in custody to bring the prisoner before the court for a determination of whether the prisoner is restrained of his liberty by due process. It is not used to determine the guilt or innocence of the prisoner.
<b>Incarceration</b>	Imprisonment; confinement in a jail or penitentiary.
<b>Indemnify</b>	To shift responsibility for a loss from the person held legally responsible to another party.
<b>Indictment</b>	A formal accusation by a grand jury that charges a person with a crime. Indictments are used to bring more serious charges and are used in circuit court only.
<b>Indigent</b>	In a general sense, one who is needy and poor, or one who has insufficient property to furnish him a living nor anyone able to support him or to whom he is entitled to look for support.
<b>Information</b>	A formal accusation by a prosecutor setting forth criminal charges against a person. An information is used in circuit court.
<b>Insanity Plea</b>	A claim by a defendant that he or she lacked the mental capacity at the time of the crime and should not be held responsible for it.
<b>Interrogatories</b>	A set of series of written questions drawn up for the purpose of being asked of a party, a garnishee, or a witness or other party to be answered under oath.
<b>Jail</b>	A place of confinement for persons awaiting trial and for persons sentenced to shorter terms of confinement for misdemeanors.
<b>Judgment</b>	A final decision and order of the court.

<b>Judgment Creditor</b>	The person who wins an award against some other person in a civil suit.
<b>Judgment Debtor</b>	The person against whom an award is made in a civil suit.
<b>Jurisdiction</b>	The authority of a court or other governmental agency to adjudicate controversies brought before it.
<b>Jury</b>	A body of persons selected from the community to hear evidence and decide a criminal or civil case. Juries are used only in circuit court.
<b>Juvenile</b>	A child or young person who has not yet reached the age at which he or she is treated legally as an adult.
<b>Lack of Jurisdiction</b>	The phrase may mean lack of power to act in a particular manner or to give certain kinds of relief. It may consist of a court's total lack of power to act at all, or lack of power to act in particular cases because the parties have not complied with conditions essential to the exercise of jurisdiction.
<b>Legal Aid</b>	Legal services are available in some areas to persons unable to afford an attorney. Legal aid offices handle only civil matters.
<b>Lesser Included Offense</b>	A less serious criminal charge that includes some of the same elements as the original charge.
<b>Letters Testamentary</b>	A document issued by the circuit court that gives an executor the power to take control of and distribute a deceased person's property.
<b>Levy</b>	A seizure; the setting aside of specific property from the general property of the debtor and placing it under the control of the sheriff until it can be sold and applied to the payment of the execution.
<b>Lien</b>	A charge or security or encumbrance upon property.



<b>Liquidated Damages</b>	The term is applicable when the amount of the damages has been ascertained by the judgment in the action, or when a specific sum of money has been expressly stipulated by the parties to a bond or other contract as the amount of damages to be recovered by either party for a breach of the agreement by the other. In truck weight and length violations, liquidated damages are determined by a statutory formula.
<b>Litigant</b>	A party to a lawsuit; one engaged in litigation.
<b>Magistrate</b>	A judicial officer with limited powers that handles certain preliminary matters such as issuing warrants, determining bail, issuing emergency protection orders, and temporarily committing people to mental institutions.
<b>Mechanic's Lien</b>	A claim created by law for the purpose of securing priority of payment of the price or value of work performed and materials furnished in building or repairing a structure or personal property.
<b>Mediation</b>	A form of dispute resolution that takes place outside of court where a neutral third party helps the parties reach a settlement.
<b>Minor</b>	An infant or person who is under the age of legal competence. One under eighteen.
<b>Misdemeanor</b>	Offenses punishable by fine not exceeding \$2,500 or being jailed for a term not exceeding 12 months or a combination of fine and jail within these limits.
<b>Mistrial</b>	A trial that is cut short and does not result in a verdict due to a procedural error or other problem. The trial must then start over from the beginning.
<b>Mitigating Factor</b>	A fact or circumstance associated with a criminal act that, while not an excuse or justification, may reduce its severity and result in a lesser sentence.
<b>Modification</b>	A change, addition, or deletion that alters but does not change the basic subject matter.
<b>Motion</b>	A request made to the judge by a litigant or other person connected with the case for a ruling or order.

<b>Motion for Judgment</b>	A pleading filed by a plaintiff to start a civil case which sets forth the basis of plaintiff's claim and request's judgment in plaintiff's favor.
<b>Negligence</b>	Failure to exercise that degree of care which a reasonable person would have exercised given the same circumstances.
<b>Next Friend</b>	A person who brings an action or handles matters for the benefit of a minor or a person who is legally incompetent, without formal appointment by the court.
<b>Nolle Prosequi</b>	A formal motion by the prosecuting officer in a criminal action, which states that he "will no further prosecute" the case. The court would grant the motion in order to dispose of the case.
<b>Nolo Contendere</b>	"I will not contest it". The name of a plea in a misdemeanor case or traffic infraction proceeding, having the same legal effect as a plea of guilty, so far as regards all proceedings in the case, and on which the defendant may be sentenced.
<b>Not Guilty</b>	A finding or verdict in a criminal case wherein the judge or jury determines that the Commonwealth has not proven that the defendant is guilty of a charge. Also the plea that may be made by a defendant to assert that he or she is not guilty and to demand that the Commonwealth prove its case.
<b>Not Guilty by Reason of Insanity</b>	A finding or verdict in a criminal case wherein the judge or jury determines that a defendant is not responsible for the act(s) due to mental incapacity at the time of the offense.
<b>Notary</b>	A public officer whose function it is to administer oaths; to attest and certify, certain classes of documents; to take acknowledgments, and certify the same.
<b>Notice</b>	Formal notification of a legal proceeding or determination.
<b>Nunc Pro Tunc ("Now for Then")</b>	An order that is retroactively effective.
<b>Objection</b>	A protest or exception made by a party against an action by the opposing party.

<b>Ordinance</b>	The enactments of the legislative body of a local government.
<b>Ore Tenus</b>	Oral. Used as a technical term to describe a hearing or pleading which is orally presented.
<b>Original Jurisdiction</b>	Jurisdiction in the first instance; jurisdiction to take cognizance of a cause at its inception, try it, and pass upon the law and facts.
<b>Parole</b>	In criminal law, a conditional release. If prisoner makes good, he will receive an absolute discharge from balance of sentence, but, if he does not, he will be returned to serve unexpired time.
<b>Partial Payment</b>	Payment of a sum less than the whole amount originally due.
<b>Party</b>	An individual person or a legal organization such as a partnership or corporation.
<b>Perjury</b>	A criminal offense committed by giving a false statement given under oath.
<b>Personal Recognizance</b>	Release of a defendant from jail or arrest by a judicial officer, upon the promise to appear in court without the necessity of posting bond but with some conditions imposed.
<b>Petition</b>	A formal request to a court to take a certain action on a matter.
<b>Plaintiff</b>	A person who brings an action; the party who complains or sues in a personal action and is so named on the record.
<b>Plea</b>	Statement made by the defendant either as to his guilt or innocence to the charge made against him.
<b>Pleadings</b>	The formal allegations by the parties of their respective claims and defenses, for the judgment of the court.
<b>Power of Attorney</b>	Authorization given by one person allowing another to take action on their behalf.

<b>Preliminary Hearing</b>	The hearing given to an accused which is held by a judge, to ascertain whether there is evidence to warrant the binding over of the accused on the felony charge to the circuit court for further proceedings.
<b>Preponderance</b>	Greater weight of evidence, or evidence that is more credible and convincing to the mind.
<b>Prima Facie</b>	Evidence good and sufficient on its face.
<b>Probable Cause</b>	A reasonable ground for belief in the existence of facts warranting the proceedings complained of (e.g., probable cause to believe that a crime has been committed and that the person accused may have committed it).
<b>Probation</b>	In modern criminal administration, allowing a person convicted of some offense to remain free under a suspension of a jail sentence during good behavior and generally under the supervision or guardianship of probation officer together with other restrictions as the court may impose.
<b>Putative Father</b>	The alleged or reputed father of an illegitimate child.
<b>Quash</b>	The action of a court to deny, vacate, or make void a request on legal process, such as a subpoena.
<b>Reasonable Doubt</b>	The degree of certainty beyond which the Commonwealth must prove its accusations in order to obtain a criminal conviction.
<b>Recognizance</b>	An obligation entered into by an accused before a court, with condition to do some particular acts, including to appear in criminal court as required, to keep the peace, to be of good behavior, and not to depart from the Commonwealth.
<b>Remand</b>	Sending a case back to the same court out of which it came for purpose of having some action taken on it there.
<b>Restitution</b>	The act of making good or giving equivalent for any loss, damage, or injury.

<b>Return</b>	The act of a sheriff, constable, or other ministerial officer, in delivering back to the court a writ, notice, or other paper, which he was required to serve or execute (See Execute in this Glossary), with a brief account of his doings under the mandate, the time and mode of service or execution, or his failure to accomplish it, as the case may be. Also the endorsement made by the officer upon the writ or other paper, stating what he has done under it, the time and mode of service, etc.
<b>Revocation</b>	The recall of some power, authority, or thing granted, or a destroying or making void of some deed that had existed until the act of revocation made it void.
<b>Satisfaction</b>	The discharge of an obligation by paying a party what is due to him or what is awarded to him, by the judgment of a court or otherwise.
<b>Sealed</b>	A file that is physically closed from review. Also, a document containing a seal or the word “seal” next to the signer's signature.
<b>Search Warrant</b>	An order in writing, issued by a judicial officer, in the name of the state, directed to a sheriff, or other officer commanding him to conduct a search to aid an official investigation.
<b>Seizure</b>	To take into possession forcibly.
<b>Sentence</b>	The judgment formally pronounced by the judge upon the defendant after his conviction in a criminal prosecution, setting the punishment for the offense.
<b>Sentence - Suspended</b>	Postponing the execution of the sentence after it has been pronounced upon certain conditions.
<b>Sentence - Deferred</b>	Postponing the imposition of the sentence or finding for a period of time upon certain conditions. Does not operate as a suspension of sentence.
<b>Service of Process- Personal</b>	Service of a summons or other process made by delivering it in person to the person named, in the process.

<b>Service of Process-Publication</b>	Service of a summons or other process upon an absent or non-resident defendant, by posting a notice on the courthouse door and, unless dispensed with by the judge, by publishing the same as an advertisement in a designated newspaper, with such other effort to give him actual notice as the particular statute may prescribe.
<b>Service Of Process-Substitute</b>	Service of a summons or other process by any means authorized by statute other than by personal service. These include service by publication, posted service, service on alternative individual as authorized by statute.
<b>Show Cause Rule</b>	A court ruling directing the recipient to appear and present to the court such reasons and considerations as one has to offer why the recipient should not be punished for violating a court order or legal process or for contempt of court.
<b>Subpoena</b>	A process to cause a witness to appear and give testimony, commanding him to appear before a court therein named at a time therein mentioned to testify for the party named under a penalty therein mentioned.
<b>Subpoena Duces Tecum</b>	A process by which the court, at the request of a party to an action, commands a witness who has in his possession or control some document or paper that is relevant to the pending controversy, to produce it at or before the trial.
<b>Substitute Judge</b>	A lawyer authorized to hold court in the absence of the regular judge of a general district court or a juvenile and domestic relations district court.
<b>Suit In Debt</b>	A civil action brought upon claim of non-payment of debt.
<b>Suit In Detinue</b>	A type of civil case in which the plaintiff seeks to recover personal property from a defendant who acquired possession of the personal property lawfully, but allegedly does not have the right to keep it. In this kind of case, the plaintiff may ask for money damages, but is not required to.

<b>Summons</b>	A document notifying defendant that an action has been instituted against him and that he is required to answer to it at a time and place named.
<b>Surety</b>	One who undertakes to pay money or to do any other act in the event that another, called his principal, fails to perform as promised. In criminal cases, the accused is the principal.
<b>Tenant Assertion and Complaint</b>	A complaint filed by a tenant against a landlord asserting that the landlord has failed to fulfill an obligation.
<b>Third Party</b>	One who is not a party to a lawsuit, agreement, or other transaction but who is somehow involved in the transaction; someone other than the principal parties.
<b>Transcript</b>	A written, verbatim record of a legal proceeding. Generally, transcripts are created only in circuit court and in some administrative hearings.
<b>Trial De Novo</b>	A new trial or retrial had in a circuit court in which the whole case is re-tried as if no trial whatever had been had in the district court.
<b>Unlawful Detainer</b>	The unjustified retention of the possession of lands by one whose original entry was lawful and of right, but whose right to possession has terminated and who refuses to vacate the premises. This type of action applies to renters.
<b>Venue</b>	“Venue” designates the particular county or city within which a court with jurisdiction may hear and determine the case.
<b>Verdict</b>	The formal decision or finding of guilt or innocence made by a judge in a criminal case.
<b>Waive</b>	To abandon, renounce, repudiate or surrender a claim, a privilege, a right, or the opportunity to take advantage of some defect, irregularity or wrong.
<b>Warrant In Debt</b>	A form used in general district court to seek recovery of money from another party.

<b>Warrant In Distress</b>	A form used in general district court to assert a claim to property held by another, as satisfaction of a debt or in lieu of performance of an obligation.
<b>Warrant of Arrest</b>	A written order issued and signed by a judicial officer directed to a law enforcement officer or some other person specially named and commanding him to arrest the body of a person named in it who is accused of an offense.
<b>Will</b>	A written document in which a person declares how his or her property should be distributed upon death. Wills are handled by circuit courts.
<b>Witness</b>	One who testifies to what he has seen, heard, or otherwise observed and who is not a party to the action.
<b>Writ</b>	An order in writing in the name of the state, issuing from a court, addressed to a sheriff or other officer of the law, or directly to the person whose action the court desires to command, either as the commencement of a suit or other proceeding or as incidental to its progress, and requiring the performance of a specified act, or giving authority and commission to have it done.
<b>Writ of Possession</b>	This is the writ of execution employed to enforce a judgment to recover the possession of land in an unlawful detainer action or personal property in a detinue action. It commands the sheriff to enter the land or seize the personal property and give possession of it to the person entitled under the judgment.