

 <p><b>Cambridge Police Department</b></p>	<b>POLICY &amp; PROCEDURES</b>		<b>No. 621</b>
	Subject/Title: <b>Traffic Enforcement Guidelines</b>		
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## I. PURPOSE:

This directive establishes guidelines that are to be followed to ensure that traffic enforcement actions are in compliance with applicable laws, and to ensure that officers always take into account the degree and severity of the violation when determining the appropriate enforcement action. The department's objectives in traffic enforcement are specifically directed toward controlling violations through the analysis of available data and complaints, preventive patrol, and proactive enforcement measures.

## II. POLICY:<sup>1</sup>

It is the policy of this department for its officers to patrol in a proactive manner, to aggressively investigate suspicious persons and circumstances, and to actively enforce the motor vehicle laws. Likewise, the department is equally committed to adhering to the laws that require that officers stop or detain citizens only when there exists reasonable suspicion to believe they have committed, are committing, or are about to commit, an infraction of the law. Further, recognizing the degree of discretionary powers that officers have with respect to traffic enforcement actions, officers should exercise sound judgment and impartially take enforcement action to correct inappropriate driving behaviors. To that end, it is the goal of the department to:

- Use traffic enforcement as one of several methods to reduce traffic collisions, fatalities, and injuries;
- Make motor vehicle stops based solely on the violations observed, not to on the profile of the vehicle's occupants; and
- Maintain and account for traffic records and citations.

<sup>1</sup> CALEA Std. 1.2.7 – *A written directive governs the use of discretion by sworn officers.*

### III. GENERAL DISCUSSION AND CONSIDERATIONS:

Traffic enforcement, education, and engineering are crucial elements of an effective traffic safety program to promote the safe, efficient, and orderly movement of motor vehicles over the roads and highways in each community. Enforcement and education programs are designed to change illegal and dangerous driving behaviors and to promote voluntary compliance with the laws of the Commonwealth. Effective traffic safety programs accomplish the following objectives:

- Maximize the presence of personnel and equipment at locations and times conducive to enhancing traffic safety and flow;
- Maximize the utilization of traffic data, accident reports, and citation information as key identifiers for personnel deployment and selective traffic enforcement; and
- Maximize partnerships with law enforcement and transportation agencies, researchers, and educators to enhance information sharing, and the development of prevention programs and problem solving activities.

Police departments attain safety goals through traffic law enforcement, investigation, traffic direction and control, and education. Among these goals is the reduction of traffic collisions, fatalities, and injuries. Another goal is to facilitate the safe and expeditious movement of vehicular and pedestrian traffic through the public's voluntary compliance with traffic regulations. The Police Department can only meet these goals through a combination of education, enforcement, engineering, and public support.

As a component of behavior modification, enforcement must be applied where it can best target the type of driving behavior that needs to be affected. Through the use of collision statistics, traffic patterns and volumes, police can target the times and locations where enforcement resources will do the most good.

With the ever-increasing number of vehicles and operators on the roadways, traffic crashes will continue to occur. In an effort to limit the number of motor vehicle collisions, it is essential to understand the importance of thorough accident investigation and reporting. Data from such investigations are the prime source of information for accident prevention programs. It is therefore imperative that comprehensive information be gathered for use in planning, evaluating, and implementing efforts to achieve highway safety goals.

It is imperative that the police department creates the perception that it takes traffic enforcement seriously, and takes enforcement action that is perceived to be uniform and fair. Given the complexity of the traffic patterns that exist throughout the city and the number of pedestrians and bicyclists that transverse the city, traffic enforcement will always be considered a major component of police function within the city. In order maximize the number of resources available, the department will continually rely upon data to determine when those resources are to be deployed.

#### IV. UNIFORM PROCEDURES FOR TRAFFIC ENFORCEMENT:<sup>2</sup>

**A. General Traffic Enforcement Guidelines:** The ultimate goal of selective traffic law enforcement is to reduce traffic collisions. Achievement of this goal is contingent upon the analysis of information derived from the following: motor vehicle collision reports; traffic surveys; citizen complaints; enforcement history; officer's observations of special hazards; and other sources of information. Careful analysis of this data will focus on specific traffic problems and solutions, and allow for strategic deployment of personnel and equipment. The department's Traffic Enforcement Unit in collaboration with the Crime Analysis Unit will review the available data to identify locations where selective enforcement, speed enforcement, and OUI patrols are indicated. Such review will be conducted on an ongoing and as needed basis. The information will be made available to patrol units for enforcement activity.

1. *Analysis of Traffic Collisions:* Motor Vehicle Collision Reports will be reviewed on a monthly basis by the Crime Analysis Unit, and will be used along with other information to generate a list of those locations around the city that warrant additional enforcement. A Monthly Traffic Analysis Report will be provided to patrol supervisors, under the direction of the Patrol Operations Division Commander, to facilitate making appropriate traffic enforcement assignments.
2. *Analysis of Traffic Enforcement Activities:* The Traffic Enforcement Unit, in collaboration with the Crime Analysis Unit, will review motor vehicle citations, selective enforcement and speed enforcement (RADAR, LIDAR, and Speed Trailers) activity reports, and OUI arrests on a monthly basis to assist in selecting appropriate locations for selective traffic enforcement efforts. This analysis report will be provided to the patrol supervisors, under the direction of the Patrol Operations Division Commander, to facilitate making appropriate traffic enforcement assignments.
3. *Implementation of Selective Enforcement Techniques:* The Traffic Enforcement Unit, in collaboration with the Crime Analysis Unit, will review the available data based on collision analysis, enforcement activity records, traffic volume and conditions to identify locations where selective enforcement, RADAR operation, and/or OUI enforcement is indicated. Such review will be conducted monthly and as needed for specific situations, and this analysis will be provided to the patrol supervisors, under the direction of

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<sup>2</sup> CALEA Std. 61.1.1 – A written directive governs the agency's selective traffic enforcement activities, to include:

- a. compilation and review of traffic collision data;
- b. compilation and review of traffic enforcement activities data;
- c. comparison of collision data and enforcement activities data;
- d. implementation of selective enforcement techniques and procedures;
- e. deployment of traffic enforcement personnel; and
- f. evaluation of selective enforcement activities.

the Patrol Operations Division Commander, to facilitate making appropriate traffic enforcement assignments.

4. *Development of Traffic Enforcement Personnel:* The Deputy Superintendent in charge of the Traffic Enforcement Unit, in collaboration with the Traffic Enforcement Unit Commander, will routinely assign the unit's officers to monitor the locations indicated by the monthly analysis reports for selective enforcement activities.
5. *Evaluation of Selective Enforcement Activities:* The Traffic Enforcement Unit Commander will on an annual basis review the impact of enforcement efforts on accident data and revise selective enforcement activity as necessary. This annual report will be provided to the Police Commissioner and the Division Commanders.

**B. Officer's Role in Traffic Enforcement:** The role of police officers is to observe, detect, and prevent violations of traffic laws and to take appropriate action when violations are observed. When carrying out traffic enforcement activities, officers should keep the following factors in mind:

1. The department is definitively and unequivocally opposed to preferential treatment pertaining to adjudication of traffic cases in any manner, by any agency, official, or person.
2. The ultimate objective of enforcement is to favorably alter the violator's future driving behavior, thus fostering a climate of safe driving throughout the community.
3. Traffic law enforcement will not be used as a means to generate revenue for the department.
4. The number of citations issued by an officer shall not be the sole basis of determining the effectiveness of an officer's traffic enforcement efforts. The quality of the citations, i.e., motor vehicle collisions and injury-causing types of violations and other elements, will also be considered in an overall evaluation.
5. In cases where conventional traffic enforcement is unsuccessful (i.e., by the use of visible marked police cruisers) unmarked units may be utilized. Unmarked vehicles may be used where covert enforcement will be most effective in addressing specific violations, for example, passing school buses, speeding vehicles, stop sign violations, etc. The decision to utilize covert enforcement is within the discretion of the Shift Commander and/or the Traffic Enforcement Unit Commander.

6. To ensure maximum reduction of motor vehicle collisions, enforcement pressure should be applied in direct proportion to the need for enforcement at particular locations, and at the hours of greatest accident expectancy.
7. Traffic laws will be enforced at a level sufficient to ensure the safe and expeditious movement of traffic.
8. Enforcement activities will be conducted in a consistent and uniform manner. Officers will not give preference to either local residents or non-residents. Enforcement efforts should be focused on the violations that cause the largest number of collisions, and against those drivers who pose the greatest hazard to the community.
9. Profiling prohibited: Profiling citizens for enforcement action based on their racial, cultural background, age, gender, sexual orientation or other characteristics is strictly prohibited. Traffic enforcement shall be based solely on the violation of law observed and not the characteristics of the operator and/or occupants (also refer to department policy entitled, “*Policy # 230 - Addressing Bias-based Policing*”).

**C. Traffic Enforcement Actions:**<sup>3</sup> All enforcement actions will be accomplished in a firm, fair, impartial, and courteous manner by using one of the following four methods:

1. *Verbal Warnings*: A verbal warning is appropriate when the violator commits a minor motor vehicle violation, which may be due to the motor vehicle operator’s ignorance of a particular law. Examples of this type of violation could be where the operator approaches a stop sign and instead of coming to a complete stop slows to a speed slower than walking. If such movement is made with reasonable safety and the driver is accustomed to driving in those jurisdictions where this action is permissible, the issuance of a verbal warning may be appropriate. Similarly, a verbal warning is appropriate for equipment failure (i.e., license plates not illuminated) of which the driver may have been unaware. **HOWEVER, A WRITTEN WARNING SHOULD USUALLY BE USED INSTEAD OF A VERBAL WARNING BECAUSE IT EXERTS A MORE EFFECTIVE INFLUENCE ON THE DRIVER.**
2. *Written Warnings*: A written warning is a proper alternative to issuance of a citation in response to relatively minor traffic infractions. It is also appropriate for those violations that occur within the tolerances generally allowed by the

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<sup>3</sup> CALEA Std. **61.1.2** – A written directive establishes uniform procedures for taking enforcement action incidental to traffic law violations, to include:

- a. physical arrest;
- b. citation (notice to appear); and
- c. warnings (if used).

courts. These tolerances would include speeds in excess of the legal limit, but less than a speed for which a citation or arrest would result. If used properly, warnings can effectively educate the driving public because they involve less emotional stress, and are also considered to be an effective public relations tool. However, the excessive use of warnings should be avoided because they could create a feeling of lack of commitment by the department to enforce motor vehicle safety within the community.

3. *Issuance of Traffic Citation:*<sup>4</sup> Citations are the central enforcement tool of the department's traffic enforcement effort. An officer's thoughtful discretion plays an important role this type of enforcement action against a violator. An officer's use of discretion should be based on a combination of experience, training, and common sense. The traffic citation should be issued to all violators who jeopardize the safe and efficient flow of vehicular and pedestrian traffic, including hazardous moving violations, multiple violations (multiple violations consist of infractions listed on the same citation), violations of new laws and/or regulations, and operating unsafe and/or improperly equipped vehicles. The citation issued would not be a warning in these cases. Whenever an officer issues a citation, he/she should be advising the motorist of the following information, as may be applicable:
  - a. Written warnings have no fine or court appearance associated with it.
  - b. Civil citations: The violator has the option of paying the fine associated with the violation by mail or may request a hearing.
  - c. Criminal citation: There is a mandatory court appearance. The violator will be notified of the court date if no action is taken or may request a show cause hearing within four (4) days.<sup>5</sup>
  - d. Notify the violator that all options are explained on the back of the citation.
  - e. Officers shall explain the motorist's options and requirements upon arrest or issuance of a citation.
  - f. Notification on any other procedures with regard to the disposition of the citation.

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<sup>4</sup> CALEA Std. **61.1.4** – *At the time a motorist is charged with a violation, the agency provides information relative to the specific charge, to include:*

- a. *court appearance schedule;*
- b. *optional or mandatory nature of court appearance by the motorist;*
- c. *notice of whether the motorist is allowed to enter a plea and/or pay the fine by mail or at a traffic violations bureau; and*
- d. *other information that must be provided to the motorist prior to release.*

<sup>5</sup> M.G.L. c. 90, § 3

4. *Physical Arrest:*<sup>6</sup> Officers may affect the physical arrest of any person in violation of those traffic laws allowing for an arrest, and shall place a violator under arrest where the law mandates it. Whenever an arrest results from a motor vehicle violation, a citation must be filled out and the “Arrest” box on the citation shall be checked. The departmental policies entitled: Policy #440-*Arrest Guidelines* and Policy #650 – *Transportation of Detainees* shall be followed.
5. *Special Traffic Violation Processing:* Officers at times, while enforcing motor vehicle laws, will encounter unusual or special circumstances that may require them to handle the violation in a manner other than normal procedure. This would include violations committed by:
  - a. *Non-Residents:* Enforcement action shall be consistent and in a uniform manner without preference to local residents or bias against non-residents.
  - b. *Juveniles:* When a citation is issued to a juvenile, each copy of the citation shall be marked on the top left corner with the words “A Juvenile.” There are no special procedures for dealing with juvenile offenders of the traffic laws and in the issuance of citations. For purposes of ensuring that a parent or legal guardian be notified in certain circumstances, officers will observe the following procedures:
    - When the officer has determined it appropriate to issue a motor vehicle citation to a juvenile, it shall be made out in the juvenile’s name. However, the offender’s copy of the citation will be given to the juvenile’s parent or legal guardian.
    - In situations where an officer places a juvenile into custody, the officer will be guided by the departmental policy entitled, Policy #430 – *Juvenile Justice Guidelines*.
  - c. *State Legislators:* The Massachusetts Constitution (Part 2, Chapter 1, Sec. 3, and Article 10) stipulates that state legislators, while attending, going to, or returning from a session of their respective houses, shall be exempt from physical arrest. However, citations may be issued, as is deemed appropriate by the officer in his or her discretion.
  - d. *United States Senators and Representatives:* Members of the United States Congress shall in all cases, except treason, felony, and breach of the peace,

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<sup>6</sup> CALEA Std. 61.1.3 – A written directive establishes procedures for handling traffic law violations committed by:

- a. nonresidents of the agency’s service area;
- b. juveniles;
- c. legislators;
- d. foreign diplomats/consular officials; and
- e. military personnel.

be immune from arrest during their attendance at the session of their respective houses, and in going to and returning from a session of their respective houses.

- e. *Diplomatic and Consular Officers*: These officials shall be accorded their respective privileges, rights, and immunities as directed by international law and federal statute. These officials shall be treated with the courtesy and respect that befit their distinguished positions (also refer to Policy #561 - *Foreign Nationals and Officials*).
- Diplomatic Agents: Ambassadors and other diplomatic officers enjoy complete immunity from the laws of the host country. They may not be handcuffed (except in extraordinary circumstances), arrested, detained, or searched, nor may their property or vehicles be searched.
  - Family Members of Diplomatic Agents: Spouses, children to age 21 (age 23 if a full time college student) and other persons agreed to by the U.S. Department of State. If family members are U.S. citizens, they enjoy no immunity.
  - Administrative and Technical staff members enjoy the same immunity as Diplomatic Agents for criminal matters and civil matters connected to their official duties. Family members enjoy the same immunity as their sponsors, but have no civil immunity.
  - Service Staff members enjoy immunity related to their official acts only. Family members have no immunity.
  - Traffic citations may be issued; however, the subject may not be compelled to sign the citation.
  - Any citations issued shall be reported to the U.S. Department of State. The State Department maintains driver histories and assesses points for moving violations. Drivers who demonstrate a pattern of driving infractions are subject to having their driver's license suspended or revoked.
  - OUI: When such person with full immunity from arrest is, in the officer's opinion, too impaired to drive safely, the officer may:
    - With the individual's permission, take him/her to the police station or other location until he/she recovers sufficiently to drive;
    - Summon, or allow the individual to summon a friend or relative to drive; or

- Call a taxi.
- f. *Military Personnel:* When a physical arrest of military personnel is made, the investigating officer shall notify the nearest armed forces investigative headquarters division.
- g. *Marked Police Cruisers:* The most effective deterrent to traffic law violations is a visible patrol in marked police cruisers. In the interest of maintaining a posture of prevention as opposed to apprehension, traffic law enforcement activities will be conducted primarily with marked patrol vehicles.
  - Officers shall operate patrol vehicles in accordance with existing laws and in such a manner as to demonstrate exemplary driving behavior. Extreme emergency conditions will be the only exceptions to this practice.
- h. *Stationary Observations:* In those areas where fixed-post observation is necessary to maximize the effectiveness of a selective enforcement effort, officers shall generally park in a conspicuous location and in such a manner that traffic flow is not impeded. When appropriate, off street observation is permitted; however, every effort should be made to avoid the appearance of a “speed trap” situation.
- i. *Unmarked Police Cruisers/Unconventional Vehicles:* Unmarked patrol vehicles/unconventional vehicles may be used for traffic patrol only with the prior approval of the Shift Commander and/or the Traffic Enforcement Unit Commander.
  - Unmarked police cruisers may be used for routine patrol in the same manner as marked police cruisers if special enforcement is needed, but only with the prior approval of the Shift Commander.
  - Speed timing devices may be used in unmarked police cruisers.
- j. *Use of Roadside Safety Checks:* Roadside Safety Checks will only be used for the purpose of providing safety information to motorists and only with the prior approval of the Police Commissioner. All Roadside Safety Checks will be pre-planned, taking into consideration the following factors:
  - Purpose of the Roadside Safety Check
  - Time of Day

- Location: Taking into consideration visibility, potential for traffic congestion, safe movement of vehicles and pedestrians, and the availability of a staging area.
- Weather Conditions
- Availability of Personnel

## V. ACCOUNTABILITY OF CITATIONS:<sup>7</sup>

**A. Accountability:** Traffic citations are received from the Registry of Motor Vehicles. The Traffic Unit Commander will maintain control over the citations until issued to the officers. The Traffic Unit Commander will also issue citations to Operations Division supervisors who will issue them to their officers. Citations issued to Operations supervisors are maintained in the Patrol Sergeants' Room where a log is kept of citation books that have been issued.

**B. Obtaining Citations:<sup>8</sup>** Motor vehicle citation books are kept in the Patrol Sergeants' Room and shall be issued to officers as needed.

1. During business hours, officers may obtain a citation book directly from the Traffic Unit or from their Operations Division supervisor.
2. During non-business hours, citation books may be obtained from their Operations Division supervisor
3. The officer receiving the citation book will make sure that the citation book is not defective, and that the citations are accounted for within the book. Problems with the citation book should be immediately brought to the attention of the Shift Commander.
4. The name, badge number, and date of issue shall be recorded in a citation book issue log when an officer is issued a citation book. VOIDED Citations: when an officer needs to void a citation, the violator should be given a corrected copy. The original citation shall be signed and turned in to the records division with a report for proper administrative disposal.

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<sup>7</sup> CALEA Std. **82.3.4** – A written directive establishes procedures for maintaining records of traffic citations, to include:

- a. Issuing citation forms to officers;
- b. Accounting for citations; and
- c. Storing citations in a secure area.

<sup>8</sup> CALEA Std. **82.3.4 (a)**

- C. Issuing Citations:** It is the normal practice to issue a violator a citation at the time when the violation occurs and the officer has encountered the motorist. Failing to give the violator a citation at the time and place of the violation shall constitute a defense unless:<sup>9</sup>
1. The violator could not have been stopped.
  2. Additional time is reasonably necessary to determine the nature of the violation or the identity of the violator.
  3. The court finds the failure is justified.
  4. NOTE: This does not apply to M.G.L. c. 90, §§ 24, 24G or 24L, if the violation of the automobile law resulted in death.
- D. Issuing Citations Not In-hand:** Citations not given to the violator at the time and place of the violation, or given after an investigation, must be written as soon as possible and may be delivered to the violator or mailed to the violator's residential or mail address, or to the address appearing in Registry records.<sup>10</sup>
- E. Types of Violations:** Depending upon the type of the violation, the following procedures will be followed:
1. *Arrest:* If a citation was issued in conjunction with an arrest, it should be marked "Arrest" and processed as an arrest. The violator should be given the "violator copy" and the remaining copies submitted to the department, pursuant to this policy.
  2. *Civil:* The violator should be given the "violator copy" and the remaining copies submitted to the department.
  3. *Criminal:* If any violations indicated on a citation are criminal, the citation should be marked "criminal." The "violator copy" should be given to the violator, the "court copies" submitted to the court along with the incident report and statement of facts, and the agency copy submitted to the department.
  4. *Warning:* The violator should be given the "violator copy" and the remaining copies submitted to the department.

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<sup>9</sup> M.G.L. c. 90c, § 2

<sup>10</sup> M.G.L. c. 90c, § 2

5. *Drug Offenses:* A citation may be issued to any person charged with a drug offense. No association with a vehicle or operator's license is necessary. The citation serves as a vehicle for the court to notify the Registry in the event of a conviction. On a citation separate from any others issued for the incident, enter the charge for possession of the drug, intention to distribute, or traffic, etc., and cite M.G.L. c. 90, § 22(f). Do not give the violator a copy. Submit the agency copy to the department and the remaining copies to the court with the other court documents.

**F. Submitting Citations:** Officers are expected to turn in the citations they issued during the course of their shift to the Sector Sergeants for review and submission to the Records Management Unit. The procedures will be adhered to as it relates to the following situations:

1. *Officer's Copy:* The issuing officer shall retain the officer's copy of the citation.
2. *Issued Citations:* All citations issued during an officer's tour of duty shall be placed in the appropriate Platoon mailbox located on the second floor at the end of that tour of duty.
3. *Lost Citations:* Officers shall submit to the Shift Commander a written report explaining the circumstances surrounding the loss of any citations.
4. *Voided Citations:* When an officer needs to void a citation, the violator should be given the corrected copy. The officer shall submit a written report explaining the reasons for voiding the citation, along with the voided citation, to the Shift Commander, who shall submit same to the Records Management Unit.
5. *Amendments to Citations:* Amendments to criminal or arrest citations shall be processed by the Court Prosecuting Unit. Non-criminal citations may not be amended after issue. An additional citation must be issued to the violator.
6. *Review of Citations:* The sector sergeant will review all submitted citations, noting any irregularities, and shall turn them into the Records Management Unit.<sup>11</sup>

**G. Processing and Disposition of Citations:** Citations that have been submitted shall be processed and retained in the following fashion:

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<sup>11</sup> CALEA Std. 82.3.4 (c)

1. *Arrests:* The Court copies are the charging instrument for motor vehicle citations linked to an arrest. They shall accompany the arrest reports and any other arrest documents to court.
2. *Civil Citations:* The RMV copy shall be submitted by mail to the Registry of Motor Vehicles each day in the supplied RMV envelope. The agency copies shall be retained by the department.
3. *Criminal:* The Court copies are the charging instrument for criminal motor vehicle citations. They shall accompany the incident report, along any other related documents, to the court.
4. *Drug Possession:* Citations issued under M.G.L. c. 90, § 22 are a vehicle for RMV reporting purposes only. The agency copy shall be retained. All remaining copies (other than the officer's copy) shall accompany the criminal charging instruments and other documents to court.
5. *Voided:* All copies shall be retained by the Records Management Unit and submitted periodically to the Registry.
6. *Warnings:* The RMV copy shall be submitted by mail to the Registry of Motor Vehicles each day in the supplied RMV envelope. The agency copies shall be retained by the department. The Court Copy shall be destroyed.
7. *Audit Sheets:* A Registry of Motor Vehicles Uniform Citation audit sheet is prepared by the Records Management Unit in compliance with Registry guidelines and submitted to the Registry by the Records Management Unit when all citations in a citation book have been issued.<sup>12</sup>
8. *Retention:* Completed warnings and non-contested civil citations shall be retained for at least one year.<sup>13</sup> Arrest and criminal citations shall be retained until completion of prosecution and exhaustion of appeals.

**H. Interfering with the Citation Process:** Members of the department are prohibited from ticket fixing. The State Ethics Commission has ruled that requests by police officers for a consideration or dismissal of traffic citations based on the violator's personnel connection with a police officer is a violation of the conflict of interest law.<sup>14</sup>

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<sup>12</sup> CALEA Std. **83.3.4 (b)**

<sup>13</sup> Guidelines of the Office of the Secretary of the Commonwealth, Police Department Records Disposal Schedule 14-81, Series 14.20.

<sup>14</sup> M.G.L. c. 268A, § 23

## VI. SPECIFIC TRAFFIC VIOLATIONS GUIDELINES:<sup>15</sup>

- A. Operating Under the Influence of Alcohol or Drugs:** Many traffic accidents, particularly those involving a fatality or personal injury, are directly attributable to persons driving under the influence of alcohol and/or drugs. In all contacts with violators, the officer should be aware of the possibility the driver may be under the influence of alcohol or drugs.<sup>16</sup>

Whenever an officer encounters an operator of motor vehicle, who he/she believes has operated a motor vehicle while under the influence of alcohol or drugs, it is the policy of this department for the officer to arrest and charge the operator for the appropriate offense.

- B. Operating After Suspension/Revocation of License or Registration (G.L. c. 90, § 23):<sup>17</sup>** One of elements that an officer must establish with respect to charging an individual for Operating After Suspension/Revocation of License or Registration is that the person received notice: (1) sent written notice that his/her driver's license, right to operate or registration has been or was about to be suspended/revoked; or (2) "otherwise aware" that his/her license, right to operate or registration had been or was about to be suspended/revoked. Further, for a suspended/revoked license when the offense has taken place in the presence of an officer and the offense was committed on a public way, an officer may make a warrantless arrest otherwise the officer may only cite and summons the violator. For a suspended/revoked registration, an officer may only issue a citation and summons, since G.L. c. 90, § 21 does not authorize a warrantless arrest for this offense. Although an officer does have the authority to make a warrantless arrest for operation of motor vehicle after suspension/revocation of a license, the officers should take the following enforcement options into consideration:

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<sup>15</sup> CALEA Std. **61.1.5** – *A written directive establishes uniform enforcement policies for traffic law violations, to include:*

- a. *operation of a vehicle by a driver under the influence of alcohol/drugs;*
- b. *operation of a vehicle after driving privileges have been suspended or revoked;*
- c. *speed violations;*
- d. *hazardous violations;*
- e. *off-road violations;*
- f. *equipment violations;*
- g. *public carrier/commercial vehicle violations;*
- h. *non-hazardous violations;*
- i. *multiple violations;*
- j. *newly enacted laws and/or regulations;*
- k. *violations resulting in traffic collisions; and*
- l. *pedestrian and bicycle violations.*

<sup>16</sup> For specific information regarding the enforcement of OUI laws, refer **Policy #622 – Operating Under the Influence.**

<sup>17</sup> Scheft, John Sofis, Esq. and Law Enforcement Dimensions: *Motor Vehicle Massachusetts Police Manual 2009.* DMI Digital Printing, Printers. 2009, pp. 7-1 – 7-6.

1. *Operating after suspension/revocation does not have to occur on a public way:* G.L. c. 90, § 21 authorizes an officer to make warrantless arrest when a driver is operating a motor vehicle “upon any way or in any place to which the public has a right of access.” This has been interpreted by the court<sup>18</sup> to mean persons operating after suspension/revocation can be charged for operating *anywhere*, but the allowance for a warrantless arrest only applies when traveling on a *public way*.
2. *Only arrest “in presence”:* G.L. c. 90, § 21 only allows for a warrantless arrest when a violation takes place in the presence of an officer. This would mean that an officer must observe the offender operating the motor vehicle. This does not preclude an officer from citing and summoning in a violator for this offense if the officer can establish operation independent of his/her own observation (e.g., leaving the scene of an accident, where the officer can establish operation).
3. *Use of discretion:* Although the statute provides for an officer making a warrantless arrest for a violation of G.L. c. 90, § 21, officers are encouraged to use their discretionary power in deciding upon the appropriateness of making an arrest (provided all of the provisions of the statute have been satisfied), as opposed to citing and summoning the violator. Some of the factors that an officer may wish to take into consideration would include, but are not necessarily limited to the following situations:
  - a. The nature of the violation that resulted in the operator’s license being suspended/revoked, e.g., habitual offender, OUI suspension, vs. failure to pay fines.
  - b. The seriousness of the offense that led to the motor vehicle stop.
  - c. Other mitigating factors that may suggest it is more appropriate to summons as opposed to arrest, such as the presence of children.<sup>19</sup>
4. *Towing of the vehicle:* If the officer arrests the operator, the officer is to handle the disposition of the operator’s vehicle in accordance with department ***Policy #604 – Towing and Impoundment of Vehicles.***
5. *Seizure of a Driver’s License:* If the officer seizes the operator’s driver’s license, the officer is responsible for completing the **Registry of Motor Vehicles’ Form D – “Police Notice of License Seizure,”** and faxing the completed form to the Registry of Motor Vehicles Suspension Department (see copy of attached form).

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<sup>18</sup> *Comm. v. Murphy*, 409 Mass. 665 (1991)

<sup>19</sup> *Comm. v. Blake*, 52 Mass. App. Ct. 526 (2001)

6. *Completion of RMV form:* Whenever an officer issues a citation for operating after suspension/revocation (M.G.L. Chapter 90, § 23), the officer is responsible for also completing the Registry of Motor Vehicles' Commonwealth of Massachusetts Form #20434 – "Report and Affidavit of an Operating After Suspension/Revocation Incident" (see copy of attached form), which is to be made part of the officer's Incident Report. This form will be forwarded to the Records Bureau after review, signed by the Police Commissioner, and forwarded to the Registry of Motor Vehicles for processing.

**C. Speed Violations:** Speed is one of the main contributing causes of accidents. Officers shall take appropriate enforcement action for speeding violations. Officers shall use verbal warnings, written warnings, and citations to encourage motorists to voluntarily comply with traffic laws and regulations to ensure maximum reduction of accidents. Speeding citations should involve a speed that clearly demonstrates a potential hazard when being prosecuted in court, and may to some extent depend on the location of the violation (congested area, downtown, school zone, etc).

**D. Seatbelt and Child Restraint Violations:** It is the policy of this Department to aggressively enforce the laws related to the use of seat belts and child passenger restraints (*see* M.G.L. c. 90, § 13A and M.G.L. c. 90, § 7AA). Encouraging the use of seatbelts and child safety restraints shall be the mission of all police department personnel. To that end, the Department expressly adopts a "zero tolerance" policy with respect to violations of the seat belt and child restraint laws. It is well-established that the use of seatbelts has a significant effect in reducing the number injuries and fatalities resulting from motor vehicle accidents. To encourage compliance with these laws, officers will issue violators a civil citation and penalty for violations of the seat belt and/or child restraint laws, rather a written or verbal warning.<sup>20</sup> Procedures relative to the enforcement of seatbelt usage and its enforcement is as follows:<sup>21</sup>

1. All violations of the seatbelt law or child safety restraint laws will be recorded by means of a written citation.
2. Officers will issue citations for violations of the seatbelt laws whenever observed during a traffic stop for other violations of the motor vehicle laws, for example, for speeding, for OUI, and other offenses. Citations for violation of the seatbelt law shall be issued regardless of whether a written or verbal warning is provided for the underlying traffic violation.

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<sup>20</sup> Officers should note that violations of M.G.L. c. 90, § 13A and M.G.L. c. 90, §7AA are not deemed to be a conviction of a moving violation for purposes of assessing insurance surcharge premiums.

<sup>21</sup> As part of statewide effort and in keeping with the requirements of the "Next Generation of Click-It or Ticket" grant program, the City of Cambridge has adopted the "Zero Tolerance Enforcement for Seatbelt Violations."

3. Violations of the child restraint safety law in particular shall be strictly enforced, and constitute sufficient grounds for stopping a motor vehicle, regardless of whether the operator has violated any other rule of the road.
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- E. Equipment Violations:** Equipment required on motor vehicles is covered under M.G.L. Chapter 90 § 7. When a vehicle is found to be in violation, officers should consider issuing a citation for any essential equipment defects. Whenever a fixture is missing and it is obvious that the owner is aware of the defective equipment, a citation should generally be issued even though this may be the only violation on the vehicle. Examples of such violations include but are not limited to the following: headlight removal, parking brake disconnected, rear light fixture removed, etc. If the equipment violation is not obvious, the officer should stop and inform the violator of the defect and give a verbal warning or a written warning.
  
  - F. Public Carrier/Commercial Vehicle Violation:** When encountering these types of vehicles, all patrol and traffic enforcement officers should enforce traffic laws that relate generally to all classes of vehicles (speed, turning movements, traffic control signals, etc.) and safety laws specific to these vehicles, such as having an uncovered load. Patrol officers may enforce non-safety violations as well. Officers trained in commercial vehicle enforcement shall enforce such violations.
  
  - G. Other Non-Hazardous Violations:** With other non-hazardous violations of law, ordinances, by-laws, or regulations affecting the use or protection of streets or highways, but not enacted primarily to regulate safe movement of vehicles and pedestrians, consider warnings unless the violations are repetitive or flagrant.
  
  - H. Multiple Violations:** Generally, with the exception of seatbelt or child restraint violations, one citation will be issued in the case of related multiple, non-hazardous violations stemming from the same operation. For instances where, in the opinion of the officer, multiple violations are intentional, flagrant or hazardous, officers may charge violators for each violation.
  
  - I. Newly Enacted Laws and/or Regulations:** These cases should be treated on a case-by-case basis depending on the severity and nature of the offense.
  
  - J. Other Hazardous Moving Violations:** A hazardous moving violation means the violation of any law, ordinance, or regulation affecting the use or protection of streets or highways enacted primarily to regulate safe movement of vehicles and pedestrians. There are two general types:

1. *Unsafe Behavior:* An action or omission in traffic that is hazardous even when vehicles, streets or highways, and people involved are in legal condition.
2. *Unsafe Condition:* Causing or permitting an illegal and possibly hazardous condition of a driver or pedestrian in traffic, streets or highways used by traffic, or vehicle used in traffic.

**K. Use of False Identification: Violation of Drug Laws; and/or Sale of Drugs**

**Within a School Zone:** Any police officer who makes an arrest or seeks a criminal complaint to issue relative to the above offenses shall, along with the criminal complaint application, submit a written citation with the defendant's information recorded on it. EXAMPLE: name, date of birth, address, license number, and date of expiration of license.

1. Also recorded on the citation shall be the offense and its chapter and section. The officer will keep his/her copy of the citation, and the department copy will be submitted to the Court Officer who shall bring it to the District Court.
2. The District Court, upon a guilty finding, will submit the officer's citation to the Registry of Motor Vehicles, who will suspend the defendant's Motor Vehicle License.
3. License Suspensions/Revocations:

**L. Other Special Enforcement Provisions:** The primary responsibility for the enforcement of traffic laws and regulations rests with the patrol officers. However, all sworn officers, while on duty, shall take appropriate enforcement action for violations of traffic laws and regulations they observe.

1. *Bicycles:* In those areas where traffic flow is minimal, visibility is unobstructed, and traffic accident experience is low, officers should exercise discretion in the application of laws regarding the safe operation of bicycles. Conversely, where high traffic congestion and accidents involving bicycles are frequent, laws pertaining to the safe operation of bicycles shall be strictly enforced.<sup>22</sup>
2. *Pedestrians:* Officers may use their discretion in enforcing laws relating to pedestrians, concentrating on dangerous or suspicious activities.
2. *Recreational and Snow Vehicles:* Officers shall take appropriate enforcement action against operators of off-road recreational vehicles (e.g., snowmobiles,

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<sup>22</sup> M.G.L. c. 85, § 11B regulates the use of bicycles, and M.G.L. c. 90, §§ 1B & 1C regulates the use of mopeds.

dirt-bikes, mini-bikes) for traffic violations that are either observed by them or reported to them.<sup>23</sup>

3. *Reported School Bus Violations:* Aside from the enforcement efforts of officers with respect to monitoring the illegal passing of school buses while engaged in picking up or discharging students, each of the school bus drivers have been instructed as to the procedures to follow when reporting any school bus violations they may witness. If a school bus driver does witness a violation, the following procedures are to be followed:
  - a. The school bus driver will complete a school bus violation notice that is to be forwarded to the School Bus Coordinator.
  - b. The School Bus Coordinator will forward the completed violation notice to the police department's Traffic Enforcement Unit, who in turn will initiate a log entry for the reported violation and check the license plate registration through the Registry of Motor Vehicles' automated files.
  - c. If the license plate registration matches the description of the vehicle that is listed on the completed violation notice, the Safety Officer will submit the completed violation notice to the Registry of Motor Vehicles.
  - d. As a further precaution, the Traffic Enforcement Unit should make arrangements to have the school bus stop location monitored to ensure that there are no further violations.

**M. Enforcement Involving Motor Vehicle Collisions:** Officers are expected to take enforcement action whenever their traffic accident investigation or reporting activities produce probable cause to believe that a violation of law or ordinance has occurred.

1. *Specific Action:* Enforcement action arising from traffic accident investigation or reporting (e.g., physical arrest, citation, written warning, etc.) will be consistent with the nature of the alleged violation and with all written directives concerning traffic law enforcement.
2. *Violations Not Witnessed by an Officer:* Violations that the officer has not personally witnessed must be established through investigation, which may include but are not limited to:
  - a. Statements or admissions made by the alleged violator;
  - b. Statement of witnesses;

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<sup>23</sup> M.G.L. c. 90B, §§ 20 - 34

- c. Accident scene measurements; and
  - d. Physical evidence.
3. *Alternative Enforcement:* Citizens have the ability to file a complaint regarding the actions of another motorist that have not been witnessed by the police. An officer will be assigned to take these types of complaints, and provided that there is sufficient information, such as a registration matching the description of the vehicle, the officer will conduct a further investigation to determine the appropriate level of enforcement action (warning letter, application for a complaint filed by the complainant, or receive a warning).
  4. *Accidents Occurring On Private Property –No Right of Access:* Accidents occurring on private property not normally open to the public, such as a private residence, involving injury or excessive property damage will require a complete report of the incident.
  5. *Accidents Occurring On Private Property – Public has a Right of Access:* Accidents occurring on private property where the public has a right of access will be processed as if they had occurred on a public street, with all necessary forms completed.
  6. *Issuance of Citations at the Conclusion of the Investigation:* To avoid a violation of the “no-fix” law, the courts have consistently ruled that the officer must issue a traffic citation by the conclusion of his/her investigation; otherwise any delay is considered an acceptable defense in response to the citation.