

**South Carolina Bench Book
for
Magistrates and Municipal Court Judges

Traffic**

A. Jurisdiction

- 1 Jurisdiction

B. Trial

- 1 Trial
- 2 Revocation or Suspension of Driver's License

C. Title

- 1 Title

D. General Principles

- 1 Requirement to Elect
- 2 Prohibition of Reduction of Charges

E. Reckless Driving

- 1 Reckless Driving

F. Driving Under Suspension

- 1 Driving Under Suspension
- 2 Suggested Charge for Driving Under Suspension

G. Qualifying the Data Master Operator and Admissibility of Results

- 1 Generally
- 2 Determining Admissibility of Operator's Testimony
- 3 Instructions to the Jury

H. Forfeiture of Bail Posted

- 1 Forfeiture of Bail Posted

I. Parking Lot Jurisdiction

- 1 Parking Lot Jurisdiction

J. Previous DUI Charge Pending

- 1 Previous DUI Charge Pending
- 2 Delay in Trying Second Charge

K. Collection by Patrolman of Bail Money

- 1 Collection by Patrolman of Bail Money

L. Common Traffic Violations

- 1 Generally
- 2 Hazardous Moving Violations
- 3 Hazardous Non-Moving Violations
- 4 Vehicle License Violations
- 5 Equipment Violations
- 6 Buses, Trucks, Trailers
- 7 Violations Pertaining to Accidents
- 8 Driver's License Violations
- 9 Special Sections

M. Non-Resident Violations Compact

- 1 Generally
- 2 Procedures Under the NRVC (General)
- 3 Procedural Guidelines for Administering the NRVC
- 4 Member of the NRVC Compact
- 5 Traffic Ticket

A. Jurisdiction

1. Jurisdiction

Traffic offenses are offenses against the State in violation of penal law and therefore are criminal in nature. Thus the processes and procedural safeguards discussed in the CRIMINAL section apply to traffic offenses. For example, an individual charged with a traffic offense for which a prison sentence may be imposed, has the same right to due process of law including the right to counsel and right to trial by an impartial jury as one charged with assault and battery.

The statutory authority of magistrates to handle traffic offenses is S.C. Code Ann. § 22-3-550. "Magistrates have jurisdiction of all offenses which may be subject to the penalties of a fine or forfeiture not exceeding five hundred dollars (\$500.00), or imprisonment not exceeding thirty days, or both." Municipal judges are granted the same jurisdiction in traffic cases as magistrates, by S.C. Code Ann. § 14-25-45 of the South Carolina Code. Magistrates and municipal judges may impose sentences within these limits singularly or in the alternative. The penalty for most violations of the motor vehicle laws that are within the jurisdiction of magistrates in all cases, except for DUI, DUS, and Reckless Driving, is a fine not exceeding \$500.00, plus assessments.

The summary court jurisdiction may be limited in those cases in which an offense within the jurisdiction of the summary court is included in a charge beyond the judge's jurisdiction or when a charge of an offense within the magistrate's jurisdiction has been joined with an offense over which the summary court judge has no jurisdiction. (S.C. Code Ann. § 22-3-540 made applicable to municipal judges by S.C. Code Ann. § 14-25-45.)

The jurisdiction of magistrates over traffic offenses is within their respective counties. Where the traffic offenses have occurred within the county of the magistrate, the magistrate has all of the power, authority, and jurisdiction as prescribed by the Code of Laws. (S.C. Code Ann. § 22-3-520 "Magistrates shall have and exercise within their respective counties all the powers, authority and jurisdiction in criminal cases herein set forth.") However, S.C. Code Ann. 17-13-40(B) provides that when police authorities of a county are in hot pursuit of an offender for a violation of a county ordinance or statute of this State committed within the county, the authorities may arrest the offender, with or without a warrant, at a place within the county, or at a place within the adjacent county. The jurisdiction of municipal courts over traffic offenses is within the respective limits of such municipalities. Similar to above, however, S.C. Code Ann. 17-13-40(A) provides that when police authorities of a town or city are in hot pursuit of an offender for a violation of a municipal ordinance or statute of this State committed within the corporate limits, the authorities may arrest the offender, with or without a warrant, at a place within the county in which the town or city is located, or at a place within a 3 mile radius of the corporate limits.

Proceedings in traffic offenses triable in summary courts are commenced by the service of either a properly drafted arrest warrant or a Uniform Traffic Ticket. The statutory authority for the Uniform Traffic Ticket is S.C. Code Ann. § 56-7-10, which vests summary courts with jurisdiction to hear and dispose of traffic charges and certain other named non-traffic offenses, which are listed at S.C. Code Ann. § 56-7-10. The Uniform Traffic Ticket is the only official summons, other than numbered arrest warrants, on which traffic offenses may be charged. "Traffic offenses" means only those traffic offenses defined or described in Title 56. Specific non-traffic offenses which may be charged on a Uniform Traffic Ticket are listed at S.C. Code Ann. § 56-7-10. They are, as follows:

	Recodified As *	As Codified By 56-7-10
Interfering with Police Officer Serving Process		§ 16-5-50
Dumping Trash on Highway/Private Property		§ 16-11-700
Indecent Exposure		§ 16-15-130
Disorderly Conduct		§ 16-17-530
Discharging Fireworks from Motor Vehicle		§ 23-35-120
Damaging Highway		§ 57-7-10
Place Glass, Nails, Etc. on Highway		§ 57-7-20
Obstruction of Highway by Railroad Cars, Etc.		§ 57-7-240
Signs Permitted on Interstate		§ 57-25-140
Brown Bagging	§ 61-6-20*	§ 61-5-20
Drinking Liquors in Public Conveyance	§ 61-6-4720*	§ 61-13-360
Poles Dragging on Highway		§ 57-7-80
Open Container	§ 61-4-110*	§ 61-9-87
Purchase or Possession of Beer or Wine by a Person Under Age	§ 20-7-8920*	§ 20-7-370
Purchase or Possession of Alcoholic Liquor by A Person Under Age Twenty-One	§ 20-7-8925*	§ 20-7-380
Unlawful Possession and Consumption of Alcoholic Liquors	§ 61-6-4710*	§ 61-5-30
Sale of Beer or Wine on Which Tax Has Not Been Paid	§ 61-4-20*	§ 61-9-20
Falsification of Age to Purchase Beer or Wine	§ 61-4-60*	§ 61-9-50
Unlawful Purchase of Beer or Wine for A Person Who Cannot Legally Buy	§ 61-4-80*	§ 61-9-60
Unlawful Sale or Purchase of Beer or Wine, Giving False Information as to Age, Buying Beer or Wine Unlawfully for Another	§ 61-4-100*	§ 61-9-85
Employment of a Person Under the Age of Twenty-One As An Employee in Retail or Wholesale or Manufacturing Liquor Business	§ 61-6-4140*	§ 61-13-340
Failure to Remove Doors from Abandoned Refrigerators		§ 16-3-1010
Malicious Injury to Animals or Personal Property		§ 16-11-510
Timber, Logs, or Lumber Cutting, Removing, Transporting Without Permission, Valued at Less Than Fifty Dollars		§ 16-11-580
Littering		§ 16-11-700
Larceny of a Bicycle Valued at Less Than One Hundred Dollars		§ 16-13-80
Cock Fighting		§ 16-17-650
Ticket Scalping		§ 16-17-710
Glue Sniffing		§ 44-53-1110
Trespassing on Utility Right of Ways		§ 16-11-755
Trespassing on Posted Property or After Notice		§ 16-11-600
Trespassing for Various Purposes Without Permission		§ 16-11-610

Trespassing Premises or Business After Warning or Refusing to Leave		§ 16-11-620
Negligent Operation of Watercraft; Operation of Watercraft While Under Influence of Alcohol or Drugs		§ 50-21-110
Negligence of Boat Livery to Provide Proper Equipment and Registration		§ 50-21-120
Interference with Aids to Navigation or Regulatory Markers or Operation of Watercraft in Prohibited Area		§ 50-21-170
Operation of Watercraft Without a Certificate of Title		§ 50-23-190
Parking on private property without permission		§ 16-11-760

*** The section changes are found in the editor's notes under section S.C. Code Ann. § 56-7-10**

"The uniform traffic ticket, established under the provisions of Section 56-7-10, may be used by law enforcement officers to arrest a person for an offense committed in the presence of a law enforcement officer if the punishment is within the jurisdiction of magistrate's court and municipal court." (S.C. Code Ann. § 56-7-15). The uniform traffic ticket may also be used by law enforcement to cite individuals for violations of county or municipal ordinance violations. (1990 Op. Atty. Gen. No. 90-48).

County and municipal uniform ordinance summons were established under the provisions of S.C. Code Ann. § 56-7-80, which provides as follows: (A) Counties and municipalities are authorized to adopt by ordinance and use an ordinance summons as provided herein for the enforcement of county and municipal ordinances. Upon adoption of the ordinance summons, any county or municipal law enforcement officer or code enforcement officer is authorized to use an ordinance summons. Any county or municipality adopting the ordinance summons is responsible for the printing, distributing, monitoring, and auditing of the ordinance summons to be used by that entity. (B) **The uniform ordinance summons may not be used to perform a custodial arrest. No county or municipal ordinance which regulates the use of motor vehicles on the public roads of this State may be enforced using an ordinance summons.**

Persons under the age of seventeen charged with most traffic offenses may be tried in magistrate's and municipal courts. The family court has concurrent jurisdiction of all such cases involving juveniles. Whichever court (circuit, magistrate's or municipal) would have jurisdiction of the offense charged if committed by an adult would share jurisdiction with the family court. (S.C. Code Ann. § 20-7-410.) Since magistrates and municipal judges may not incarcerate a juvenile, (S.C. Code Ann. § 20-7-7210), cases should be referred to the family court (before trial) if it appears that a penalty other than a fine may prove more appropriate.

Traffic proceedings in the summary courts are required to be summary in nature or with only such delay as a fair and a just examination of the case requires. (S.C. Code Ann. § 22-3-730.) In order to assure the summary nature of the proceedings, the charging paper may be amended at any time before trial. (S.C. Code Ann. § 22-3-720.)

B. Trial

1. Trial

A defendant with a traffic offense triable in magistrate or municipal court is entitled to a trial by jury. S.C. Code Ann. § 22-2-150 provides that every person arrested and brought before a magistrate, charged with an offense within his jurisdiction, is entitled on demand to a trial by jury. Likewise, "Any person to be tried in a municipal court may, prior to trial, demand a jury trial..." (S.C. Code Ann. § 14-25-125). The same trial procedure discussed in the CRIMINAL section applies to the trial of traffic offenses.

Juries in magistrate and municipal courts must be drawn in the manner prescribed by S.C. Code Ann. § 22-2-60. S.C. Code Ann. 22-2-195 provides for the random selection and summoning of jurors by computer. However, you must receive prior written approval from South Carolina Court Administration before using a computer to generate jury lists. (See CRIMINAL, Trial Procedure.)

"In the trial of any case before a magistrate the testimony of all witnesses must be taken down in writing and signed by the witnesses except when the defendant waives the taking and signing of the testimony. In any case before any magistrate in which a stenographer takes down the testimony or in which the testimony is electronically recorded it need not be read over and signed by the witnesses." S.C. Code Ann. § 22-3-790. In municipal courts, the defendant may mechanically record the proceedings himself, or use the service of the municipal court reporter, at the defendant's own cost. S.C. Code Ann. 14-25-195. The Office of Court Administration recommends that all court proceedings be mechanically recorded.

Of special importance is the June 26, 1980, Order of the Chief Justice of the South Carolina Supreme Court that requires that all magistrates and municipal judges dispose of all criminal (which includes traffic) cases within sixty (60) days of the date of arrest in each case.

2. Revocation or Suspension of Driver's License

Anyone who forfeits bond, is convicted of, or pleads guilty or nolo contendere to an offense requiring their driver's license to be revoked or suspended must surrender his/her driver's license to the court. The clerk of court, magistrate, or municipal judge must transmit the driver's license to the Department of Public Safety within five days of receipt. Failure to comply within the five day period is punishable by a fine not to exceed five hundred dollars.

The following magistrate and municipal court offenses require the revocation or suspension of the convicted's driver's license:

<u>Offense</u>	<u>Revocation or Suspension Provision</u>
DUI 1st (56-5-2930)	56-5-2990
Driving With Unlawful Alcohol Concentration (56-5-2933)	56-5-2933
Reckless Driving 2nd+ (56-5-2920)	56-5-2920
DUS 1st (56-1-460 (A)(2)(a))	56-1-460 (B)
DUS 1st, 2nd, 3rd and subsequent (56-1-460 (A)(1)(a), (b), and (c))	56-1-460 (B)
Operation, allowing operation uninsured vehicle 1st (56-10-270)	56-10-270

False insurance certificate 1st (56-10-260)	56-10-260
Operation, unlicensed taxi (58-23-1210)	56-1-290
Possession small amount of marijuana or hashish 1st offense (44-53-370(d)(3))	56-1-745
DL or ID of another, lend or permit use (56-1-510 (2))	56-1-746
Fraud in application for DL or ID (56-1-510 (5))	56-1-746
DL or ID of another or false or altered, use of (56-1-515)	56-1-746
False age information to purchase beer, wine (61-4-60)	56-1-746
Purchase beer, wine on behalf of underaged person (61-4-80)	56-1-746
Transfer beer, wine, liquor to underaged person (61-4-90)	56-1-746
Purchase, possession beer, wine by underaged person (20-7-8920)	56-1-746
Purchase, possession furnishing false age to purchase liquor by underaged person (20-7-8925)	56-1-746
Failure to pay for Gasoline (16-13-185(B))	56-1-292

Upon conviction, collect the driver's license. If the offense was charged on a Uniform Traffic Ticket, attach the license to the pink and yellow copies of the ticket and to the Transmittal Form (DL-76-B). For charges initiated on an ABC summons, attach the driver's license to the orange copy of the summons and the transmittal form. Use a separate form for cases brought by each arresting agency. Complete the transmittal form in quadruplicate, retain one copy for your files, and submit three copies to SCDPS (South Carolina Department of Public Safety). They will return copies to you to verify acceptance.

C. Title

1. Title

Title 56 of the 1976 Code of Laws is the general statutory law relating to motor vehicles and the violation of motor vehicle laws that would be tried in the magistrate's courts. Title 56 has 16 Chapters which in varying degrees contain acts of the General Assembly regulating motor vehicles and traffic law enforcement which would be triable in the magistrate or municipal court or might be before the magistrate or municipal court for a probable cause determination in a matter beyond the trial jurisdiction of the magistrate or municipal court judge. The several chapters relating to motor vehicles of Title 56 are as follows:

	Beginning Section:
Driver's License	56-1-10
Motor Vehicle Registration and Licensing	56-3-10
Uniform Act Regulating Traffic on Highways	56-5-10
Traffic Tickets	56-7-10
Motor Vehicle Financial Responsibility Act	56-9-10
Motor Vehicle Registration and Financial Responsibility	56-10-10
Regulation of Manufacturers, Distributors and Dealers	56-15-10
Regulation of Motorcycle Manufactures, Distributors, Dealers, and Wholesalers	56-16-10
Protection of Titles to and Interests in Motor Vehicles	56-19-10
Regulation of Traffic at State Institutions	56-21-10
Driver Training Schools	56-23-10
Non-Resident Traffic Violators Compact	56-25-10
Professional Housemoving	56-27-10
Enforcement of Motor Vehicle Express Warranties	56-28-10
Motor Vehicle Chop Shop, Stolen, and Altered Property Act	56-29-10
Rental of Private Passenger Automobiles	56-31-10

There are several areas of the law relating to motor vehicles that are of particular concern to magistrates and municipal court judges. These subjects will be dealt with specifically in the text that follows.

D. General Principles

1. Requirement to Elect

S.C. Code Ann. § 22-3-740 relates to the election of one of several offenses on which to try the accused in motor vehicle violations. This section of the Code relates to the committing of an act that can be interpreted to be the elements of the crime for more than one offense. Magistrates and municipal court judges sometime mistakenly construe S.C. Code Ann. § 22-3-740 to mean that more than one traffic offense cannot be committed at the same time. For example, the offense of speeding may be done in such a manner as to constitute the offense of reckless driving. Although the driver is guilty of both speeding and reckless driving, he may be charged with only one offense. In contrast however, when a person drives without a license and speeds at the same time, he may be charged with both offenses, even though they were committed at the same time. The offense of driving without a license is not within the purview of the statute as being "...susceptible of being designated...", as speeding, and the act of speeding should not be designated as driving without a license. The principle for magistrates and municipal court judges to understand is that if the criminal offenses alleged to be committed are unrelated offenses, S.C. Code Ann. § 22-3-740 does not apply to them. Examples of offenses where an election must be made and offenses where an election need not be made are as follows:

Election Must Be Made	Election Need Not Be Made
1. Speeding	1. Driving Without License
2. Reckless Driving	2. Drunk Driving
1. Drunk Driving	1. No Vehicle Registration
2. Reckless Driving	2. Speeding
1. Driving Left of Center	1. Reckless Driving
2. Reckless Driving	2. No Seat Belt
1. Passing School Bus	1. Passing School Bus
2. Reckless Driving	2. No Vehicle License

2. Prohibition of Reduction of Charges

Each traffic offense is a separate and distinct offense, and a defendant may not be tried for a traffic offense for which he has not been formally charged in an arrest warrant or a uniform traffic ticket. Therefore, a defendant may not be found guilty of a "reduced" charge for which he was not formally charged for the following reasons: (1) the defendant may not be tried for a traffic offense not charged in an arrest warrant or a Uniform Traffic Ticket (see TRAFFIC, JURISDICTION); (2) the magistrate or municipal judge is required to elect which charge to prefer if the act committed can be designated as any one of several different offenses (see TRAFFIC, GENERAL PRINCIPLES, REQUIREMENT TO ELECT); and (3) there are no "degrees" of traffic offenses. The magistrate or municipal judge may amend the warrant or ticket before trial (see CRIMINAL, WARRANTS, ARREST WARRANTS, THE WARRANT AT TRIAL), but the defendant must be given sufficient notice to adequately prepare his defense. As an example of this general principle prohibiting reduction of charges in traffic offense cases, if a defendant is charged with driving under the influence and the proof at trial does not support a finding of guilty, then the defendant cannot be convicted of reckless driving based on the evidence which failed to prove the DUI charge but would have succeeded in proving a charge of reckless driving.

E. Reckless Driving

1. Reckless Driving

The offense of reckless driving is found in S.C. Code Ann. § 56-5-2920. This section relates to any person driving any vehicle in such a manner to indicate a willful or wanton disregard for the safety of persons or property. A suggested instruction to the jury about reckless driving is as follows:

Reckless Driving: Suggested Instruction to the Jury

The defendant in this case is charged with reckless driving, a traffic offense. S.C. Code Ann. § 56-5-2920 of the S.C. Code of Laws states that "any person who drives any vehicle in such a manner as to indicate either a willful or wanton disregard for the safety of persons or property is guilty of reckless driving."

Willfull can be defined as doing something deliberately. Wanton is to act unruly or without any checks or limitations. As a general rule, what constitutes reckless driving is to be determined from all the surrounding circumstances where the statute does not specifically declare what particular acts shall comprise the offense. What constitutes reckless driving under some conditions may not be such under other conditions. As a general rule, something more than mere negligence in the operation of a motor vehicle is necessary to constitute the offense of reckless driving. Generally, the offense denotes operation of a vehicle under such circumstances, and in such manner, as to show a willfull or reckless disregard of consequences.

"Recklessness implies the doing of a negligent act knowingly. When a man actually acts negligently and he realizes that he is acting negligently, the law says he is reckless or willfull and wanton, whichever term you prefer, they all mean the same thing, that is, the conscious failure to exercise due care." State v Rachels, 218 S.C. 1, 61 S.E. 2nd 249 (1950).

For example only, if a motorist unthinkingly or ignorantly passes a school bus without stopping, but driving carefully, slowly, and with a lookout for school children who might be injured, he is guilty of "passing a school bus", regardless of the fact that he was careful. But, he is not guilty of "reckless driving". On the other hand, if the same motorist passes the same bus at a high rate of speed, without being on the lookout for children who might be injured by his act, the law says he either knew or should have known that his acts endangered others, and although he is guilty of "passing a school bus", he is also guilty of "reckless driving", and a jury may find him guilty of the greater offense only; that is, reckless driving.

On the other hand, it is not necessary that a motorist violate a traffic law to be guilty of reckless driving. A driver who continues to drive after dozing off at the wheel, disregarding the fact the he is very sleepy, has shown a wanton disregard for the safety of persons and property and is, therefore, guilty of reckless driving.

This court cannot, of course, literally look into the mind of a person to determine whether or not he was heedless or without regard to the safety of others; which is to say, reckless. We must do that by a judgment of his action, and it is by this defendant's acts that you shall know him. The law permits you to judge whether or not the defendant was reckless, by his acts. Otherwise, neither you nor any other jury would have a basis for making such decision. Secondly, it is not necessary that you find that he knew his acts endangered the safety of others; that is, that he was actually conscious of the fact. It is necessary only that you find that he should have known in light of the circumstances.

NOTE to Judges:

To avoid confusing the jury about what is in evidence, it is suggested that the school bus or dozing off example not be used if the actual case involves either passing a school bus or dozing off at the wheel.

F. Driving Under Suspension

1. Driving Under Suspension

S. C. Code Ann. § 56-1-460 makes it unlawful for any person to drive a motor vehicle on any public highway of this State when his license to drive is cancelled, suspended, or revoked. A first offense violation of the driving under suspension statute where the suspension resulted from a violation of S.C. Code Ann. § 56-5-2990 (Driving Under the Influence or Driving With an Unlawful Alcohol Concentration) requires that the defendant, upon conviction, be fined \$300.00 (exclusive of assessments) or imprisoned for not less than ten (10) nor more than thirty (30) days. Therefore, such a first offense violation is within the jurisdiction of magistrate and municipal court. However, the punishment for second and subsequent violations of S.C. Code Ann. § 56-1-460 which are the result of a violation of S.C. Code Ann. § 56-5-2990 exceed the normal jurisdictional limit in summary courts, and must be heard in the court of general sessions.

S. C. Code Ann. § 56-1-460 (A)(1) provides that magistrates have jurisdiction over first, second, third, and subsequent violations of the driving under suspension statute when the suspension is **not** a result of a violation of S.C. Code Ann. § 56-5-2990. Please note that the penalty for second and subsequent offenses exceeds the normal jurisdictional level of magistrate court. However, the Legislature specifically vested jurisdiction over these cases in magistrate court. Therefore, upon conviction, judges have full sentencing authority as provided in the statute. For example, a conviction for a third offense of S.C. Code Ann. § 56-1-460 carries a sentence of a fine of \$1,000.00 and incarceration for not less than ninety (90) days nor more than six (6) months, no portion of which may be suspended by the trial judge. If the sentencing magistrate determines it to be appropriate, he may sentence the defendant to the full six (6) months.

S. C. Code Ann. § 14-25-45 provides that municipal courts shall have all such powers, duties, and jurisdiction in criminal cases made under State law and conferred upon magistrates. Therefore, municipal judges have jurisdiction to dispose of these cases also.

Rule 602 of the South Carolina Appellate Court Rules provides for the defense of indigents in criminal proceedings. The Rule requires appointment of counsel in magistrate and municipal courts upon a showing of indigency and "...if a prison sentence is likely to be imposed upon conviction." In certain subsequent violations of the DUS statute, jail time is mandatory. When presiding over those cases, reference to Rule 602 and consideration of appointment of counsel is required.

2. Suggested Charge for Driving Under Suspension

The defendant is charged with driving under suspension. The State must prove beyond a reasonable doubt that the defendant drove a motor vehicle on a public highway in this State during the time the defendant's driver's license was cancelled, suspended, or revoked.

To be guilty of driving under suspension, the defendant must have been notified by the Department of Public Safety that his driver's license has been cancelled, suspended, or revoked.

G.

Qualifying the Data Master Operator and Admissibility of Results

1. Generally

S.C. Code Ann. § 56-5-2930, DUI, makes it unlawful for a person to drive a motor vehicle within this State while: (1) under the influence of alcohol to the extent that the person's faculties to drive are materially and appreciably impaired; (2) under the influence of any other drug or a combination of other drugs or substances which cause impairment to the extent that the person's faculties to drive are materially and appreciably impaired; or (3) under the combined influence of alcohol and any other drug or drugs or substances which cause impairment to the extent that the person's faculties to drive are materially and appreciably impaired. S.C. Code Ann. § 56-5-2933, DUI Per Se, makes it unlawful for a person to drive a motor vehicle within this State while his alcohol concentration is ten one-hundredths of one percent or more. An integral part of any trial for DUI or DUI Per Se is the qualification of the breath test machine operator by the court.

The breath test machine operator must be qualified as an expert witness. An expert witness is a person who has some specialized training, education or experience that the court determines would be useful to a layperson jury in consideration of a particular issue in a case. Generally, the court has wide latitude in the qualification of an expert witness. However, the DUI and DUI Per Se statutes do mandate certain training and certification. S.C. Code 56-5-2950.

First, the court will make the initial determination of the qualification of the witness outside the presence of the jury unless the parties have previously stipulated to the witness' qualifications. The prosecution will first ask questions of the witness to establish his qualification, then defense counsel will be afforded the right of cross-examination on the qualification of the witness. After hearing "both" the prosecution and the defense, the court will make an initial determination about qualifying the witness. However, even if the witness is qualified as an expert and allowed to testify, the jury will be free to accept or reject any testimony of the expert witness and defense counsel is free to attack the witness' qualifications on cross-examination in the presence of the jury.

Second, the court must also make a preliminary determination that the results are admissible. Most of this analysis hinges on statutory and case law requirements for admissibility of the results. Judicial officers should note that the applicable statutes have been amended and great care must be exercised in applying cases based upon the old statutory provisions.

1. Qualification Process: [see S.C. Code 56-5-2950]

a. Was the breath test administered by a person "trained and certified" by the Department of Public Safety, pursuant to SLED policies?

If so, you may find the witness qualified. [often this is stipulated]

2. Determining Admissibility of Operator's Testimony

As indicated, even upon a finding that a person is qualified to testify as to the results of the breath test, the court must next address the question of admissibility in accordance with case and statutory requirements.

a. Was the breath test administered at the direction of a law enforcement officer who has arrested a person for driving a motor vehicle in this State while under the influence of

alcohol / drugs?

b. Prior to taking the test, the defendant was informed in writing that:

1. he does not have to take the test or give the samples but that his privilege to drive must be suspended or denied for at least 90 days if he refuses to submit to the test and that his refusal may be used against him in court;

2. his privilege to drive must be suspended for at least 30 days if he takes the tests or gives the samples and has an alcohol concentration of fifteen one-hundredths of one percent or more;

3. he has the right to have a qualified person of his own choosing conduct additional independent tests at his expense [note - the defendant's failure to obtain such additional tests is not admissible];

4. he has the right to request an administrative hearing within 30 days of the issuance of the notice of suspension; and

5. he must enroll in an Alcohol and Drug Safety Action Program within 30 days of the issuance of the notice of suspension.

c. Generally, it has been established that the test must be administered at the direction of the arresting officer, but not by the arresting officer. This still hold true unless "the person's conduct during the twenty-minute pre-test waiting period is videotaped pursuant to Section 56-5-2953(A)(2)(d)." In this event, the test may be administered by the arresting officer.

d. The test was administered in accordance with methods approved by SLED.

e. Pursuant to 56-5-2950(g), prior to the use of the test results in any proceeding or trial, a written report must be given to the person tested indicating the time of the arrest, the time of the test, and the results of the test.

f. The breath test machine was in proper working order at the time of the test.

g. Before the breath test was administered, a ten one-hundredths of one percent simulator test must have been performed and the result must reflect a reading between 0.076 percent and 0.084 percent.

h. The accused was not allowed to put anything in his mouth for 20 minutes prior to the test

The findings in f-h above, along with the administering of the test by a qualified person, are referred to as the foundational requirements of *State v. Parker*, 245 S.E.2d 904 (1978). That case requires that a certain foundation be laid prior to admissibility of the tests results. However, *State v. Huntley*, 349 S.E.1, 562 S.E.2nd. 472(2002), may suggest a different approach. The court in *Huntley*, while addressing the proper statutory language to be applied as a result of a change made by the Code Commissioner, went on to suggest that the failure to use the statutorily mandated simulator test range would go to the weight, not the admissibility, of the test results. In other words, the failure to use the correct test reading on the simulator test is properly addressed on cross examination for the jury to consider. The court indicated that the record showed the different ranges would make no difference

as to whether the machine was working properly. This approach appears to be a shift from an admissibility standard, as seen in *Parker*, to a "weight of the evidence" standard, as seen in *Huntley*, for some factors depending on the record established.

3. Instructions to the Jury

a. DRIVING UNDER THE INFLUENCE

[FOR CASES AFTER JUNE 29, 1998]

I have indicated to you that the defendant is charged with the offense known in law as Driving Under the Influence. South Carolina Law, Section 56-5-2930 states:

It is unlawful for a person to drive a motor vehicle within this state while under the:

___ 1. influence of alcohol to the extent that the person's faculties to drive are materially and appreciably impaired;

___ 2. Influence of any other drug or a combination of other drugs or substances which cause impairment to the extent that the person's faculties to drive are materially and appreciably impaired; or

___ 3. combined influence of alcohol and any other drug or drugs, or substances which cause impairment to the extent that the person's faculties to drive are materially and appreciably impaired.

To constitute a violation of this law the State must prove, beyond a reasonable doubt, the elements of this offense:

First: That in the County and State [___ or municipality] at the time and place alleged in the charging document, the defendant was driving a motor vehicle;

_____ The word "drive" requires the vehicle to be in motion in order to meet this element of the offense. This requirement may be met by showing through direct or circumstantial evidence that the defendant had placed his vehicle in motion while under the influence of alcohol [drugs or a combination thereof];

and

Second: That at the time and place alleged in the charging document the defendant was under the influence of alcohol [drugs or a combination thereof], such that the defendant's faculties to drive were materially and appreciably impaired.

_____ [If needed in drug case] For purposes of this section, "drug" means illicit or licit drug, a combination of licit or illicit drugs, a combination of alcohol and an illicit drug, or a combination of alcohol and a licit drug.

Now, what is under the influence? It is not necessary to show that the defendant was in a helpless condition or that the defendant was dead drunk or even so drunk that the defendant could not walk without staggering. On the other hand, proof that the defendant had, at some time previous to the occasion in question partaken in some degree of alcohol [drugs or a combination thereof], is not

sufficient in itself to place one under the influence. A person is not under the influence simply because that person consumes some alcohol [drugs or a combination thereof] and drives a vehicle.

A person is under the influence when the person has ingested alcohol [drugs or a combination thereof] such that the person's faculties to drive are materially and appreciably impaired. The person must be under the influence so as to cause the person to lose normal control of the person's mental or physical faculties, either one or both, to such an extent that there is a material and appreciable impairment of either or both of these faculties. A person violates the statute by operating a motor vehicle where he has partaken of any alcohol [drugs or a combination thereof] to the extent that he cannot drive a motor vehicle with reasonable care, or cannot drive as a prudent driver would operate a vehicle. One who drives [or operates] a vehicle when that person's mental or physical faculties have been thus impaired is considered to be driving while under the influence.

_____ **Omit if NO B/A TEST ---- Chemical Test Inferences**

In a prosecution for the violation of the law [Section 56-5-2930] pertaining to driving a vehicle under the influence of alcohol [drugs or a combination of them], the alcohol concentration at the time of the test, as shown by chemical analysis of the defendant's breath, or other body fluids, gives rise to the following statutory inferences:

(1) If the alcohol concentration was at that time five one-hundredths of one percent or less, it is conclusively presumed that the person was not under the influence of alcohol.

(2) If the alcohol concentration was at that time in excess of five one-hundredths of one percent but less than eight one-hundredths of one percent, this fact does not give rise to any inference that the person was or was not under the influence of alcohol, but that fact may be considered with other evidence in determining the guilt or innocence of the person.

(3) If the alcohol concentration was at that time eight one-hundredths of one percent or more, it may be inferred that the defendant was under the influence of alcohol.

The results of any breath analysis test were submitted to you for your consideration. You are not required to accept or believe the results of the test. Any inference created by law which I have just read to you is an inference only. This inference is simply an evidentiary fact to be taken into consideration by you, the jury, along with other evidence in the case, and to be given such weight as the jury determines it should receive when considered with all of the evidence in the case.

_____ **[use if needed] AFFIRMATIVE ASSISTANCE**

South Carolina Law [56-5-2950] provides that:

The person tested or giving samples for testing may have a qualified person of his own choosing conduct additional tests at his expense and must be notified in writing of that right... The arresting officer must provide affirmative assistance to the person to contact a qualified person to conduct and obtain additional tests.

The person tested or giving samples for testing may have a backup test. If a person tested requests a blood test, the arresting officer is required to provide affirmative assistance promptly in obtaining a blood test. Affirmative assistance, at a minimum, includes providing transportation for the person to the nearest medical facility which provides blood tests to determine a person's alcohol concentration.

The initiative rests with the person who has been charged with driving under the influence and not with the arresting officer. The arresting officer need only provide affirmative assistance to the person if there is a request for assistance to conduct additional tests.

If you find that the arresting officer did not provide affirmative assistance to the defendant as I have described that duty to you as required by statute, then the results of any breathalyzer test given to the defendant shall be disregarded and not afforded any evidentiary weight or value. If you find that the arresting officer did provide affirmative assistance to the defendant to conduct additional tests at the defendant's expense and did take the defendant to a qualified person for conducting such additional tests, OR that the defendant did not make a request after being notified of such right or that the defendant waived such right, then you may accord any breathalyzer results such evidentiary weight and value as you determine taking into consideration the statutory provisions in regard to chemical analysis that I have previously charged to you and my charge pertaining to such provisions.

In regard to any waiver of this right, the person must know of such right and then knowingly and voluntarily relinquish or give up such right.

_____ [Optional] Even where it has been shown that affirmative assistance was provided by the arresting officer to the person being tested, if this assistance was subsequently negated by acts of law enforcement personnel, then, in that event, the breathalyzer test result cannot be considered by you, the jury.

Breathalyzer Foundation: *State v. Parker* 2455 E.2d.904 (1978)

Checklist for Judge

Prima Facie -

- (1) Machine was in proper working order at time of test,
- (2) Correct chemicals were used,
- (3) Accused not allowed to put anything in mouth for 20 minutes prior to test,
- (4) Test administered by qualified person in proper manner.
- (5) Advised of rights concerning breathalyzer.

Notes:

The State has now moved to the Datamaster machine. Based on an opinion of the Supreme Court, it appears that *Parker* is still applicable. See, *State v. Huntley*, 349 S.C. 1, 562 S.E.2d 472 (S.C. 2002). However, while *Parker* required the proper foundation to be met prior to admissibility of the test results, *Huntley* suggests that may not always be the case. *Huntley* now opens the door to whether, based on the record established, the results may be admitted and that some foundational problems may be questions of the weight of the evidence as opposed to the admissibility of the evidence.

On another note - one problem to be watched is that it has been asserted that the Datamaster does not use chemicals to actually test breath for the presence of alcohol. Instead, the machine utilizes principles of infrared absorption.

____[use if needed] **REFUSAL OF BREATHALYZER TEST**

A person may refuse to take the breath-alcohol test when it is offered to that person under lawful conditions. It is the right of the person to so refuse; but is also the right of the state to prove to you, through proper testimony, that the person did refuse. You may give whatever weight you wish to any refusal [____if you find such refusal to exist], in your deliberations as to the defendant's innocence or guilt, keeping in mind that a defendant is never required to produce evidence or prove innocence; rather, the burden always remains with the State to prove a defendant's guilt beyond a reasonable doubt.

_____Now, although a person may refuse to take the breathalyzer test, if a person does refuse, then that person's driver's license will be suspended for a period of ninety days; this suspension will occur even if the person is not convicted at trial.

____[use if requested] **HGN test**

Now, a Horizontal Gaze Nystagmus (HGN) test involves watching a person's eyeballs when an object is gradually moved out of the suspect's vision to detect involuntary movement of the eyeball. This testing procedure is not conclusive proof of driving under the influence or determinative of a specific degree of blood alcohol content, but rather is simply one piece of evidence to be given whatever consideration you desire along with all the other evidence in the case in determining the guilt or innocence of the defendant.

State v. Sullivan, 310 S.C. 311, 426 S.E.2d 766 (1993)

**SUGGESTED ADDITIONAL CHARGE FOR DRIVING WITH AN UNLAWFUL ALCOHOL
CONCENTRATION
(DUI PER SE) - § 56-5-2933**

The defendant is charged with driving with an unlawful alcohol concentration. The State must prove that the defendant was driving a motor vehicle in this State with a blood alcohol concentration of eight one-hundredths of one percent or more.

H.
Forfeiture of Bail Posted

1. Forfeiture of Bail Posted

S.C. Code Ann. § 56-5-6220 provides in part that, "...the entry of any plea of guilty, the forfeiture of any bail posted or the entry of a plea of nolo contendere for a violation of the traffic laws of this State...shall have the same effect as a conviction after trial...". This section further provides that a traffic offender may not be forced to trial in less than 10 days following the date of arrest. When the Uniform Traffic Ticket is issued in the form prescribed by S.C. Code Ann. § 56-7-10, the date of trial before the magistrate must be shown as no less than 10 days following the date of arrest.

In counting days under S.C. Code Ann. § 56-5-6220, the count starts on the day following the arrest. For example, when the arrest is on the 3rd of the month, the count would begin on the 4th. The 10th day would fall on the 13th day of the month so, the 13th would be the earliest day on which the case could be set for trial. When the 10th day falls on Sunday, it would then be set on the Monday following. Sundays are counted when they fall on 1st through the 9th days, but not when they fall on the 10th day. (Rule 6(A) SCRCP.)

And offender may lawfully forfeit bail, enter a plea, or be tried before the 10th day if he consents to the earlier date.

Rule of Thumb

1. Date of trial shown on the Uniform Traffic Ticket should never be less than ten (10) days following the date of arrest. When the 10th day falls on Sunday, the trial date would be no sooner than the 11th day.

2. When an offender volunteers to have his case disposed of earlier than the 10th day, it would be a good idea to have some signed statement to that effect on the back of the ticket.

Example:

"I consent to (bond forfeiture) (trial) (entry of plea of guilty) on this charge on the _____ day of _____, 20____."

(Offender's Signature)

I. Parking Lot Jurisdiction

1. Parking Lot Jurisdiction

S.C. Code Ann. § 23-1-15 gives law enforcement officers authority to enforce all traffic laws on parking lots open to use by the public, even though such lots are privately owned. Before such authority may be exercised, the parking lot must be posted "with appropriate signs to inform the public that the area is subject to police jurisdiction with regard to unlawful operation of motor vehicles."

Both State traffic laws and municipal ordinances (when the area is in the city or town) may be enforced under S.C. Code Ann. § 23-1-15, which reads:

Any real property which is used as a parking lot and is open to use by the public for motor vehicle traffic shall be within the police jurisdiction with regard to the unlawful operation of motor vehicles in such parking lot.

Such parking lots shall be posted with appropriate signs to inform the public that the area is subject to police jurisdiction with regard to unlawful operation of motor vehicles. The extension of police jurisdiction to such areas shall not be effective until the signs are posted.

In any such area, the law enforcement agency concerned shall have the authority to enforce all laws or ordinances relating to the unlawful operation of motor vehicles which such agency has with regard to public streets and highways immediately adjoining or connecting to the parking area.

In addition, S.C. Code Ann. § 16-11-760 provides penalties for parking on private property, provided notice prohibiting such parking is posted "in a conspicuous place on the borders of such property". Punishment for this offense is by a fine of not less than twenty-five dollars nor more than one hundred dollars or by imprisonment for a term not exceeding thirty days. This offense may be charged on a uniform traffic ticket.

J.
Previous DUI Charge Pending

1. Previous DUI Charge Pending

S.C. Code Ann. § 56-5-2930 prohibits persons under the influence from driving any vehicle within the State. Many times a defendant will be arrested for driving under the influence and it will be found that a previous charge against him has not been disposed. In these cases magistrates and municipal court judges are often times confused as to the procedure to be followed. The South Carolina Supreme Court in the case of State v. Sarvis, 266 S.C. 15, 221 S.E. 2nd 108 (1975), held that a reasonable delay in bringing a second driving under the influence charge to trial so that disposition of a first charge could be determined was not prejudicial to the defendant.

2. Delay in Trying Second Charge

The language of the Court follows:

Delay in Trying Second Charge

The only request by respondent was that his case be tried in Magistrate's Court. He has not sought a speedy trial in any other court. In view of respondent's prior conviction for a first offense, the Magistrate's Court had no jurisdiction to grant respondent's request. In substance, the contention of respondent is that he was entitled to have the second charge against him tried in Magistrate's Court as a first offense while the appeal from the first offense conviction was pending. If this has been done and respondent had been convicted on the second charge, he would have had two convictions for first offense charges of driving under the influence, since his first conviction was affirmed.

It is apparent that the main cause of delay in disposing of the second charge against the respondent was the appeal from the conviction for the first offense. The delay, resulting from such appeal, in order to determine the appropriate court in which to try the second charge, was reasonable and necessary and deprived respondent of no constitutional right to a speedy trial. Respondent's right to a speedy trial did not give him the right to insist that he be given a speedy trial in a court without jurisdiction to try the offense.

The controlling considerations when dealing with the defendant's right to a speedy trial have been set forth in State v. Foster, 260 S.C. 511, 197 S.E. 2nd 280. One of the most important factors is that of prejudice to the defendant from the delay.

The only prejudice claimed, or found by the lower court, was that by waiting until the appeal from the conviction for the first offense was affirmed by the Court, respondent's second charge was determined absolutely to be a second offense subjecting him to a charge of a higher crime for which the punishment would be more severe. This result is required by the law when a defendant is charged with multiple violations of the statute making it unlawful to drive while under the influence of intoxicants. The fact that for a second violation a defendant is charged with a second offense under the statute is the intent of the law and does not constitute legal prejudice. State v. Sarvis, supra 221 S.E. 2nd at 110.

K. Collection by Patrolman of Bail Money

1. Collection by Patrolman of Bail Money

S.C. Code Ann. § 56-25-40 provides that a patrolman of the South Carolina Highway Patrol may accept a deposit of money in lieu of taking the arrested person immediately before the proper magistrate or municipal court judge to enter into a formal recognizance. S.C. Code Ann. § 17-15-230 requires a patrolman to accept, in lieu of cash bail or bond, guaranteed arrest bond certificates, in an amount not to exceed \$1,500.00, issued by an automobile club or association. However, these certificates are unacceptable when the offense is driving under the influence of intoxicating liquors or drugs. With the advent of the Non-Resident Violator's Compact (NRVC), the need for the State Highway Patrol to collect bail money has been all but eliminated. See Section "M" of the "Traffic" section for a detailed explanation of the NRVC.

§ 14-1-214 authorizes the payment of fines, fees, assessments, court costs, and surcharges by credit card or debit card. The statute also authorizes the imposition of a fee for processing payment by credit card. Reference should be made to the statute for those individuals from whom payments from credit or debit cards may be refused. If a deposit is made in a case triable in magistrate's court or municipal court, it cannot exceed the maximum fine for the offense for which the defendant is to be tried. (§ 22-5-530.) On December 11, 2003, the Chief Justice issued an Order, Re: Deposits to Summary Court Judge in Lieu of Recognizance. (A copy of this Order may be found in the "Orders" section of the Benchbook.) The Order provides that the ability to immediately release persons charged with a crime is limited by § 16-3-1525(H), which requires notification of the victim of the bond hearing and, if the notification is not given in a timely manner, requires the bond hearing to be delayed for a reasonable time to allow notice. Because of the conflict between the two sections, counties and municipalities that have instituted proceedings pursuant to § 22-5-530 shall provide for individualized hearings in cases where the accused may pose a threat to the public.

Subsequent to the enactment of S.C. Code Ann. § 56-25-40 relating to the collection by a patrolman of bail money, the General Assembly enacted S.C. Code Ann. § 56-5-6220 of the 1976 Code of Laws. This section relates to the entry of a guilty plea, forfeiture of bail posted, or entry of a plea of nolo contendere to have the same effect as conviction after trial. S.C. Code Ann § 56-5-6220 provides that in cases where bail is posted by the defendant with the patrolman, no forfeiture of such bail shall become effective until ten days following the date of arrest.

The Order of Chief Justice Jean Hoefler Toal dated February 8, 2002, requires magistrates and municipal judges to accept bond monies and the trial officer's copies of Uniform Traffic Tickets within seventy-two (72) hours from the date of the alleged violations. At that time, the officer should be issued a receipt listing the amount of bond received with each copy of the traffic ticket. The bail money should then be deposited in the magistrate's bank account for official funds pursuant to the Order of the Chief Justice of the South Carolina Supreme Court dated September 7, 2006.

In a few cases, the patrolman may determine after the deposit of the bail money with the summary court that the case should be nol prossed. In these situations, the magistrate should return to the patrolman, the trial officer's copy and a check for the bond.

On the appointed day of the trial of the case where bail has been posted by the defendant with the officer, and subsequently deposited with the magistrate or municipal court, the case shall be disposed of as provided by law pursuant to S.C. Code Ann. § 56-5-6220. If the defendant is found not guilty, a check for the bond money is returned to the defendant. If the defendant enters a plea of guilty, forfeits

the bail posted enters a plea of nolo contendere, the bail posted is paid over to the county treasurer pursuant to the law. The Order of the Chief Justice dated February 8, 2002, further requires that all uniform traffic tickets shall be certified, or "signed off", at the time of disposition of the case, but, if circumstances warrant, no later than within forty-eight (48) hours of disposition of the case. For detailed direction concerning the proper handling of traffic tickets, see "Signing Off Traffic Tickets" in the MEMORANDUM SECTION of this book.

L. Common Traffic Violations

1. Generally

Listed below are a number of motor vehicle violations and special statutes relating to such violations that may be commonly encountered by the magistrate and municipal court judge. This list is certainly not a complete citation of all motor vehicle violations. In addition, magistrates and municipal court judges are advised to refer directly to the Code of Laws before attempting to apply any of these statutes.

2. Hazardous Moving Violations

Acquiescing in Racing	56-5-1600
Changes Lanes Unlawfully	56-5-1900
Crossing Median or Other Separation	56-5-1920
Disregarding Stop Sign	56-5-2740
Disregarding Traffic Signal	56-5-950
Right Turn on Red	56-5-970
Driving Left of Center	56-5-1810
Driving Wrong Side Divided Highway	56-5-1920
Driving Under Influence	56-5-2930
Driving Without Lights	56-5-4450
Fail to Dim Headlights	56-5-4780
Fail to Give Proper Signal	56-5-2150
Fail to Yield Right of Way (No Sign)	56-5-2310
Fail to Yield Right of Way (Left Turn)	56-5-2320
Fail to Yield Right of Way (Stop Intersection)	56-5-2330
Fail to Yield Right of Way (At Sign)	56-5-2330(c)
Fail to Yield Right of Way (From off Road)	56-5-2350
Following Too Closely	56-5-1930
Turning Movements and Signals	56-5-2150
House Trailer– Speeding	56-5-1570
Improper Backing	56-5-3810
Improper Passing on Left	56-5-1860
Improper Passing (Yellow Line)	56-5-1890
Improper Turning Around (Curve or Grade)	56-5-2140
Improper Turning (Left or Right)	56-5-2120
Making U Turn Divided Highway	56-5-1920
Minimum Speed Law	56-5-1560
Motor Driven Cycle– Speeding	56-5-1550
Passing Stopped School Bus	56-5-2770
Racing on Public Roads	56-5-1590
Reckless Driving	56-5-2920

Maximum Speed Limit	56-5-1520
Too Fast for Conditions and General Speed Limits	56-5-1520

3. Hazardous Non-Moving Violations

Improper Parking	56-5-2510
Improper Parking (No Park Sign)	56-5-2540
Projecting Load (Length)	56-5-4080
Unlawful Use of Spot Light	56-5-4660

4. Vehicle License Violations

Fail to Display License Plates	56-3-1240
Fail to Transfer Ownership	56-3-1270
False Affidavit (Uninsured Vehicle) (RECODIFIED FROM 56-11-760)	56-10-260
Improper Vehicle License	56-3-1360
Improper Use of Dealer's License	56-3-2320
No Vehicle License	56-3-110
Operating or Allowing Uninsured Vehicle	56-10-270
Registration Cards: Possession and Display	56-3-1250

5. Equipment Violations

Defective Brakes	56-5-4850
Driving Unsafe Vehicle	56-5-4410
Goggles or Face Shield Required (Motorcycle)	56-5-3670
Helmets: Operator and Passenger (Motorcycle)	56-5-3660
Improper Lights (Front)	56-5-4490
Improper Lights (Rear)	56-5-4510
Lights on Other Vehicle	56-5-4650
Limitation on Number Front Lamps	56-5-4820
Muffler Violations	56-5-5020
No Clearance Lights or Reflectors	56-5-4580
No Light or Flag on Projecting Load	56-5-4630
Reflectors on Passenger Cars	56-5-4540
Stop Lamps Required	56-5-4560
Unsafe Equipment	56-5-5310
Violation Vehicle Inspection Law (REPEALED)	56-5-5350

6. Buses, Trucks, Trailers

Failure to Display Fuel Tax Marker (REPEALED)	12-31-640

Empty Weight Stenciled Outside	56-5-4150
No Clearance Lights and Reflectors	56-5-4580
No Light or Flag on Projecting Load	56-5-4630
Over Height	56-5-4060
Over Length	56-5-4070
Over Weight (Axle)	56-5-4130
Over Weight (Gross)	56-5-4140
Over Weight (License)	56-5-4150
Over Width Vehicle	56-5-4030
Projecting Load (Length)	56-5-4080
Spilling Loads	56-5-4100
Warning Devices (Trucks to Carry)	56-5-5060
Warning Devices (When Disabled)	56-5-5090
Poles Dragging on Highway	57-7-80

7. Violations Pertaining to Accidents

Fail to Report Accident (Personal Injury)	56-5-1260
Fail to Report Accident (Property Damage)	56-5-1270
Leaving Scene of Accident (Personal Injury)	56-5-1210
Leaving Scene of Accident (Property Damage)	56-5-1220

8. Driver's License Violations

Altered Driver's License	56-1-510
Borrowing or Lending Driver's License	56-1-510
Child or Ward Operating Motor Vehicle	56-1-490
Driving Under Suspension (Fixed Period)	56-1-460
Driving Under Suspension (SR-22) (REPEALED)	56-9-70
Fail to Surrender Driver's License	56-1-350
False Affidavit (Driver's License)	56-1-510
No Driver's License Issued (THIS IS THE PENALTY SECTION)	56-1-440
No Driver's License in Possession	56-1-190
Violation, Driver's License Restriction	56-1-170

9. Special Sections

Altering or Defacing Traffic Sign	56-5-1030
Chemical Test and Refusal (Breath Alcohol)	56-5-2950
Child Restraint Systems– Use Required	56-5-6410
Conviction Inadmissible in Civil Action	56-5-6160
Damaging Highway	57-7-10
Discharging Fireworks from Motor Vehicle	23-35-120

Disobedience to Traffic Officer	56-5-740
Failure to Stop for Police Vehicle	56-5-750
Handicap Parking	56-3-1970
Obstruction of Hwy. By Railroad Cars, etc.	57-7-240
Parties to a Crime	56-5-6110
Placing Glass, Nails, etc. on Highway	57-7-20
Reports Not to be Used as Evidence in Civil Actions	56-5-1290
Safety Belts	56-5-6520
Signs Permitted on Interstate	57-25-140
Unclaimed Vehicle in Storage to be Reported (Loss of Lien for Failure)	56-19-840
Uniform Traffic Ticket	56-7-10
Unlawful Transportation of Alcoholic Liquors (REPEALED)	61-5-20
Use of Horn	56-5-4960

M. Non-Resident Violators Compact

1. Generally

Act 461 of 1980 authorized entry of South Carolina into the Non-Resident Violators Compact (NRVC) and its terms became effective in this State on January 1, 1981. The NRVC provides a method for the enforcement of certain traffic violations which were previously unenforceable because the defendant did not post bond, did not appear for trial, and could not be located to be brought to trial or pay the fine.

The effect of the NRVC is that, following the issuance of the uniform traffic ticket for certain moving traffic violations to a person who is licensed in South Carolina, or any other member-jurisdiction, a person who fails to post bond prior to the date of the trial, and fails to appear at the time of trial, will be tried in his absence, and if he is found guilty, his driver's license will be suspended until such time as he pays the fine imposed by the court (or otherwise complies with the final order of the court). This is the basic procedure followed in all NRVC jurisdictions. Therefore, if a New York driver is stopped for speeding in South Carolina, is issued a ticket, does not post bond prior to trial, does not appear for trial, and is found guilty, his driver's license will be suspended until he pays the fine to the South Carolina court which heard the case. The same would be true if a South Carolina driver were issued a traffic ticket in Florida, or any NRVC member-jurisdiction.

The statutory provisions regarding the NRVC are embodied in Chapter 25 of Title 56 of the South Carolina Code. This chapter includes:

1. S.C. Code Ann. § 56-25-10, which authorized South Carolina's entry into the Non-Resident Violators Compact.
2. S.C. Code Ann. § 56-25-20, which authorized the South Carolina Department of Public Safety to suspend the driver's license of any South Carolina driver who fails to comply with the terms of a traffic ticket issued in South Carolina or in any other state which is a member of the NRVC. Such suspension remains in effect until (1) the driver presents evidence to the Department of Public Safety that the terms of the ticket have been complied with, and (2) the driver pays a thirty-dollar reinstatement fee.
3. S.C. Code Ann. § 56-25-30; which authorizes law enforcement officers to allow any South Carolina driver, or a driver licensed in a state which is a member of the NRVC, to proceed on his own recognizance following the issuance of the uniform traffic ticket.
4. S.C. Code Ann. § 56-25-40 (a), which provides that under the following circumstances, a driver may not be released on personal recognizance by the law enforcement officer, to wit:
 - a. if the officer requires the driver to personally appear before a magistrate, recorder, or other judicial officer;
 - b. if the offense is one which alone would result in a suspension or revocation of a person's license or privilege to drive;
 - c. if the offense is a violation of S.C. Code Ann. § 56-1-440 prohibiting the operation of a motor vehicle without a valid driver's license;
 - d. if the offense involves the violation of a highway weight limitation.

NOTE: This statute has special application to South Carolina licensed drivers. The list of offenses not covered by the NRVC procedures is much shorter and less restrictive for South Carolina drivers from

other NRVC member-jurisdictions. The result is that South Carolina drivers may be released on personal recognizance and the NRVC used for offenses such as violations of equipment laws, size limitations, parking laws and laws regarding the transportation of hazardous material. Drivers from other NRVC member-jurisdictions, if ticketed in South Carolina may not be released on personal recognizance and the NRVC may not be used if the offense is in any of the categories listed above [(a) through (d)] or if it is a violation of any of the laws included in this note. (Equipment violations, size limitations, parking laws, transportation of hazardous waste regulations) (Important: See Procedures Under the NRVC.)

5. S.C. Code Ann. § 56-25-40 (b), which creates a new criminal offense of willfully failing to appear in court, as required by the uniform traffic ticket, when the driver has neither posted bond, nor been granted a continuance. The penalty for this misdemeanor is a fine of not more than \$200.00, or imprisonment for not more than 30 days. This offense is separate and distinct from the original traffic violation. A numbered arrest warrant charging S.C. Code Ann. § 56-25-40 (b) failure to appear must be issued and served on the defendant.

2. Procedures Under the NRVC (General)

When a law enforcement officer stops a driver and issues the uniform traffic ticket for a traffic offense, he must first determine whether that person should be taken immediately before a judicial officer or required to post a bond. If, for example, the driver is licensed in a jurisdiction which is not a member of the compact, the officer must collect a bond or take the defendant immediately before a judicial officer. An updated list of the NRVC member-jurisdictions is located on page V-41. Also, for any other reason the officer may exercise his discretion and require a bond or an immediate appearance.

Next, if the officer determines that the driver is licensed by a NRVC member-jurisdiction and that the driver need not post bond or immediately appear before a judicial officer, he must determine whether the violation charged is covered by the NRVC. The list of offenses which are not covered by the NRVC differs according to whether the driver is licensed by the State of South Carolina, or by another compact member-jurisdiction.

Type of Citation Generally Covered (S.C. and all compact members):

- Moving traffic violations which of themselves do not carry suspension or revocation

Type of Citation NOT Covered (S.C. and all compact members):

- Moving traffic violations which alone carry suspension or revocation of license
- Driving without a valid driver's license
- Highway weight limitation violations

Type of Citation NOT Covered (All compact members except S.C.):

- Other offenses which mandate personal appearance
- Equipment violations
- Inspection violations
- Size and weight violations

- Parking violations
- Transportation of hazardous material violations

These offenses which are not covered by the NRVC are handled in the same manner in which they have been in the past, i.e., a "roadside bond" is collected or the driver is immediately taken before a judicial officer.

Upon a determination by the officer that a court appearance is not necessary, or that a "roadside bond" need not be collected, the motorist who is given the citation must: (1) be informed of the terms of the NRVC, (2) agree to abide by the terms of the citation, and (3) be allowed to proceed on his own recognizance. However, should the driver desire to post his bond with the officer, the officer may accept the money.

If the motorist either voluntarily posts bond with the officer, or sends his bond to the trial court prior to trial, the NRVC procedure is never needed. Non-compliance with the terms of the citation will activate the NRVC procedures.

S.C. Code Ann. § 56-25-20 provides that within twelve (12) months from the date a citation was issued, a court must notify the Department of Public Safety that a defendant is a resident of a NRVC member-jurisdiction, the Department of Public Safety must notify the defendant's home jurisdiction of his failure to comply with the terms of a citation. Upon being so notified, the home jurisdiction will begin procedures to suspend the driver's license of that defendant.

If, at any time, the defendant pays the fine imposed by the court, the court will issue a receipt to him which will constitute proof of his compliance with the terms of the traffic citation. If the license suspension procedure has already begun, the defendant must present that receipt to the proper authorities in his home jurisdiction (Department of Public Safety, in South Carolina) in order to have his license and driving privileges reinstated. Should the defendant fail to pay his fine, even after his license has been suspended, the suspension will continue indefinitely, until he can present proof of compliance.

3. Procedural Guidelines for Administering the NRVC

1. Citation is issued to member-jurisdiction driver South Carolina, or any other member-jurisdiction.
2. In most cases, the driver is allowed to continue without posting bond. Exceptions: driving under the influence, reckless homicide, and other major violations. The officer has discretion as to whether a courtesy summons will be issued.
3. If the driver posts bond prior to trial, or appears at trial date, or requests a jury trial or continuance, proceed as usual and NRVC does not apply.
4. If bond is not posted, or other arrangements made for trial on the trial date, the defendant is tried in his absence, and if found guilty, Form 100 is prepared and defendant's copy (white copy) is mailed to the defendant.
5. The traffic summons and remaining copies of Form 100 are placed in the calendar file at least fifteen (15) days past the trial date.
6. If the defendant responds to Form 100 within fifteen (15) days from the date it is mailed, then the yellow and blue copies of Form 100 are destroyed, and this ends the NRVC involvement. The pink Court Record copy of Form 100 should be attached to traffic summons as a permanent record of payment. Standard receipt should also be filled out.
7. If a defendant fails to respond within fifteen (15) days from the date of mailing, the judge should forward the yellow copy of Form 100 (#2 labeled "Home Jurisdiction Copy") to the South Carolina Department of Public Safety within twelve (12) months

from the date of issuance. If the judge fails to send Form 100 within the required twelve (12) months, the Department will be unable to forward it to the home jurisdiction, or in the case of a South Carolina driver, unable to suspend his driving privilege.

8. A. If an out-of-state driver is involved, the Department of Public Safety forwards Form 100 (yellow copy) to the home jurisdiction, which will take administrative action against the driver.
B. If a South Carolina driver is involved, the Department will notify the individual that his privilege to drive has been suspended, and will remain so suspended until the citation is cleared with the court.
9. Upon defendant complying with the citation, the top portion of Form 100 (blue and pink copies) is completed, along with the judge's receipt. The blue copy of Form 100 and the white copy of the receipt are forwarded to the defendant. The defendant is responsible for presenting the blue copy to his home jurisdiction (i.e. the state which issued his drivers license) for purpose of withdrawing the suspension.
10. The pink copy of Form 100 is retained by the judge for court records.

4. Member of NRVC Compact

MEMBER OF NRVC COMPACT

STATES	YES	NO	STATES	YES	NO
Alabama	X		Montana		X
Alaska		X	Nebraska	X	
Arizona	X		Nevada	X	
Arkansas	X		New Hampshire	X	
California		X	New Jersey	X	
Colorado	X		New Mexico	X	
Connecticut	X		New York	X	
Delaware	X		North Carolina	X	
District of Columbia	X		North Dakota	X	
Florida	X		Ohio	X	
Georgia	X		Oklahoma	X	
Hawaii	X		Oregon		X
Idaho	X		Pennsylvania	X	
Illinois	X		Rhode Island	X	
Indiana	X		South Carolina	X	
Iowa	X		South Dakota	X	
Kansas	X		Tennessee	X	
Kentucky	X		Texas	X	
Louisiana	X		Utah	X	
Maine	X		Vermont	X	
Maryland	X		Virginia	X	
Massachusetts	X		Washington	X	
Michigan		X	West Virginia	X	
Minnesota	X		Wisconsin		X
Mississippi	X		Wyoming	X	

Missouri

X

5. Traffic Ticket

UNIFORM TRAFFIC TICKET
FROM HIGHWAY PATROL TRAINING MANUEL CHAPTER 5
INSTRUCTIONS FOR COMPLETION OF UNIFORM TRAFFIC TICKET

SHADED AREAS OF TICKET ARE AREAS THAT NO CORRECTIONS ARE PERMITTED

SOUTH CAROLINA STATE HIGHWAY PATROL UNIFORM TRAFFIC TICKET

STATE OF SOUTH CAROLINA VERSUS

FIRST NAME _____ MIDDLE NAME _____ LAST NAME _____

STREET AND NO. _____ CITY _____ STATE _____

STATE LICENSED _____ DRIVER'S LICENSE NO. _____ DRI. LIC. CLASS _____

VEH. LIC. NO.	STATE	MAKE OF VEH	YEAR	COMM VEH	AUTO	TRUCK	CCMB.
				HAZ. MT.	MCPED	MTRCYCL	OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER _____ STREET AND NO. _____

DATE	OF	TRIAL	TIME OF TRIAL	CITY	STATE	ZIP CODE
		19				

VIOLATION - COURT APPEARANCE REQUIRED <input type="checkbox"/> YES <input type="checkbox"/> NO	VIOLATION SECTION NO.
--	-----------------------

OWNER OF VEHICLE _____	DATE OF ARREST _____
	19

ADDRESS OF OWNER _____	DATE OF VIOLATION _____
	19

BAIL DEPOSITED _____	NAME OF ARRESTING OFFICER _____	RANK _____
----------------------	---------------------------------	------------

DESCRIPTION OF ACCUSED							COUNTY _____	NUMBER _____
RACE	SEX	BIRTH DATE	HT.	HAIR	WT.	EYES		
		19						

DATE BAIL RECD. _____	BY _____	BADGE _____	DISTRICT _____
19			

CASE BEFORE	MAGISTRATE <input type="checkbox"/>	MUN. COURT <input type="checkbox"/>	CIRCUIT COURT <input type="checkbox"/>	FAMILY COURT <input type="checkbox"/>	FEDERAL COURT <input type="checkbox"/>																	
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;">D</td><td style="width: 10%;">S</td><td style="width: 10%;">M</td><td style="width: 10%;">T</td><td style="width: 10%;">W</td><td style="width: 10%;">T</td><td style="width: 10%;">F</td><td style="width: 10%;">S</td> </tr> <tr> <td style="width: 10%;">A</td><td style="width: 10%;">Y</td><td style="width: 10%;">1</td><td style="width: 10%;">2</td><td style="width: 10%;">3</td><td style="width: 10%;">4</td><td style="width: 10%;">5</td><td style="width: 10%;">6</td><td style="width: 10%;">7</td> </tr> </table>						D	S	M	T	W	T	F	S	A	Y	1	2	3	4	5	6	7
D	S	M	T	W	T	F	S															
A	Y	1	2	3	4	5	6	7														

NAME OF TRIAL OFFICER _____ IF DIFFERENT FROM ABOVE	TIME OF VIOLATION	WEATHER
	A.M.-1 P.M.-2	

DEFENDANT: DID NOT APPEAR <input type="checkbox"/> APPEARED <input type="checkbox"/>	DISPOSITION	HWY. NO.
	GUILTY <input type="checkbox"/> FORFEITED BOND <input type="checkbox"/> PLED: NOLO CONTENDERE <input type="checkbox"/>	

TRIAL BY: TRIAL OFFICER <input type="checkbox"/> JURY <input type="checkbox"/>	MILES	N E S W
	1 2 3 4 5	

VERDICT OF _____ GUILTY <input type="checkbox"/>	DATE OF TRIAL IF ANY, _____	MILES _____
--	-----------------------------	-------------

DOCKET NO.

GUILTY PLEA WITH REDUCED POINTS

SOUTH CAROLINA STATE HIGHWAY PATROL UNIFORM TRAFFIC TICKET OVER

STATE OF SOUTH CAROLINA VERSUS
 FIRST NAME _____ MIDDLE NAME _____ LAST NAME _____

STREET AND NO. _____ CITY _____ STATE _____

STATE LICENSED _____ DRIVER'S LICENSE NO. _____ DR. LIC. CLASS _____

VEH. LIC. NO.	STATE	MAKE OF VEH	YEAR	COMM VEH	AUTO	TRUCK	COMB.
				HAZ. MT.	MOPED	MTRCYCL	OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER _____ STREET AND NO. _____

DATE	OF	TRIAL	TIME OF TRIAL	CITY	STATE	ZIP CODE
		19				

VOLATION - COURT APPEARANCE REQUIRED YES NO _____ VIOLATION SECTION NO. _____

OWNER OF VEHICLE _____ DATE OF ARREST _____ 19

ADDRESS OF OWNER _____ DATE OF VIOLATION _____ 19

BAIL DEPOSITED _____ NAME OF ARRESTING OFFICER _____ RANK _____

RACE	SEX	DESCRIPTION OF ACCUSED				COUNTY	NUMBER
		BIRTH DATE	HT.	HAIR	WT.	EYES	
		19					

DATE BAIL REC'D.	BY	BADGE	DISTRICT
19			

CASE BEFORE
 MAGISTRATE MUN. COURT
 CIRCUIT COURT FAMILY COURT FEDERAL COURT

NAME OF TRIAL OFFICER _____
 IF DIFFERENT FROM ABOVE

DEFENDANT: DID NOT APPEAR APPEARED

DISPOSITION
 FORFEITED BOND PLED: NOLO CONTENDERE GUILTY

TRIAL BY: TRIAL OFFICER JURY

VERDICT OF TRIAL IF ANY: GUILTY NOT GUILTY DATE OF TRIAL IF ANY: 8 | 9 | 09

D	S	M	T	W	T	F	S
Y	1	2	3	4	5	6	7

TIME OF VIOLATION: A.M.-1 _____ P.M.-2 _____ WEATHER: _____

I	U	P	S	O	MYS. NO.
1	2	3	4	5	

MILES: _____ N E S W

DOCKET NO.

The word "OVER" will be printed on the right top corner of the tickets if a point reduction is necessary.

The reverse side of all tickets would reflect the following statement:

(SPEEDS MAY DIFFER)

THIS SUBJECT FOUND GUILTY OF
SPEEDING 64 IN 55 ZONE.
MAGISTRATE: /S/ JUDGE SMITH