

<b>Anchorage Police Department</b> Regulations and Procedures Manual	<b>Operational Procedures</b> <b>3.02.050</b>	
<b>Policy and Procedure Title</b> Custody-Infractions/Civil Violations	<b>Effective Date</b> April 12, 2021	Page 1 of 7
<b>Replaces Prior Policy:</b> August 10, 2009	<b>Approved by:</b> Chief Justin Doll	

**This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.**

### **3.02.050 Custody--Infractions/Civil Violations**

#### **PURPOSE**

To instruct all personnel of the procedures governing the processing of infractions and civil violations.

#### **DEFINITIONS**

**Infraction:** A violation of a law that can subject the violator to a fine less than \$1,000.00 and/or impoundment of property, or other such minor sanctions. An infraction is distinguished from a crime in that a violation of an infraction cannot subject the violator to any term of imprisonment or community service or to any large fine.

**Charging Document:** That document which specifies the particulars of the violation (the who, what, where and when of the violation). These documents include:

**Court Complaint:** A form that specifies the particulars of a criminal violation, usually submitted by an officer or other complainant.

**Uniform Summons and Complaint:** A form used for both:

Charging most infractions, such as traffic violations. When used for this application the form is commonly called a "traffic citation"; and

Charging some misdemeanor offenses. When used for this application, the form is commonly called a "Cite and Release."

**Order and Conditions Release Per Schedule CR-766:** A form that may be used by an officer when arresting and releasing a person for a misdemeanor offense. This form is different from a misdemeanor citation, in that conditions of release can be set.

**Civil Citation:** A form that may be used to charge infractions set forth in the fine schedule contained in Anchorage Municipal Code, Title 14. Hearings on such charges are conducted by the municipality's Administrative Hearings Officer instead of in District Court.

**Taxicab Violation Citation:** A form used to charge a violation of any of the laws governing taxicab operation. If a taxicab operator violates a general traffic law, however, the Uniform Summons and Complaint (i.e. "Traffic Citation") is used.

**Parking Citation:** A form used to charge parking violations.

## **PROCEDURE**

### **I. Types of Violations:**

A. Criminal offenses. A crime is a violation so serious that to be convicted of such an act could result in a term of imprisonment, and/or imposition of a term of community service, and/or a fine. Since the word "arrest" is defined as the taking into custody of a person to answer to an allegation of a criminal act, it becomes obvious that a person can only be arrested for violating a law falling in the category of "criminal."

1. Felony crimes--which are the most serious crimes, punishable by imprisonment in excess of one year; and
2. Misdemeanor crimes--which are the least serious criminal offenses, but still serious enough to deserve jail time (up to a year) if committed.

B. Infractions. Infractions, like crimes, are violations of law, but differ from crimes in that the possible consequences do not include either imprisonment or community service as punishment. Being less than a crime, however, does not imply infractions are not taken seriously. Consider the following:

1. If a violator refuses to give the necessary information to the officer to complete an accurate charging document (a Traffic Citation, an Uniform Summons and Complaint, an Order and Conditions Release Per Schedule CR-766, or the Civil Citation, issued in the field), that person can be brought before a magistrate, who can hold that person in jail until the information is provided (AS 12.25.180.(b)).
2. If a violator purposely provides false information to the officer for the completion of the charging document, that person can be arrested for a criminal offense.
3. Infractions are presumed to require court appearance. District Court Rule 8, however, recognized a large body of infractions that seemed appropriate for non-judicial review, and so authorized the "bail forfeiture schedule." Officers who have issued a conventional "traffic ticket" that specifies the points and bail assessed have used this bail forfeiture provision. This gives the violator the option of mailing the bail, checking the no-contest plea box, and dispensing with a physical appearance in court. A small number, however, are not assigned a bail on this schedule, and have a "mandatory appearance" (within 30 days), which officers should readily recall.

C. Civil violations. For the officer, the most commonly thought of civil violation is the parking violation. However, Anchorage Municipal Code Section

14.20.020(B) grants to the municipality's Administrative Hearings Officer jurisdiction "concurrent with that of the Alaska State Courts" over civil violations set forth in the fine schedule contained in AMC 14.60.030. The Administrative Hearings Officer may assess civil penalties (fines) and costs but may not assess attorney's fees, impose community service, provide injunctive relief, or suspend licenses. Civil violations are distinct in that:

1. No criminal record is established on the offender.
2. No imprisonment, even by warrant, is possible. Instead, "civil relief" is sought through fines, impoundments, and civil collections proceedings.

## **II. APPLICABILITY OF INFRACTIONS TO JUVENILES**

**A. Juveniles Charged as Adults.** Because of the regulatory (versus criminal) nature of most infractions, juveniles may be charged in state court as adults for all infractions found in the traffic code, those having to do with tobacco or alcohol violations, Fish and Wildlife regulations, and Parks and Recreation rules.

The Municipality has several infractions that fall in the criminal code (AMC 8 series), but they are outside of the categories listed above. Charging juveniles with one or more of these infractions must be done through the Administrative Hearings process via use of a Civil Citation.

**B. Avoid Confusion with Criminal Violations.** Just like several infractions appear in the criminal code, some criminal violations appear randomly in codes that are almost exclusively infractions. For instance, the "hit and run" ordinances and the "OUI" provisions are criminal but appear in the digest of traffic infractions known as Anchorage Municipal Code Title 9. Therefore:

1. If a juvenile violates such a criminal law within that code (i.e. a traffic crime), he/she is arrested as detailed in the procedure "Arrests—Juveniles 3.02.020".
2. If the juvenile violates infractions contained in the fine schedule listed in municipal code 14.60.030, he/she must be cited into the Administrative Hearings process by use of a Civil Citation form.
3. If the juvenile violates any other criminal code, including most of AMC Title 8 (i.e. non-traffic criminal), that minor is handled as a delinquent, as discussed in the procedure entitled "Custody--Juvenile Delinquency".

## **III. CHARGING DOCUMENT**

**A. Proper Completion of Form.** No field report is required when charging an infraction, if evidence was not seized, as the citation serves as the report. Instead, field notes and/or notes on the back of the citation are adequate.

**B. Proper Use of Forms.** The following forms are to be used when charging the respective violations:

1. Parking citation. Used to charge any violation of a Municipal parking ordinance (AMC 9.30 series, 9.32 series, and 9.34 series in their entirety).

This document is used on commercial and private vehicles with no distinction.

2. Taxicab violation citation. Used to charge any taxicab operator with violation(s) of any of the specific taxicab ordinances (the entire AMC 11.10, 11.20, and 11.30 series). Note that these laws apply to taxicabs only and have their specific charging form.

3. Civil citation. Used to charge infractions set forth in the fine schedule contained in AMC 14.60.030. All violations charged through use of this form will be heard by the municipality's Administrative Hearings Officer instead of in state court.

4. Uniform summons and complaint "traffic ticket". Used to charge the following infractions:

- a). Violations of any of the noncriminal traffic ordinances committed by either an adult or a juvenile. These include both Municipal and State traffic infractions, as found in AMC 9 series, the State 13AAC series, and State Title 28 provisions.
- b). Violations of various infractions, such as Parks and Recreation ordinances or Fish and Wildlife laws. Anchorage Police Officers have very limited contact with these offenses but can make charges of such infractions on the Uniform Summons and Complaint.
- c). Violations of various infractions committed by juveniles that fall within the categories of Alcohol related ordinances or statutes, Parks and Recreation ordinances, or Fish and Wildlife laws.

#### IV. TRAFFIC

**A. Traffic Represents Most Infractions.** For the Anchorage Police Department member, traffic represents the vast majority of infractions charged. To provide more specific procedural information to the officer, this section is included. It would be wise to remember, however, that infractions appear in many other codes besides traffic (Parks and Recreation, Fish and Wildlife, health codes).

**B. Bail Forfeiture Schedule.** All infractions were originally presumed to require court appearance. However, practice soon showed that not each case could be adequately heard, and the majority of offenses were not contested. It became apparent that not each offender had to appear in court, so the court system developed a list of infractions that could be handled by mail or on-line. District Court Rule 8 authorized the "Bail Forfeiture Schedule," which was the list of eligible infractions, their bail amount, and the associated points assessment developed administratively by the Division of Motor Vehicles (not the court system). This allowed:

- 1. Officers to issue a charging document (the traffic citation for the infraction and put the pre-decided bail amount on the ticket without having to appear before a magistrate for a bail hearing).

2. The defendant to exercise the option of never appearing in court but forfeit the bail and have the points assessed against his or her license in an assumed guilty/no contest plea, commonly referred to as the default judgement.
3. The defendant to invoke the right to contest the citation and establish a court date for testimony.

**C. Infractions that Do Not Appear on the Bail Forfeiture Schedule.** All infractions that do not appear on the Bail Forfeiture Schedule require court appearance. In issuing the Uniform Summons and Complaint, officers annotate "MANDATORY COURT--WITHIN 30 DAYS," allowing the defendant to appear in court anytime during normal working hours.

**D. Correctable Infractions.** Some equipment violations give the defendant one additional method of resolution--to correct the deficiency, have it inspected for verification and adequacy, and thereby void the citation and possible penalties. These are known as "correctable" violations. When issuing a citation alleging a correctable violation, officers shall mark the box indicating:

1. Correctable: This citation will be dismissed if the defect is corrected and the vehicle is presented for inspection within 30 days at:
  - a). Anchorage Police Department Headquarters, 716 W 4<sup>th</sup> Ave.
  - b). Environmental Service Division, 825 L. St. (for excessive exhaust noise or excessive fumes or smoke violations (AMC 9.44.330 B-E).

## **V. OTHER CIVIL INFRACTIONS--THE ADMINISTRATIVE HEARINGS PROCESS**

**A. Civil infractions are contained in several chapters of the Anchorage Municipal Code.** For the purpose of enforcement, those infractions have been listed in the fine schedule contained in AMC 14.60.030. Enforcement of any of these ordinances may be done by any code enforcement officer of the municipality including, but not limited to, Anchorage Police Officers, Anchorage Fire Department Officers, Building Safety Officers, Zoning Enforcement Officers, or Health Inspection Officers.

For the Anchorage Police Department member, civil violations represent a distinct minority of infractions charged. However, to provide more specific procedural information to officers, this section is included.

**B. Civil Fine Schedule (AMC 14.60.030).** Anchorage Municipal Code 14.20.020 authorizes the Administrative Hearings Officer to have jurisdiction over infractions for which a civil penalty is set forth in the fine schedule in AMC 14.60.030. This jurisdiction is to be "concurrent with that of state court." In plain language, this means that, if the violation appears in the Title 14 fine schedule, an Anchorage Police Officer may elect to charge a violator through either the Administrative Hearings process (Civil Citation) or the state court (Uniformed Summons and Complaint), whichever is appropriate. The notable

exceptions here are violations committed by juveniles which are explored in detail in section B. of this chapter.

In uncontested cases and those in which, through the hearings process, the Administrative Hearings Officer decides that the person committed the offense, the only "sentence" possible is the imposition of the requested fine. Use of other actions by the Administrative Hearings Officer, such as suspensions of fines, terms of jail, probation or community service, or the awarding of attorney's fees, is not allowed.

**C. Benefits of Using the Administrative Hearings Process.** Some of the same benefits accrue to officers and defendants using the Administrative Hearings process as in the use of the bail schedule for traffic violations. Some significant differences do exist, primarily:

1. Officers must issue a different charging document (the Civil Citation) for the infraction and write the pre-decided bail amount as listed in the Title 14 fine schedule on the ticket.
2. The defendant may exercise the option of sending in the fine amount indicated or requesting an administrative hearing. In either case, no points can be assessed against any license held by the defendant.
3. The defendant retains the right to contest the citation by posting that fine amount (assigned in the field) and establishing a date for an administrative hearing. If the defendant ignores the citation completely or fails to appear for a scheduled administrative hearing without posting the fine, a default judgment will be entered against him/her and collection proceedings could be initiated.

**D. Writing a Civil Citation for an Infraction Appearing on the Title 14 Fine Schedule.** Since the rights of defendants and the requirements for processing differ from those in criminal or traffic cases, the standard Uniform Summons and Complaint form cannot be used to charge violators. The proper charging document is the Civil Citation.

1. Though the Civil Citation appears substantially similar to the Uniform Summons and Complaint, there are differences in both structure and processing.
  - a). Only civil violations listed in the civil fine schedule set forth in Title 14 of the Municipal Code may be charged on a Civil Citation form.
  - b). The "Description of Violation" block must contain a brief charging statement noting sufficient information to establish a prima facie case, or the citation may be dismissed. The reverse of the pink copy may be used to add additional officer notes.
  - c). The officer must enter the amount of the fine in the space provided. Some violations show a range of possible fines but, for our purposes, the standard amount assessed will be the lower figure unless there are aggravating circumstances justifying an increased fine. If so, these

circumstances must be articulated on the reverse of the officer's (pink) copy, or in a police report.

d). The violator is not required to sign the citation and the officer certifies service by checking the appropriate block.

e). The violator receives the last two (white) copies of citation, the Statement of Rights sheet, and a pre-addressed envelope. The reverse of the violator's copies contain instructions for the defendant on how the citation may be handled.

2. Issuance of a civil citation does not require a police report unless the circumstances are such that the situation cannot be fully explained on the ticket form, or if the citation is part of a larger investigation involving the possibility of criminal charges. In those cases, the case number must be entered in the marked spaces along the right margin.

3. Violations of civil infractions do not require court appearances by either adults or minors. However, if a hearing is requested by the defendant, such hearing will be held before the Municipal Administrative Hearings Officer.

If a juvenile request an administrative hearing, a parent or guardian must appear at any hearing so requested by the juvenile.

## **VI. SUMMARY**

Infractions are minor offenses that, like crimes, are still violations of law, but do not carry with them the possibility of jail time. Most are charged on specific forms which are rather self-explanatory. Juvenile offenders are charged just as an adult would be for all, but the AMC Title 8 infractions previously noted that must be handled through the administrative hearings process.

**\*\*\*END OF DOCUMENT\*\*\***