



STATE OF DELAWARE  
**THE JUSTICE OF THE PEACE COURT**

5 E. PINE STREET  
GEORGETOWN, DELAWARE 19947  
TELEPHONE: (302) 856-5871  
FAX: (302) 856-5919

2 PENNS WAY  
SUITE 100 B  
NEW CASTLE, DELAWARE 19720  
TELEPHONE: (302) 323-4530

ALAN G. DAVIS  
CHIEF MAGISTRATE

**POLICY DIRECTIVE 10-238 (REVISED)**

**TO: ALL JUSTICE OF THE PEACE COURT EMPLOYEES**

**FROM: ALAN G. DAVIS** *AGD*  
**CHIEF MAGISTRATE**

**DATE: FEBRUARY 15, 2024**

**RE: PENALTIES & COSTS FOR RED-LIGHT CAMERA CIVIL  
VIOLATIONS CONTESTED IN JUSTICE OF THE PEACE COURT**

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**Scope**

This Policy Directive Revision presents a broad overview of the Delaware Department of Transportation Electronic Red Light Safety program and the statutory provisions authorizing the Red-Light Civil Violations. It discusses the statutory penalties and costs the Court may assess, the penalty differences between State Code and local ordinance violations, and reconciliation among conflicting statutory provisions.

In addition, this Policy Directive discusses offenders' appeal rights and explains some highlights of the Justice of the Peace Court's procedures for processing red light civil violations.

**Justice of the Peace Court Policy**

- The Justice of the Peace Court (JP Court) location with jurisdiction shall schedule trials for all offenders requesting an appeal through the vendor. **Vendors shall process and forward all appeals to the designated JP Court locations**

**regardless of the timeliness of the request.**<sup>1</sup> In addition, if an offender comes directly to a JP Court location, before or after receiving a late notice(s) from the vendor, the judge or court clerk shall instruct the offender to file a motion with the vendor, requesting an appeal.

- The offender's appearance for trial before the Court resets the amount the offender owes to the original amount of the fine plus any additional assessments provided by statute and court rule, regardless of the timeliness of the appeal. Any accrued late fees shall be suspended.<sup>2</sup>
- If the prosecutor articulates a pre-trial motion to reject an appeal, raising the issue of timeliness of the offender's filing of the appeal, the judge shall rule on the State's motion, using the standard presented in Justice of the Peace Civil Rule 60(b), after hearing from both parties.

### **Policy Directives Affected**

The following policy directive is hereby rescinded and may be kept for historical purposes:

Policy Directive 10-238 (1<sup>st</sup> Supplement) "Red Light Camera Civil Violation Procedures."

Although Policy Directive 04-215 "Prosecution of Red Light Cases by Police Officers" discusses red light civil violations, it establishes that police officers who prosecute those violations do not need to submit a Form 50. It does not address the statutorily mandated fines and costs for those violations. Therefore, PD 04-215 is unaffected by this revision.

### **Effective Date**

This policy shall take effect on March 1, 2024.

### **Discussion**

#### **Broad Overview of the Red-Light Civil Violation Citation System**

Violations detected by State-operated traffic signal violation monitoring systems are charged under State Code 21 *Del. C.* § 4101(d), regardless of the governing body named on the citation (ex: City of Elsmere.) Violations detected by systems operated by a local governing

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<sup>1</sup> Contractually, the vendor is required to transfer appeals to JP Court and document the final disposition of the case. There are no requirements for the vendor to review timeliness of an appeal and no assignment of authority to deny an appeal under any circumstances.

<sup>2</sup> By filing an appeal, defendants have pleaded not responsible and continue to be not responsible until proven responsible. Each appeal results in a trial *de novo*, not in a review of the case on the record. A trial *de novo* is a "clean slate."

body (currently only the City of Wilmington) are charged under the local regulation or ordinance.<sup>3</sup> When a violation allegedly occurs, the vendor reviews the recording. If, after review, the vendor believes that the recording indicates that a violation has occurred, the vendor forwards the information to the Delaware State Police (DSP), or to the police agency for the governing body listed on the citation. They in turn review the alleged violation to make a charging determination whether or not to authorize the citation. Similarly, if the vendor contracted by the City of Wilmington believes that the recording indicates that a violation has occurred, the vendor forwards the information to the Wilmington Police Department (WPD.) The reviewing police agency then sends authorizations back to the vendor to proceed with mailing the citations to the alleged offenders.

The decision made by a city, town, or county to either enact local ordinances, independently contract with a vendor of a red-light monitoring system, and charge offenders with the local ordinance, *or* to use the State-operated system, charging offenders with a violation of *Del. C. § 4101(d)*, affects offenders in 3 (three) principal ways:

- 1) Every governing body using the State-operated system, charging offenders under the State Code, currently agrees to uniformly assess a civil penalty of \$75, even though the maximum penalty allowed by statute is \$110. Any governing body charging offenders under a local ordinance, may independently determine the amount of the civil penalty with a maximum allowed by statute of \$110<sup>4</sup>;
- 2) Offenders charged under the State Code have additional assessments that offenders charged under a local ordinance do not; and
- 3) The amount of the civil penalty determines whether offenders have the right of appeal.

The vendors mail all citations, whether charged under the State Code or under a local ordinance, to the registered owner of the vehicle listed on the citation. Citations have a violation data page (the front of the citation) and an instruction page (the back of the citation.) The data page for both State Code and local ordinance citations gives the registered owners of the vehicles the following information: where and when the violation occurred; the vehicle involved; the fines and assessments; where to send payment; the “Response Date” (“Payment Due Date”);

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<sup>3</sup> Title 21 of the Delaware Code, § 4101(b) permits counties and municipalities to adopt ordinances or regulations that substantially conform to State red light civil violation statutes. For example, a red-light civil violation detected by a Wilmington monitoring system shall be brought under Wilmington City Code sec. 37-95(b), not under 21 *Del. C. § 4101(d)*.

<sup>4</sup> 21 *Del. C. § 4101(d)(3)*. House Bill 189 of the 145<sup>th</sup> General Assembly increased the maximum from \$75 to \$110. Although a local authority may set its own civil penalty, such penalty may not exceed \$110. As of the date of this Policy Directive, cases authorized under the City of Wilmington ordinance impose the greater fee and cases authorized under the State Code continue to impose \$75.

notice that a failure to pay may result in a flag on the vehicle's registration; a late fee structure<sup>5</sup>; three photographs of the incident; and an online link to view a video of the alleged violation. In addition to this information, the violation data page for citations under the City of Wilmington ordinance also includes data on "Red Light Time" in seconds; "Yellow Light Time" in seconds; "Lane Number;" and "Vehicle Speed."

The instruction page of both State Code and local ordinance citations informs the registered owners of the vehicles that they have three options to dispose of the citations within 20 (twenty) days<sup>6</sup>:

- 1) Pay by voluntary assessment to the vendor with which the State has a contract or to the local governing body (currently only the City of Wilmington.) Payments for citations charged under the State Code may be forwarded from the vendor to the governing body listed on the citation, after first being applied to reimburse the applicable state agencies for their costs of administering such systems.<sup>7</sup> If offenders do not pay by the due date, late fees may begin to accrue;
- 2) Mail a notarized "Affidavit"<sup>8</sup> of non-responsibility to the vendor or to the City of Wilmington when applicable, stating that: a) someone else was the operator of the vehicle, including the name and address of the operator of the vehicle at the time of the alleged offense;<sup>9</sup> or b) that the vehicle or tag had been stolen, and attaching a certified police report showing that the vehicle or tag was logged as stolen at the time of the alleged offense; or
- 3) Mail a "Notice of Intent to Appeal" to the vendor or to the City of Wilmington, requesting a court hearing to contest the violation.<sup>10</sup>

If the alleged owner or operator does not respond in one of the three ways listed

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<sup>5</sup> 21 *Del. C.* § 1401(d)(3) "...the city or county may provide for an additional assessment not to exceed \$10 if the civil or administrative assessment is not paid within 20 days, which assessment may be increased to an amount not to exceed \$20 if the assessment is not paid within 45 days, and may be increased to an amount not to exceed \$30 if the assessment is not paid within 90 days."

<sup>6</sup> 21 *Del. C.* § 1401(d)(3) and 21 *Del. C.* § 1401(d)(7).

<sup>7</sup> 21 *Del. C.* § 1401(d)(3).

<sup>8</sup> The affidavit appears on the instruction page of the citations authorized under the State Code for the offender to fill out and mail to the vendor. The affidavit does not appear on the instruction page of the citations authorized under the City of Wilmington ordinance. Upon request, the clerk will provide an offender with an affidavit to fill out and mail to the City, which will forward it to the vendor.

<sup>9</sup> The City of Wilmington requires a copy of any lease or rental agreement, when applicable.

<sup>10</sup> The instruction page of citations for the City of Wilmington also includes an option for the operator to claim that failure "to comply with the traffic signal" [was] in order to yield the right of way either to an emergency vehicle or as part of a funeral procession.

above, the vendor will submit a report to the Delaware Division of Motor Vehicles (DMV.) The DMV has statutory authority to refuse to renew the registration of the owner’s vehicle cited in the violation.<sup>11</sup> Furthermore, the DMV has the statutory authority to suspend the licenses of owners or operators if they fail to pay as ordered by the Court, after receiving notice from DELJIS that:

- 1) The Court found the operator responsible at the time of trial;
- 2) The operator pled responsible at the time of trial; or
- 3) The Court ordered a default judgment against the operator for a failure to appear at the scheduled trial.<sup>12</sup>

If a corporate or artificial entity is the defendant and appears at the time of the hearing without an attorney, the person who is present in the courtroom must be advised that they will need to be represented by an attorney and if an attorney is not present to represent them at the next hearing, a default judgment will be entered against the corporation or artificial entity.<sup>13</sup>

#### Reconciling Conflicting Statutory Provisions

There are several provisions of the Delaware Code that address civil traffic violations. Although the terms of each are roughly similar, some variations from statute to statute concerning the appropriate assessments exist. These various provisions potentially lend themselves to different interpretations. As a result, these provisions must be reconciled. This Policy Directive will sort out the provisions and set out a uniform approach to red light civil violation fines and assessments.

21 *Del. C.* § 4101(d) establishes vehicle owner civil liability for failing to comply with traffic light signals and describes the “traffic light signal violation monitoring systems” program. 21 *Del. C.* § 4101(b) authorizes local authorities (*i.e.* municipalities and counties) to establish ordinances and regulations that substantially comply with similar State provisions for the enforcement of red light civil violations. And, Chapter 8 “Provisions Regarding Civil Traffic Offenses” of Title 21 addresses civil traffic violations in general and explicitly applies to traffic signal violations established under 21 *Del. C.* § 4101(d).

Both Title 21 §§ 805 and 4101(d) discuss penalties and costs the Court may assess for red light civil violations. The maximum civil penalty for both State red light civil violations and those brought by local authorities is \$110.<sup>14</sup> Other specific costs and fees are discussed in one of

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<sup>11</sup> 21 *Del. C.* § 4101(d)(8).

<sup>12</sup> Suspensions of licenses remains a possible penalty for a failure to pay a red-light camera violation. House Bill No. 244, passed by the state legislature on June 30, 2022, effective October 3, 2022, (includes a prohibition against suspending driver’ licenses for failure to pay) did not amend 21 *Del. C.* § 4101(d)(8).

<sup>13</sup> PD 01-189.

<sup>14</sup> 21 *Del. C.* § 4101(d)(3).

the sections, but not the other. And, the permissible reading of one of the sections potentially conflicts with the other. 21 *Del. C.* § 805(d) provides that all court costs associated with civil traffic offenses shall be governed by JP Court Rule consistent with 10 *Del. C.* § 9801.<sup>15</sup> Pursuant to 21 *Del. C.* § 805, assessments for the videophone and for the victim's compensation fund are prohibited.<sup>16</sup> The failure to specifically exclude other possible assessments or fees, generally signals a legislative intent that the Court may assess such other fees as applicable.<sup>17</sup> Conflicting with this, 21 *Del. C.* § 4101(d)(3) explicitly states, "No assessments and court costs other than those specified in this subsection may be imposed."<sup>18</sup> However, another part of § 4101(d) authorizes the Court to enact rules or policy to govern the hearing and the collection process.<sup>19</sup> Hence, it does not necessarily follow that the exclusion of additional assessments or costs extends to fees or assessments established by JP Court Rules or policy directives that address civil penalties.

A long-standing rule for resolving conflicts between statutes is that the more specific provision prevails over the more general.<sup>20</sup> Title 21 § 4101(d) addresses the narrow topic of red-light civil violations. As such, it has specific statutory provisions addressing the fines and costs for these particular civil offenses. Thus, to the extent that other, more general provisions conflict, the language of § 4101(d) ought to prevail for red light camera violations.

Section 4101(d), provides for "court costs or similar administrative fees not to exceed \$35" payable by an owner who requests a hearing and is ultimately found responsible. JP Court rules specifically require the clerk to collect \$10 for the Court Security Fund from the defendant upon "a finding or an admission of responsibility for an infraction for which a civil penalty may be assessed."<sup>21</sup>

As a result, the assessment for the Court Security Fund under J.P. Crim. Rule 58(c) applies to both State Code and local ordinance red-light civil violations on its own merit. However, a better interpretation of the conflicting provisions is that, if this fee is imposed, it must be assessed as part of court costs. As such, judges should be imposing court costs of \$25 and a Court Security Assessment of \$10 for a total of \$35, the limit on court costs imposed by Section 4101(d)(3).

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<sup>15</sup> 10 *Del. C.* § 9801 "All costs in the Justice of the Peace Court shall be established by court rule, subject to approval by the Chief Justice and the Delaware Supreme Court."

<sup>16</sup> 21 *Del. C.* § 805(b) and (c).

<sup>17</sup> The doctrine that permits this interpretation is called *expressio unius est exclusio alterius* and is a maxim of statutory interpretation meaning that the expression of one thing is the exclusion of another. *Metrodev Newark, LLC v. Justice of Peace Court No. 13*, Del.Super., 2010 WL 939800 at \*8 fn. 68 (Feb. 18, 2010) (citing BLACK'S LAW DICTIONARY at 581 (6th ed.1990)).

<sup>18</sup> 21 *Del.C.* § 4101(d)(3).

<sup>19</sup> 21 *Del.C.* § 4101(d)(7).

<sup>20</sup> *Clark v. State*, 957 A.2d 1, fn.19 (Del 2008) (Table), quoting *Blue Cross and Blue Shield of Delaware, Inc. v. Elliott*, Del. Super., 449 A. 2d 267 (1982).

<sup>21</sup> J.P. Court Criminal Rule 58(c).

Another long-standing rule for resolving conflicting statutes is that the more recently enacted statute prevails over a later-enacted statute.<sup>22</sup> The presumption of this rule is that a legislature knows the provisions of prior legislation it has enacted. Under this rule, the Transportation Trust Fund assessment in 11 *Del. C.* § 4101(g) applies to State red-light civil violations. That provision allows the collection of the assessment *for violations of Title 21*, and specifically mentions that it is collectible from a “recipient of a civil offense.” On its face, it applies to red-light civil violations. Moreover, it was added to 11 *Del. C.* § 4101(g) on June 30, 2007.<sup>23</sup> In contrast, the Title 21 exclusion on additional assessments on red-light civil violations, became law on June 23, 2005.<sup>24</sup> Thus, the provision allowing an assessment for the Transportation Trust is the later-enacted statute. The General Assembly must have intended it as an exception to the exclusion in 21 *Del. C.* § 4101(d)(3).

Furthermore, under this rule, the Fund to Combat Violent Crimes (Police Fund) assessment in 11 *Del. C.* § 4101(h), which became law on August 2, 2011, and the Voluntary Ambulance Company Fund assessment in 11 *Del. C.* § 4101(j), which became law on September 24, 2014, apply to State red-light civil violations. A reference to civil offenses in § 4101(h), requires the assessment of \$15 for the Fund to Combat Violent Crimes *for violations of Title 11, Title 16, and Title 21*. And a reference to civil offenses in § 4101(j) requires the assessment of \$10 for the Voluntary Ambulance Company Fund *for violations of Title 21*.

Title 11 § 4101(f), requires a \$1 assessment for the DELJIS fund. This section specifically states that the \$1 penalty will be “imposed and collected by the courts for crimes and offenses *as defined in § 233*” of that Title.<sup>25</sup> This section specifically states that the act requires a conviction. An owner or operator charged with a red-light civil violation will not have a conviction for this offense. In addition, the legislature did not provide a specific inclusion of any civil violation, civil penalty, or civil offense in Title 11 § 4101(f) (as they did for the assessments for the Transportation Trust Fund, the Fund to Combat Violent Crimes, and the Voluntary Ambulance Company Fund,) even though this section became effective on July 12, 2007, after the red-light civil statute was enacted. Therefore, the blanket ban in 21 *Del. C.* § 4101(d)(3) on additional assessments or court costs prohibits the Court from assessing the \$1 DELJIS Fund on both State Code and local ordinance violations.

### Local Violations

Local governing bodies should bring red-light violations that are detected by local monitoring systems as violations of the ordinance the local governing body has enacted pursuant

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<sup>22</sup> *Clark v. State*, 957 A.2d 1, fn.19 (Del 2008) (Table).

<sup>23</sup> 76 *Del. Laws* ch. 77.

<sup>24</sup> 75 *Del. Laws* ch. 65.

<sup>25</sup> 11 *Del. C.* § 233(a) “Crime” or “offense” means an act or omission forbidden by a statute of this State and punishable upon conviction by: (1) Imprisonment; or (2) Fine; or (3) Removal from office; or (4) Disqualification to hold any office of trust, honor or profit under the State; or (5) Other penal discipline.

to 21 *Del. C.* § 4101(b).<sup>26</sup> Thus, for example, when the owner of a vehicle which failed to stop at a red-light traffic signal in the City of Wilmington contests the violation in writing,<sup>27</sup> a trial for a violation is scheduled in JP Court 20.<sup>28</sup>

A local governing body that enacts a red-light civil violation ordinance may adopt its own provisions addressing penalties and costs. For example, the City of Wilmington enacted an ordinance that sets a civil or administrative monetary assessment not to exceed \$110 and court costs or administrative fees not to exceed \$35.<sup>29</sup> When the Court finds an offender responsible, the Court should assess the civil penalty as set out in the local ordinance or regulation. Staying with the Wilmington example, if the Court finds the offender responsible, the Court should order the offender to pay a “civil or administrative monetary assessment not to exceed \$110.”<sup>30</sup> The responsible party pays the civil penalty to the City.<sup>31</sup>

Although the Wilmington ordinance permits the assessment of \$35 court costs or other administrative fees, Wilmington cannot properly impose such an assessment. Wilmington does not operate a court and, as a result, cannot enforce a court fee.<sup>32</sup> Moreover, the proceeding is held in a Justice of the Peace Court, *a State court*. Wilmington cannot dictate to the State the costs that its courts may assess. This means that State statutes govern court costs in local ordinance cases. Thus, the same costs that apply for State violations (*i.e.* court costs of \$25.00 and a court security fee of \$10.00 if an alleged offender requests a hearing) apply to local violations.<sup>33</sup> The Court may order no costs or assessments on local violations other than these for reasons explained earlier.

“Court costs may be assessed against an owner or operator who requests a hearing to contest the violation whether the owner or operator is ultimately found or pleads responsible for the violation, or who fails to pay or contest the violation in a timely manner.”<sup>34</sup> As a result, when the local prosecuting agency, such as the City of Wilmington, works out a plea with the offender that includes an admission of responsibility, the Court may order court costs as delineated above, despite that a hearing has not taken place. The fact that the owner or operator requests a hearing triggers the court costs, and Wilmington (or other local prosecutors for their respective cities) *may not waive that fee as part of its plea negotiations*.

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<sup>26</sup> While this Policy Directive talks about “local governing bodies” involved in red-light camera enforcement, the provisions currently only relate to the enforcement actions of the City of Wilmington. State provisions bring all other red-light camera enforcement actions at this time.

<sup>27</sup> Wilm. City Code § 37-95(b)(1).

<sup>28</sup> Ct. 20 is currently the Justice of the Peace Court location hearing red-light ticket cases.

<sup>29</sup> Wilm. City Code § 37-95(b)(1).

<sup>30</sup> *Id.*

<sup>31</sup> 21 *Del. C.* § 4101(d)(3).

<sup>32</sup> Del. Op. Atty. Gen. 97-IB04, 1997 WL 111291 (“if the Town does not operate a court, it may not impose, collect or retain court costs of any similar administrative fee,” referring to the Town of Newport).

<sup>33</sup> 21 *Del. C.* § 4101(d)(3). 21 *Del. C.* § 805(d). (Chapter 8 of Title 21 is expressly applicable to civil penalties created by § 4101(d). See 21 *Del. C.* § 801.)

<sup>34</sup> 21 *Del. C.* § 4101(d)(3).



## Appeals from a Finding of Responsible

21 *Del. C.* § 4101(d)(7) assigns original jurisdiction to hear all civil red-light camera cases with JP Court.<sup>35</sup> That statute also states that a person found responsible shall have the right of appeal when the penalty assessed exceeds \$100.00.<sup>36</sup> Therefore, the offender found responsible for a City of Wilmington violation has the right of appeal based solely upon the initial assessment of \$110.00. Offenders charged with a State Code violation, with a civil penalty of \$75.00 do not have a legal right of appeal.<sup>37</sup>

21 *Del. C.* § 4101(d)(12) provides that the civil penalty for red-light camera violations, for purposes of appeals, includes penalty assessments for late payments/responses. However, by contesting the violation, “offenders” become “alleged offenders” when they plead not responsible. They continue to be not responsible, regardless of the timeliness of their filing of their intent to contest, until proven responsible. Each trial on a contested violation is a trial *de novo*, not a review of the case on the record. A trial *de novo* is a “clean slate.” Therefore, pleading not responsible and appearing before the Court resets the civil assessment the offender owes to the State or to the local governing body, to the amount of the original fine plus any additional assessments provided by statute and court rule, regardless of the timeliness of the appeal. Any accrued late fees shall be suspended.

There is a natural disparity in appeal rights presented by the difference between the state fine of \$75.00 and the City of Wilmington fine of \$110. But a different disparity is revealed if the administrative late fees were added to the civil assessment. Offenders who have accrued administrative late fees added to the civil penalty are then bestowed the right to appeal to the Court of Common Pleas for a trial *de novo*. Offenders who contest within the statutorily-designated time frame are not. Hence, there is a clear benefit to offenders who file after late fees begin to accrue.

An appeal to the Court of Common Pleas on a finding of responsible at trial must be filed within 15 (fifteen) days.<sup>38</sup> Standard time-computation rules apply.<sup>39</sup> Filing an appeal constitutes a waiver of the offender’s right to a writ of certiorari in Superior Court.<sup>40</sup>

## Procedures for Processing a Red-Light Civil Violation

The Court has adopted formal procedures regarding the red-light camera civil violation process.<sup>41</sup> When the vendor forwards a defendant’s intent to contest through an electronic data

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<sup>35</sup> 21 *Del. C.* § 4101(d)(7) “There shall be no right of transfer to the Court of Common Pleas.”

<sup>36</sup> 21 *Del. C.* § 4101(d)(12).

<sup>37</sup> *Lowicki v. State of Delaware*, Del. Supr. Ct. (July 29, 2020).

<sup>38</sup> 21 *Del. C.* § 4101(d)(12).

<sup>39</sup> Justice of the Peace Criminal Rule 45.

<sup>40</sup> 21 *Del. C.* § 4101(d)(12).

transfer, CJIS automatically generates a summons and trial notice with a scheduled court date. This summons is printed at the designated court location, whereupon the court clerk mails a copy to the defendant. The court clerk logs into the system used by the vendor to generate a copy of the ticket and the Defendant's letter of their intent to contest, then goes into CJIS to print case paperwork.

The following 4 (four) procedural elements are worth additional highlighting:

- 1) If the offender pleads or is found responsible, but fails to pay by the date due, the computer-generated failure-to-pay letter is sent to the offender, giving them an additional 14 (fourteen) days to pay. If the offender again fails to pay, DELJIS sends a notice to the DMV of the non-payment. This notice to the DMV occurs regardless of whether the offender pled responsible, the Court found the offender responsible at trial, or if the Court found the offender responsible by default judgment. The DMV, based upon the DELJIS report and through its own policies, procedures or protocols, may send a notice to the offender of an impending driver's license suspension and may suspend the offender's driver's license as of the date indicated on this notice.<sup>42</sup> A suspension of the offender's driver's license may occur at any time after DELJIS has issued its report to the DMV, even if the offender appeared before the Court and paid in full or entered into a payment plan during the interim.
- 2) The implementation of this procedure to suspend a driver's license has prompted offenders to inquire as to how they may contest a default judgment entered against them. As with other civil matters, the proper pleading is a "Motion to Vacate the Default Judgment," although the criminal computer system does not have an option for "Motion to Vacate a Default Judgment." Therefore, if the defendant uses the term "Motion to Re-Open" or similar language, the Court shall *sua sponte* consider it to be a comparable term and proceed accordingly. Such a motion will be set for the red-light calendar as a "Motion to Re-Open" hearing so that the prosecution may be available to present its position on the motion. The judge has the discretion to grant or deny the motion using the standard presented in Justice of the Peace Civil Rule 60(b) and proceed accordingly. Case law imparts the factors the judge must consider when deciding whether to grant or deny the offender's motion. The offender must show:
  - a) Excusable neglect in the conduct that allowed the default judgment to be issued;
  - b) A meritorious defense to the action that would allow a different outcome to the litigation if the matter was heard on its merits; and,

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<sup>41</sup> Procedural Memorandum 12-006 (2<sup>nd</sup> Revision) "Red Light Camera Civil Violation Process for the Justice of the Peace Criminal Courts," updated February 15, 2024. Attached in separate document.

<sup>42</sup> 21 Del. C. § 4101(d)(8).

- c) A showing that the State/Municipality will not suffer substantial prejudice if the motion is granted.<sup>43</sup>

If the judge grants the offender's motion to re-open their case, trial will proceed. If the judge denies the offender's motion to re-open and the state moves for summary judgment, the judge shall grant the motion and issue a judgment. If the state fails to move for summary judgment, the judge shall issue a judgment *sua sponte*, as it is within the inherent powers of the court to do so. The offender's appearance before the Court resets the amount the offender owes to the original amount of the fine plus any additional assessments provided by statute and court rule, regardless of the timeliness of the response. Any accrued late fees shall be suspended.

#### EXAMPLES:

Case #1: A person receives a fine of \$75 for a red-light violation. The person requests a hearing to contest the violation and submits a request to the vendor within 20 days of the date on the summons. By the time the request is processed, the JP Court holds a hearing on the 45<sup>th</sup> day from the date on the summons. There are no late fees to apply because the request for hearing was timely made and the person's responsibility has not yet been established. After the hearing, if the Court finds the person responsible for the violation, the Court orders the person to pay the original fine of \$75 and court and admin costs up to \$35 (as stated in 4101(d)(3)). In its order, the Court sets the timeline for payment of the fine, and any court and admin costs.

Case #2: A person receives a fine of \$75 for a red-light violation. The person requests a hearing to contest the violation but submits the request to the vendor 38 days after the date on the summons. Even though the request is made outside the 20-day timeline, the vendor must forward the request to the JP Court. The judge will address and consider why the request was made outside the 20-day timeline. The judge may decide to accept the person's late request to contest the violation (based on the person's individual circumstances or reasons) and hold the hearing to determine the person's responsibility. After the hearing, if the Court finds the person responsible, the Court orders the person to pay the original fine of \$75 and court and admin costs up to \$35 (as stated in 4101(d)(3)). But there are no late fees involved or assessed. In its order, the Court sets the timeline for payment of the fine, and any court and admin costs.

Case #3: Same facts as Case #2, except the judge does not accept the person's late request to contest the violation. The judge considers the reasons are not appropriate to excuse the inaction and/or late request. The request to contest the violation is dismissed by the judge as untimely. In this scenario, the original citation stands and the person is responsible to pay the original fine and late fees assessed. It is a failure to pay if the person does not comply.

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<sup>43</sup> *Karowski v. Nickle Real Estate, Inc.*, 2013 WL, 3131615, at \*3 (Del. Com. Pl. June 14, 2013) (quoting *Verizon Delaware, Inc. v. Baldwin Lint Const. Co., Inc.*, 2004 W 838610, at \*1 (Del. Super. Apr. 13, 2004)), as cited by an Order dated December 17, 2015 in *Keller vs. Mooney*, C.A. No. CPU4-15-003965.

3) Pursuant to 21 *Del. C.* § 4101(d)(10)(a), the owner of the vehicle may rebut the presumption of their responsibility by furnishing an affidavit to the prosecuting agency, indicating that the owner was not operating the vehicle at the time of the violation.<sup>44</sup> The owner must also provide the name and address of the operator of the vehicle. This affidavit is essential in order to make the operator a party to the case. Without the affidavit, the third person is not legally a party to the case. The prosecuting agency may then dismiss the case against the registered owner and resubmit the ticket against the operator. A registered owner contesting the citation, stating that they were not the operator of the vehicle, must:

- a) File an affidavit with the vendor or prosecuting agency OR a motion with the Court to substitute a real party in interest before or at the time of the hearing;<sup>45</sup>  
or
- b) Provide proof to the court or the vendor at the time of the hearing that the owner was not the operator.<sup>46</sup>

If proof is given to the Court at the time of the hearing that the owner was not the operator at the time of the violation, the judge should dismiss the case, and return it to the prosecuting agency.

4) Pursuant to JP Court Civil Violations Rule 4, corporations or artificial entities charged with a red-light camera civil violation, must be represented by an attorney.<sup>47</sup> Form 50s are not sufficient for representatives of the artificial entity to appear on its behalf. Corporations or artificial entities are also subject to default judgments for failure to appear or failure to pay.<sup>48</sup>

### **Post-Adjudication**

If the defendant pleads or is found responsible, either at the time of trial or through a default judgment, and the defendant does not pay, the judge, at the defendant's next court appearance for any other case, may order the defendant to report to work referral. A tax intercept is also a method for the court to achieve compliance under these circumstances. The DMV may also refuse to renew a defendant's license or vehicle registration until the financial penalty is addressed.

It is important to remember that the judge may not charge the defendant with contempt of court, even if the defendant does not pay and does not report to or finish work referral. 11 *Del. C.* § 4105(b)(9) establishes the Court's powers to order a defendant to work referral to pay civil penalties. However, this section specifically states, "Notwithstanding paragraph (b)(7) of this section, a person's failure to participate in work ordered under this paragraph (b)(9) of this

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<sup>44</sup> A copy of the "Red Light Violation Affidavit Form" is attached.

<sup>45</sup> 21 *Del. C.* § 4101(d)(10).

<sup>46</sup> *Id.*

<sup>47</sup> Justice of the Peace Court Civil Violations Rule 4(b).

<sup>48</sup> Justice of the Peace Court Civil Violations Rule 4(a).

section is not punishable as contempt of court. A person's failure to participate in work ordered under this paragraph (b)(9) of this section may result in the transfer of the judgment to the Office of State Court Collections Enforcement to be collected according to §4104 of this title."

### **Conclusion**

For State red-light camera civil violations, the Court hears trials pursuant to 21 *Del. C.* § 4101(d). On a finding or an admission of responsibility, the Court may assess a civil penalty up to \$110. The court costs and assessments permitted following a finding or admission of responsibility are: 50% of the civil penalty for the Transportation Trust Fund; \$15.00 for the Fund to Combat Violent Crimes; \$10.00 for the Voluntary Ambulance Company Fund, and up to \$35 court costs, which includes a \$10 assessment for the Court Security Fund.

For local red-light camera civil violations, the Court hears trials pursuant to the local ordinance or regulation the municipality adopted under 21 *Del. C.* § 4101(b). On a finding or an admission of responsible, the Court shall assess the civil penalty set out in the local ordinance or regulation. That penalty may not exceed \$110. State law, rather than the municipal ordinance, dictates court costs and other assessments. The Court shall assess court costs up to \$35, inclusive of a \$10 assessment for the Court Security Fund. No other fees or assessments are permitted.

Vendors shall forward all requests to contest an assessment from a red-light camera ticket to the Court regardless of the timeliness of the request.

Offenders have the right to appeal a finding of responsible to the Court of Common Pleas if the fine amount exceeds \$100.00. The State's decision to assess a civil penalty of \$75 for violations proceeding under the State-operated system (charging offenders under the State Code,) even though the maximum penalty allowed by statute is \$110, results in no right of appeal from a judge's finding of responsible.

Any accrued administrative late fees shall be suspended upon an adjudication of responsible.

The charts below summarize the amounts assessed for both State and local red light civil violations:

**State:**

Civil Penalty	Up to \$110
Court Costs	Up to \$25
Court Security Fund	\$10
Fund to Combat Violent Crimes (Police Fund)	\$15
Voluntary Ambulance Company Fund	\$10
Transportation Trust Fund	50% of the civil penalty
No fee may be charged for the following: DELJIS Fund Victims' Compensation Fund Videophone Fund	

**Local:**

Civil Penalty	Up to \$110
Court Costs	Up to \$25
Court Security Fund	\$10
No fee may be charged for the following: Transportation Trust Fund Fund to Combat Violent Crimes (Police Fund) Voluntary Ambulance Company Fund DELJIS Fund Victims' Compensation Fund Videophone Fund	

Cc: Honorable Collins J. Seitz, Jr.  
Honorable Kathaleen S. McCormick  
Honorable Jan R. Jurden  
Honorable Carl C. Danberg  
Honorable Michael K. Newell  
Gayle P. Lafferty, State Court Administrator  
All Justice of the Peace Courts  
Elizabeth Petrick, Justice of the Peace Court Administrator  
Stephanie Parker, Justice of the Peace Court Deputy Administrator  
Rebecca Trifillis, Esquire, Justice of the Peace Court Staff Attorney  
Jennifer L. Kline, Esquire, Justice of the Peace Court Staff Attorney  
Roger Roof, Operations Manager North  
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