

# The Reckless Driving Myth



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**Since 2004, I've been a daily presence in the Fairfax County Courthouse and have handled thousands of Reckless Driving cases as both a Prosecutor and a Defense Attorney.** I have spent the last decade analyzing the legal process and observing the results.

Here are several tips to help you navigate Fairfax County's legal system and to better understand how Reckless Driving tickets are handled.

The Reckless Driving Myth is the false belief that a Reckless Driving ticket is the end of the world for everyone who gets a ticket. The truth of the matter is that a Reckless Driving ticket is only a big deal for certain people and only in certain situations. Every case is unique, which is why even after reading this guide you should still talk to an attorney about your case before court. It would be foolish to assume that any guide can answer every question for every person. However, this guide will provide the reader with a strong idea of what consequences are realistic, which consequences are myth, and how to best proceed after distinguishing between the two.

The Introduction will separate the myths from facts. The second part will go into great detail explaining Reckless Driving law. Read the Introduction first to fully understand whether you are facing large or small consequences before reading the more in depth analysis of the law.

## SECTION 1 – INTRODUCTION

### Why Hiring a Lawyer May Be A Waste Of Money

For many people, hiring a lawyer for a Fairfax Reckless Driving ticket is a waste of money.

If you are reading this guide you most likely have recently received a reckless driving ticket in Fairfax County. If so you have probably been flooded with information trying to scare you.

*“Class 1 misdemeanor...12 months in jail...\$2500 fine...6 months loss of license”*

The simple fact is that for the vast majority of people a reckless driving ticket simply isn't the horrible situation many would have you believe. None of these claims are lies, they are just somewhat misleading. While a reckless driving ticket does possibly carry serious consequences the vast majority of cases are resolved favorably. Only a small fraction of total cases incur jail time or a loss of license. Those punishments are typically reserved for those drivers who are alleged to have going at very high speeds or have terrible driving records.

#### **IT ONLY MAKES SENSE TO HIRE A LAWYER IF THE BENEFITS OUTWEIGH THE COSTS**

It only makes sense to pay a lawyer's fee if the benefit is justified. It is a classic cost-benefit analysis. If you are only facing a slap on the wrist it doesn't make sense to pay a lawyer a large fee to avoid a small punishment. So then the best place to start is by figuring out what types of punishments you are realistically facing.

### PUNISHMENTS

First and foremost it is important to understand that court is run by human beings. Human beings are unpredictable. It is also important to note that different judges look at reckless driving differently. Some will be inclined to be harsh, whereas others are more lenient. No guide can provide a one size fits all guarantee of what is going to happen on your case. Even after doing this nearly every day for 10 years I can never say exactly what a judge is going to do on any given day no matter what he or she has done in the past. All that anyone can do is play the odds and hope that the ruling is consistent with what has happened in the past.

That much said as a general rule, most people accused of going less than 85 miles per hour are typically not at risk of losing their licenses. Also drivers going less than 90 are not typically at risk of going to jail. If you are accused of going more than 90, then jail is a possibility and it would be foolish to go in without a lawyer. If you are accused of going more than 85 and absolutely cannot function without your license then you should also hire a lawyer.

Similarly judges increase the punishment imposed if you have a bad driving record. If you have gotten several tickets in the past, particularly if they are for prior reckless driving or other speed related charges you are increasingly likely to lose your license, hiring a lawyer would be recommended.

In those cases the logic is easy. Most people can't get by without the ability to drive to work, or to school, or to take care of their kids. The potential consequences are major and therefore hiring a lawyer is a necessary expense to minimize the punishments.

But what about drivers with decent records and are alleged to have been going between 75 and 85 miles per hour? (Reckless driving is 20 mph over the limit, so on most highways you get into Reckless going 75 or faster). Those drivers have a less clear cut decision to make. For drivers in this range, jail and a loss of license aren't likely. That doesn't mean that there may not be consequences to a conviction it just means that they don't automatically need a lawyer the way the other drivers did.

For many of those drivers the biggest things they have to worry about are an insurance premium increase and/or having a misdemeanor on their record.

### INSURANCE INCREASES

Every case and every insurer is different and a wise consumer will not take it for granted that a Reckless driving ticket will cause their insurance to skyrocket. Before you make that assumption and hire a lawyer, you should investigate to confirm your suspicions. You can simply call your insurer and see what a reckless ticket would do to your premium. Or if you are worried about tipping them off unnecessarily the website [Insurance.com](http://Insurance.com) has a calculator designed to estimate how much your premium will increase.

### EMPLOYMENT ISSUES

Reckless driving is technically a class 1 misdemeanor. That means that it is technically classified in the same manner as crimes generally thought to be more serious like shoplifting, assault and DWI. However, it only has some of the same characteristics as those other crimes. In a lot of ways it isn't the same. Before you assume that a reckless driving conviction will hurt your employment or a background check talk to someone at your job or in HR and confirm that it will make a difference. There certainly are a lot of strict guidelines at some jobs, but many places aren't going to be too worried that you drove a little fast once.

### COME UP WITH A "DOLLAR VALUE"

Before you call any lawyer have a good idea of what types of issues you are realistically facing. Try to put everything in financial terms. This is particularly important if you are in the category of people who are only facing an increase in insurance premiums. Figure out an estimate for how much your yearly premium is likely to increase. Then multiply that number by the 11 years that a ticket stays on your record. That will create a "dollar value" for your conviction.

Now when you talk to a lawyer about your case you can make an easy straight forward decision about whether hiring them makes sense. If their fee is less than your dollar value, then it is actually cheaper to hire them. If on the other hand, their fee is higher than your dollar value, then it doesn't make sense to hire a lawyer.

### WHAT TO DO IF YOU DECIDE TO GO BY YOURSELF

If you do elect to go to court without a lawyer, get to court early and pay close attention to what the judge does on cases called before yours. Pay close attention to those drivers who are accused of going a similar speed. If the judge does something favorable on those cases, you should emulate what those others driver's did and hope that you get a similarly good resolution.

If on the other hand, the judge is not resolving cases favorably you likely have gotten unlucky and gotten a judge who is strict on reckless driving cases. In that circumstance you should ask for a continuance and reconsider hiring a lawyer. However, even if you get a bad result you still have other options. Within 10 calendar days of any hearing in General District Court you have an absolute right to appeal your case. If you don't get a good result either call a lawyer to appeal your case or simply appeal it yourself. On appeal you will get your case heard again by a different judge. Nothing that happened in the first case will have any impact on the second. It is important to note that you can get a worse result on appeal than you got originally, so at a minimum you should talk to a lawyer before you note an appeal to make sure it is a good idea.



## SECTION 2 – RECKLESS DRIVING LAW

### Calculating Speed

In Virginia, there are several common methods police officers and the state patrol use to calculate how fast the driver was going. The three most common methods are radar, LIDAR, and pacing a vehicle.

#### Radar

The police use a Doppler Gun to determine how fast a driver is going. The radar gun relies on the Doppler Effect to gauge speed. To calculate the speed, the officer points a gun in the direction of the vehicle. The gun then calculates the speed of the moving object in its “beam” based on the way the beam is reflected back to the gun. These radar guns are generally accurate within a one mile margin of error. There are factors that can interfere with an accurate reading such as calibration errors, distance, and interference. The further away the radar gun is from the target, the harder it is to get an accurate reading. For example, if the officer measures your speed from 1,000 miles away, the radar gun will cast a beam that is 250 feet wide. The width of the beam increases the chances that the officer will actually radar a different vehicle.

Radar guns must be inspected regularly to ensure that they are working properly. In Fairfax, radar guns are checked for accuracy using a tuning fork or a calibrated speedometer. A tuning fork, vibrating at a specific frequency, produces the same effect on the radar beam as a moving car. Virginia law requires radar guns to be calibrated and inspected every six months to ensure their accuracy.

#### LIDAR

Another technique for calculating speed is Light Detection and Ranging (LIDAR). LIDAR uses a similar method to a radar gun except that it shoots a narrow beam of light instead of casting a wide beam. The LIDAR device can measure the distance between the vehicle and the device hundreds of times within 1/3 of a second and translate the distance into a determination of speed. It is considered to be more accurate than radar because the beam is much narrower. It allows the officer to target a specific vehicle instead of a wide group of moving cars. The LIDAR device must be inspected for accuracy every six months. In Virginia, the LIDAR devices are

manufactured by a Kansas company, Kustom Signals Inc. The company provides the certificates of accuracy which opens the door to challenge their authenticity due to conflicts of interest and the test being performed outside of the state, in Kansas.

## Pacing Cars

The third method used to calculate speed is pacing. This is the oldest method and requires a police officer to follow a vehicle suspected of reckless driving. The officer must maintain the same distance from the vehicle for at least two-tenths of a mile. They will then be able to determine how fast the vehicle was going because they are neither gaining nor losing ground in relationship to how close they are to the vehicle. In order for an officer to successfully pace another vehicle, they must have an accurate speedometer. They must also take into account speed changes due to road conditions, distance and time the speed of the target vehicle are measured as well as the location of and the actions taken by other motorists at the time of the pace.

In Fairfax, the traffic courts require a police officer to present a sworn speedometer accuracy certificate in order to conclude that the officer's testimony is credible and that the speed they claim the other car was going is accurate.

## What you need to know

In reckless driving cases, the government has the burden of proof. They must prove that you were going as fast as they said that you were. Regardless of how they calculated your speed, they must bring that evidence to the court. You and your attorney have the right to ask them to demonstrate the last time the equipment was inspected and challenge the accuracy of those documents. Working with an experienced Fairfax Reckless Driving Attorney is helpful because they know what those reports are supposed to look like and can identify any red flags or glaring inaccuracies. In court, asking questions the right way can be just as important as asking them in the first place. For example, if you ask the officer if the equipment has been inspected they are likely to say yes. If you ask when the last time it was inspected prior to the citation, they have to provide specific details that could open the door for challenging the accuracy of the reading.



## Virginia Reckless Driving Laws

Since reckless driving is a Class 1 misdemeanor in Virginia, everyone cited for reckless driving has the opportunity to go before a judge and plead their case. Many people are aware that speeds over 80 miles per hour are considered reckless driving but are not aware that other factors can also lead to a citation.

You can be cited for reckless driving in the following circumstances:





## Deducting Points from Your Driving Record

Most states have a point system that helps them to determine who is a good driver and who is a bad driver. In Virginia, a driver gets their license and starts with a zero point balance. Every year they have their license; they gain one good point that is capped at five points. The highest score you can ever have is five points. When you get a ticket, it has a point score associated with it. The point violations are either 0, 3, 4 or 6. These points are deducted from your overall score, and drivers with negative points are considered to have a bad driving record.

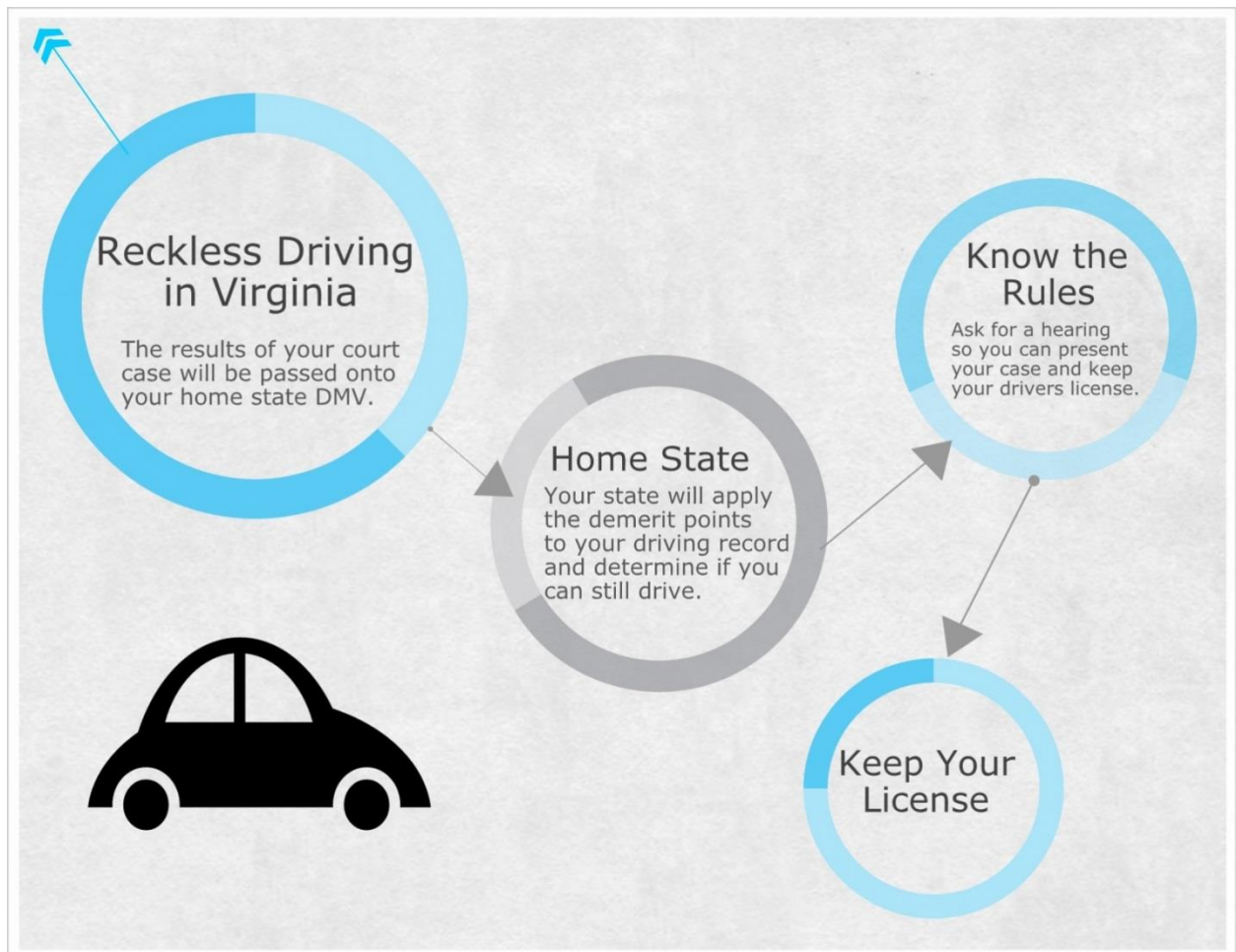
Reckless driving convictions come with a six point deduction that stays on your driving record for 11 years. That is a long time to be considered a bad driver by the state of Virginia. Even if you have never had a speeding ticket, and currently have a perfect driving record, one reckless driving conviction will immediately put you in the bad driver category. If you have had a previous minor ticket that offense combined with the reckless driving conviction may cause your license to be suspended.

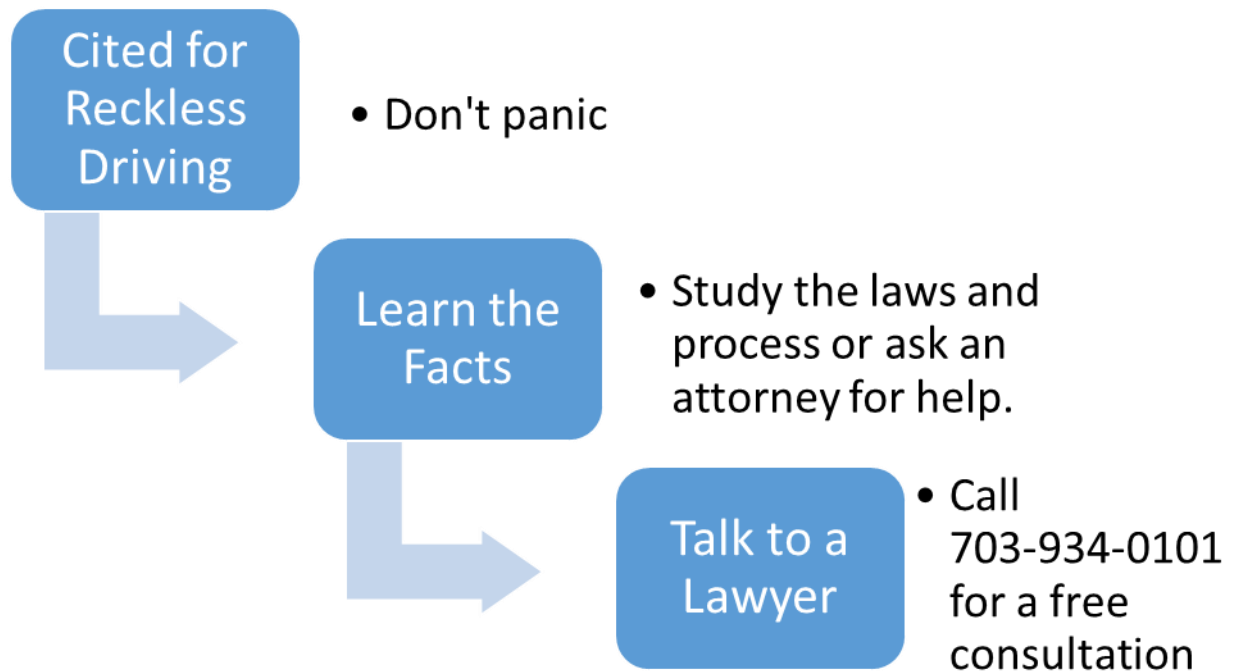
There are ways to improve your driving score. You can take a driver improvement program voluntarily and have five points added to your driving record. You are only allowed to take the program once every two years, and you still cannot exceed the five point score. Reviewing your driving record, current points, and discussing the driver improvement class should be part of your legal strategy session.

## Out of State Drivers and Demerit Points

If you live outside of Virginia, the point deductions could have additional consequences. It is important to understand how your state calculates points and when they determine to revoke a person's license. For example, if they have a lower point system and six points are deducted it could have a greater consequence. There have been reports of living outside of Virginia that have complained that their license was suspended for six months or greater due to the demerit point system, not a judge ruling to have it suspended. In other words even if you sail through court with only a fine to pay, losing six points on your driving record could still lead to your driver's license being suspended or revoked.

The way to avoid this is to find out about your state's rules and regulations. By understanding them, you can argue your case as to why you should have your driving privileges kept intact. The important thing is to do the research and not take for granted that your state DMV won't care about the citation.



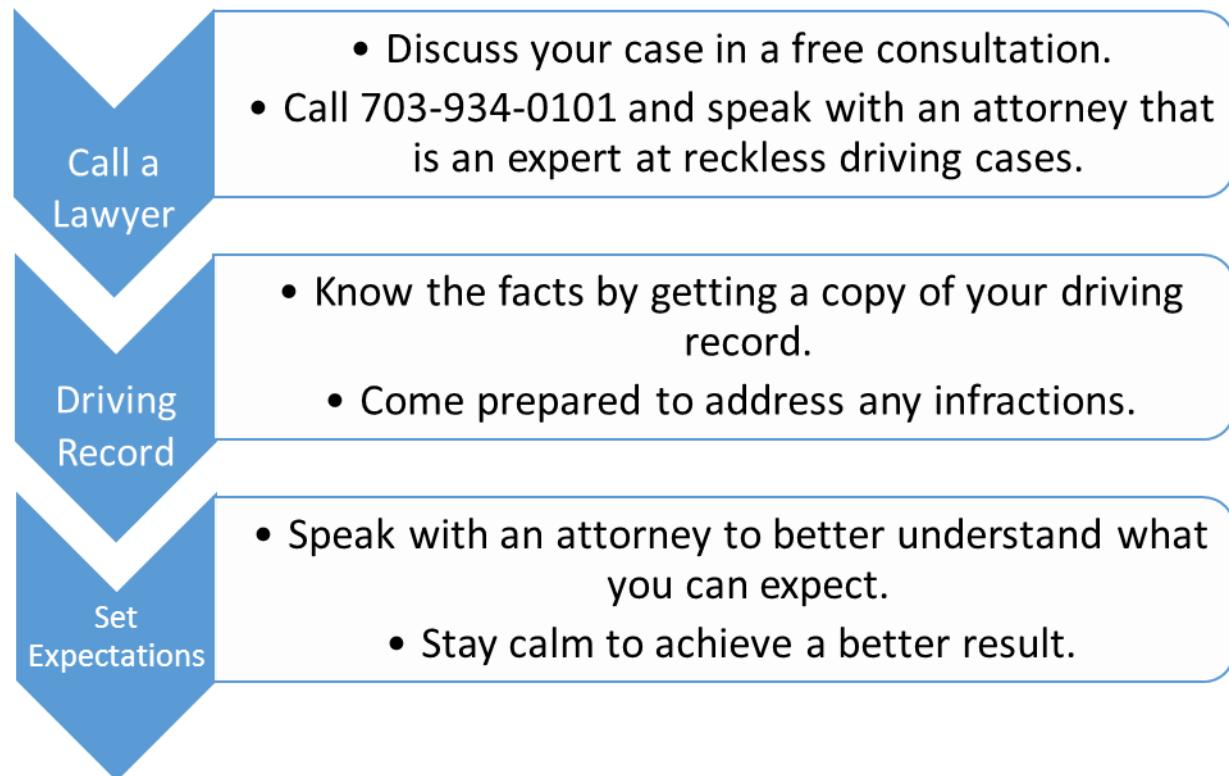


### Out of State Drivers

If you were cited for reckless driving in Virginia, but live out of state, you will still have a scheduled court date in the county where you were cited. You are required to attend the hearing. However, if you are accused of a relatively low speed Reckless you can authorize your attorney to resolve the matter in your absence. Your lawyer will require you to complete a plea authorization form. This form should describe the terms of a plea agreement that you would find agreeable. Your attorney will then try to negotiate a plea deal with the Prosecutor on your court date. If the Prosecutor agrees to your plea requirements, a plea can be entered without you ever having to come to court. If a deal cannot be reached the matter will be rescheduled to allow you to appear.

## Preparing for Court

Once you have received a citation for reckless driving it is time to prepare to go to court. **If you do not fight the citation, you will likely be convicted of Reckless Driving.** Not preparing for court is not a wise decision. .



## Get your speedometer calibrated.

If your speedometer is inaccurate a judge may be more lenient when hearing the case. The calibration will show how many miles per hour your speedometer is off by and the speed it would have been displaying when you were pulled over. An inaccurate reading could show a lack of intent on your part to drive at such high speeds. At least, that is the argument your attorney can make. We have several preferred vendors in Virginia that will provide an accurate calibration and the reports needed for court. For a list of vendors call 703-934-0101.

## Take a Driver Improvement Class

Some people may benefit from taking a Driver Improvement Class to demonstrate to the court a desire to improve their driving and become more responsible. The courses can be found

online at the Department of Motor Vehicles website. You can complete them in person or online for a small fee. If you have received a ticket or had an accident in the past, this class shows a desire to improve.

If, however, you have a clean driving record do not take this class without speaking to an attorney. Taking a Driver Improvement Class could disguise your clean driving record and make it look like you have a clean driving record because you took the class. It is important to discuss the overall legal strategy with an attorney before deciding whether or not to take the course.



## Day of Court

Make sure you come prepared with copies of any documents your attorney has asked you to bring, including your driving record. Even if your attorney has copies, reviewing these documents before speaking to the judge will help your mind to recall the information if you are asked any questions.

## Plea Offer

Before the hearing, your attorney will meet with the prosecutor and get a plea offer. This offer will describe the consequences if you agree to plead guilty. The offer may discuss fines that need to be paid, restrictions on driving, demerit points on your driver's license, how long it will stay on your record and more. Speak with your lawyer before going into court to discuss what type of plea bargains you are willing to take and which ones will be rejected outright. If you are required to tell your employer of your conviction, or concerned about your auto insurance, tell your attorney right away. It is important to be on the same page so your attorney can be a powerful negotiator on your behalf.

## Witnesses

You have the right to call any witness, but they typically do not add strategic value. By reviewing the rules of evidence, you must ask, "What does this person know that will prove I was not going this fast?" With that in mind, the most relevant witness would be someone that could testify to the accuracy of your speedometer. Your attorney can advise you on whether or not a witness should be called.



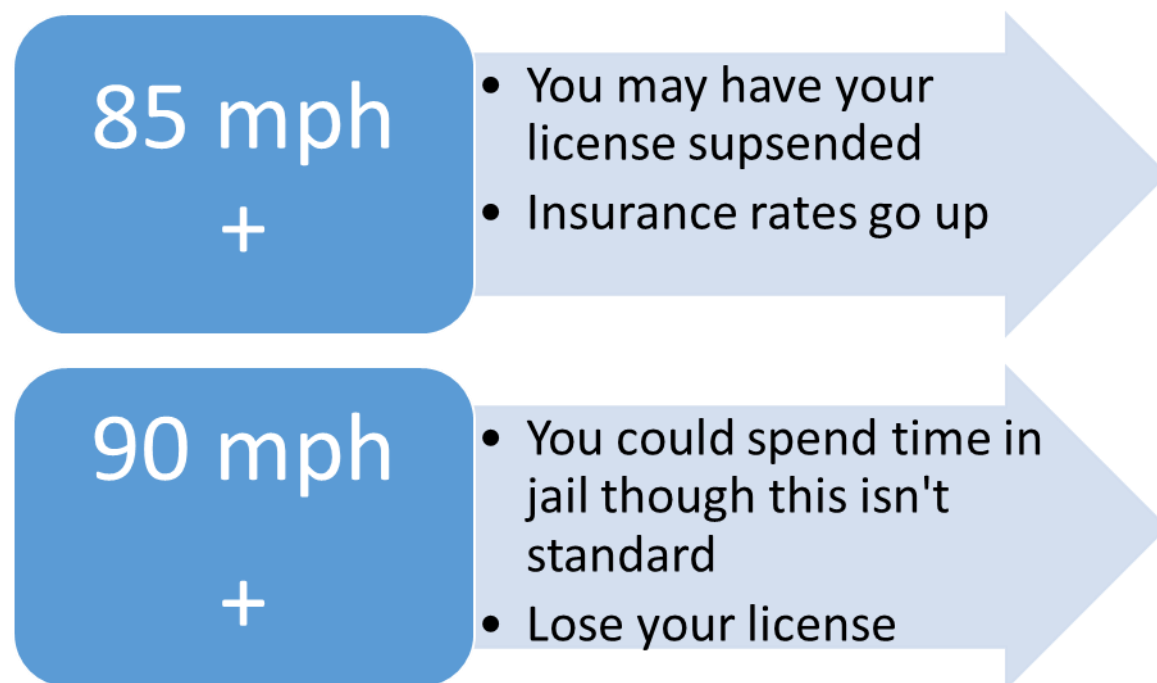
## The Officer Will Testify

Typically, the officer that gave your citation will appear in court and testify to the circumstances surrounding the incident, the equipment they used, and so on. If they do not show up, the case is usually dismissed. If, however, they give the court notice and have a good reason for their absence, the court is likely to continue the hearing for a different day. Police officers that repeatedly miss court dates face being reprimanded and do their best to appear as scheduled. In Fairfax, it is almost unheard of for a case to be dismissed because an officer failed to appear and did not provide a valid explanation before court.

## Why Speed Matters

It is essential that your attorney questions the officer and their equipment in order to create reasonable doubt that you were not going as fast as they say you were. Sometimes a one mile reduction can make the difference between keeping your license and having it suspended. Suspension is by no means automatic. It is up to the judge to decide.

Many drivers have been ticketed going 81 or 82. If your attorney can prove that there was a slight inaccuracy in the reading that mileage reduction could take the citation from reckless driving down to speeding.



## Defenses in Court

Your attorney's job is to present the best possible defense to prevent a reckless driving, Class 1 misdemeanor conviction. The good news is that the prosecutor must prove to the judge that you were indeed going fast enough to warrant a reckless driving conviction. It is the government's job to prove you are guilty beyond reasonable doubt.

In court, both sides need to prove their case with evidence. It is not enough to testify to the facts of your case. You have to prove the facts that you want admitted or negotiate for the lightest sentence possible based on their evidence.

Before court a good lawyer will come up with a strategy based on the following issues:

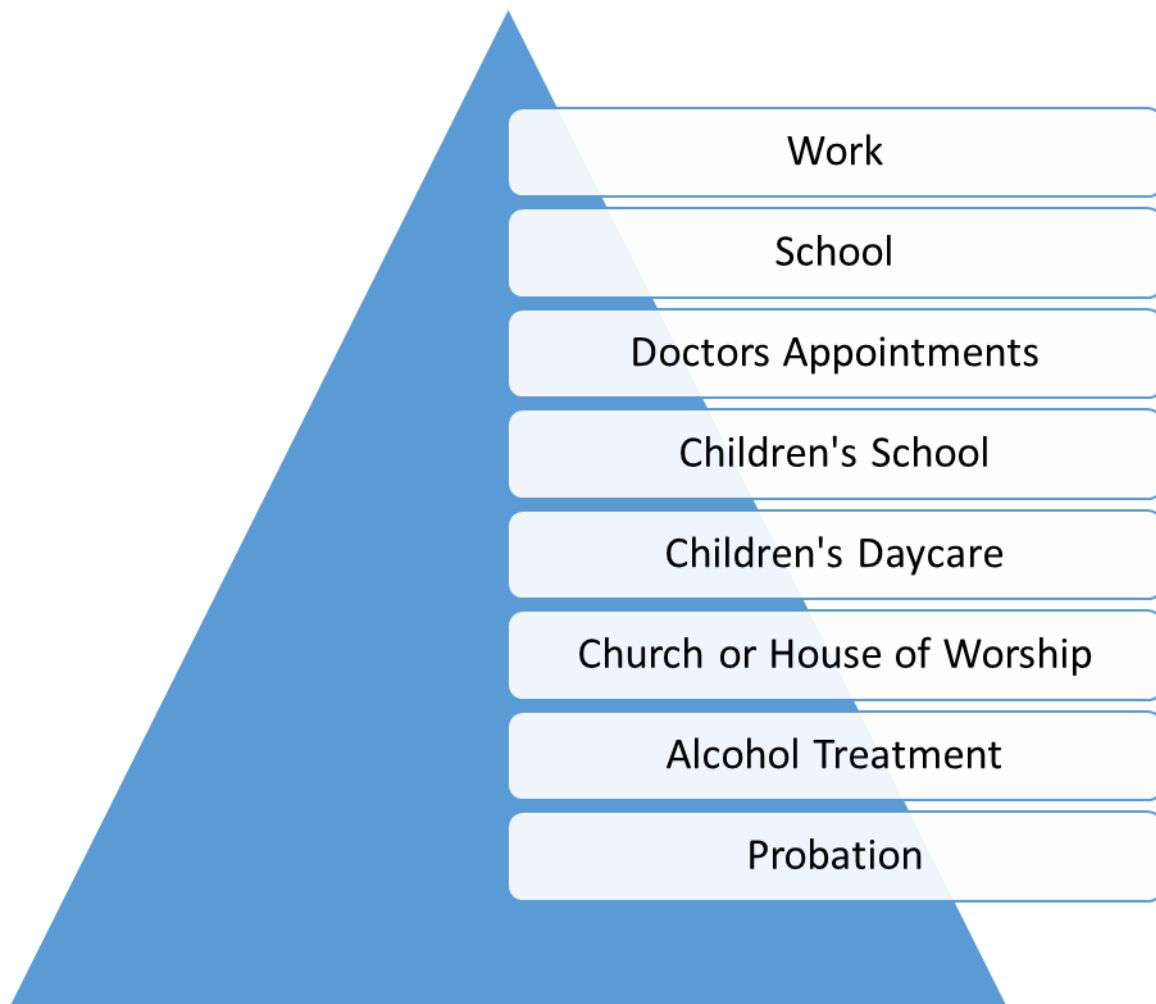
- **How did the police calculate speed?** The police have to use specific tools and tactics to measure how fast you were going. If they did not follow protocol, it will benefit your case.
- **Was the roadway properly marked?** Were clear signs placed along the roadway showing drivers what the speed limit is? Both the officer and prosecutor need to have knowledge of where the speed limits are posted and that they can easily be viewed by drivers. They must also demonstrate that they conform to state law.
- **Did the officer's equipment work properly?** If the officer's equipment was broken, not working properly, or not serviced recently it could have led to a faulty reading that you, as the driver, cannot be held responsible for. There are specific regulations for how their equipment must be tested, and documentation must go with it. The officer must bring evidence that these procedures were followed, and the equipment was working.

It is critical that you come to court prepared with a comprehensive strategy. You need to have the evidence in hand, know which questions to ask, when you are allowed to ask them, and how you are allowed to phrase them. Simply asking a question the wrong way can cause the prosecutor to object and the judge to dismiss the question. Even if you are confident in your ability to speak in court, an attorney is still recommended. An attorney is needed, in part, because the legal process can be very complicated and failure to submit one small form, submit evidence in a certain way, or address the judge properly could lead to penalties and an unfavorable outcome in your case.

## Restricted Driver's License

A judge may order a restricted driver's license during a reckless driving case. This gives people the ability to drive to specific places for specific reasons and is a welcome substitute for those facing complete suspension. An expert reckless driving lawyer can help to negotiate a restricted license when a suspended license is likely.

According to Virginia state law, a restricted license allows a person whose license is suspended to drive for certain limited purposes. Under a restricted license a driver may drive to:



## How to Get a Restricted License

In order to get a restricted license, you need to apply for one. It is easiest to do this while already in court for the original case. There is a two page application that your attorney can help you to complete. The application will ask for personal information such as your name and address along with where you want to travel and at what times. Since this is a restricted license application, the information must be very specific. For example if you are applying to be able to take your child to school then drive to work and back, you must list the exact addresses you will be going to and the times you will be making the trip. A restricted driver's license does not allow for the flexibility of changing schools or jobs without notifying the court and asking for approval to drive to that new location. In addition, you should not apply for a restricted license with broad travel times such as "taking my child to daycare between 9AM and noon". The broader your application, the more likely it is to be denied.

### Review by a Judge

The judge will review your application and make a determination on whether or not you qualify. Your chances will be increased by working with an experienced reckless driving attorney that understands the process and is able to structure your application accordingly.

If you are applying for a restricted license after your court date, the judge will also need to have a copy of your current driving record and compliance summary from the DMV. If the judge approves the application, they will stamp their approval and a copy will be sent to the court clerk's office.

The amount of time it takes to obtain the actual license will depend on where your case is heard. For example in Fairfax County General District Court, a restricted license may be obtained the same day it is approved. In Fairfax Circuit Court, however, it may take days or weeks. Before a license will be issued, all fines and court costs must be paid in full.

### Warning!

A Virginia restricted driver's license comes in what's called a "green sheet", which outlines all of the driver's restrictions. This includes where they are allowed to drive and when they are allowed to drive. This is the document you would show to police if pulled over, so it is critical that the information is accurate. Do not leave the court without reading it thoroughly and making sure it is what was agreed upon. If it is inaccurate let them know and ask for a corrected copy to be generated.

This document will also list out the specific steps you must take to get your full license back.



## Next Steps

Once you have received a restricted license you may also be required to participate in the VASAP program. The Virginia Alcohol Safety Action Program was designed to improve highway safety by decreasing the number of people driving under the influence of alcohol and drugs. This program may include a 20 hour class focused on substance abuse while driving, self-evaluation, substance abuse and health. Those ordered to participate in VASAP must have a staff member sign their green sheet within fifteen days. You must also go back to the DMV and obtain a plastic license within 30 to 60 days of being given your green sheet.

## Warning!

If 60 days pass and you have not gotten a plastic license your green sheet will expire. You will have to go back before a judge and ask for a new restricted license. Do not let this deadline pass!

## A Restricted License is Very Restrictive!

If you obtain a restricted license, you are not allowed to drive socially. This means you cannot stop by the grocery store on the way home or swing by Starbucks for a latté. You could have a terrible cold, have no food in the house, and still not be able to stop by the drug store. You are **ONLY** allowed to drive to the destinations listed on your green sheet during the times listed on your green sheet. You must carry it with you at all times and show it to the officer if pulled over.

## Warning!

You cannot have any alcohol in your system and drive with a restricted license. Virginia law only permits a 0.02 BAC for people with restricted licenses, versus the standard 0.08 BAC. This level can happen after less than a single beer, making it an enormous risk driving after even a sip of alcohol.

If you are pulled over, after violating the conditions of your restricted license you need an attorney and you need one fast. The judge will likely suspend your license for a full year on top of what the initial suspension should have been. This could result in a year and a half of no driving for any reason. The court will not grant you an additional restricted license if caught violating the terms of the first one.

## How to Protect Yourself

In order to protect yourself from a reckless driving conviction, increased insurance premiums, hefty fines, and a suspended license you need to hire an experienced Fairfax Reckless Driving Attorney. A seasoned attorney will be able to identify the best legal strategy to have your case dismissed or your speed reduced. While there is a small fee for hiring an attorney, the cost is far less than the fine that would be charged if you are convicted.

The Law Offices of Faraji Rosenthall offers free consultations for people cited with reckless driving. There is no cost, no obligation, and you will be speaking with a respected lawyer that will advocate for your rights. To schedule your consultation call 703-934-0101.

### Time is of the Essence



Don't wait until the last minute to hire an attorney. Having time to prepare will improve your chances of success.