



# CMPD POLICE LAW BULLETIN

## A Police Legal Newsletter

August-September 2005

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#### Officer Reminders:

1. Citations/Arrests
2. Increase in Court Costs

**CONGRATULATIONS TO JUDY EMKEN FOR HER PROMOTION TO SENIOR ASSISTANT CITY ATTORNEY – POLICE!**

**Forward:** In this issue, we discuss recent amendments to G.S. 20-217 and review situations in which motorists can and cannot pass stopped school buses. We provide guidance to officers in how to deal with disabled citizens who are accompanied by service animals. We also look at the issue of motorists using cell phones during traffic stops. We discuss the topic of videotaping in the Intoxilyzer Room at the Intake Center. In addition, we revisit the issue of transporting officers and arrest affidavits. Finally, we include reminders for officers regarding citations/arrests and the recent increase in court costs.

### **PASSING A STOPPED SCHOOL BUS**

Effective September 1, 2005, G.S. 20-217, the statute that prohibits passing a stopped school bus, was amended. This article discusses those amendments, as well as the general application of the statute.

The statute requires vehicles to stop while the school bus is displaying its mechanical stop signal or flashing red lights and is stopped for the purpose of receiving or discharging passengers. Vehicles must come to a full stop, remain stopped, and not proceed to move, pass, or attempt to pass the school bus until after the mechanical stop signal has been withdrawn, the flashing red stoplights have been turned off, and the bus has started to move. In addition, the bus must have on the front and rear a plainly visible sign containing the words “school bus”. Under the amended version of the statute, it is **no longer required** that the letters be at least eight (8) inches high.

The statute applies to **any** vehicle (not just motor vehicles). It also applies to a public school bus transporting children or school personnel, a public school bus transporting senior citizens, or a privately owned bus transporting children. A violation of the statute is now a **Class 1 misdemeanor** (previously a Class 2) and, under G.S. 20-16, carries five (5) driver’s license points (eight (8) points for a commercial vehicle). In addition, the recent amendment now makes it a **Class 1 felony** if a person violates the statute and willfully strikes any person causing serious bodily injury.

The statute provides that a vehicle traveling in the opposite direction of a stopped school bus does **not** have to stop if the street has been divided into two roadways with an intervening space or physical barrier. An “intervening space” includes a center lane for left turns **if** the street has at least **four** other lanes. A “physical barrier” includes a concrete or grass median.



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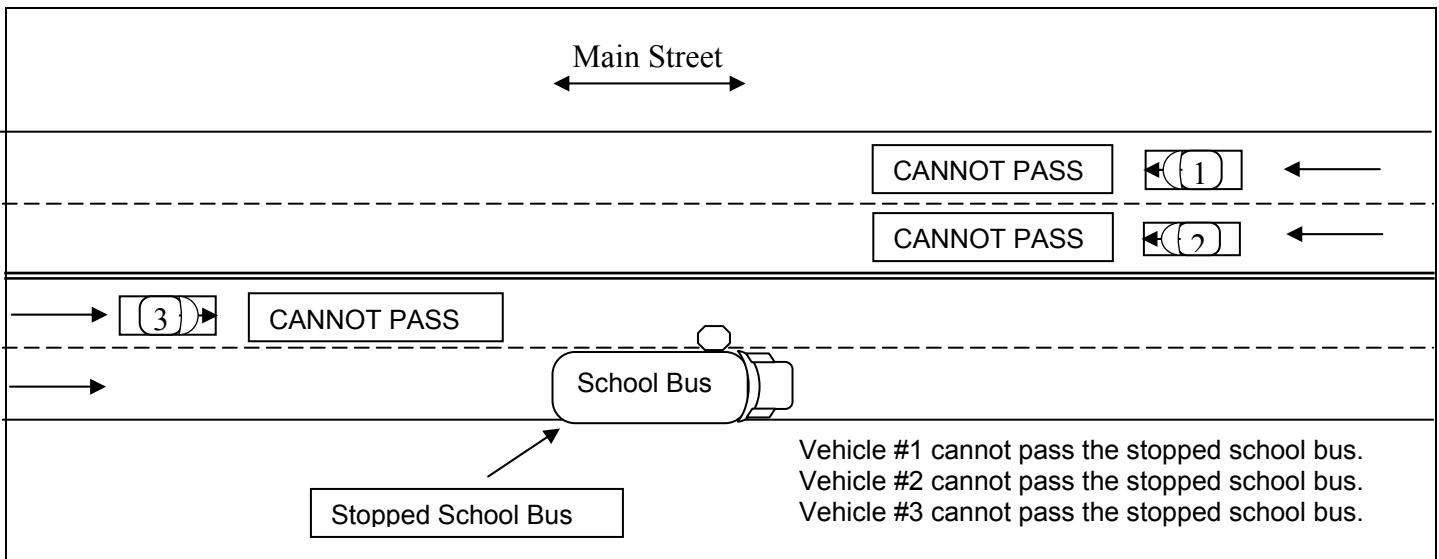
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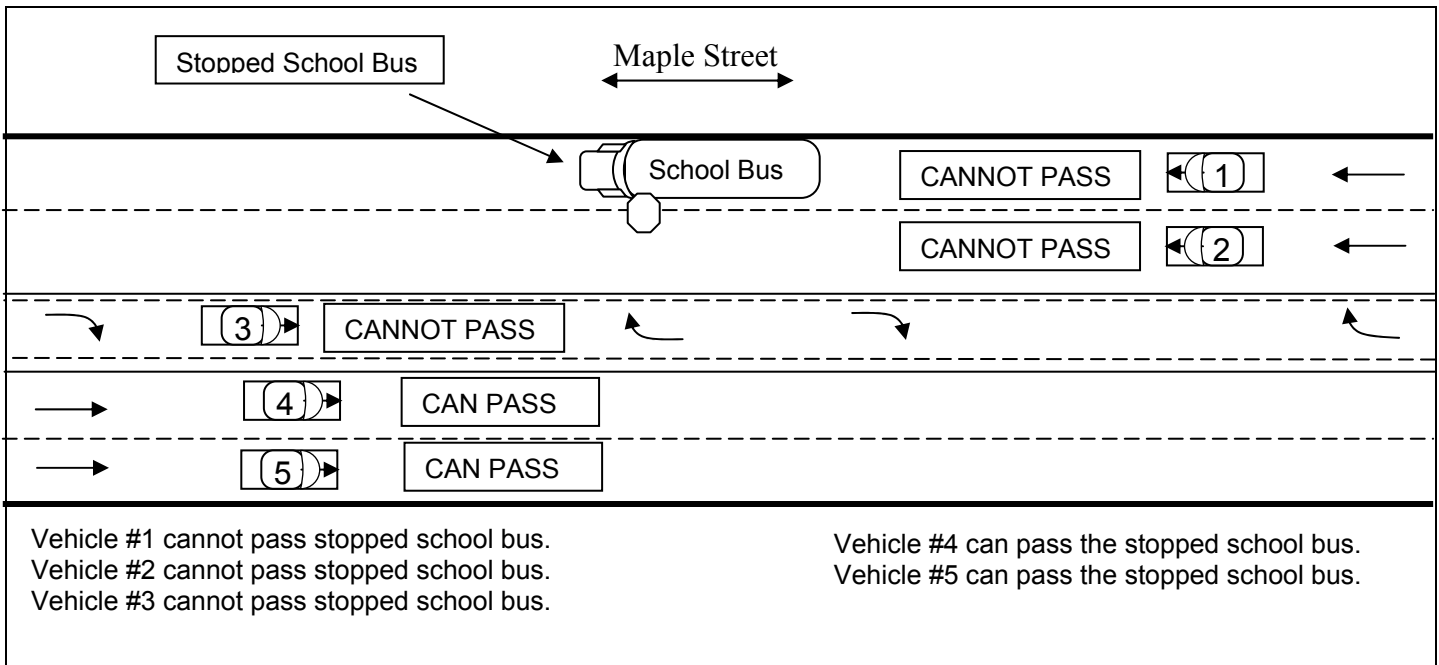
**Examples:**

**Our thanks to Officers Joe Reiner and Christian Wagner of the Providence Division for providing the excellent diagrams!**

**1. Four-lane undivided road.**



**2. Four-lane road with a middle turning lane**





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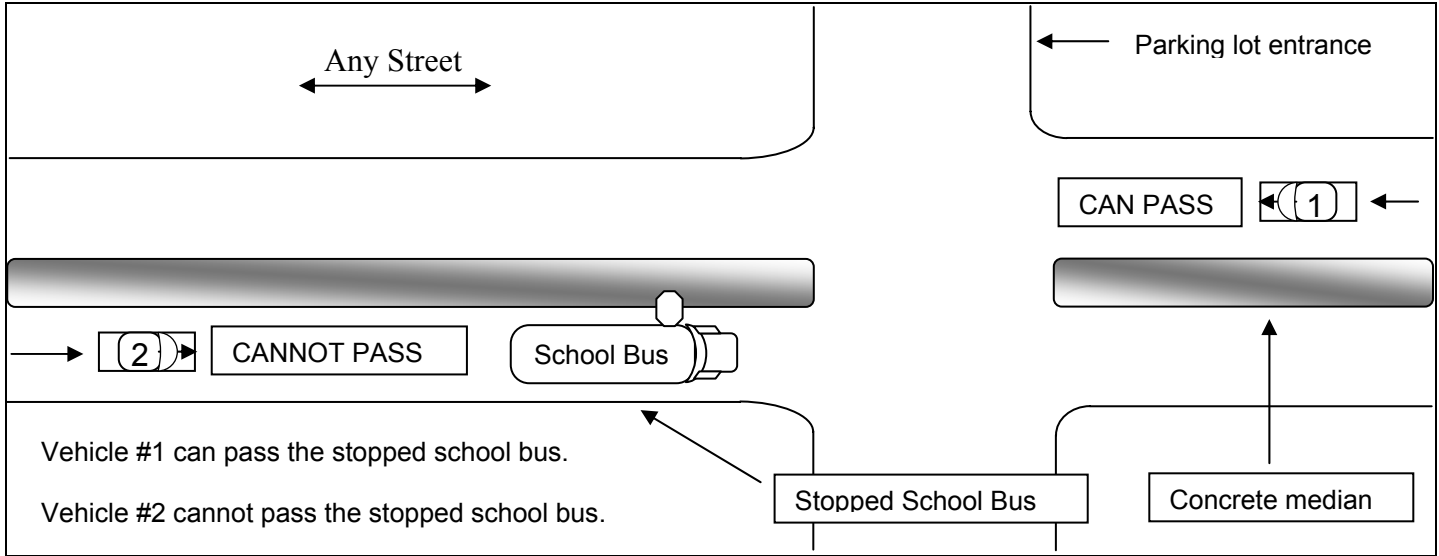
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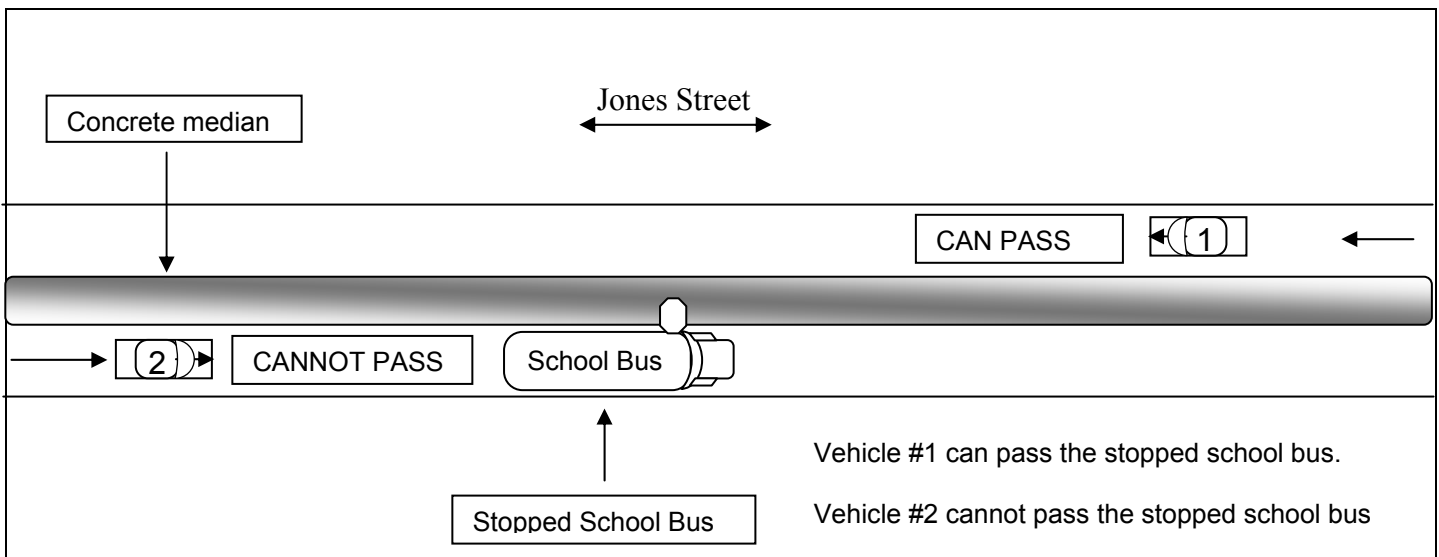
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### 3. Two-lane road with a middle turning lane



### 4. Two-lane road with a median





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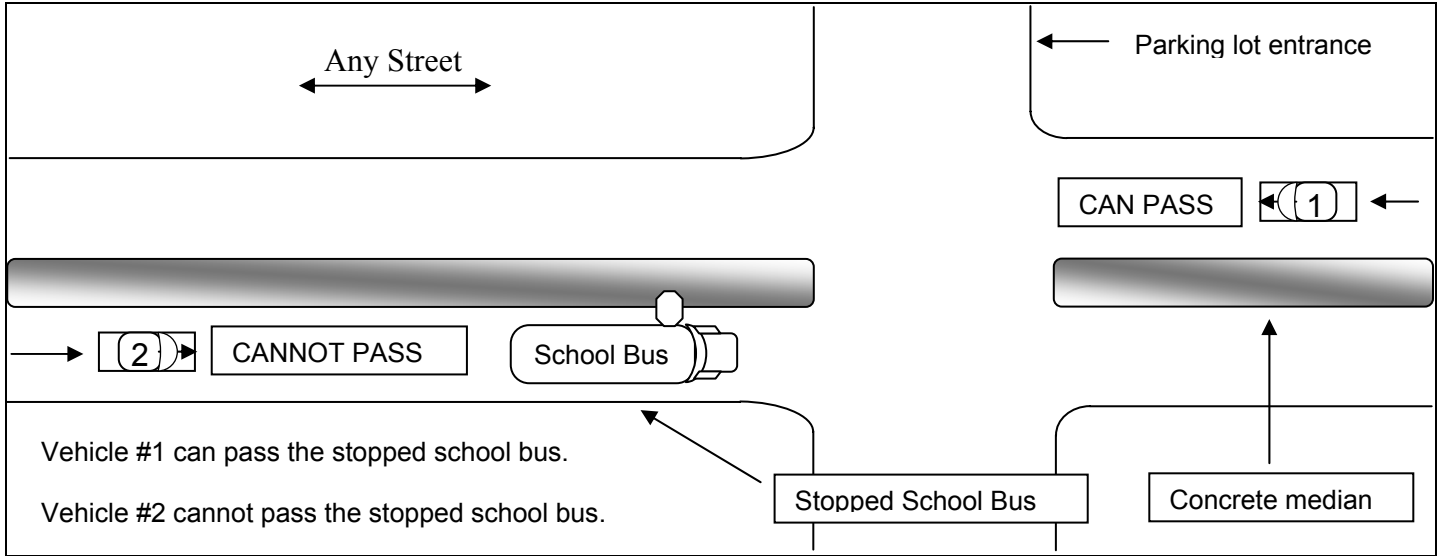
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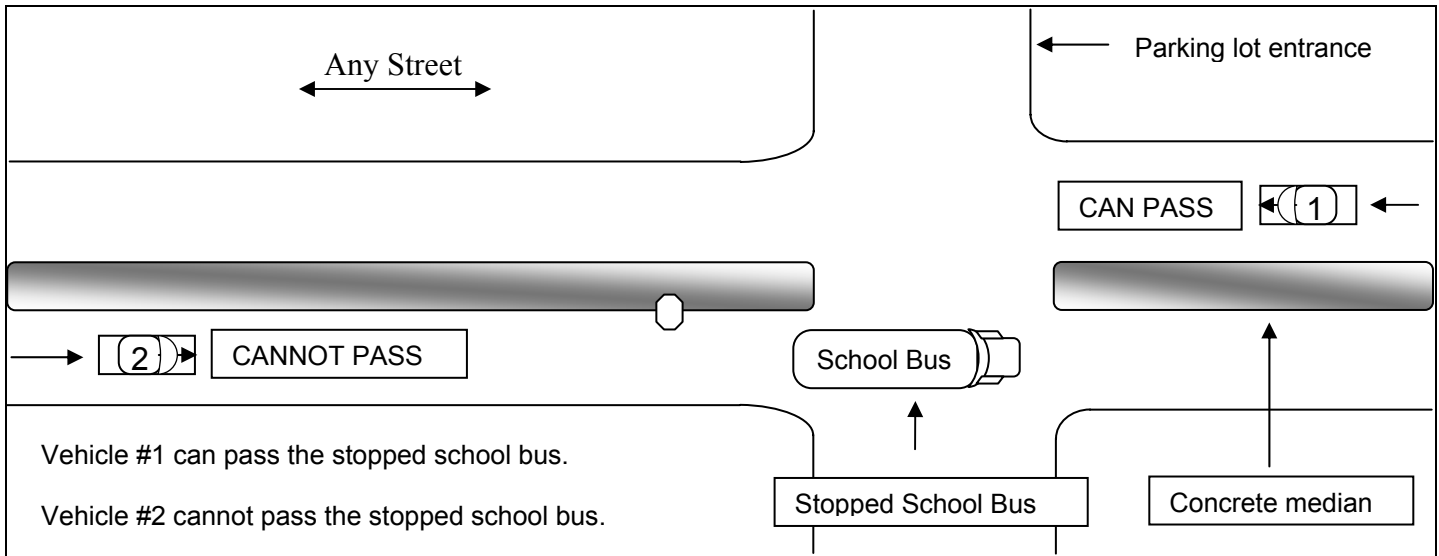
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### 5. Two-lane road with a break in the median



### 6. Two-lane road with a break in the median. Even though Vehicle #1 can pass in this situation, bus drivers are advised not to stop in the middle of the median break





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The relevant language from the statute is as follows:

G.S. 20-217(c):

“Notwithstanding subsection (a) of this section, the driver of a vehicle traveling in the opposite direction from the school bus, upon any road, highway or city street that has been divided into two roadways, so constructed as to separate vehicular traffic between the two roadways by an intervening space (including a center lane for left turns if the roadway consists of at least four more lanes) or by a physical barrier, need not stop upon meeting and passing any school bus that has stopped in the roadway across the dividing space or physical barrier.”

The statute also makes it unlawful for any school bus driver to receive or discharge passengers **or** for any school principal or superintendent to authorize a driver to do so on any roadway described above where passengers would be required to cross the street to reach their destination or to board the bus (**except** that passengers may be discharged or received at points where pedestrians and vehicular traffic are controlled by adequate stop-and-go traffic signals).

**PLEASE NOTE:** Officers who are operating emergency equipment (blue lights/siren) are advised to stop for a school bus in the same manner as all other drivers. There is no emergency operation exception that is expressly stated in the statute. Therefore, it would be left to a court to decide whether or not such an exception is implied and whether an officer acted reasonably under the circumstances in not stopping for a school bus.

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### DEALING WITH SERVICE ANIMALS (GUIDE DOGS, ETC.)

The purpose of this article is to provide guidance to officers (CMPD and Animal Control) in dealing with animals that are trained to assist individuals with disabilities. The situation may arise when an individual attempts to bring a service animal into a city-sponsored event or when an officer is called to mediate a dispute over the presence of such an animal at a public location.

Service animals are animals that are individually trained to perform tasks for people with disabilities, such as guiding people who are blind, alerting people who are deaf, pulling wheelchairs, alerting and protecting a person who is having a seizure, or performing other special tasks, such as retrieving dropped items or assisting a person with mobility impairment with balance. They are often dogs, but other types of animals are also trained and used as service animals. Service animals are working animals, not pets. Their use is covered by both the Americans with Disabilities Act (“ADA”) and State law.

Under the ADA, businesses and organizations that serve the public must allow people with disabilities to bring their service animals into all areas of the facility where customers are normally allowed to go. This federal law applies to all businesses open to the public, including restaurants, hotels, taxis and shuttles, grocery and department stores, hospitals and medical offices, theaters, health clubs, parks, and zoos.

Some of the highlights of the ADA guidelines are as follows:



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- Businesses and officers may ask if an animal is a service animal or ask what tasks the animal has been trained to perform, but **cannot** require special ID cards or registration/certification papers for the animal or **ask about the person's disability**.
- People with disabilities who use service animals cannot be charged extra fees ("pet deposits"), isolated from other patrons, or treated less favorably than other patrons.
- A person with a disability cannot be asked to remove his/her service animal from the premises unless:
  - (1) the animal is out of control and the animal's owner does not take effective action to control it (for example, a dog that barks repeatedly during a movie), or
  - (2) the animal poses a direct threat to the health or safety of others.
- Businesses that sell or prepare food must allow service animals in public areas even if state or local health codes prohibit animals on the premises.
- A business is not required to provide care or food for a service animal or provide a special location for it to relieve itself.
- Allergies and fear of animals are generally not valid reasons for denying access or refusing service to people with service animals.

Violators of the ADA can be required to pay money damages and penalties. The ADA is **not** subject to criminal enforcement by CMPD personnel.

North Carolina law (G.S. 168-3, 168-4.2, and 168-4.4) provides that a person with a disability has the right to be accompanied by a trained service animal while he/she is in any of the following places: common carrier, airplane, motor vehicle, railroad train, motor bus, streetcar, boat, or any other public conveyance, or mode of transportation; hotel, lodging place, or place of public accommodation, amusement or resort to which the general public is invited. "Person with a disability" generally means any person who has a physical or mental impairment which substantially limits one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

In addition, an animal that is in training to become a service animal may be taken into any of the above places for the purpose of training when the animal is accompanied by a trainer and is wearing a collar and leash, harness, or cape that identifies the animal as a service animal in training. A disabled person who is accompanied by a service animal or a person who is training a service animal may not be required to pay any extra compensation for the animal.

Under G.S. 168-4.5, it is unlawful to disguise an animal as a service animal or a service animal in training. In addition, it is unlawful to deprive a person with a disability or a person training a service animal or a service animal in training. In addition, it is unlawful to deprive a person with a service animal or a person training a service animal or any of the rights described above, or of any rights and privileges granted to the general public, or to charge any fee for the use of the service animal. A violation of this statute is a Class 3 misdemeanor.



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Officers may also encounter therapy animals, which are animals with good temperament and disposition, reliable, predictable behavior, and which may accompany people with disabilities. A therapy animal does not assist an individual with a disability in the activities of daily living and has not been trained to perform specific tasks for or on behalf of the individual. Instead, the animal may serve to provide companionship or reduce stress. Unlike a service animal, a therapy animal does not accompany a person with a disability at all times. A therapy animal is **not** considered to be a service animal under the ADA or State law.

**NOTE:** City Code Section 3-67 makes it unlawful for any person owning or having possession, charge, custody or control of any animal:

- 1) to take that animal, whether or not the animal is on a leash, into the boundaries of any city-sponsored public event, or
- 2) to fail to obey the command of a law enforcement officer or of an animal control officer to remove the animal from the event. There is an exception in the ordinance for guide dogs.

However, officers should **not** enforce the ordinance with regard to **any** service animals

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### INTOXILYZER ROOM – VIDEOTAPING

Officers should be advised that the Intoxilyzer Room located at the Intake Center is audio and videotaped. Everything that occurs in the room is recorded and defense attorneys can and do request copies of the tapes.

Under G.S. 20-16.2(a), before an intoxilyzer test is administered, the person charged must be notified, orally and in writing, of his/her rights in regard to the test. Those rights include the following:

- Right to refuse the test;
- Refusal to take the test will result in an immediate revocation of the person's driving privilege for at least 30 days and an additional 12-month revocation by DMV;
- Test results or the fact of refusal will be admissible in evidence at trial; and
- Driving privilege will be revoked immediately for at least 30 days if:
  - 1) the test results are 0.08 or more (0.04 or more for a commercial vehicle), or
  - 2) the person is under 21 and the test reveals any alcohol concentration.

In addition, the person has the right to call an attorney and select a witness to view the testing procedure, but the test may not be delayed for that reason for more than 30 minutes from the time the person is advised of his/her rights.

Officers should be careful in engaging in conversations with and responding to questions asked by defendants during the testing process. For example, officers should avoid giving advice about whether or not it would be helpful for the defendant to contact an attorney. If the question is asked, the defendant should be informed that the decision to contact an attorney is one that he/she must make. In addition, officers should not speculate as to the possible outcomes associated with a



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refusal to take the test, but merely provide the information contained in the above rights. Tapes from the Intoxilyzer Room are also available to officers upon request. The contact person at the Sheriff's Office is Deputy Marilyn Boyce Henson, (704) 353-1261, [boycemf@co.mecklenburg.nc.us](mailto:boycemf@co.mecklenburg.nc.us). The tapes are retained for a period of 29 days. In order to obtain a tape, an officer needs to provide the defendant's name and date of arrest.

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### TRANSPORTING OFFICERS AND ARREST AFFIDAVITS

Questions continue to come up as to whether or not it is appropriate for a transporting officer to sign an arrest affidavit ("pink sheet") on behalf of the arresting officer. The transporting officer **can and should** sign the affidavit, even though the arresting officer completed the narrative portion. In addition, the transporting officer should discuss the case thoroughly with the arresting officer. The arresting officer should **not** sign the affidavit if another officer is going to transport the suspect.

The narrative in the affidavit should **not** be written in the first person (for example, "I observed the suspect . . ."). This makes it appear that the transporting officer, who signs the affidavit, is the individual who made the arrest. Instead, the narrative should be written using the arresting officer's name (for example, "Officer Smith of the CMPD observed the suspect . . .").

The transporting officer should print his/her name and place his/her signature on the appropriate lines on the back of the affidavit. The transporting officer should sign the affidavit in the presence of the Sheriff's Office employee, who will then notarize the signature. **NOTE:** The transporting officer should **never** leave the Intake Center without signing the arrest affidavit and having it notarized.

In order to avoid being subpoenaed for court, the transporting officer should put "C" (for "complainant") beside his/her name on the arrest worksheet. The transporting officer should designate the arresting officer as a witness ("W") on the arrest worksheet, which will ensure that the arresting officer will be subpoenaed for court.

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### OFFICER REMINDERS

#### Magistrate's Office – Citations/Arrests

Whenever officers issue citations in connection with an incident in which an individual is arrested, they should give **all** of the citations for that individual to the personnel in Arrest Processing. This will help to ensure that the person is not charged twice for the same offense. In addition, officers should **not** put a court date on the citation(s), as the case(s) may go to Courtroom 1101, instead of Courtroom 2205, if the defendant is not released from jail. Finally, in these situations, officers should put only **one** charge on each citation.

#### Increase in Court Costs

Effective September 1, 2005, court costs increased from \$100.00 to **\$110.00**. In addition, the court costs for **seat belt** and **helmet** law violations increased from \$50.00 to **\$75.00**.

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