

**REPORT OF THE  
DEPARTMENT OF MOTOR VEHICLES,  
COMMISSION ON VIRGINIA ALCOHOL  
SAFETY ACTION PROGRAM, AND THE  
TRANSPORTATION SAFETY BOARD**

# **Administrative Revocation Of Driver's Licenses**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



## **SENATE DOCUMENT NO. 8**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
1990**



COMMONWEALTH of VIRGINIA  
*Department of Motor Vehicles*  
*2300 West Broad Street*

DONALD E. WILLIAMS  
COMMISSIONER

MAIL ADDRESS  
P. O. BOX 27412  
RICHMOND, VIRGINIA 2

REPORT ON ADMINISTRATIVE REVOCATION  
OF DRIVER'S LICENSES (SJR 172)

December, 1989

To the General Assembly:

As required by Senate Joint Resolution 172, I am submitting the attached report on administrative revocation of driver's licenses. The report was prepared by the Virginia Department of Motor Vehicles, the Transportation Safety Board, and the Commission on Virginia Alcohol Safety Action Program.

Information was obtained through the process of public hearings as well as from other states which have implemented administrative per se programs. Based on this information, it is the opinion of the Department of Motor Vehicles, the Transportation Safety Board and the Virginia Alcohol Safety Action Program, that an administrative license revocation program is appropriate for the Commonwealth of Virginia. Since this is a complex issue for which there are numerous alternative approaches, this group further recommends that prior to the development of legislation, a committee be appointed by the General Assembly to design a program that is best suited for Virginia.

Sincerely,

Donald E. Williams  
Commissioner

DEW/jkb

Attachment



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## RESPONSE TO SENATE JOINT RESOLUTION 172

### EXECUTIVE SUMMARY

#### Introduction

A task force comprised of the Department of Motor Vehicles, Commission on Virginia Alcohol Safety Action Program, and the Transportation Safety Board was organized in the spring of 1989 to respond to Senate Joint Resolution 172. The resolution requested these agencies to study the issue of administrative revocation as related to driving under the influence. The resolution also required the aforementioned agencies to provide for public hearings.

A panel of representatives from each of the following organizations was established to assist the task force with information received during the course of the public hearings.

- ◆ Department of Motor Vehicles
- ◆ VASAP Commission
- ◆ Transportation Safety Board
- ◆ Office of the Attorney General
- ◆ Supreme Court (General District Court Judge)
- ◆ Chiefs of Police
- ◆ Citizen Activist Group (MADD)

#### Findings

The following issues were identified from both written and oral testimony:

##### ◆ Safety ◆

The issue of safety on the highways of Virginia was a major concern identified by all testifying or submitting written comments. The method by which these drivers are removed, however, evoked much controversy and a wide range of remedies.

##### ◆ Deterrence ◆

Many of those testifying or submitting written comments believe administrative license revocation serves not only as a general deterrent to potential drunk/drugged drivers, but also as a specific deterrent to those previously convicted of DUI. However, many felt that in order for this process to be effective, the action must occur immediately and result in a punishment severe enough to discourage drivers from ever driving intoxicated or under the influence of drugs in the first place.

◆ **Constitutionality/Due Process** ◆

Those opposing the concept believe only a court of law should make the determination of whether or not an accused drunk/drugged driver should lose his license. The issue of "due process" was also a major concern. Those supporting administrative per se believe the question of constitutionality and due process has been answered through previous court cases in which the administrative per se process was upheld.

◆ **Police Involvement** ◆

Numerous law enforcement agencies responding to the issue of administrative per se support the basic concept of the program, if implemented in a manner that sufficiently addresses several major concerns. One such concern is the additional time that will be required to process paperwork and appear at hearings. They felt as though these requirements will result in a loss of patrol time.

◆ **Alcohol/Drug Treatment and Rehabilitation** ◆

Many who testified or submitted written comments felt that alcohol/drug treatment and rehabilitation should be incorporated as a major component in the administrative per se process. They felt that the elimination of such would have a detrimental effect on a process designed to focus on the alcohol/drug impaired individual.

**Considerations and Recommendations**

Based on the knowledge gained through the public hearings and the analysis of submitted written comments, it is the opinion of the Department of Motor Vehicles, the Virginia Alcohol Safety Action Program, and the Transportation Safety Board task force, that an administrative license revocation program is appropriate for the Commonwealth of Virginia.

To achieve an effective program that "best fits Virginia", it is the recommendation of this task force that a committee be established to design an administrative license revocation process for the Commonwealth of Virginia. The committee should consist of the following at a minimum:

- ◆ One or two General Assembly members representing each house
- ◆ One representative from each of the following Court levels:
  - Magistrate
  - General District
  - Circuit

- ◆ Representatives from:
  - State and Local Police
  - Department of Motor Vehicles
  - Attorney General's Office
  - Commission on Virginia Alcohol Safety Action Program
  - Local Alcohol Safety Action Program
  - Citizen Activist Groups

The design of the process by the committee should incorporate the following components and examine issues relative to those components.

### 1. Two-track system (Administrative and Judicial)

#### Administrative

In designing an administrative component, the committee should address the following issues:

- ◆ Who will have the responsibility of issuing the notice of revocation (i.e. police officer, magistrate, DMV official, other)?
- ◆ Will a temporary license be issued pending the administrative hearing?
- ◆ When and how will notification of license suspension/revocation be transmitted to DMV, in order to maintain accurate driver license status on the automated system?
- ◆ When and where will the administrative hearing take place?
- ◆ What are the criteria for requesting an administrative hearing?
- ◆ Will the police officer be required to be present at the administrative hearing?
- ◆ Will the decision of the administrative hearing be subject to appeal?
- ◆ If a not guilty verdict is rendered at the post-revocation administrative hearing, will the individual who originally revoked the license be liable for civil suit?

#### Judicial

The committee should design a process whereby a judicial component remains in place for adjudication of those charged

with driving under the influence as a criminal offense. The committee should examine the following issues relevant to the judicial process:

- ◆ If the license is revoked administratively and the offender is found not guilty when tried under the criminal sanction, will the judicial decision override or cause any consequence to the administrative decision?
- ◆ Will the results of the administrative hearing be admissible in the judicial proceedings?
- ◆ If the accused's license is restored at the administrative hearing, is he still required to stand trial on criminal charges?
- ◆ Will there be an appeal process after a decision is rendered by the General District Court?

## 2. Training and Public Awareness

The committee should examine and incorporate comprehensive training programs and appropriate public awareness efforts.

## 3. Identification of Resources

Based on the design of the program, the committee should examine resources that will be needed to effectively implement the administrative per se process.

### Implementation

It is the recommendation of this task force that the following time frame be followed for implementing the administrative per se program. This time frame allows for program development, training, and public awareness efforts to be accomplished.

1990 General Assembly appoints committee to design administrative per se program and report to 1991 General Assembly;

1991 General Assembly passes administrative per se statute;

July, 1991 through December, 1991: Training and public awareness elements occur;

January, 1992: Administrative per se statute becomes effective.

## Introduction

The purpose of this report is to respond to Senate Joint Resolution 172, passed by the 1989 session of the Virginia General Assembly. The resolution requested "the Department of Motor Vehicles, the Commission on Virginia Alcohol Safety Action Program, and the Transportation Safety Board to study the administrative revocation of the driver's licenses of persons who operate motor vehicles while under the influence of alcohol and/or drugs, or who refuse to submit to chemical testing after having been arrested for driving under the influence." A copy of the resolution may be found as Appendix A.

This report explains the process by which the aforementioned agencies addressed SJR 172. It also presents comments received from organizations and individuals concerning administrative per se, identifies issues needing further consideration, and offers recommendations for implementation. Additionally, Appendix B is a matrix designed to provide information on the various administrative per se models implemented in other states.

## Process Utilized to Address Senate Joint Resolution 172

### **Tri-Agency Task Force**

A task force comprised of the Department of Motor Vehicles, Commission on Virginia Alcohol Safety Action Program, and the Transportation Safety Board was organized in the spring of 1989. The primary objective of the group was to develop a process by which SJR 172 could be accomplished.

Components of the process included the development of a time-table, dissemination of relevant materials to specific groups and organizations, and providing the opportunity for citizens and organizations to comment on the issue through the process of public hearings.

### **Public Hearings**

Senate Joint Resolution 172 required the "aforementioned agencies [to] provide an opportunity for citizens and various interest groups to comment on the issues being examined through the process of public hearings." The following sections describe the efforts put forth by the task force to accomplish this requirement.

### **Establishment of Public Hearing Panel**

Much discussion ensued by the task force in regard to choosing the members of the panel for the public hearings. A balance of representation was of primary concern. Careful consideration was given to assure that the members

constituted a cross-section of organizations that would be affected by such a program, and/or would have critical interest and involvement in the issues surrounding administrative revocation.

Thus, a representative from each of the following organizations was selected.

- o Department of Motor Vehicles
- o VASAP Commission
- o Transportation Safety Board
- o Office of the Attorney General
- o Supreme Court (General District Court Judge)
- o Chiefs of Police
- o Citizen Activists Group (MADD)

#### **Dissemination of Information**

Realizing the dissemination of information to various interest groups and organizations was a major catalyst for this process, each member of the public hearing panel was requested to submit a list of groups they felt should be notified. The distribution of the materials targeted the following groups:

- o Commonwealth Attorneys
- o Defense Attorneys
- o General District Court Judges
- o Magistrates
- o Members of the Virginia General Assembly
- o Chiefs of Police
- o Sheriffs
- o State Police
- o City and County Administrators
- o Mothers Against Drunk Driving (MADD)
- o Virginians Opposing Drunk Driving (VODD)
- o Local ASAP Programs
- o Virginia Transportation Research Council
- o The National Highway Traffic Safety Administration
- o The National Transportation Safety Board
- o The Department of Motor Vehicles of Other States



A packet of materials was distributed to members of each of the previously mentioned organizations, prior to the public hearings. The packet included an invitation to speak or submit written comment; information on each public hearing; and a document prepared to address frequently asked questions. A copy of the information packet may be found as Appendix C.

### **Schedule**

The task force agreed that a public hearing should be held in each of the four major geographical areas of the Commonwealth. With this in mind, hearings were scheduled as follows:

- o Roanoke, VA. September 26, 1989
- o Springfield, VA. September 27, 1989
- o Newport News, VA. October 2, 1989
- o Richmond, VA. October 3, 1989

Notice of the intent to hold public hearings was published in The Virginia Register of Regulations beginning with the July 3 edition. The notice of the public hearings may be found as Appendix D. In addition, a press release was distributed statewide to media (print, radio, television). This press release may be found as Appendix E.

### Public Hearing Comment (Oral and Written)

The following sections describe the positions of those organizations and individuals who either testified at the public hearings or submitted written comment on the subject of administrative per se. Key phrases are quoted throughout in an attempt to preserve accuracy. Transcripts of each public hearing as well as copies of submitted written comments are on file at DMV and the Office of the Secretary of Transportation and Public Safety.

#### **Citizen Activists**

Citizen Activists groups including MADD (Mothers Against Drunk Driving), VODD (Virginian's Opposing Drunk Driving), and CCATS (Concerned Citizens Advocating Traffic Safety), testified at three of the four public hearings. Testimony from these groups indicated total support for the implementation of an administrative revocation statute. These groups offered suggestions for implementing the law while providing due process rights to the accused individual.

During the public hearing in Springfield, a MADD representative indicated that administrative license revocation has three primary objectives. These objectives are to "get the impaired driver off the road as soon as possible, provide swift license action to deter others from driving impaired, and to reduce alcohol-related crashes."

All groups which spoke offered the same basic recommendations for an effective administrative revocation statute. The following is a summation of those recommendations.

1. Allow for the immediate seizure of the driver's license.
2. Allow the police officer to choose which test is to be administered, (breath or blood).
3. Keep the administrative process separate from the judicial process.
4. The hearing should be in the jurisdiction where the arrest occurred.
5. The police officer should not be required to be present at the hearing.
6. License reinstatement fees should be increased to cover the cost of the program.

Lastly, these groups view the operation of a motor vehicle to be a privilege granted by the State and feel the State should also be able to remove that privilege, if abused by the driver. They also indicated a belief that the Commonwealth of Virginia has an obligation to the citizens to provide safe highways upon which to drive. They feel that license revocation remains to be "the most feared of sanctions", and "if swift and sure", can accomplish the basic objectives of removing the alcohol/drug impaired driver from the highway, offering a deterrent mechanism, and reducing alcohol-related accidents and deaths.

## Law Enforcement

Representatives of the law enforcement sector testified at three of the four public hearings. In addition, written comments were submitted to DMV by numerous law enforcement agencies. By and large, police officers support the concept of administrative license revocation, if implemented in a manner that sufficiently addresses several of their major concerns. Those concerns are:

1. The increase in paperwork required will amplify an already lengthy and cumbersome process of processing a drunk/drugged driver.
2. Required appearance at hearings will impair the police departments responsibility to provide adequate patrol coverage.
3. Appearance in court could potentially result in an increase in overtime expenditures.
4. The issuance of temporary licenses by the police officer could potentially create unnecessary risks and decrease quality control.

In addition to these concerns, the police officers that testified and submitted written comments posed several questions that were felt to need further consideration and clarification. These questions were:

1. What will the process be if an offender elects to take the blood test as opposed to the breath test? Presently, results of a blood test can take several weeks.
2. How will the process handle those drivers arrested in Virginia with an out-of-state license?
3. If the court disposes of a case in favor of the accused, or if the court allows the accused to operate under a restricted license, what effect will these decisions have on the revocation placed on the accused by the administrative hearing?

4. If, through the administrative hearing, the offender's license is returned, will he still be required to stand trial on criminal charges?

5. If the offender's license is returned through the administrative hearing process, is there potential for those involved in the confiscation of the license (i.e. police), to be liable for civil suit?

6. If the administrative hearing suspension/revocation goes on record, is it removed if the offender is found not guilty in court?

In summary, the police officers indicated that administrative revocation of a driver's license would send a "powerful message to the drinking driver", as well as serve as a strong deterrent for others. While supporting the basic principle of the proposed statute, they offered several suggestions which they feel would enable them to provide their required services while assisting in the removal of alcohol-impaired drivers from the highway. Those suggestions were:

1. The magistrate should be the individual who has responsibility for confiscating the driver's license.

2. The magistrate should be the individual who completes all affidavits required by DMV.

3. The magistrate should be the individual to issue temporary permits, or the offender should be required to report to DMV to request a temporary permit.

4. There should be a "waiting period" for drivers applying for a duplicate license. This would allow DMV time to be notified of any arrest.

#### **National and Federal Organizations**

Several national and federal agency representatives testified at the public hearings. Most have intensely studied administrative per se in other states and support

its enactment as law in Virginia. The National Transportation Safety Board, testifying in Springfield, considers administrative revocation to be "a most effective measure" to combat the problem of drunk drivers. They cited studies that have shown that "a person can drive approximately 5,000 miles drunk before they are arrested for the first time."

They also indicated a person's employment is not greatly affected, and that "more than 90% of those who lost their license still managed to get to work." Additionally, there is potential for the involvement of drivers in fatal crashes to be "reduced by 9%," as well as a significant decrease in recidivism rates. Their support for administrative revocation is based on the following premises:

1. License revocation is seen by the driver as a "severe sanction."
2. License revocation "can be invoked with certainty."
3. License revocation "goes into effect shortly after arrest."
4. License revocation has a "direct effect on public perceptions."
5. License revocation has the "advantage of being a less costly sanction than that of jail."

The Pacific Institute for Research and Evaluation also offered testimony at the Springfield public hearing in support of administrative revocation. They indicated that the law "improves general deterrence of drunk driving and improves specific deterrence for those that have previously been penalized for DUIs."

The Institute conducted a study for the U. S. Department of Justice; in which three states were the focus: North Dakota, Mississippi, and Louisiana. After implementation of administrative revocation statutes, two of the states showed "significant reductions in recidivism rates." The license suspension period in all three states was three months, with the effects of the suspensions lasting throughout the follow-up period of three years. In the state where recidivism rates were not significantly reduced, there was a "notable effect on other driving offenses."

The Institute noted that it is important to qualify that all three states had a "two-track system, meaning civil and judicial."

The National Highway Traffic Safety Administration reported at the public hearing in Richmond, reiterating much of what the other federal organizations had presented. In addition, the representative offered numerous suggestions for implementing an administrative revocation statute in Virginia. The recommendations were:

1. Enact legislation that "allows administrative revocation to be separate from judicial revocation."
2. Limit the "span of time from arrest to license suspension; usually 15 - 45 days is an appropriate length of time, with 30 days being the most frequently used time frame."
3. Do not "delay the suspension of the license if a driver requests a hearing."

4. Assure that the accused is "provided an opportunity for a hearing and appeal as soon after the revocation of the license as possible." Administrative revocation cannot be arbitrarily administered, it requires due process to remain constitutional."

5. Conduct the administrative hearing "in the jurisdiction where the arrest occurred."

In addition to these recommendations, the representative of the National Highway Traffic Safety Administration shared experiences from other states that currently have the administrative per se statute. He noted methods that can be utilized to avoid requiring the police officer's presence at the hearings, such as the State of Iowa allowing the officer to give testimony via the telephone. Other states allow a sworn affidavit as opposed to personal appearance. There tends to be somewhat of an increase in paperwork, but not to a burdensome extent. He indicated there will be additional cost involved, but this can be offset by an increase in reinstatement fees. And finally, he stated that "treatment for the alcohol-impaired driver is essential," and that requirement for treatment can be achieved through several different means. "Offer treatment as opposed to jail time; offer treatment as opposed to higher fines, or offer treatment as a requirement for reinstatement of the license."

#### **Commonwealth Attorneys**

Responses to the possibility of enacting the proposed administrative revocation law in Virginia were received from



three Commonwealth Attorneys. Two of these responses were received in writing, and one was publicly stated at the Roanoke public hearing.

Although all three attorneys indicated concern and support for getting the drunk driver off the highway, they did differ in the aspects of alternatives that they supported, and those they did not. For example, the attorney who spoke in Roanoke was supportive of a system "whereby the time, expense, and effort on the part of the people involved in getting the accused to trial is minimized...the most critical need in the judicial system is to get the accused into court and dispose of the case." The attorney indicated a major problem with continuances, and suggests that "if the license is taken at the time of arrest and charge, and not returned until final disposition by the court, the motivation to continue delaying cases would greatly diminish." In addition, he feels that there is "potential for confusion if this is handled administratively as opposed to judicially."

Another Commonwealth attorney indicated that an administrative revocation statute "might be appropriate in some cases, such as an urban jurisdiction, where an accused party would have access to public transportation allowing one to maintain employment pending trial." He did offer objection to the process in a rural area, "where an APS suspension would cause substantial hardship to individuals

who, despite being charged with driving under the influence, driving with a blood alcohol concentration greater than .10%, and/or refusal, may have legitimate defenses to those charges." The attorney indicated that he "would not be opposed to allowing officers to issue temporary restricted permits...pending trial, with the understanding that a further or complete suspension may be imposed upon conviction."

In closing, this attorney stated that he was "a firm believer in allowing an accused person his day in Court, and as such, tends to reject efforts by the government or administrative agencies to trample upon an accused's presumption of innocence, especially when the results of such action may cause one to lose his or her job."

The third Commonwealth attorney to respond on this issue indicated support for the administrative revocation of the license in refusal cases, but opposes such where the accused's BAC is .10% or higher. Addressing the instances separately, he indicated that the administrative revocation for refusal "has always been deemed to be an administrative rather than criminal sanction." He stated that "as such, questions of probable cause do not arise as they would in a criminal case and a post revocation hearing is clearly sufficient to meet the requirements of due process. Administratively, the current practice could be left in place with the magistrate simply forwarding his certifications to DMV rather than the Court. An

administrative per se [APS] rule where the blood or breath test is refused is clearly more appropriate than the current practice of cluttering up the Courts with such cases.

Further, by removing them from the Courts, refusal charges will no longer be a bargaining chip in plea negotiations in DUI cases."

As indicated earlier, this attorney opposes administrative revocation where the accused's BAC is .10% or higher. His opposition is "founded primarily on the horrendous impact of the loss of one's license in modern society and on the lack of safeguard in any APS system." He substantiated this argument by saying that "law enforcement officials are human..., and prone to err upon occasion. The machinery used to take breath tests is subject to human manipulation and, if infrequently, mechanical failure. As much as [he] want[s] to convict drunk drivers and get them off the road, the effects of license revocation are simply too great to impose without the greatest safeguards... bureaucrats, even lawyer bureaucrats... are not equipped to adequately determine questions such as probable cause to arrest; to fairly judge the credibility of witnesses and properly consider the nuances of a full hearing in a DUI case. Even judges, who are acutely aware of the problem, will admit to feeling a need to support law enforcement officers. Bias toward law enforcement officials is bound to be even greater among administrators who, unlike judges, will not function in full view of the people and their fellow attorneys, but

rather will function subject only to the scrutiny of their supervisors within DMV."

### **Defense Attorneys**

Written comments were received from twenty-five attorneys across the Commonwealth. Of this total, twenty indicated adamant opposition to the enactment of an administrative per se statute. Three indicated support for such a law, and two were divided on the issue. For simplification purposes, remarks from each group will be summarized separately.

### Attorneys Indicating Opposition

Twenty of the twenty-five attorneys submitting written comments on the issue of administrative per se in Virginia were opposed to the statute for a myriad of reasons. This report attempts to summarize those views.

The majority of the attorneys opposing administrative per se believe the proposal is "misguided, unjust, and an unconstitutional deprivation of due process." A basic concern in regard to due process is that they do not believe anyone other than a General District or Circuit Court judge should decide probable cause. One attorney summed it up by saying "to enact a statute which would allow deprivation of an individual's privilege to operate a motor vehicle on probable cause determined by someone other than a judicial officer opens up the possibilities of persons being deprived of their livelihood based upon erroneous decisions or

misapplications by non-qualified individuals."

Further comment indicated that "evading and thus eliminating our fundamental constitutional rights is not the proper way to solve a social problem." The "fundamental concept behind our judicial system is that a person is innocent until proven guilty. This Act seeks to punish people before they are proven guilty and denies the individual his fundamental right by categorizing the punishment as administrative."

In addition to the issue of due process, many attorneys argued that allowing the police officer to revoke a persons' license is "a dangerous step towards establishing a police state." This law would allow "too much power to be placed in the hands of the police officer." Additional responses indicated that the current processes by the court and the Department of Motor Vehicles are "more than adequate", and that "in this country, we must tolerate some delays and inefficiencies in the administration of our system of justice, it being felt that on balance, such delays and inefficiencies are the price we must pay to avoid a police state."

Another issue that attorneys commented on was the concern that administrative revocation in Virginia would "gut the VASAP program." They fear that when a person's license is taken by a police officer, "the incentive for VASAP is gone." One attorney remarked that "it now appears that the issue has become something of a political football to be bandied about, and it is far better to address the problem

of obtaining treatment for the serious alcoholic driver, rather than imposing a new and unnecessary penalty as the administrative revocation statute."

Additionally, many attorneys feel that it is "obvious that the true reason for the push for this statute is federal handouts to State government." The "only real benefit to the Commonwealth of Virginia and its citizens is that an administrative per se statute would get federal grants which might otherwise be lost. The truth of the matter is, there is no such thing as a free lunch. Federal grants are either financed by debt or by revenues collected from the citizens of the country as a whole, including the citizens of Virginia."

Several attorneys offered proposals in lieu of the implementation of an administrative per se process. One attorney suggested that "as an alternative, stricter sentences be imposed by the courts..." Another suggested that the General Assembly could "mandate that DUI charges be tried within thirty days and that mandatory suspension of driving privileges following conviction of a DUI could be lengthened." Still another suggested that a potential solution to the problems of delays in the appeals process might be remedied by a "statute prohibiting such persons from retaining their operators permits pending appeal." And finally, one attorney believes that "increasing the certainty of punishment, not the severity, is the solution." Finally, in addition to submitting argument opposing the

enactment of an administrative per se statute and alternative solutions to the implementation of such, the attorneys that responded posed several questions. These questions were as follows:

1. What happens to implied consent law if the accused chooses a blood test as opposed to a breath test? Results from blood tests often take several weeks.
2. What is the process for when the license of the accused is taken administratively, and then he is found not guilty in court?
3. Will the results of a post-revocation hearing be admissible in the ultimate court proceedings?
4. As the Department of Motor Vehicles' administrative revocation would not be a double jeopardy situation in that it is a civil penalty, shouldn't the State be subject to a tort claim when the DMV errs?

#### Attorneys Indicating Support

Three attorneys that submitted written comment on the subject of administrative per se indicated support for this type of process. One attorney wrote "we have for too long suffered at the hands of those who cannot control their drinking and insist upon driving while intoxicated, killing thousands of people on our roads." Another attorney feels that the most effective means of punishing a drunk driver is to take away his license. "The fines, jail sentences, etc. that are the sanctions provided under the criminal prosecution for DUI offenses are not the primary consideration of a driver, nor a primary deterrent in preventing those offenses." The third attorney responding offered the suggestion that "in the case of fatal accidents

caused by someone driving under the influence, that there be a mandatory prison sentence for the inebriated perpetrator requiring a minimum period of incarceration of the same number of years of life expectancy possessed by the person who was killed at the time of his death. Where more than one person was killed, I should think the life expectancies should be totalled together and that the guilty party should serve for at least that number of years."

#### Attorneys Divided on the Issue

Finally, two attorneys submitted written comment that indicated partial support for such a statute, and partial opposition. Both attorneys indicated no opposition to administrative revocation in cases where the defendant refuses to take a breath or blood test. However, one attorney feels that "the concept of a restricted license on a pre-trial basis would be more appropriate than a total suspension." This same attorney opposes "any changes in the law as to first offenders," although he would not object to an administrative process "for an alleged multiple offender, which results in a restricted license pending Court action and allowing the administrative restriction to be encompassed as part of the Court's sentence." The other attorney responding did not favor an administrative per se statute for individuals charged with driving under the influence. He feels that DUI "has always been a much more complicated matter, and at times is dependent on subjective



determinations by the arresting officer." He did not believe that the administrative process is "adequate to protect the rights of those accused of driving while intoxicated, and that it is further likely that for DWI cases, the administrative hearing will become another level of litigation, incurring great cost and expense to the Virginia taxpayers, and resulting in many appeals to the Virginia court system."

#### **General Assembly Members**

During the public hearing in Springfield, the Honorable Joseph V. Gartlan, Jr., patron of Senate Joint Resolution 172, offered comments to the panel. He indicated the "need to make people very, very much aware that while drunk driving is a crime, it's not just that. It's an abuse, a gross abuse, of a privilege that our society confers on people, and our society ought to be free in the same way it confers that privilege, to pull it away. We oughtn't to have to have in every case a judicial proceeding that removes that right or privilege." He feels that "what we continue to struggle against in Virginia and elsewhere in the nation in terms of getting a handle on the undiminished and in some cases increasing degree of alcohol-related crashes and fatal crashes on our highways across the country is at bottom a question of attitude. Attitude not just on the part of legislators, not just on the part of prosecutors, not just on the part of judges, but attitudes

on the part of the general public."

Speaking before the panel at the Newport News public hearing, Delegate Alan A. Diamonstein offered strong support for an administrative revocation statute in Virginia. He feels that such a statute would be a "logical extension of our current .10 per se and implied consent statutes," and it will offer several advantages. First, an administrative per se approach "would remove the drunk or drugged driver's license more quickly than is possible under the current implied consent law." Secondly, "the threat of an administrative per se revocation hopefully would deter at least some drunk or drugged persons from driving at all." Lastly, the procedure is "an administrative process, not a criminal process. This makes it easier to revoke the license of the drunk or drugged driver." He also indicated that he believes administrative per se will provide "necessary safeguards to protect innocent persons from having their license revoked." The safeguards include "periodic testing of the equipment that measures the blood alcohol level, training of the personnel who conduct these tests, swift completion of the test, prompt notice to drivers who are found to have alcohol or drugs in their blood, and lastly, a hearing for drivers who feel their license was improperly revoked."

### Other States

Representatives from Delaware, Washington D. C., Maryland, and North Carolina, testified at the public hearing in Richmond. All of these states have an administrative per se program. The following is an explanation of their respective programs and a summarization of their experiences encountered as a result of the implementation of such a program.

### Delaware

The Director of the Delaware Motor Vehicle Department described Delaware's system as being "two-track." The statute, which was implemented in February, 1983, has an administrative system and a judicial system, and was originally passed as a "means to conserve prison space." In that state, the police officer, upon making the arrest, confiscates the license. A form, which is fairly simple to complete and includes basic driver's license information, is issued and serves as the revocation notice as well as the temporary driver's license. It informs the accused that he has fifteen days to personally appear at a DMV office and apply in writing for an administrative hearing if he wants one. If the person does not request a hearing, the revocation becomes effective on the sixteenth day, and remains administratively revoked for ninety days. This revocation is a "hard revocation, meaning no work license, no occupational license, of any kind." The Director

indicated that since 1983, "75% of those people arrested do not request hearings." If the person does request a hearing, it must be scheduled within thirty days, and is held in the jurisdiction where the arrest occurred. One continuance is allowed for both sides, that is, one for the defendant and one for the prosecutor. The police officer must be present at the hearing. The temporary driving permit is extended until the outcome of the hearing. A decision must be issued by the hearing officer within fifteen days after the hearing. Each hearing is scheduled to last forty-five minutes. Fifteen minutes is allowed for either side to be late. Witnesses are allowed.

During the ninety day revocation period, the person is required to complete an alcohol program. There are two such programs in Delaware, one for the "so-called social drinker, and one for the problem drinker." All fees for the programs are paid by the offender.

Prior to admittance in either program, the offender must be evaluated. The fee for this evaluation is \$50 and also must be paid by the offender. The social drinker program is a sixteen-hour program and costs \$100. The problem drinker program is a minimum of 616 hours, and the fee is \$490. If the offender's BAC is .17 or above, he is automatically referred to the problem drinker program.

The two programs are administered by private entities, and are not part of the Department of Motor Vehicles. They are, however, under the purview of the Secretary of Public

Safety. Upon completing the program, a completion certificate is submitted to the Department of Motor Vehicles and they determine if the person should be re-licensed. This determination by DMV is based on an interview with the offender, reference checks, and a review of the offender's driving record. The fee for reinstatement of the license is \$125.

As stated previously, Delaware has a judicial track for drunk driving convictions. The administrative track and the judicial track are two separate systems. Under the judicial track, if the person is a first offender, he may apply for enrollment in "The First Offender's Election Program, however, he must meet certain eligibility requirements." A person is not eligible if:

1. The BAC is greater than .20;
2. The offender has had another DUI within the last five years;
3. The offender was involved in an accident where anyone was hurt except himself;
4. The offender has significant traffic violations on his driving record within the last three years.

If the person enrolls in this program, he gives up his right to a speedy trial. If he fails to complete the program, he is taken back to Court and convicted of DUI.

The Director also shared additional information regarding Delaware's experience with administrative per se. The State has not encountered a problem with offenders losing their jobs as a result of license revocation. Delaware also has

an implied consent law, and they have tried to "build in an incentive package in the law, whereby, if you take the test, the penalty will be less." So far, they have experienced about 16% refusal to the test. The State is attempting to revise the law, where refusing to take the test, regardless of the BAC level, will result in a one-year hard revocation. Also, the Attorney General has ruled that there will be no "plea-downs" for DUIs, and if there are, the prosecutor must submit a justification for the plea agreement.

In terms of additional resources required as a result of administrative per se, Delaware received four additional clerical positions and two additional hearing officer positions to accommodate a driver population of approximately 500,000. These positions were filled on an "as-needed basis."

#### Washington D.C.

The Administrator from the Washington D.C. Transportation Systems Administration explained that in D.C., when a person is arrested for driving under the influence, he is issued a "proposed order of suspension." The person has five days to apply for a hearing. If he does not request a hearing, the order of suspension becomes effective and the person is suspended until disposition of the case is rendered in the Superior Court of D.C. If the defendant is found not guilty, the Bureau of Motor Vehicle Services has to hold a final hearing to restore the license. If the defendant is

found guilty, the revocation is mandatory and the Bureau is not required to hold another hearing.

During the administrative hearing, the police officer is summoned. The defendant can have legal representation and present witnesses. He can also cross-examine the police officer. The administrative hearing last approximately fifteen to twenty minutes. The Bureau employs four hearing examiners and one Motor Vehicle Services clerk.

In the District of Columbia, there are discretionary revocations and mandatory revocations. Mandatory revocations include:

1. Driving under the influence of alcohol or drugs;
2. Homicides committed by means of a motor vehicle;
3. Leaving the scene of an accident where there is personal injury;
4. Reckless driving involving personal injury;
5. Commission of a felony where a motor vehicle is used.

When a person is found to have an alcohol or drug problem, they are referred to a medical review unit within the DC Bureau of Motor Vehicles. A psychologist evaluates the drinking behavior. The offender may be referred to a professional alcohol/drug treatment program. Once the person has completed the treatment program, they may apply for reinstatement of the driver's license.

## Maryland

The Administrator for the Maryland Motor Vehicle Administration explained that Maryland went through the same process concerning administrative per se just last year. The effective date of their APS statute is January, 1990. To develop an administrative revocation program that would effectively work for Maryland, a committee was formed consisting of six members of the General Assembly (three from each House), six members of the judiciary (representing all three levels of courts), the Administrator of Maryland's Motor Vehicle Administration, the Superintendent of Maryland's State Police, a staff person from the Governor's office, and four representatives of public interest groups. Maryland's administrative per se statute provides for immediate confiscation of the driver's license. The driver has ten days to request a hearing. Written testimony of the police officer and the test technician are prima facie evidence.

The Administrator offered several suggestions to Virginia as the General Assembly considers implementing administrative per se. First, Maryland feels that if Virginia requires a mandatory suspension for test refusal, the penalty for refusal should be greater than for taking and failing the test. "If the driver doesn't face a greater consequence for refusing the test, more drivers will refuse the test to avoid the APS statute's suspension, thereby making the probability of convictions decrease."



The Administrator stressed the importance of everyone working together in the program development process. "It is a very political process, and the best way to be successful in a political process is to involve all the players." In addition, he suggested that the "legislation be written carefully so that it does not contradict or offset other programs that are in place."

Maryland has received appropriations for seven additional hearing officers and nine additional clerical positions to accommodate a driver population of approximately 3,000,000. They have also instituted a publicity campaign known as "Drive to Survive." This campaign was funded partially by Federal funds and partially by private donations. GEICO gave \$150,000 to buy "air time" to run the advertisements. Finally, Maryland has established two diversionary treatment programs for the drinking driver. The Motor Vehicle Administration provides alcohol education programs for the social drinker and the State Health Department administers a program for the more serious problem drinker.

#### North Carolina

The final state representative to testify was the Special Deputy Attorney General for the State of North Carolina. She stated that North Carolina has what she believes is a "unique animal in the United States in our Administrative per se statutes." If a person is charged with an implied consent offense and the test results are .10 or higher, or

the person refuses the test, their license is confiscated on the spot. The offender is taken before a magistrate, where the police officer testifies as to probable cause. A revocation report is issued and a copy is given to the offender. The revocation period is ten days or until the offender pays the \$25 administrative fees. If the offender does not physically have his license, he has five working days to produce it. If he doesn't produce it within five days, the revocation period becomes a thirty day revocation period. The license revocation period does not begin until the license is produced.

On the back of the revocation notice, there is an explanation to the offender that he has a right to a hearing, and must make this request in writing. If he requests a hearing, a judicial officer, which can be a magistrate, has to hold that hearing within three working days. The offender can request a hearing before a District Court judge. In this case, the judge has five working days to hold the hearing. The driver's license remains revoked. North Carolina estimates that "less than one percent request hearings."

Beginning January, 1990, anyone arrested for driving under the influence in North Carolina with a BAC of .10 or more, will have to undergo an assessment by a local mental health center that is licensed by that State.

Finally, the license reinstatement fee for a DUI conviction in North Carolina has been raised from \$25 to \$250.

## Summary of Mutual Concerns

Throughout the course of public hearing testimony and written comment analysis, issues of mutual concern were continually emphasized. The following summarizes those "common" issues that were presented in the previous section.

### **Safety**

Of concern to all those testifying at the public hearings or submitting written comment, was the issue of safety on the highways of the Commonwealth. According to the 1988 Virginia Crash Facts report, 522 persons were killed in alcohol-related crashes in 1988. This was a 24.9% increase from the previous year. During that same year, 14,172 persons were injured in alcohol-related crashes, representing a decrease of 5.6% from 1987. There were 46,044 persons arrested for driving under the influence, and of those, 84.2% were eventually convicted of DUI.

No one testifying or submitting written comment disputed that the alcohol/drug impaired driver is a threat to the safety of motorists who utilize Virginia's highways. Nor did they dispute that the removal of the alcohol/drug impaired driver is one means by which our highways could be made safer. However, the method by which these drivers are removed evoked controversy and varying remedies.

## **Deterrence**

A number of those testifying at the public hearings consider license revocation to serve not only as a general deterrent to drunk/drugged drivers, but also as a specific deterrent to those previously convicted of driving under the influence. However, many believe that in order to achieve the optimal deterrent effect, the action must occur immediately and result in a punishment severe enough to discourage drivers from ever driving intoxicated or under the influence of drugs in the first place. If the driver knows that he will definitely lose his license, the risk of that loss will in fact deter.

## **Constitutionality/Due Process**

The issue of constitutionality and due process rights of the driver accused of driving under the influence was perhaps the most controversial issue among those testifying and submitting written comment.

On the one hand, strong objection was voiced for allowing anyone other than a court of law, the decision of whether or not an accused drunk/drugged driver should lose his license. It was felt the accused should always be presumed innocent until proven guilty. By allowing an administrative hearing to occur as a post-revocation process, the presumption of innocent until proven guilty is eliminated. Additionally, many who opposed administrative license revocation felt this type of process would not permit extenuating circumstances

relevant to the case to be considered when making the ultimate decision of whether or not to revoke a license. On the other hand, many who testified or provided written remarks felt that the issues of constitutionality and due process have already been settled by previous court decisions in which the administrative per se process was upheld. Additionally, those supportive of administrative per se felt that the State issues licenses to drivers who, by acceptance of that license, agree to operate a motor vehicle in a safe and law-abiding manner. If the driver fails to operate the motor vehicle in that manner, the State has the authority to remove that license.

#### **Police Involvement**

A major concern to a number of those remarking on the administrative per se concept was the amount of time that will be required of the police officer. Numerous law enforcement agencies, although supportive of the basic concept of administrative per se, fear they will be required to spend much time processing additional paperwork and appearing at hearings. They felt that the requirements will result in a loss of patrol time, which is a major responsibility of the law enforcement officer in the community.

## **Alcohol/Drug Treatment and Rehabilitation**

Numerous comments were received encouraging the implementation of a program that integrates alcohol/drug treatment and rehabilitation as one of its major components. A number of individuals felt strongly that the elimination of this component would have a detrimental effect on the process that was originally designed to focus on the alcohol/drug impaired individual.

Considerations and Recommendations for Implementing An  
Administrative Per Se Law in Virginia

From the knowledge gained by listening to the experiences of those familiar with the administrative revocation issue, as well as hearing and reading the opinions of interested parties in Virginia, it is the opinion of the Department of Motor Vehicles, the Transportation Safety Board, and the Virginia Alcohol Safety Action Program task force, that an administrative license revocation process is appropriate for the Commonwealth of Virginia.

However, the task force feels that a process needs to be developed that will not only serve the needs of the citizens of Virginia, but is also integrable into an intricate system already established. In other words, we believe that a process that "best fits Virginia" needs to be developed. Therefore, it is the recommendation of this task force that a committee be established to design an administrative license revocation process for the Commonwealth of Virginia.

This committee should consist of the following at a minimum.

- ◆ One or two General Assembly members representing each house
- ◆ One representative from each of the following Court levels:
  - Magistrate
  - General District
  - Circuit
- ◆ Representatives from:
  - State Police
  - Local Police
  - Department of Motor Vehicles
  - Attorney General's Office

- Commission on Virginia Alcohol Safety Action Program
- Local Alcohol Safety Action Program
- Citizen Activist Groups

The committee should design a process that incorporates the following components, which are felt to be imperative to an effective program in Virginia:

**1. Two track system (Administrative and Judicial)**

**Administrative**

In designing an administrative component, the committee should address the following issues:

- ◆ Who will have the responsibility of issuing the notice of revocation (i.e. police officer, magistrate, DMV official, other)?
- ◆ Will a temporary license be issued pending the administrative hearing?
- ◆ When and how will notification of license suspension/revocation be transmitted to DMV, in order to maintain accurate driver license status on the automated system?
- ◆ When and where will the administrative hearing take place?
- ◆ What are the criteria for requesting an administrative hearing?
- ◆ Will the police officer be required to be present at the administrative hearing?
- ◆ Will the decision of the administrative hearing be subject to appeal?
- ◆ If a not guilty verdict is rendered at the post-revocation administrative hearing, will the individual who originally revoked the license be liable for civil suit?



## Judicial

A judicial process should remain in place for adjudicating those individuals charged with driving under the influence as a criminal offense. In light of the recommendation that an administrative track also be developed, the judicial process should remain a separate one. In addition, the committee should examine the following issues:

- ◆ If the license is revoked administratively and the offender is found not guilty when tried under the criminal sanction, will the judicial decision override or cause any consequence to the administrative decision?
- ◆ Will the results of the administrative hearing be admissible in the judicial proceedings?
- ◆ If the accused's license is restored at the administrative hearing, does he still have to stand trial on criminal charges?
- ◆ Will there be an appeal process after a decision is rendered by the General District Court?

## 2. Training and Public Awareness

Imperative to the development of an administrative per se process is the coordinated training required for all agencies and organizations involved. The committee designing the process should examine and incorporate a comprehensive training program that targets police, judicial officials, DMV officials, ASAP, and citizen activist groups. In addition to training, a public awareness effort should be developed prior to implementation.

### 3. Identification of Resources

The committee developing the administrative per se process should identify, based on the design of the program, resources that will be needed to effectively implement this process. Resources should include, but not be limited to, costs associated with implementing the program based on anticipated increases in personnel, the number of hearings required, police appearances at hearings, public awareness, and forms that will need to be developed and printed.

The National Highway Traffic Safety Administration has estimated that the average cost for implementing an administrative per se program is approximately \$100,000.

This figure is based on a 1986 survey and includes costs for four additional clerks, training, forms, and other administrative expenses.

The committee should also examine other avenues of reducing the cost of the program such as potential Federal Alcohol Incentive Grant Funds (23 USC 408), increasing reinstatement fees, fees for hearings, and fees for alcohol/drug treatment programs.

## Implementation Process

It is the recommendation of this task force that the following time frame be followed for implementation of the administrative per se program. This time frame allows adequate time for program development, training, and public awareness efforts to be accomplished.

1990 General Assembly appoints committee to design administrative per se program and report to 1991 General Assembly;

1991 General Assembly passes administrative per se statute;

July, 1991 through December, 1991: Training and public awareness elements occur;

January, 1992: Administrative per se statute becomes effective.

SENATE JOINT RESOLUTION NO. 172

*Requesting the Department of Motor Vehicles, the Commission on Virginia Alcohol Safety Action Program, and the Transportation Safety Board to study administrative revocation of driver's licenses.*

Agreed to by the Senate, February 23, 1989

Agreed to by the House of Delegates, February 21, 1989

WHEREAS, many persons continue to illegally operate motor vehicles while under the influence of alcohol and/or drugs; and

WHEREAS, in violation of Virginia's implied consent law, many of these drivers refuse to submit to chemical tests to determine blood-alcohol or drug content; and

WHEREAS, the Governor's 1983 Task Force to Combat Drunk Driving recommended the enactment of a law providing for the administrative revocation of the driver's licenses of those who operate motor vehicles under the influence of alcohol or drugs, or who refuse to submit to chemical testing; and

WHEREAS, the 1983 Presidential Commission on Drunk Driving recommended that each state enact an administrative revocation law; and

WHEREAS, twenty-three states have enacted administrative revocation laws and subsequently experienced a significant reduction in alcohol-related crashes, fatalities and injuries; and

WHEREAS, since 1983 over 2,400 people have been killed and 75,000 people injured in alcohol-related accidents within the Commonwealth; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Department of Motor Vehicles, the Commission on Virginia Alcohol Safety Action Program, and the Transportation Safety Board are requested to study administrative revocation of the driver's licenses of persons who operate motor vehicles while under the influence of alcohol and/or drugs, or who refuse to submit to chemical testing after having been arrested for driving under the influence. The aforementioned agencies shall provide an opportunity for citizens and various interest groups to comment on the issues being examined through the process of public hearings.

All agencies of the Commonwealth shall render assistance upon the request of the aforementioned agencies.

The Department, VASAP and the Safety Board shall complete their work in time to submit their findings and recommendations to the Governor and the 1990 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for processing legislative documents.

Administrative Per Se and Pre-DWI Adjudication Licensing Actions:  
Sanctions as of October 25, 1989

State	BAC Level	Mandatory Minimum License Action		
		1st offense	2nd offense*	3rd/Subsequent offense*
AK	0.10	R-30 days	R-1 yr	R-10 yr
AZ	0.10	S-30 days	S-90 days	S-90 days
CA (Eff. 7-1-90)	0.10	S-4 mos.	S-1 yr	
CO	0.10	R-3 mo	R-1 yr	R-1 yr
CT (Eff. 1-1-90)	0.10	S-90 days	S-1 yr	S-2 yrs
DE	Probable cause of DWI	R-3 mo	R-1 yr	R-18 mo
DC	Sufficient evidence of DWI	---	---	---
FL (Eff. 10-1-90)	0.10	S-6 mos.	S-1 yr	
IL	0.10	---	S-90 days	S-90 days
IN	0.10	Suspension up to 180 days or until the DWI charges have been disposed of, whichever occurs first.		
IA	0.10	---	R-1 yr	R-1 yr
KS	0.10	S-30 days, then restricted for 60 days	S-1 yr	*If there are previous convictions in KS, stiffer sentences can be imposed, including court-ordered treatment
KY	Alternative pre-DWI criminal adjudication licensing action by the courts if there is probable cause and certain other circumstances are present.			

State	BAC Level	Mandatory Minimum Licensing Action		
		1st offense	2nd offense*	3rd/subsequent offense*
LA	0.10	S-30 days	S-1 yr	S-1 yr
ME Over 21	0.08	S-90 days	S-1 yr	S-2 yr
ME Under 21	0.02	S-1 yr	---	---
MD (Eff. 1-1-90)	0.10	S-45 days	S-90 days	S-90 days
MA	Alternative pre-DWI criminal adjudication licensing action by the courts.			
MN	0.10	---	---	---
MS	0.10**	---	---	---
MO	0.13***	S-30 days, then restricted for 60 days	R-1 yr, if one or more "alcohol related enforcement contacts" within the preceeding 5 yrs.	
NV	0.10	---	---	---
NM Over 18	0.10	R-90 days	R-1 yr	R-1 yr
NM Under 18	0.05	R-6 mo	R-1 yr	---
NY	Alternative pre-DWI criminal adjudication licensing action by the courts. Temporary suspension is mandatory for repeat offenders w/in 5 yr.			
NC Judicial Per Se	0.10	R-10 days	R-10 days	R-10 days
ND	0.10	S-30 days	S-1 yr	S-2 yr
OH	Alternative pre-DWI criminal adjudication licensing action by the courts.			
OK	0.10	---	---	---
OR	0.08	S-30 days	S-1 yr	S-1 yr
UT	0.08	---	---	---

State	BAC Level	Mandatory Minimum Licensing Action		
		1st offense	2nd offense*	3rd/subsequent offense*
VT	0.10	S-90 days****	S-18 mos****	S-5 yr****
WVa	0.10 or driving under the influence	R-90 days	R-5 yr	R-10 yr
WI	0.10	S-15 days	S-15 days	S-15 days
WY	0.10	---	S-90 days	S-90 days

S = suspension; R = revocation.

\*Time period between offenses varies. A test refusal under an implied consent statute may also be considered a prior offense under the administrative per se statute.

\*\*Special provisions, procedures.

\*\*\*Administrative sanctions do not apply if the arrest was made at a roadblock or checkpoint, and there was not probable cause for the arrest prior to stopping the vehicle.

\*\*\*\* Each period of suspension includes an alcohol assessment and the license will not be returned until completion of treatment, if the assessment indicates it is warranted.

Sources: (1) Digest of State Alcohol-Highway Safety Related Legislation, 6th ed. (Washington, D.C.: U.S. Department of Transportation, National Highway Traffic Safety Administration, 1988); (2) telephone conversations with state motor vehicle officials; and (3) Codes of the various states.



DONALD E. WILLIAMS  
COMMISSIONER

J. F. OBER  
ASSISTANT COMMISSIONER



PEGGY S. McCREREY  
PLANNING AND PROGRAM DEVELOPMENT  
DIRECTOR

# COMMONWEALTH of VIRGINIA

*Department of Motor Vehicles  
2300 West Broad Street*

MAIL ADDRESS  
P. O. BOX 27412  
RICHMOND, VIRGINIA 23269

September 15, 1989

Dear Colleague:

The 1989 Session of the Virginia General Assembly passed a resolution (SJR 172) requesting the Department of Motor Vehicles, the Transportation Safety Board, and the VASAP Commission to study the administrative revocation of the driver's license of persons who operate motor vehicles while under the influence of alcohol and/or drugs, or who refuse to submit to chemical testing after having been arrested for driving under the influence. These agencies were also requested to provide citizens and various interest groups the opportunity to comment on issues relative to this subject through a series of public hearings.

I cordially invite you to attend a series of four public hearings. Attached is a list of the dates, times, and locations of each. Should you wish to speak at any of the hearings, I would appreciate you submitting a written copy of your remarks, if possible, to Vince Burgess. His address is:

Vince Burgess, Administrator  
Transportation Safety Administration  
Department of Motor Vehicles  
P. O. Box 27412  
Richmond, Virginia 23269-0001

You may wish to submit written comments on the issue as opposed to publicly speaking. These comments can be submitted to Mr. Burgess as well.

In addition to the information on public hearings, I have also included a copy of SJR 172 and general information on administrative revocation. Should you have questions or require additional information, please let me know.

Thank you for your interest in this issue, and I look forward to seeing you at the public hearings.

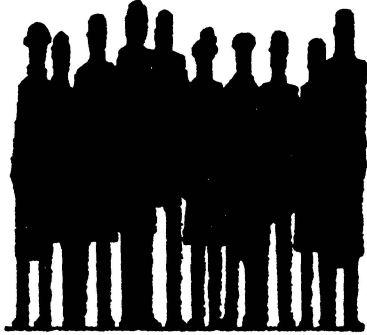
Sincerely,

Donald E. Williams  
Commissioner

cc: Vince Burgess



*A Partnership With the Public*



## **PUBLIC HEARINGS**

**September 26, 1989      10:00 a.m.**

Holiday Inn Airport  
6626 Thirlane Road  
Roanoke, Virginia

**September 27, 1989      1:00 p.m.**

Best Western Springfield Inn  
6550 Loisdale Court  
Springfield, Virginia

**October 2, 1989          10:00 a.m.**

Omni  
100 Batten Bay Boulevard  
Newport News, Virginia

**October 3, 1989          1:00 p.m.**

DMV Headquarters  
2300 West Broad Street  
Richmond, Virginia

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**SOME QUESTIONS & ANSWERS ABOUT  
ADMINISTRATIVE  
REVOCAATION STATUTES**

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TRANSPORTATION SAFETY ADMINISTRATION

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## INTRODUCTION

During its 1989 session, the Virginia General Assembly passed a resolution (SJR No. 172) requesting the Department of Motor Vehicles, the Commission on the Virginia Alcohol Safety Action Program, and the Board of Transportation Safety to study administrative revocation of driver's licenses. Laws that provide for such revocation are frequently called administrative per se (APS) statutes. This document answers the questions most commonly asked about APS statutes. The information in this document comes from Issues Concerning the Adoption of an Administrative Per Se Statute by the Commonwealth of Virginia, a report issued by the Virginia Transportation Research Council.

## QUESTIONS AND ANSWERS

### 1. What does administrative per se mean?

Although some people use the term per se to refer to statutes that make it illegal to drive with a blood alcohol content (BAC) of .10% or greater, for the purposes of this document, per se refers to the process whereby a person's driver's license is automatically revoked if that person is caught driving with a BAC of .10% or greater or refuses to submit to chemical testing to determine his or her BAC level after having been stopped. A court conviction is not required prior to the revocation. An administrative per se statute calls for the Department of Motor Vehicles to perform the revocation rather than for the courts to do so.

### 2. What types of per se statutes could be adopted?

Although the particulars of per se statutes differ from state to state, they fall into one of two categories: administrative per se and judicial per se. An administrative per se statute is carried out by an administrative agency--usually the department of motor vehicles--rather

than the court system. A judicial per se statute functions in the same way as an administrative per se statute, except that it is carried out by a judicial officer--usually a magistrate--who handles only these types of cases.

### **3. How do APS statutes operate?**

APS statutes generally work in the same way. When a police officer has probable cause to suspect that someone is driving while intoxicated, the officer may request the driver to submit to a chemical analysis test to determine if the driver's BAC level is above the legal limit. If the BAC level is above the legal limit or if the driver refuses to submit to chemical testing, the police officer may immediately confiscate the driver's operator's license. The officer then issues a temporary permit (usually valid for 7 to 10 days) to allow the driver to operate a motor vehicle while the revocation is processed. Next, the officer sends the license along with a full report and an affidavit to the motor vehicle department, which then revokes the license. The duration of the revocation varies from state to state but usually is no less than 90 days.

During the period of revocation, the driver may request a hearing to review the order of revocation. At the driver's request, the motor vehicle department may review the revocation to see that proper procedure was followed. Some states allow for judicial review of the revocation order in place of administrative review. The filing of a request for review does not suspend the revocation order.

### **4. How does the operation of APS statutes differ from the operation of current Virginia laws?**

Current Virginia laws are like APS statutes in that drivers are legally intoxicated if their BACs are .10% or greater. However, with APS statutes, the licenses of persons who drive while intoxicated are automatically revoked within about 7 days of being stopped by a police officer. When individuals are arrested for DUI in Virginia, they are booked, arraigned, and then released on bail until their court dates. Arrestees have a right to an automatic appeal after their first trial. Arrestees retain their licenses while their trials and appeals are pending. Licenses are not revoked until final resolution of the cases.

Because of the large number of cases, resolution of a particular case may take several months. Under the APS statutes, arrestees do not retain their licenses while a review is pending.

Virginia's current laws treat drivers who refuse to submit to chemical testing in the same manner that APS statutes do. The laws mandate suspension of drivers' licenses if they refuse to submit to testing.

**5. What states have adopted per se statutes?**

As of January 1989, 21 states and the District of Columbia have adopted the administrative form of the per se statute. Those states are: Alaska, Arizona, Colorado, Delaware, Illinois, Indiana, Iowa, Louisiana, Maine, Minnesota, Mississippi, Missouri, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, Utah, West Virginia, Wisconsin, and Wyoming. To date, only North Carolina has adopted a judicial per se statute.

**6. What has been the experience of states that have adopted APS statutes?**

A 1988 report issued by the Insurance Institute for Highway Safety estimates that APS statutes have reduced the number of alcohol-related fatal crashes by about 4.6% in states that have adopted them.

A 1987 study conducted by the U.S. Department of Transportation evaluated the effect of Wisconsin's APS statute. The study found that alcohol-related crashes declined by about 25% during the year following the statute's enactment. The number of DUI repeat offenders also declined. The study also found that before the statute's enactment, only 45% of drivers convicted of DUI had their licenses revoked. Following the statute's enactment, 100% of drivers convicted of DUI had their licenses revoked.

In 1986, under Minnesota's APS statute, over 99% of the drivers arrested for DUI had their licenses revoked for some period of time.

**7. Would an APS statute be more effective than Virginia's current laws?**

In 1987, there were 18,878 alcohol-related crashes in Virginia. Of those crashes, 378 were fatal, accounting for 418 deaths. In 1987, only 61% of the drivers arrested for DUI had their licenses revoked or suspended. Furthermore, only about 80% of the drivers arrested for DUI in Virginia receive some form of punishment. Under the Minnesota and Wisconsin APS statutes, much higher percentages of arrested drunken drivers have their licenses revoked.

If Virginia revokes the licenses of more of its DUI arrestees and establishes stiff penalties for driving during the period of revocation, those individuals will be deterred from getting out on the road and driving while intoxicated. Virginia would then be likely to experience the decline in alcohol-related crashes and fatalities that other states have experienced. An APS statute is a proven method of revoking the licenses of intoxicated drivers surely and quickly. Finally, since APS statutes reduce the length of time between arrest and punishment, they increase the deterrent effect of the punishment. If Virginia were to adopt an APS statute, it would likely experience a decline in repeat DUI offenders similar to that experienced in Wisconsin.

**8. What sort of safeguards exist to ensure that an APS statute would not be misapplied?**

As with any statute imposing penalties on violators, an APS statute must have safeguards to protect against erroneous punishment. Fortunately, there are many ways to guard innocent persons from having their driver's licenses taken away. First, the statute would provide for quick and accurate documentation of probable cause for administering a chemical test and for prompt notice to the offenders of the deprivation of their licenses. Second, the statute would provide for speedy post-revocation hearings should the drivers so desire. This hearing would take place within 7 days of the confiscation and would give drivers an adequate opportunity to respond to the charges. Third, the statute would provide for frequent testing of the equipment used to determine BAC level as well as adequate training for the personnel administering the tests. These controls are the same types of controls used in the existing DUI statutes in other states. The fact that the process is speeded up takes nothing away from those controls.

**9. Would an APS statute be unconstitutional?**

The quick answer to this question is no. However, a more in-depth discussion is provided to show why this is so.

**a. Would the statute violate due process?**

The fact that the license is confiscated prior to any hearing on guilt makes the statute seem violative of the guarantees of due process. The U.S. Supreme court has ruled that a driver's license is an entitlement and, as such, may not be taken away without due process of law. Bell v. Burson, 402 U.S. 535 (1971). However, the Court has allowed property to be seized in emergency situations without a pre-deprivation hearing. Thus, an administrative per se statute would not necessarily violate due process just because the license is taken away prior to any hearing on guilt.

The Court, in the case of Mathews v. Eldridge, 424 U.S. 319 (1976), set out a balancing test to determine if a pre-hearing deprivation of an entitlement was justifiable under due process standards. The Court's test involves weighing the individual's private interest against the government's interest, taking into account the risk of erroneous deprivation and the safeguards instituted to protect against such deprivation. In at least two cases, the Supreme Court upheld summary license revocation statutes, citing the government's overwhelming interest in highway safety. Since the government's interest in highway safety is the reason for an administrative per se statute and since the private interest is the same as in other summary license revocation cases, the per se statute should pass muster under the due process test. Also, the risk of erroneous deprivation is not all that great, given the safeguards accompanying the statute.

**b. Would the statute violate double jeopardy?**

At first glance, an APS statute would seem to violate the constitutional prohibition against double jeopardy (being punished twice for the same crime) since the driver loses his or her license administratively yet still faces criminal charges. However, it is important to distinguish between criminal and administrative sanctions. Administrative sanctions are civil: they carry no stigma of conviction since they do not affect one's criminal record. There is



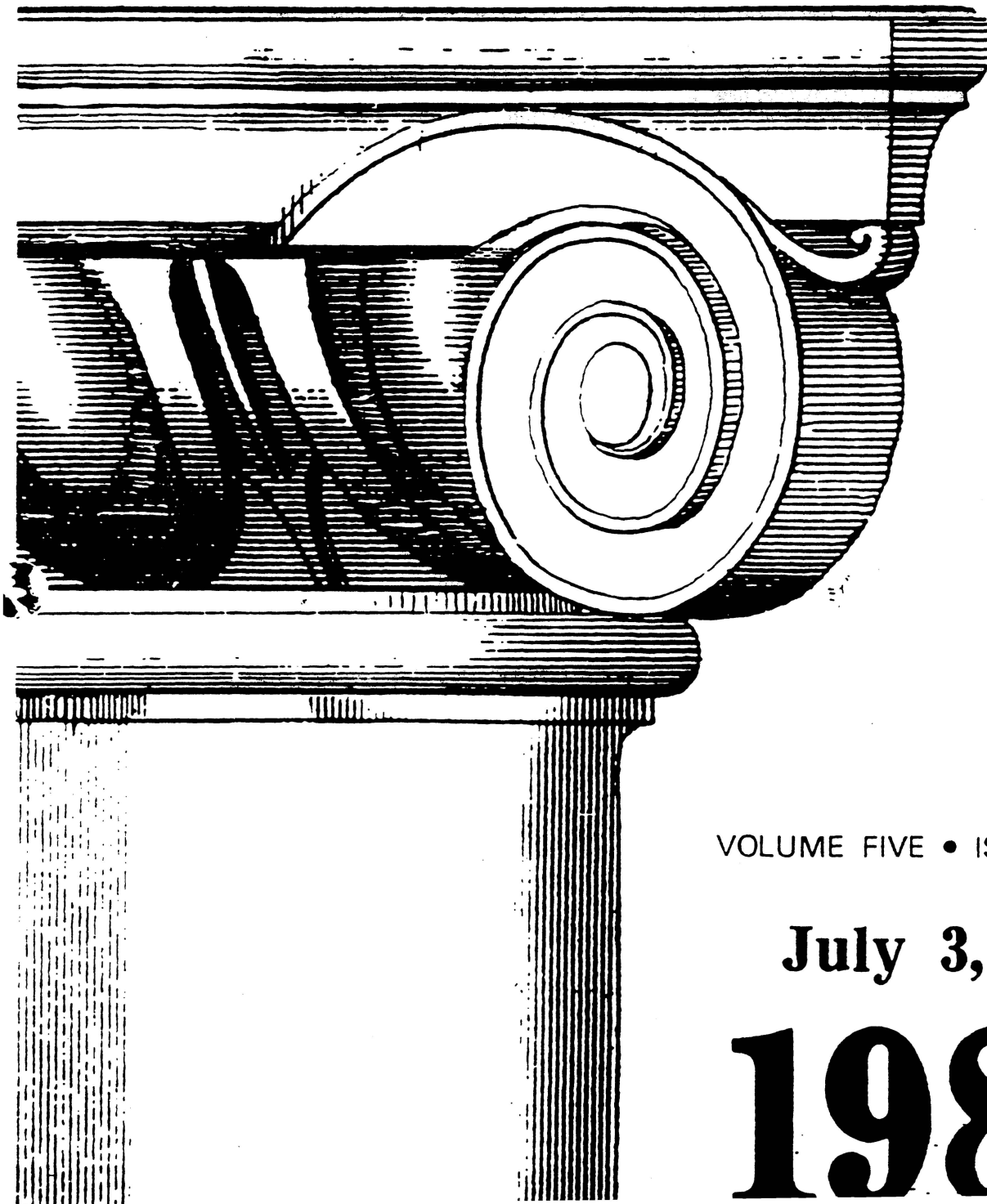
**no constitutional prohibition against receiving both civil and criminal sanctions for the same action. Since the APS statute involves an administrative sanction, it is civil in nature, and thus no double jeopardy question is involved.**

**10. What other benefits would accrue to Virginia if an APS statute were adopted?**

**The federal government provides grants to those states that adopt certain statutes to combat drunk driving. One of the statutes required to receive the grant is some form of automatic license revocation for people found to be driving under the influence of alcohol. Adoption of an APS statute would satisfy that criterion. Although several other steps are required, an APS statute would move Virginia closer to the federal grants, which can be quite substantial. The money would be useful in Virginia's battle against drunken driving.**

# THE VIRGINIA REGISTER

OF REGULATIONS



VOLUME FIVE • ISSUE TWENTY

July 3, 1989

**1989**

# Calendar of Events

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of vision requirements; and (iii) the administration of skills tests by persons other than DMV employees. The Virginia Commercial Driver's License Act (House Bill 1675, enacted by the 1989 General Assembly); the federal Commercial Motor Vehicle Safety Act of 1986 (Title XII of Public Law 99-750), and §§ 46.1-26 and 46.1-370.2 of the Code of Virginia.

Statutory Authority: §§ 46.1-26 and 46.1-370.2 of the Code of Virginia.

Written comments may be submitted until September 1, 1989.

Contact: Dan W. Byers, DSA Assistant Administrator or Rudy C. McCollum, CDL Program Manager, Department of Motor Vehicles, P.O. Box 27412, Richmond, VA 23269, telephone (804) 367-1836 (Dan Byers) or 367-6633 (Rudy McCollum)

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**September 26, 1989 - 10 a.m. - Public Hearing**  
Holiday Inn Airport, 6626 Thirlane Road, Roanoke, Virginia. ☒ (Interpreter for deaf provided if requested)

**September 27, 1989 - 1 p.m. - Public Hearing**  
West Western Springfield Inn, 6550 Loisdale Court, Springfield, Virginia. ☒ (Interpreter for deaf provided if requested)

**October 2, 1989 - 10 a.m. - Public Hearing**  
Omni, 100 Batten Bay Boulevard, Newport News, Virginia. ☒ (Interpreter for deaf provided if requested)

**October 3, 1989 - 1 p.m. - Public Hearing**  
Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia. ☒ (Interpreter for deaf provided if requested)

The Department of Motor Vehicles, in conjunction with the Commission on Virginia Alcohol Safety Action program and the Transportation Safety Board, will conduct a public hearing for the purpose of discussing issues regarding SJR 172, administrative revocation of the driver's licenses of persons who operate motor vehicles while under the influence of alcohol or drugs, or both, or who refuse to submit to chemical testing after having been arrested for driving under the influence.

Contact: Vince M. Burgess, Administrator, Traffic Safety Administrator, P.O. Box 27412, Richmond, VA 23269, telephone (804) 367-8150 or SCATS 367-8150

## BOARD OF NURSING

October 14, 1989 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Nursing intends to adopt and amend regulations entitled: **VR 495-01-1. Board of Nursing Regulations.** The purpose of the proposed action is to establish a registry for clinical nurse specialists, minimum standards for education of clinical nurse specialists and requirements for the practice of clinical nurse specialists.

Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.

Written comments may be submitted until October 14, 1989.

Contact: Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9909 or SCATS 662-9909

## PESTICIDE CONTROL BOARD

† **September 15, 1989 - 2 p.m. - Open Meeting**  
† **September 16, 1989 - 8:30 a.m. - Open Meeting**  
† **September 17, 1989 - 8:30 a.m. - Open Meeting**  
Sheraton Park South, Eppington Room, 9901 Midlothian Turnpike, Richmond, Virginia. ☒

A meeting to discuss priorities and receive reports from staff. Interested persons should first call the contact person to confirm meeting times and places.

Contact: C. Kermit Spruill, Jr., Director, Division of Product and Industry Regulation, Department of Agriculture and Consumer Services, P.O. Box 1163, Room 403, Richmond, VA 23209, telephone (804) 786-3523 or SCATS 786-3523

## BOARD OF PHARMACY

† **November 29, 1989 - 9:30 a.m. - Public Hearing**  
Holiday Inn-West End, 6532 West Broad Street, Richmond, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Pharmacy intends to adopt regulations entitled: **VR 530-01-02. Regulations for Practitioners of the Healing Arts to Sell Controlled Substances.** The proposed regulation provides licensing and regulatory standards for practitioners of the healing arts to sell controlled substances.

## STATEMENT

Statement of purpose: To establish licensing standards, security and record keeping requirements for practitioners licensed by the Board of Pharmacy to sell controlled substances. The proposed regulations implement the



Public Information Office  
Department of Motor Vehicles  
2300 West Broad Street  
Richmond, Virginia 23220

FOR IMMEDIATE RELEASE

September 21, 1989

Contact: Nena P. Teller

(804) 367-6390

**DMV To Hold Public Hearings Statewide  
About Driving Under the Influence**

RICHMOND--The Department of Motor Vehicles, in cooperation with the Commission on the Virginia Alcohol Safety Action Program and the Virginia Transportation Safety Board will hold statewide public hearings in September and October to discuss issues about driving under the influence of alcohol (DUI).

At the hearings, DMV will receive comment on the legislative resolution which would require administrative revocation of the driver's licenses of persons who operate a motor vehicle under the influence of alcohol and/or other drugs, or who refuse to submit to chemical testing after having been arrested for DUI.

"We are holding these sessions to find out how the public feels about the concept of administrative revocation of driver's licenses," said DMV Commissioner Donald E. Williams.

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All citizens are invited to attend the meetings listed

below:

September 26, 1989  
10:00 a.m.

Holiday Inn Airport  
6626 Thirlane Road  
Roanoke, Virginia

September 27, 1989  
1:00 p.m.

Best Western Springfield Inn  
6550 Loisdale Court  
Springfield, Virginia

October 2, 1989  
10:00 a.m.

Omni  
100 Batten Bay Boulevard  
Newport News, Virginia

October 3, 1989  
1:00 p.m.

DMV Headquarters  
2300 West Broad Street  
Richmond, Virginia

For more information, contact Vincent M. Burgess, (804)  
367-8150.

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