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THE POINT SYSTEM FOR DRIVER LICENSE ADMINISTRATION:
A VIABLE ALTERNATIVE FOR VIRGINIA?

by

Steven L. Micas
Graduate Legal Assistant

(A Report Prepared by the Virginia Highway Research Council Under the
Sponsorship of the Highway Safety Division of Virginia)

Virginia Highway Research Council
(A Cooperative Organization Sponsored Jointly by the Virginia
Department of Highways and the University of Virginia)

Charlottesville, Virginia

June 1972
VHRC 71-R38

RECOMMENDATION

Traffic safety research has been unable to produce any empirical evidence which shows that the introduction of a point system affects, either negatively or positively, traffic accident statistics. In view of this absence of evidence, the similarity between Virginia's record-keeping procedures and one type of point system, and the admitted administrative disruption incident to a complete change-over, the introduction of a point system for handling traffic convictions in Virginia is contraindicated at this time.

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NATURE OF DRIVER LICENSING ADMINISTRATION

Since World War II driver licensing laws have attempted to control drivers prone to serious offenses through the revocation and suspension of licenses. Perhaps the most visible administrative change has been the trend toward the widespread use of point systems. The first such point system, or demerit system, was initiated by Connecticut in 1947. The promulgation of similar systems by other states quickly followed, but a slowdown has now occurred with few new point systems having been initiated since 1965.

Basically, a point system seeks to place numerical values on various traffic convictions and police warnings in relation to the seriousness of the offense. Though the meaning of "seriousness" is generally left unclear (is it related to accident probability, subsequent violation prediction, or gravity of future mishaps?), theoretically the more serious offenses receive greater weight, and the serious offenses less weight. The points accumulated by a driver are recorded in his file by a designated administrative agency of the state.

When a driver accumulates a given number of points, he is sent a warning letter notifying him of the high probability of his losing his license upon conviction of another traffic offense. After the points exceed a certain number, his license is automatically revoked or suspended for a given period of time by the administrative agency. Many states have made a distinction between the revocation and the suspension of a license, though some continue to use the words interchangeably. The majority of jurisdictions that make the distinction view revocation as the more serious penalty, and leave reinstatement of the permit to the discretion of the administrative agency. On the other hand, a suspension runs a given length of time, after which reinstatement is automatic.

Virginia, however, reverses the typical scheme, generally making suspension the more serious judicially-administered sanction. The Division of Motor Vehicles does retain limited authority to suspend drivers' licenses under § 46.1-430 after due hearing when it has been "satisfactorily proved at the hearing" that the licensee is incompetent to drive a motor vehicle, is affected with mental or physical infirmities or disabilities rendering him incapable of safely driving a motor vehicle upon the highways, or has committed a serious violation of the motor vehicle laws of the state. Licenses must be suspended upon conviction (or finding of not innocent in the case of a juvenile) of various felonies committed by the use of a motor vehicle. A definition of conviction, generally considered to be liberal, is included in the code as, "a plea

of guilty or the determination of guilt by a jury or by a court though no sentence has been imposed or, if imposed, has been suspended and includes a forfeiture of bail or collateral deposited to secure appearance in court of the defendant unless the forfeiture has been indicated. . . .^{1/} The period of suspension is not less than 60 days nor more than 6 months.^{2/} In addition, a court may suspend a license for not less than 10 days nor more than 6 months for conviction of reckless driving where revocation is not permissible.^{3/} In both situations the license is surrendered to the court for the suspension period imposed by the judge. In some cases suspension may be imposed by the courts for an indefinite period, most frequently in cases of incompetency by reason of mental illness, mental deficiency, epilepsy, inebriety or drug addiction.^{4/}

The Commissioner of the Division of Motor Vehicles must revoke driver licenses for convictions under numerous sections of the motor vehicle provisions of the Code of Virginia, including convictions for manslaughter or driving under the influence of alcohol.^{5/} Revocation, in contrast to suspension, is an administrative procedure automatically invoked after conviction of certain motor vehicle offenses or combinations of convictions.^{6/} Though mandatory language is used to determine the proper scope of DMV revocations, judicial interpretation allows the Commissioner discretion both in invoking revocation and the length of revocation.^{7/} The Commissioner is further required to revoke the license of a Virginia resident who has been convicted of an offense in another state that would require revocation if committed in Virginia.^{8/} As to a nonresident, the Commissioner can revoke only his privilege to drive in Virginia. In some cases the nonresident may be requested to surrender his license, but he is not forced to do so. The code also requires that persons convicted of two moving traffic offenses within one year or involved in two accidents within one year, or any person

^{1/} Va. Code Ann. §46-1-389 (1971).

^{2/} Va. Code Ann. §46.1-417.1 (1971).

^{3/} See Va. Code Ann. §46.1-422 and §46.1-423 for mandatory revocation for conviction under the reckless driving statute.

^{4/} Va. Code Ann. §46.1-427 (1971). In this situation the court makes the findings of facts and conclusions of law from which it makes the decision to order the DMV to suspend the offender's license.

^{5/} Va. Code Ann. §46.1-417 (1971).

^{6/} For a comprehensive examination of penalties for traffic offenses in Virginia see Appendix A.

^{7/} Dillon, v. Joyner, 192 Va. 559, 66 S. E. 2d 283 (1951) and Lamb v. Rubin, 198 Va. 628, 96 S. E. 2d 80 (1957). This authority is encompassed in Va. Code Ann. §46.1-430 only after a hearing. The Commissioner is given discretion solely as to length of revocation for offenses under Va. Code Ann. §46.1-419.

^{8/} Comment, "Revocation or Suspension of Driver's Licenses," 21 Wash. & Lee L. Rev. 163, note 3, (1964).

the Commissioner believes to be an incompetent driver must take another licensing test or physical examination to continue to drive.^{9/} As has been noted, the dichotomy between revocation and suspension appears to be muddled by a subsequent provision of the Code allowing the Commissioner to revoke or suspend a license after a hearing where the licensee has been adjudged, among other conditions, an incompetent, an habitually reckless driver, or an addict.^{10/}

In summary it must be admitted that the statutes use the terms suspension and revocation interchangeably. The interpretation of the terminology unfortunately varies from court to court.^{11/} However, the Division of Motor Vehicles in its operational procedures does have a rigidly followed definition of revocation and suspension. A license is suspended when it is taken by either the Commissioner or the court for a period of time not specified by law and the driver must comply with some additional requirement prior to reinstatement of his license. Revocation occurs when the DMV takes a driver's license from a citizen for various combinations of convictions and there is no provision whereby the license can be returned prior to expiration of the revocation period. The judiciary has retained, however, a distinction between the civil and criminal nature of revocation and suspension. Revocation continues to be viewed as a civil penalty on the reasoning that a driver convicted of an offense grave enough to justify revocation of his license is no longer a fit person to exercise the privilege of driving on the Commonwealth's highways. By the same rationale, revocation is not considered punishment additional to those provided for in the Virginia Code.^{12/} A suspension of a driver's license remains a judicially imposed punishment, theoretically confined only to "serious violations" of the traffic code.^{13/} Of course, to the driver losing his license minor administrative differences in the use of suspension and revocation mean nothing. His only awareness is that he no longer is able to exercise an action he considered a right.

The judicially imposed distinction between revocation and suspension has the legal effect of removing revocation from the procedural mandates incident to prosecutions under the criminal law. Hence under Virginia law, revocation without a hearing does not violate due process,^{14/} and a pardon does not affect the pardoned man's right to operate a vehicle on the Commonwealth's highways.^{15/} It seems now that to maintain a distinction between revocation and suspension prolongs distinctions without differences beyond any justification. The absence of revocation from criminal procedural requirements now appears to be liable to attack, given the slight practical differences in the

^{9/} Va. Code Ann. §46.1-383 (1971).

^{10/} Va. Code Ann. §46.1-430 (1971).

^{11/} Wash. & Lee L. Rev., p. 163.

^{12/} Prichard v. Battle, 178 Va. 455, 17 S. E. 2d 393 (1941).

^{13/} Commonwealth v. Willis, 194 Va. 210, 72 S. E. 2d 269 (1952), and as to definition of "serious" see Commonwealth v. Hill, 196 Va. 82 S. E. 2d 473 (1954).

^{14/} Law v. Commonwealth, 171 Va. 449, 199 S. E. 516 (1938).

^{15/} Prichard v. Battle, 178 Va. 455, 17 S. E. 2d 393 (1941). In this case a suspended license was continued suspended after the violator was pardoned.

two penalties. These procedural matters may appear to be of little consequence to the driving public, but they do have serious impact on the effectiveness of the administration of the driver control program because they result in "... lack of coordination on policies, delays or failure to report convictions or to act on license revocation, or in a breakdown in maintaining a complete control file on offending drivers." ^{16/}

The legal justification for driver improvement regulation has generally been grounded on state legislatures' police power to attain a legitimate goal (in this case highway safety). The police power vested exclusively in the legislature has been defined as "that power, inherent in the state, whereby it may enact and enforce all laws for the protection, maintenance, or advancement of the health, safety, morals, comfort, quiet, convenience, welfare and prosperity of the people." ^{17/} The power is not so broad as the Supreme Court's definition might intimate, however. The police power may not be exercised so as to unfairly discriminate against any one class, and the means must have a rational connection with legitimate ends. Further, the means chosen must be necessary to accomplish the desired purpose and not be unduly oppressive. ^{18/}

Any driver improvement scheme is also circumscribed by constitutional prohibitions against ex post facto laws and denial of due process. An ex post facto question of retroactive use of the law could arise if points were assessed against drivers for offenses occurring before the adoption of the system. At least one court has ruled that points may be assigned to violations committed before the adoption of the system if they occurred after legislative approval of the system. The court reasoned that the mere use of points to determine if and when a driver's license should be suspended does not make the application of the penalty retroactive. ^{19/}

Constitutional due process requirements in the form of protection against arbitrary or capricious actions affecting an individual's life, liberty or property limit the procedures that might be used in administering a point system. In a discretionary driver suspension system, due process would most probably require an opportunity for an administrative hearing with a statutory right to judicial review of an adverse administrative determination. Some writers feel that under a mandatory driver license revocation system due process requirements are provided for at the trial level and are not necessary in any administrative actions. ^{20/} But this distinction is subject to attack on the ground that no practical difference is apparent in the nature of the punishment for revocation and that for suspension.

^{16/} Morony, Louis R., "Revocation and Suspension of Driver's Licenses," Traffic Digest and Review, p. 17 (June 1964).

^{17/} C. B. & Q. R. R. v. State of Illinois, 200 U.S. 561, 26 S. Ct. 341, 50 L. Ed. 596 (1906).

^{18/} Donigan, Robert L. and Fisher, Edward C., "Driver License Point Systems," Traffic Digest and Review, p. 32 (August 1960).

^{19/} Sturgill v. Beard, Ky. 303 S. W. 2d 908 (1957).

^{20/} Maryland Department of Motor Vehicles, Driver Improvement, Glen Burnie, Maryland, p. 68 (July 1971).

A final legal problem particularly applicable to the Commonwealth involves the General Assembly's authority to legislate point systems and the delegation of this legislative authority to an administrative agency. The question is basically one of whether a motor vehicle administrator can, by his own judgement and without express authority from the General Assembly, assign values for traffic offenses according to his criteria as to seriousness and then revoke a driver's license on the basis of those points.

The principle of the separation of powers in this country can generally be interpreted as leaving sole authority to make laws in the legislative branch of government (subject at all times, however, to constitutional prohibitions). It follows that no part of the legislative power may be delegated to a nonlegislative branch — in Virginia's case the Division of Motor Vehicles. The problem that the courts must define is, of course, what constitutes a delegation of legislative authority.

The majority of states adhere to the Kentucky Supreme Court's opinion legitimizing Kentucky's administratively defined point system. In discussing a defendant's argument that any regulation imposed by the motor vehicle administration for the purpose of revoking a driver's license is solely a legislative function, and cannot be delegated to an administrative department, the court noted,

... given that the subject is one for the legitimate exercise of the state's police power, then the means adopted by the Legislature, so long as it has an ascertainable relevancy to the object, is clearly within the scope of that power. Whether the end justifies the means is exclusively for the legislative discretion. Whether the means bear a pertinent and reasonable relation to the end may be looked into by the courts so far only as to determine the fact of pertinency and reasonableness. Only when the means adopted are manifestly unreasonable and oppressive, or bear no logical relation to the object of the legislation, are the courts at liberty to declare the act unconstitutional. In all cases the Legislature selects the subject, and indicates the public policy with respect thereto. The subject is thereby brought within governmental control. To so determine is the exclusive prerogative of legislation. The selection of the persons, places, and times, and the regulation of the conditions upon which it is to be exercised, are matters of executive detail, which may be, and which are always, delegated to the ministerial body.^{21/}

^{21/} Sturgill v. Beard, Ky., 303 S. W. 2d 998 (1957).

The majority of courts have ruled consistent with the Kentucky opinion, resting their holdings on the additional reasons of lack of continuity of legislative bodies and the need for continuity in administration.

Any state, however, must adhere to the opinions of its supreme court in defining how it should structure its procedures. Southern states have tended to take the minority position that administratively defined point systems are an unconstitutional delegation of legislative authority. The South Carolina Supreme Court ruled that the state's administratively defined and administered point system was vague and indefinite and therefore unenforceable. The court found that the law "fixes no standard and lays down no intelligible guide to which the Department must conform but leaves the right to revoke or suspend in its unrestricted and uncontrolled discretion, rendering said section void as an unconstitutional delegation of legislative power."^{22/}

Virginia's leading case relating to an unconstitutional delegation of legislative authority in the field of driver licensing is Thompson v. Smith (1930). A licensed driver in Lynchburg objected to a provision of a city ordinance authorizing the chief of police to revoke the permit of any driver who, in his opinion, became unfit to drive an automobile on the streets of Lynchburg. The petitioner felt the ordinance was invalid and void because it was a delegation of legislative power to an administrative office. The court agreed saying,

It is a fundamental principle of our system of government that the rights of men are to be determined by the law itself, and not by the let or leave of administrative offices or bureaus. This principle ought not to be surrendered for convenience or in effect nullified for the sake of expediency. It is the prerogative and function of the legislative branch of the government, whether state or municipal, to determine and declare what the law shall be, and the legislative branch of the government may not divest itself of this function or delegate it to executive or administrative officers.

This does not mean, however, that no discretion can be left to administrative officers in administering the law. Government could not be efficiently

^{22/} State Highway Department v. Harbin, 226 S. C. 585, 86 S. E. 2d 466 (1955). See also a similar treatment given an administrative point system by the North Carolina Court in Harvell v. Scheidt, 249 N. C. 699, 107 S. E. 2d 549 (1959).

carried out if something could not be left to the judgement and discretion of administrative officers to accomplish in detail what is authorized or required by law in general terms. Without this power legislation would become either oppressive or inefficient. There would be confusion in the laws, and in an effort to detail and particularize, the law would miss sufficiency both in provision and detail.

The majority of the cases lay down the rule that statutes or ordinances vesting discretion in administrative officers and bureaus must lay down rules and tests to guide and control them in the exercise of the discretion granted in order to be valid; but several courts apply the rule with varying degrees of strictness. The reasonable discretion which may be vested in its administrative affairs is limited to a discretion in its essence ministerial and not legislative though it may be such as may be exercised by the legislature. ^{23/}

In spite of the years that have elapsed since that case was decided, the relatively conservative doctrine enunciated by the court continues to be the law in Virginia. For this reason, any examination of the flexibility of a point system for Virginia should focus on a legislatively defined system rather than the administratively defined system used in some states.

A recent study by John H. Reese, Professor of Law at the University of Denver, identified and analyzed formal agency policies as related to driver licensing administration. ^{24/} In his criticism of present administrative policies, Reese states that the commonly accepted goal of driver licensing is prevention of deviant driver behavior that leads to greater probability of accident involvement. But sound research has yet to find any particular driver characteristic that is a valid predictor of future driving failure (with the exception that consumption of alcoholic beverages increases appreciably the accident risk so as to be a valid withdrawal predictor).

In terms of power, the state administrative agencies' policies will be subordinated to any national legislative attempt to solve public safety problems. But, "In the absence of national legislation covering the subject a state may rightfully prescribe uniform regulations necessary for public safety and order in respect to the operation upon its highways of all motor vehicles -- those moving in interstate commerce as well as others..." ^{25/} So any justification of state policies in terms of "states rights" and "dual sovereignty" in trying to prevent national action to solve problems believed by Congress to be national in scope is likely to fall upon deaf ears.

^{23/} Thompson v. Smith, 155 Va. 367, 154 S. E. 579 (1930).

^{24/} Reese, John H., Power, Policy, People, A Study of Driver Licensing Administration, National Academy of Sciences, Washington, D. C. (1971).

^{25/} Hendrick v. State of Maryland, 235 U. S. 610, 622, 35 S. Ct. 130, 59, L. Ed. 389 (1916).

As has been noted with delegatory power, state courts require a more precise legislative standard than the federal courts to sustain a transfer of power. But in most cases (excepting Virginia), state supreme courts have allowed broad transfers in the public safety area.^{26/}

The policy of the driver licensing agencies is seen by Reese as mediating any conflict between legislative expectations and public acceptability. These agency policies are usually in the form of formal rules or regulations and agency publications containing the substantive and procedural policies not enunciated in the regulations. Reese maintains that the predictors used by agencies to allow or prevent driver licensing only slightly predict the performance criterion of accident-free driving and are therefore of low validity. He cites as evidence a lack of quantifiable knowledge of what the driving function entails.^{27/} Medical predictors of accident probability, i. e., physiological impairments, psychiatric diseases, and drug use, are also of doubtful predictive utility until validated by controlled research studies.^{28/} Finally, the author notes that accident status in one time period is not highly related to status in another time period. He uses, as evidence, a California study of the records of 95,000 drivers over a 3-year period, which showed that more than 86% were completely accident-free regardless of the number of their moving traffic violations.^{29/}

It ... demonstrated that more than 50% of the drivers with the worst records of moving violations (nine or more) were, nevertheless, totally free of an accident involvement. These findings show the instability of individual accident status or rate and the fact that the overwhelming majority of drivers are accident free regardless of their driving performance. It is this combination of instability and low incidence of accidents among those who might be expected to have them that makes accident-free driving a difficult performance criterion to predict.^{30/}

^{26/} Reese, op. cit., p. 20.

^{27/} Ibid., p. 69.

^{28/} Ibid., p. 84.

^{29/} L. Goldstein, "Driver Selection -- The Lure, Logic and Logistics," Transactions, National Safety Council, p. 3 (1963).

^{30/} Reese, op. cit., p. 37.

It must be kept in mind that driver licensing is based on the assumption that those who are denied driver licenses do in fact refrain from driving. But studies have shown that this premise is partially invalid so as to, in effect, damage the whole concept of licensing.^{31/}

In Reese's thinking, no amount of equitable treatment and fair procedure in administration or decision review can make scientifically poor accident predictor policies more effective in identifying the potentially accident-prone driver. So in sum, "licensing predictors that are not relevant to the goal of preventing human failure do not contribute to accident prevention, but serve merely to deprive people of the right to drive. As such they are unacceptable assertions of power."^{32/} Given that the purpose used to justify point systems in many states is their alleged efficiency in determining habitually dangerous drivers, Reese's logic destroys many assumptions of driver licensing administrators.

Two 1967 state studies purportedly reject Reese's hypothesis as to the usefulness of prior convictions in predicting future accident involvement. The Oregon Department of Motor Vehicles,^{33/} which at the time was headed by Vern L. Hill current Virginia Commissioner of the Division of Motor Vehicles, sought by random sampling procedures to describe the typical driver by such variables as age, sex, driving experience and traffic record. The study also quantified the relationship between accidents and violations, types of accidents and driver age, and driver examination records and subsequent driving record.

By correlating accidents and convictions, the researchers, though admitting certain methodological flaws, found a statistically significant relationship at the one percent level of confidence. Thus without approaching Reese's cause and effect problem, the data indicate that the drivers with higher accident rates are more likely to have higher conviction rates.

Table 1 shows the correlation coefficients based on the accident and conviction entries for 1961-1965 in Oregon. The numbers in parentheses represent theoretical values that significantly differ from zero at the one percent level of confidence to show the large disparity between the obtained values and the theoretical values.

The major shortcoming of the Oregon study was the fact that an indeterminate number of drivers in accidents are cited for traffic violations in connection with the accidents. This introduces a spurious factor in the correlation between accidents and

^{31/} Coppin, R. S., and Oldenbeck, G. Van, "Driving Under Suspension and Revocation: A Study of Suspended and Revoked Drivers Classified as Negligent Operators," Report 18, State of California, Department of Motor Vehicles, (January 1963).

^{32/} Reese, op. cit., p. 30.

^{33/} Kaestner, Noel F., "A Second Look at Licensed Drivers in Oregon," Oregon Department of Motor Vehicles (November 1967).

traffic violations, usually exaggerating the degree to which accidents and convictions are related. Further ambiguity in the data occurs because the records of accidents include all accidents, not just "chargeable accidents." Similarly the violations include all types of violations such as equipment failure, operators license violations and excessive noise as well as major moving violations. The removal of all violations that were tabulated as a consequence of an accident would allow a clearer, more exact estimate of the accident-conviction relationship. The same would be true if it were possible to remove all "non-serious" types of violations from the data and consider only the relationship between serious moving violations and accidents which are not completely fortuitous.

Table 1

Accident-Conviction Correlations -- r*
 (From Kaestner, Noel F., "A Second Look at Licensed Drivers in Oregon,"
 Oregon Department of Motor Vehicles, p. 29 (November 1967).)

<u>Age</u>	<u>Males</u>	<u>Females</u>
-24	.239 (.148)	.277 (.208)
25-34	.237 (.104)	.141 (.115)
35-44	.290 (.095)	.224 (.101)
45-54	.303 (.091)	.242 (.108)
55-64	.106 (.106)	.269 (.122)
65	.267 (.112)	.344 (.157)

*Table entries are correlation coefficients based on the accident and conviction entries for 1961-1965. The parenthesized values below each entry are theoretical r values that significantly differ from zero at the one percent level of confidence. The latter values differ among themselves because the samples in each sex group differ in size, a determinant of the significant r value.

Finally the report does not differentiate the time relationship between the occurrences of convictions and accidents. In other words, a driver may have an accident followed by a conviction, which will have the same correlative value as a conviction followed within the time period by an accident. It seems that in determining whether to remove the ability to drive a driver licensing administration would be more concerned with the latter situation where its license removal function

would be most critical to the other users of the highways. The report admits,

That it is impossible to get a completely definitive answer to this question — whether convictions are highly correlated with accidents, even if allowances are made for the over-estimate of the relationship between accidents and violations, it is rather likely that a significant correlation does exist for each age-sex group.

A similar study in the same year by the state of Washington Department of Motor Vehicles ^{34/} under Douglas Toms also tabulated the relationship between accident involvement and number of violations, but only for a one year period. These data obtained from driver records led them to conclude that:

- (1) There is a strong positive relationship between accident involvement and number of citations: each citation a driver adds to his driving record increases his likelihood of being involved in an accident.
- (2) Age and sex, separately and in that order, are of importance in interpreting this relationship: (1) a statistically significant greater proportion of male drivers than female drivers were involved in accidents as the number of citations increased; (2) a statistically significant greater proportion of drivers under age 30 than age 30 or older were involved in accidents as the number of citations increased.
- (3) The combination of age and sex provides an even better interpretation of the relationship being studied: men under age 30 rank highest in accident involvement; women under 30 rank next in order; men age 30 and older rank next; finally women age 30 and older rank lowest.

Table 2 shows the proportion of drivers involved in one or more accidents by number of citations and age group for calendar year 1966. The shaded line illustrates an administrative determination of the level of accident probability that justifies removing one's ability to drive.

^{34/} O'Neill, Peggy Ann, "Relationship of Accident Involvement and Number of Citations: 1966 Data," State of Washington Department of Motor Vehicles, (November 1967).

Table 2

Proportion of Drivers Involved in One or More Accidents by
 Number of Citations and Age Group: 1966 Data
 (From O'Neill, Peggy Ann, "Relationship of Accident Involvement and Number of Citations: 1966 Data,"
 State of Washington Department of Motor Vehicles, p. 19, (November 1967).)

Number of Citations	16-19	20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	65-69	70 & Over	Total
0	$\frac{6,902}{122,811}$.0562	$\frac{7,425}{161,562}$.0460	$\frac{5,748}{139,423}$.0412	$\frac{5,038}{130,602}$.0386	$\frac{4,935}{138,022}$.0358	$\frac{5,377}{150,587}$.0357	$\frac{5,515}{151,886}$.0363	$\frac{4,709}{134,546}$.0350	$\frac{3,746}{112,856}$.0332	$\frac{2,648}{85,859}$.0308	$\frac{1,716}{60,904}$.0282	$\frac{2,016}{77,281}$.0261	$\frac{55,775}{1,466,339}$.0380
1	$\frac{4,080}{18,366}$.2221	$\frac{4,680}{28,870}$.1621	$\frac{2,838}{19,818}$.1432	$\frac{2,146}{15,558}$.1379	$\frac{1,937}{14,777}$.1311	$\frac{2,021}{14,806}$.1365	$\frac{1,932}{14,178}$.1363	$\frac{1,712}{11,602}$.1476	$\frac{1,422}{8,918}$.1595	$\frac{1,078}{6,238}$.1728	$\frac{796}{3,924}$.2029	$\frac{1,221}{4,864}$.2510	$\frac{25,862}{161,919}$.1597
2	$\frac{1,688}{6,556}$.2575	$\frac{2,223}{10,359}$.2146	$\frac{1,086}{5,859}$.1854	$\frac{651}{3,660}$.1779	$\frac{570}{3,126}$.1823	$\frac{518}{2,837}$.1826	$\frac{447}{2,432}$.1838	$\frac{368}{1,889}$.1948	$\frac{296}{1,394}$.2123	$\frac{175}{911}$.1921	$\frac{128}{492}$.2602	$\frac{162}{568}$.2852	$\frac{8,312}{40,083}$.2074
3	$\frac{716}{2,455}$.2916	$\frac{1,009}{4,057}$.2487	$\frac{431}{1,906}$.2261	$\frac{218}{1,025}$.2127	$\frac{147}{771}$.1907	$\frac{150}{669}$.2242	$\frac{135}{557}$.2424	$\frac{95}{418}$.2273	$\frac{69}{267}$.2584	$\frac{38}{146}$.2603	$\frac{27}{92}$.2935	$\frac{22}{74}$.2973	$\frac{3,057}{12,437}$.2458
4	$\frac{384}{1,121}$.3426	$\frac{537}{2,006}$.2677	$\frac{210}{738}$.2846	$\frac{81}{318}$.2547	$\frac{46}{226}$.2035	$\frac{39}{182}$.2143	$\frac{34}{141}$.2411	$\frac{20}{94}$.2128	$\frac{10}{61}$.1639	$\frac{7}{34}$.2059	$\frac{9}{20}$.4500	$\frac{7}{20}$.3500	$\frac{1,384}{4,961}$.2790
5+	$\frac{403}{1,164}$.3462	$\frac{585}{1,907}$.3068	$\frac{158}{524}$.3015	$\frac{50}{201}$.2488	$\frac{38}{135}$.2815	$\frac{19}{80}$.2375	$\frac{15}{55}$.2727	$\frac{9}{32}$.2813	$\frac{9}{29}$.3103	$\frac{3}{11}$.2727	$\frac{0}{3}$ 0	$\frac{1}{4}$.2500	$\frac{1,290}{4,145}$.3112
TOTAL	$\frac{14,173}{152,473}$.0930	$\frac{16,459}{208,761}$.0788	$\frac{10,471}{168,268}$.0622	$\frac{8,184}{151,364}$.0541	$\frac{7,673}{157,057}$.0489	$\frac{8,124}{169,161}$.0480	$\frac{8,078}{169,249}$.0477	$\frac{6,913}{148,581}$.0465	$\frac{5,552}{123,525}$.0449	$\frac{3,949}{93,199}$.0424	$\frac{2,676}{65,435}$.0409	$\frac{3,429}{82,811}$.0414	$\frac{95,681}{1,689,884}$.0566

This study, however, also does not examine the relationship between convictions and future accident involvement; it only correlates accidents and convictions within a set time period. This failure to examine the same issue as Reese did is perhaps the greatest hindrance to its usefulness in discussing the viability of driver license removal procedures. Methodological flaws in this study include use of all accident involvement regardless of whether a driver was determined to be at fault or not at fault and failure to control for number of miles driven, time of driving, and driving conditions by males in their conclusion that women are safer drivers than men.

As compelling as Reese's theory on the present structure of driver licensing administration appears, it seems relevant, nonetheless, to more closely examine present point systems. An understanding of point system characteristics and procedures could lead to a revision in Virginia's present system so as to maximize highway safety.

NATURE OF POINT SYSTEMS

The point system as utilized today as a means of driver improvement is clearly differentiated from other systems in its attempt to evaluate the seriousness of offenses and apply specific weights to each event. But beyond this identifying principle, most point systems are characterized more by their dissimilarities than their similarities. In the traffic safety field, few would disagree that wide and undesirable variations in practices and procedures by state organizations have a deleterious effect. In many cases, differences in the results achieved by varying administrative procedures lead to seeming unfairness to some corrected drivers. Any unfairness usually is coupled with a loss of respect for the law.

Other adverse effects of nonuniformity are reflected in drivers' lack of familiarity with traffic ordinances and road practices of other states, differences in the proficiency levels of drivers, and a proliferation of the bureaucratic red tape a new resident must solve before he can be licensed in the state of his residence.^{35/}

The following section is, at the least, an argument for uniformity in driver license withdrawal procedures. But more than that, an examination of differing procedures illustrates all the possible choice points inherent in setting up a point system.

^{35/} Heimstra, Norman W., Injury Control in Traffic Safety, Charles C. Thomas, Inc., Springfield, Illinois, pp. 90-91 (1970). See Appendix B for a digest of administrative definitions of aspects of driver licensing administration.

Some sources classify point systems into three distinct models: (1) A system authorized by the code of the particular state but not specifying point values or levels at which action should be taken (commonly referred to as an administrative point system); (2) a system in which the statute not only authorizes the point system but specifies the number of points to be assigned to various violations and the action level (commonly referred to as a legislative point system); and (3) a system operating under general discretionary powers granted to the Commissioner (commonly called a discretionary system).^{36/}

All point systems can further be divided into publicized or unpublicized systems. Under the former, the administrative agency seeks to inform the public of various actions which are taken upon violation of traffic offenses. Theoretically, the widely disseminated information acts as a psychological deterrent to deviate driving behavior. An unpublicized discretionary point system is not announced publicly, but is used as an internal accounting system. It is distinguished by lack of announcement outside the administrative agency.

Various weaknesses are inherent in each system. In a statutory point system every change in procedure requires new legislation. The system is marked by rigidity, action for the most part being mandatory in nature. The system is thus difficult to administer and does not permit periodic adjustment to cope with changing conditions. Such a system thus results in a lack of flexibility. Opponents of the discretionary system say that it is too heavily dependent on the viewpoints of the personnel who administer it and requires too much time to deal efficiently with problem drivers. Though this system usually presents fewer legal difficulties, the legislature still has a duty to provide sufficient standards to govern and limit the DMV. The agency must keep in mind the fact that an administrative point system cannot be expanded or increased beyond its basic statutory authority.^{37/} This type of system is also more likely to be abused through political pressures applied during its administration.

The preceding classifications are probably the most useful schemes in terms of functions to be performed, but in the end it must be realized that any differentiation is merely a human construction. There is, of course, nothing inherent in a system's form and how one describes a system. It must necessarily be a function of his own values and goals. Figure 1 shows the states that have chosen to use point systems in driver licensing administration.

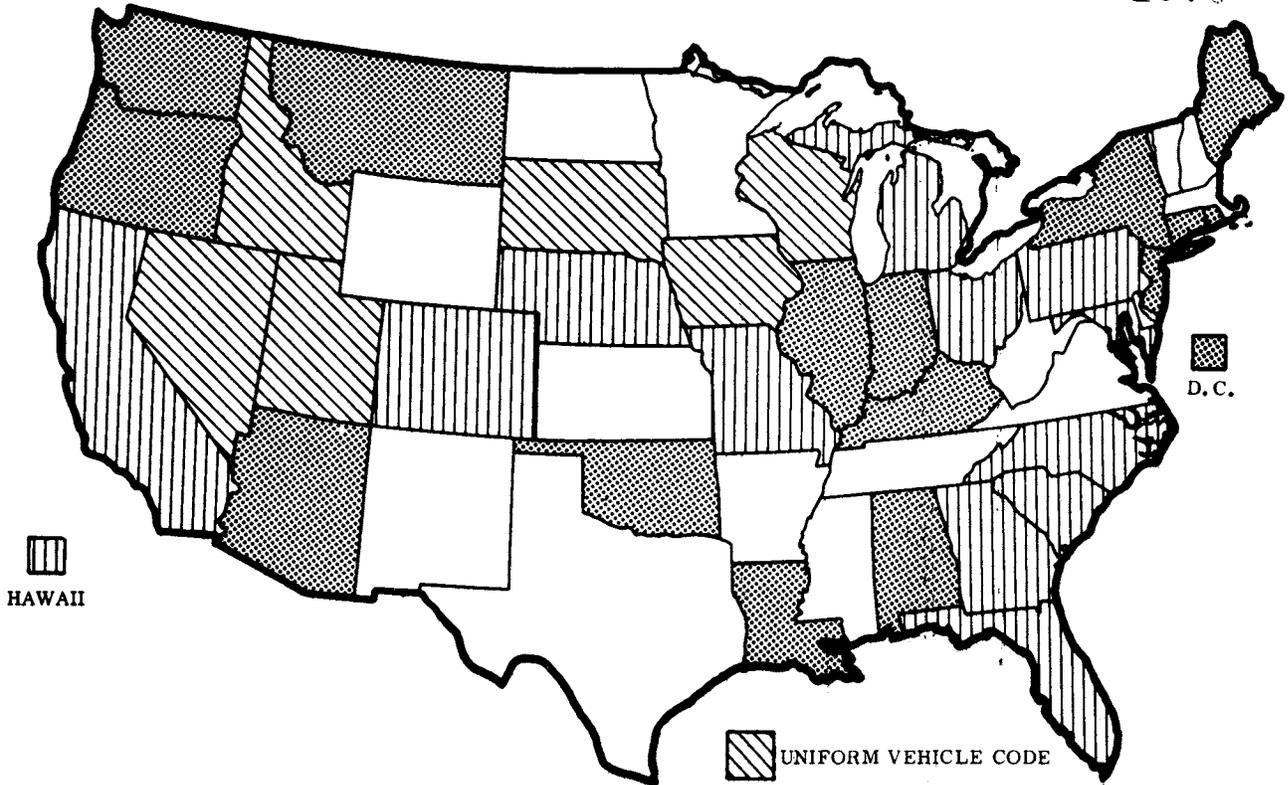
The following statutory comparison seeks merely to note the various choices which must be made in instituting a point system and examines the solutions used by different states.

^{36/} Hyde, Wallace, N., A Review of Point Systems with Recommendations for Administrative Procedures, New York University, pp. 1-2 (1958).

^{37/} Maryland Department of Motor Vehicles, op. cit., pp. 68, 131.

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ALASKA

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- ▨ STATUTORY POINT SYSTEM (13 STATES)
- ▨ LAW SETS STANDARDS AND AUTHORIZES LICENSING AGENCY TO ESTABLISH POINT SYSTEM (6 STATES)
- ▨ ADMINISTRATIVE POINT SYSTEM ESTABLISHED BY LICENSING AGENCY UNDER GENERAL AUTHORITY (15 STATES AND D. C.)
- NO FORMAL, PUBLICIZED POINT SYSTEM (16 STATES)

From Antony, Anthony, *Suspension and Revocation of Driver's Licenses*, Highway Users Federation for Safety and Mobility, Washington, D. C., p. 62 (1970).

Figure 1. Point systems.

Authority to Establish

The commissioner of a state's motor vehicle agency (or an equivalent agency) is usually statutorily given power to establish a point system or is compelled to administrate a system defined by the state legislature. The feeling is that this administrative officer is not able to handle the complex record-keeping duties necessary in a point system. States, however, have given point system duties to the commissioner of law enforcement (Idaho), the director of revenue (Missouri), and the director of the department of public safety (Georgia). The choice of chief administrative officer necessarily depends on a state's administrative organization. Currently in Virginia the Division of Motor Vehicles revokes licenses upon conviction of certain offenses (see Appendix A).

Authority to Revoke

Most states allow the administrative agency to revoke licenses pursuant to the point system, though some states allow the courts to do so, or a combination of both.

Precedence of Point System, i.e., Which Law Applies

In general, points are assessed only for court convictions, pleas of guilty or bond forfeitures.

"Point systems are subject to the same legal rules and principles that govern other systems of license suspensions and revocations... all systems of (driver) license suspensions are governed by general principles of constitutional law and statutory construction."^{38/} Nevertheless, a state must decide whether the point system regulations will be affected by action taken pursuant to other sections of the code. Most states provide that statutory authority governing mandatory license revocation takes precedence over the point system law. Michigan provides that any driver whose license is revoked under other statutory power will be assigned in addition one-half the number of points needed to revoke his license under the point system.

Other states set point values consistent with preexisting law. Thus if one reckless driving conviction results in automatic revocation under the code the point value for that offense will be placed at the action level. Cases have held that suspension of a driver's license under other discretionary authority of the motor vehicle commissioner, before his point level would justify such action, was not excessive punishment. The court held that such action was appropriate where dangerous and reckless conduct justified it.^{39/}

^{38/} Driver Improvement — The Point System, American Association of Motor Vehicles Administrators, Chapel Hill, North Carolina.

^{39/} Tillman v. Director of Vehicles and Traffic of the District of Columbia, D. C. Municipal Ct. of App. 144 A 2d 922 (1958).

Points Per Offense

The different point assessments, the varying action levels, and the varying time periods during which points are accumulated make a statutory comparison of offenses between states extremely difficult. In general, states tend to give greatest weight to such offenses as reckless driving, driving while intoxicated, and speeding. The statutes are framed in terms of X number of points within a Y time period will result in a mandatory revocation for Z length of time. Reese has succeeded in isolating a formula that compares the relative severity of treatment of offenses. He does this

... by relating the accumulation time period to the license withdrawal action suspension level, and the number of points that, if accumulated each year, will result in license withdrawal.... The point value assessed each offense may then be related to that figure and a percentage of the withdrawal action (suspension) level obtained.^{40/}

Thus, Michigan which assigns a point level of 6, with suspension for one year for twelve points within two years, treats reckless driving more severely than does California, which provides two points for reckless driving, with four or more points within twelve months resulting in a suspension of six months.

Idaho and Florida provide for a point range for any given offense depending on the judge's decision as to the severity of the violation.

A subtle double use of penalty points may occur if a state chooses to assign points to an offense for which the statute already provides mandatory revocation. Most states have not chosen to clarify this problem directly and the result usually has been the use of double point assessments to some degree.

Unfortunately, the basis upon which points are chosen and weighted is still unclear.

Duration of Points

It is common practice for statutorily defined point systems to provide a time limit within which accumulated points will count toward revocation. The shortest interval is usually twelve months, the longest less than thirty-six months. Certain states (South Carolina among them) count points at a fraction of their original value

^{40/} Reese, *op. cit.*, p. 125.

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after a certain time limit has lapsed. Some states, including Pennsylvania, also assign a point total to a driver whose license has been revoked and then reinstated. Most states, however, eliminate all point values after the stated time limit.

Under an administrative point system in which time limits are not specified, the administrative agency sets the time limit in reference to other sections of the licensing act. If this procedure provides no aid, the agency must be guided by the standard of "reasonableness."

Length of Withdrawal

Once license revocation has been deemed necessary, the agency must decide the period of time for which it is to be imposed. The major question has been whether the length of time will be prescribed by statute or set at the discretion of the agency. The mandatory revocation period increases the knowledge and certainty of the offender, but removes flexibility in the judge's or agency's determination of appropriate penalties.

Removal of Points

Various methods are used by states to mitigate the effect of accumulated points. Credit points can be accumulated by drivers for violation-free operation of a motor vehicle over a given time period. These credit points are subtracted from the driver's total point assessment in determining when to suspend a license. Under this scheme, states (such as Hawaii) credit a total of six favorable points to a driver's record if the person has had a twenty-four month violation-free driving period. The action level for suspension of a driver's license in Hawaii is twelve points within twelve months. Other states reduce a violator's point level by a given percentage depending on the length of his violation-free driving period. Missouri reduces an operator's point level by one-third for his first full year of violation-free driving; for the second consecutive full year his point total is reduced by one-half and for the third consecutive year all points are withdrawn. Maryland's procedure has a mitigating effect if a violator needs his license for the purpose of employment. If a violator falls into this category, additional points beyond the normal action level are permitted before his license is suspended or revoked.

The other common method of removing violators' accumulated points is attendance at driver improvement clinics. Attendance at these schools can be required by a statute, required by the driver agency under its discretionary authority, or be completely voluntary. The amount that a point total is reduced can be either statutorily or administratively defined. It seems obvious that no benefits should accrue to the violator unless he successfully completes the course. Mere attendance should not be sufficient evidence of his driver improvement. Perhaps the most liberal scheme is Iowa's, which allows a driver to accumulate a certain number of points for violation-free driving which may be credited to offset the assessment of points for future offenses. New Jersey gives no point credit for successful completion of its driver improvement school, but does erase two months of the license suspension period of the violator.

In sum, the only safety benefit of credit points is probably a compulsion to attend a driver improvement course if one assumes the validity of these courses as safety generative measures. It seems that violation-free driving should be sufficient reward in itself so as not to justify reducing point values for previous violations.

Hardship Mitigation

In many states suspension under the point system will not prevent issuance of provisional, probational or restricted licenses. (The terms are intended to be understood as synonymous.) The limited license may be issued by either the court or the commissioner when the convicted person needs to operate a motor vehicle in his regular employment or cannot reach his employment without using a motor vehicle. Typically, the restricted license limits the violator to the operation of a motor vehicle to and from work, driving a specified period of time, or the performance of certain duties. The license does not allow the violator to operate a vehicle solely for his own pleasure.

Usually the operator will have to apply to either the driver licensing administration or the courts to obtain this privilege. In addition to considering the reason for which the provisional license is requested, the decision-making official can examine the applicant's past driving record and financial responsibility. The hardship driving privilege can be denied certain individuals, including those convicted of committing felonies while using a motor vehicle, operating a vehicle under the influence of drugs, leaving the scene of an accident, refusing to submit to a chemical test for intoxication, or driving under the influence of intoxicating liquor. If there is satisfactory evidence that the holder of a limited license has violated any of the provisions of its terms, the commissioner has power to cancel the privilege. A violation of any provision of the motor vehicle laws of the state will result in automatic termination of the provisional license. Here also, the violator who faces losing a provisional license has the right to a hearing.

Pre-Suspension Action

Most states utilizing a point system authorize some type of action by the administrative agency in the case of a driver who has reached a point level somewhat below the level needed for suspension. The Uniform Vehicle Code suggests administrative action at 50% of the number of points authorizing suspension. This agency action is usually an advisory or warning letter which informs the driver that additional violations could result in the suspension of his license.

In some cases these advisory letters may be a prerequisite to further action by the agency. It seems clear that to ensure the effectiveness of a warning, either certified or registered mail should be used.

As an alternative, the state may provide for pre-suspension driver improvement interviews or pre-suspension hearings. Such procedures go much further as a driver improvement technique than does an easily ignored letter. Such an alternative, however, could entail greater costs through increased manpower requirements. A

decision as to use of the warning or the interview must depend on cost versus anticipated safety gain. If a hearing is held, the general rules which prescribe procedures of post-suspension hearings are applicable. Though some form of pre-suspension action is not a prerequisite to a legitimate point system, it seems clear that in terms of fairness and potential safety gain through increased deterrence it is highly desirable.

Hearing Procedure

Most jurisdictions have held that at some point a driver who will lose his license through discretion of the driver licensing administration must be given notice and the opportunity to be heard. This hearing, whether mandatory or only at the request of the violator, appears to satisfy due process requirements. The issue in most hearings will be whether or not the agency has acted arbitrarily or capriciously in suspending a driver's license. However, where pre-suspension or revocation operates mandatorily by action of law, (i. e., in most point systems), the hearing requirement is removed. Some courts have even held that it is improper to grant an administrative hearing under these conditions.^{41/} But this result is at odds with an expanded notion of due process and equal protection. It would seem to be better as a policy matter to allow, at the least, full disclosure of all the circumstances regardless of the nature of the point system.

So the hearing procedure that is required in a point system depends on whether the suspension procedures are mandatory or discretionary. No hearing is required, however, in either case if the accused violator does not choose to exercise his right. The mere opportunity to be heard is sufficient under constitutional tests.

Once the action level for suspension of driver licenses has been reached, the issue arises as to whether the licensee will be granted a hearing before or after his license is suspended. Either order is consistent with constitutional requirements, though a hearing prior to suspension tends to lessen the possibility of unjust punishment.

The hearing procedure, if allowed, can be conducted either by the court or an administrative agency. The court may be either a traffic court or a special court composed of local officials such as mayors, magistrates, and justices of the peace. Use of the courts would appear to be contraindicated in view of the already crowded court dockets. To superimpose such a potentially large amount of litigation could seriously impair the efficiency of the system. Additionally, the relaxed procedure in an administrative hearing, though perfectly legal, aids in gaining full disclosure and, in general, facilitates final disposition of the case. Administrative hearings are also more amenable to agency expansion and flexibility.

^{41/} Donigan, op. cit., Part II, pp. 35-36.

Out of State Convictions

A decision must be made as to whether convictions for traffic violations in foreign states or countries will incur points against a resident driver. The alternatives include counting convictions at the full value given the offense in the driver's state, assigning no points for out of state convictions, or assigning an arbitrary apportionment at some percentage of that number used in the resident's state. Of course, the utility of any of the approaches is only as good as the reciprocity of traffic records between states. Those states which assign points for out of state traffic violations at an arbitrary percentage of the in state weight usually apply a 50% accumulation of points rule. Some states modify the scheme somewhat in counting out of state convictions for specified moving violations, but not for others. The Uniform Vehicle Code authorizes the administrative agency to assess points against a driver for convictions of out of state offenses if they would be grounds for assessment in his home state.^{42/} A more clearly defined statutory provision would, however, appear needed to give greater clarity and certainty to proper administrative procedures.

The District of Columbia provides that in traffic cases turned over to military personnel, points will be assessed to the resident driver's record when the District has been notified that military authorities have taken disciplinary action as a result of the violation. This provision allowing for penalties without a court conviction would seem to be violative of a basic precept of point systems; that points will be assessed only after traffic convictions. A better solution, probably, is to require conviction by court martial of a military court of a traffic violation, either on or off government property, which would result in conviction under the state laws.^{43/}

As noted previously, Virginia requires the Commissioner of the DMV to revoke the privilege of a nonresident to drive in the Commonwealth if he is convicted of an offense requiring such action if perpetrated by a resident. Some states further require that the conviction record be forwarded to the nonresident's state of licensing, where the offender's license will usually be revoked in accordance with the requirements of the law of that state. However, the extent to which state licensing agencies are, in fact, exchanging all relevant records is not known. But even assuming full disclosure between the states, a driver with a revoked license in one state may apply for and receive a license in another without disclosing the fact that he is under revocation.

42/ Uniform Vehicle Code §§ 6-206 (b) (1971).

43/ See Appendix C for a typical military administered point system.

Two or More Offenses Arising Out of a Single Incident

When a driver is charged with more than one offense arising out of the same incident, including accidents, it must be decided what affect this will have on point assessment. The usual scheme provides that

in the case of the conviction of a licensee of two or more traffic offenses committed on a single occasion, such licensee shall be assessed points for one offense only and if the offenses involved have a different point value, such licensee shall be assessed for the offense having the greatest point value.^{44/}

The agency should take care to prevent the totaling of points from more than one offense in a manner which would be patently unreasonable. Of course, even without an express legislative command on the issue, administrative action is governed by a standard of reasonableness. Courts would, most likely, set aside any questionable procedures which allow the pyramiding of point values. Courts would also be likely to overturn any action of an agency which tried, without the benefit of legislation, to attach point values to a motorist involved in an accident in the absence of any proof of guilt.

Reinstatement Following Suspension

Restoration of a driver's license following suspension may require compliance with certain formalities. This requirement can be viewed as a final test to ensure that the violator should have his license returned because he has served his punishment and also has demonstrated that he is an acceptable safety risk on the state's highways. The usual requirements include qualification under the driver's examination and proof of financial responsibility.

ADVANTAGES OF POINT SYSTEM

The effect of a point system as a safety-generative device has not yet been scientifically determined. Researchers in the field have been wary of embracing such an immense task. The problem is complicated by the difficulty in compartmentalizing the many different characteristics of an interrelated phenomenon such as traffic safety. The scientific correlation of cause and effect between aspects of a point system and changes in highway statistics has not lent itself to a solution.

^{44/} General Statutes of North Carolina, § 20-16 (1971).

For these reasons, determinations of the effect, either negative or positive, of a point system on the reduction of highway mishaps generally have been subjective rather than objective. No statistical study has determined that point systems have any effect whatsoever on highway safety. The fact that any comment on point systems must be subjective naturally affects the weight any criticism should be given. Also highway safety administrators of states with point systems have a vested interest in defending the point system, so their determination of effect should be evaluated in light of this fact. The following reasons have been advanced for implementation of point systems.

1. "The point system is the best system for identifying the habitual offender."

Increased identifiability of the habitual offender could be an advantage in a state whose traffic record system fails to automatically identify such drivers. A habitual offender could conceivably escape detection unless the state is compelled by an accounting system to periodically review driver records. The point system represents, at the least, an incentive which forces tightening of intra-agency record keeping. Of course, a state that already checks records periodically would not be affected by such a change.

Virginia has a habitual offender statute which operates outside administrative discretion but within the court structure.^{45/} So even if the DMV officials are aware of a driver's habitual offender status, another branch of the state government, the Commonwealth Attorney's office, must initiate action against him. Other states with point systems do provide for mandatory self-executing license removals.

A similar notion is that the point system is more effective in identifying the problem drinking driver. This assumption appears to be more a function of the commonly accepted judicial practice of reducing DWI charges to reckless driving or other offenses. In most states, driving while intoxicated results in an automatic suspension under either statutory authority or a point system. So really, there appears to be no difference, at least with respect to this offense, between different systems in states which provide for mandatory revocation.

2. "With a publicized point system there would be an increase in the average driver's knowledge of what it takes to lose a license."

An assessment of the educational value of point systems is extremely resistant to any kind of objective measurement. Administrators are, however, consistent in believing that point systems, once initiated, lead to a greater awareness by the driver as to exactly what violations will lead to suspension of his license. Thus, the driver is more aware that safe driving is required of him. Virginia drivers generally seem less cognizant of specific offenses which will result in revocation and for what length of time. This educational problem could, nonetheless, be remedied without instituting a

^{45/} See Va. Code Ann. §46.1-307.7 in Appendix A.

point system by greater publicity and possibly a knowledge requirement prior to the revalidation of licenses. Notice of penalty weights is necessarily increased in a mandatory point system where information concerning the relative weights of various offenses can be disseminated without fear of them being adjusted as they go through the judicial system.

In sociological terms, a point system does declare in emphatic terms how the driver licensing agency will evaluate particular accident-causing behavior. This affirmation of publicly-held values tends to give greater meaning to the vague term "habitual offender."^{46/}

3. "A point system may be a spur to simplifying the Code provisions on traffic offense sanctions."

It is readily apparent that Virginia's Code on traffic offenses is overly complicated and retards easy understanding by the layman. (See Appendix A.) Point system states, on the other hand, exhibit clearly understood sanctioning schemes for various traffic offenses. It is uncertain whether the point system has actually caused the simplification, but a high correlation between introduction of point systems and simplification of traffic laws does exist. Here again, Virginia's Code could be pared without a point system, but such a mammoth task appears unlikely without compulsion of some sort.

4. "A point system accelerates remedial action against the deviant driver."

Accelerated remedial action would become apparent only if the point system offered a driver with a point accumulation below the suspension level an opportunity to attend a driver improvement course. This procedure accelerates remedial action by the state through personal contact with the erring driver. Interaction between potential traffic accident generators and highway safety officials is generally a far-sighted policy for state officials to pursue. But here again there is nothing inherent in point systems which produces this type of safety program. State intervention, as a highway accident preventive device, is provided for in the sentencing process which compels a violator to attend some sort of traffic safety school. Too often, however, this remedial device is utilized only after some harm has resulted. Virginia has provided for traffic schools according to the following statute:

§ 46.1-16.1. Traffic schools; requiring attendance by persons convicted of certain violations. (a) The governing body of any county or city may by ordinance provide for the establishment within such county or city of a traffic school, at which there shall be given instruction concerning laws and ordinances

^{46/} Reese, op. cit., p. 120.

for the regulation of vehicular traffic, safe operation of vehicles, and such other subjects as may be prescribed. Such ordinance shall provide for the supervision and control of such school, the days and hours when it shall be conducted, and the personnel who are to be instructors thereof. In the discretion of the governing body, the ordinance establishing a traffic school may vest the direction and conduct of such school in the county or city court or courts charged with the duty of hearing traffic cases.

The governing body of any county or city may alternatively, by ordinance provide for the designation of an existing traffic school or course if such is operated as part of a county or city adult education program as a traffic school for the purposes of this section.

(b) Any court of such county or city having jurisdiction of offenses covered by articles 1 through 6 (§§ 46.1-168 to 46.1-258) of chapter 4 of this title or ordinances of the county or city regulating is authorized to require any person found guilty of a violation of any such statute or ordinance to attend the traffic school established as provided in subsection (a) of this section for such period as shall be specified in the order requiring such attendance. Such requirement for attendance may be in lieu of or in addition to the penalties prescribed by § 46.1-16 or any such ordinance. Failure to comply with the order of the court shall be punishable as contempt of such court. No person not a resident of any such county or city shall be required to attend any school created hereunder; unless, if a non-resident violator be a resident of another county or city in which a traffic school has been established or designated as provided in subsection (a) of this section, the court may require his attendance at such traffic school for such period as shall be specified in the order requiring such attendance.

The apparent difficulty with the statute is that localities are able to ignore its enabling legislation at their whim. A better solution would be to enact legislation allowing the Division of Motor Vehicles to require all localities to establish mandatory traffic schools for traffic offenders. (See Appendix D for possible forms to be used by administrators in notifying offending drivers of remedial action taken against them.)

5. "The point system avoids political pressures on the administrator so as to ensure equal treatment for every motorist."

Elimination of political pressures so as to ensure equal treatment will be apparent only if a state changes from discretionary statutory provisions to a mandatory point system. Virginia already has a mandatory, self-executing, administrative system whereby the DMV automatically revokes a driver's license for conviction of certain offenses. So no readily discernible gain in terms of equal treatment for Virginia's drivers would occur by implementation of a point system.

Of course, it has been assumed that uniform treatment of drivers convicted of the same offense is a worthwhile goal. This assumption may, however, be without a legitimate basis. Administrators have indicated that in some cases they would prefer greater discretion in applying sanctions to given situations so as to avoid possible inequitable results.

6. "The point system acts as a deterrent to unsafe driving."

The presumed deterrent effect of point systems is perhaps the most widespread comment issued by safety directors of states with point systems. Unfortunately, no administrator has been able to base his assumption on available statistical evidence. Even a showing that traffic mishaps have decreased after implementation of a point system is not a sufficient control of variables to allow a generalization as to cause and effect. Some officials seem to base their judgement on the feeling that a point system puts the license removal sanctions of the state more consistently on the driver's mind. This idea has been examined earlier and is open to question.

In sum, it appears that the most important justification offered for the point system, that of increased deterrence against unsafe driving, has not been conclusively proven. Experimental data necessary to justify such a conclusion are not available. Officials with newly adopted point systems should be careful, however, to limit their claims as to point system advantages to more easily defensible positions.

7. "With a point system it is easier to differentiate degrees of offenses."

In many point system states the offense of speeding is divided into different offenses with different point weights according to the percentage speed above the limit. Other states with statutory provisions on speeding violations do not make such distinctions. Here again, the decision is a matter of legislative choice rather than one related to inherent characteristic of the point system. A state legislative body could easily make more specific classifications of the speeding offense without implementing a point system.

A last possible advantage of a point system particularly applicable to Virginia is the ease of programming an internal experimental design to determine the proper relative weights for offenses under such a system. Probably the greatest hindrance to an understanding of the point system is the lack of knowledge as to what effect conviction for any given offense may have on the probability the same driver will commit another violation, or the probability that he will be in an accident. A long-range statistical experiment involving Virginia drivers might remove this obstacle to an understanding of accident-generative phenomena.

DISADVANTAGES OF POINT SYSTEM

The most cogent indictment of the point system is contained in John Reese's treatise entitled Power, Policy and People, summarized earlier. Other criticisms have been advanced, however.

Opponents feel that point systems dehumanize the administration of traffic offenses to an unacceptable level. They are seen as replacing personal contact with the automatic disposition of cases based solely on point levels. The only criterion used in determining which drivers are worthy of remedial attention is the accumulated point value. Likewise it is argued that these systems encroach upon the individual because they are insufficiently flexible in hardship cases. But any of these criticisms can be legislated out of point systems by provisions such as mandatory personal contact with safety administrators upon request and the discretionary use of occupational licenses.

The remote possibility that publicized point systems may create a false sense of security, in that a person need not be concerned with his driving performance until it nears the action level, has been used as a criticism. A similar remote possibility is that drivers may try to avoid reaching the action level of a certain time period by delaying court prosecution. Such problems appear unlikely, however, and should be given little weight in any decision as to whether or not a point system should be implemented.

A more substantive criticism is that the seriousness of offenses under the point system is established on essentially arbitrary bases and is not scientifically related to the likelihood of accident-generative probabilities. Klein and Waller have noted that when committed in an automobile such illegal acts as fornication, illegal possession of a gun, and others which bear little or no relation to highway safety are assigned points by some states.^{47/} B. J. Campbell's major study on point systems found that although some violations were significantly correlated with the future probability of causing an accident, all the correlations were extremely small.^{48/}

^{47/} Klein, David, and Waller, Julian A., "Causation, Culpability and Deterrence in Highway Crashes," Department of Transportation, Auto Insurance and Compensation Study, p. 50 (July 1970).

^{48/} Campbell, B. J., Driver Improvement -- The Point System, University of North Carolina, Institute of Government, Chapel Hill (1958).

The Klein-Waller report also showed that motor vehicle administrations have a very low level of consensus as to how offenses should be ranked as to seriousness.^{49/} Both a California study and a North Carolina study^{50/} on point systems show that the most sophisticated research has not established reliable high correlations between any given traffic law violation and future accident involvement. So a point system based on these low-validity accident predictors will include, as future accident generators, drivers who will not actually become involved in accidents. Thus point systems, because of poor correlations, do not predict well at all.

Reese has clearly shown that the most important criticism of the point system is the fact that it rests on several dubious assumptions — specifically, that a tabulation of offenses is an accurate depiction of a particular driver's deviant behavior and his resultant probability of causing an accident.

The system, in short, represents the cumulation of several invalidities. It seems clear that it is impossible to determine from the point system whether the high-point driver is the victim of a wide variety of biases that are entirely unrelated to highway safety or whether he is in fact a source of danger to himself and others, which is the purported reason for the establishment of the point system in the first place.^{51/}

In sum, it is submitted that any examination of the effect of point systems on traffic safety, either negative or positive, must depend on subjective observations rather than objective data. Probably the only defensible answer in this field is that it is as yet unclear what, if any, effect a point system can have as a safety-generative procedure. If one presumes the utility of existing driver license removal procedures, it will be difficult indeed to prove that point systems do improve any state's traffic safety statistics.

^{49/} Klein and Waller, op. cit., p. 50.

^{50/} R. Coppin, R. McBride, and R. Peck, See Part 8, "The Prediction of Accident Involvement Using Concurrent Driver Record Data," and Part 9, "The Prediction of Accident Involvement from Driver Record and Biographical Data," State of California. Department of Motor Vehicles, the 1964 California Driver Record Study, (1967), and Campbell, B. J., op. cit.

^{51/} Klein and Waller, op. cit., p. 51.

VIRGINIA'S ADMINISTRATIVE EXPERIENCE

The agency in Virginia primarily responsible for the central record keeping of traffic convictions is the Division of Motor Vehicles. The agency derives its general duties and authority from the following statutes:

§ 46.1-25. General powers and duties of division — The administration of the motor vehicle license, registration and title laws, the issuance, suspension and revocation of operator's and chauffeur's licenses, the examination of applicants for, and holders of operator's and chauffeur's licenses, the administration, training, disciplining and assignment of examiners of applicants for operator's and chauffeur's licenses, the administration of the safety responsibility laws, fuel tax laws and such other laws or parts of laws involving the former Division of Motor Vehicles in the Department of Finance as are not covered by § 5204, shall be in the Division of Motor Vehicles established by this chapter. (Code 1950, § 46-26; 1958, c. 541.)

§ 46.1-26. Authority to adopt rules and regulations; violation; forms for applications, certificates, licenses, etc. — Subject to the provisions of chapter 1.1 (§ 9-6.1 et seq.) of Title 9 the Commissioner may adopt such reasonable administrative rules and regulations as may be necessary to carry out the laws administered by the Division and may enforce such rules and regulations and laws through such agencies of this State as he may designate. A violation of any such rule or regulation shall be a misdemeanor and punished as prescribed in § 46.1-16. He shall also provide suitable forms for applications, certificates of title and registration cards, license number plates, operator's licenses and chauffeur's licenses and badges and, unless otherwise required in this title, he shall provide all other forms requisite for the purpose of this title. (Code 1950, § 46-27; 1958, c. 541.)

§ 46.1-31. Records of Division open to public — All registration, title and license records in the office of the Division shall be public records, but shall be open for inspection only subject to such regulations as the Commissioner may adopt. (Code 1950, § 46-32; 1958, c. 541; 1964, c. 42.)

§ 46.1-37. Enforcement of laws by Commissioner, assistants, police and other officers; authority of officers to administer oaths, take acknowledgements, etc. — (a) The Commissioner, his several assistants, and police officers appointed by him are vested with the powers of a sheriff for the purpose of enforcing the laws of this state which the Commissioner is required to enforce. (b) Nothing in this title shall be construed as relieving any sheriff or sergeant, commissioner of the revenue, police officer or any other official now or hereafter invested with police powers and duties, state or local, from the duty of aiding and assisting in the enforcement of such laws within the scope of their respective authority and duty. (c) All police officers appointed by the Commissioner, are vested with the authority and power to administer oaths and take acknowledgements and affidavits incidental to the administration and enforcement of this title and all other laws relating to the operation of motor vehicles, applications for operator's and chauffeur's licenses and the collection and refunding of taxes levied on gasoline, for which services they shall receive no compensation. (Code 1950, § 46-38; 1958, c. 541.)

§ 46.1-413. Courts to forward abstracts of records in certain cases; records in office of Division; inspection; clerk's fees for reports. — In the event a person is convicted of a charge described in subdivision (a) or (b) of § 46.1-412 or forfeits bail or collateral or other deposit to secure the defendant's appearance upon such charges unless the conviction has been set aside or the forfeiture vacated; or in the event there is rendered a judgement for damages against a person as described in subdivision (c) of § 46.1-412 every county or municipal court or clerk of a court of record shall forward an abstract of the record to the Commissioner within fifteen days, or in case of civil judgements, thirty days after such conviction, forfeiture or judgement has become final without appeal or has become final by affirmance on appeal. The Commissioner shall keep such records in the offices of the Division and they shall be opened to the inspection of any person during business hours, provided the Commissioner with the approval of the Governor may destroy the record of any conviction, forfeiture or judgement when

three years have elapsed from the date thereof, except records of conviction or forfeiture upon charges of reckless driving and exceeding the established lawful rates of speed, which records may be destroyed when five years have elapsed from the date thereof, and further excepting these records that alone or in connection with other records will require suspension or revocation of a license or registration under any applicable provisions of this title.

Such records required to be kept, may in the discretion of the Commissioner be kept by electronic media or by photographic processes and when done the abstract of the record may be destroyed.

There shall be allowed to the clerk of any court a fee of fifty cents for each report hereunder to be taxed and payable as a part of the court costs.

The Virginia Code further specifies in the section on traffic offense penalties (see Appendix A) that the DMV must revoke Virginia driver licenses for convictions of:

1. Speeding -- two convictions when the offenses occur within a period of twelve months.
2. Reckless driving -- two convictions when the offenses occur within a period of twelve months.
3. Speeding -- Reckless driving -- one conviction of each when the offenses occur within a period of twelve months.
4. Operating a motor vehicle while intoxicated.
5. Voluntary or involuntary manslaughter.
6. Perjury or the making of a false statement to the Division of Motor Vehicles.
7. Racing on the highways.
8. A felony under the motor vehicle laws of this state or any other state.
9. Driving 20 or more miles per hour in excess of speed limits or in excess of 80 miles per hour regardless of posted speed limit.

10. Failure to stop and disclose identity — one conviction, if you as a driver of a motor vehicle involved in an accident resulting in the death or injury of another person, fail to stop and disclose your identity at the scene of the accident.

OR

Two convictions for offenses occurring within a period of twelve consecutive months of failing to stop and disclose identity when involved in an accident resulting in damage to property of another in excess of \$100.00.

The DMV further has discretion to suspend a driver's license after a hearing if: (1) He habitually violates the motor vehicle laws; (2) he becomes physically or mentally unable to drive safely; or (3) causes or contributes to one or more accidents.

This examination of duties and powers does not focus, however, on the internal method of record keeping and oversights. As an internal accounting procedure, the current record-keeping procedure is similar in effect to an unpublicized point system operating under general discretionary powers granted to the DMV. The system as presently operated is characterized by mechanical periodic oversight of driver's records and mandatory self-executing penalties. The DMV also now sends out warning letters to drivers who are in danger of losing their licenses with another traffic conviction. A schematic view of conviction processing is in Figure 2.

In spite of Virginia's system being similar to a type of point system, a complete change to a publicized statutory point system would require extensive changes in the automated and manual systems for handling convictions. In fact, it has been estimated that the DMV would have to purchase a new computer system and retrain 500 employees to handle the new accounting procedures.^{52/} Of course, even a change to a completely publicized statutory point system is no guarantee of a traffic safety gain to the state. Usually a point system will be a helpful record-keeping system only if a state is using lax outdated procedures with a maximum of discretionary authority within the system. As has been noted, such is not the case in Virginia. The record-keeping system now in effect, barring human error, works mandatorily to revoke licenses with few loopholes in oversight for the convicted driver.

^{52/} Telephone conversation with R. E. Spring, Driver Services Administrator, Division of Motor Vehicles, Richmond, Va., July 1971.

CONVICTION PROCESSING

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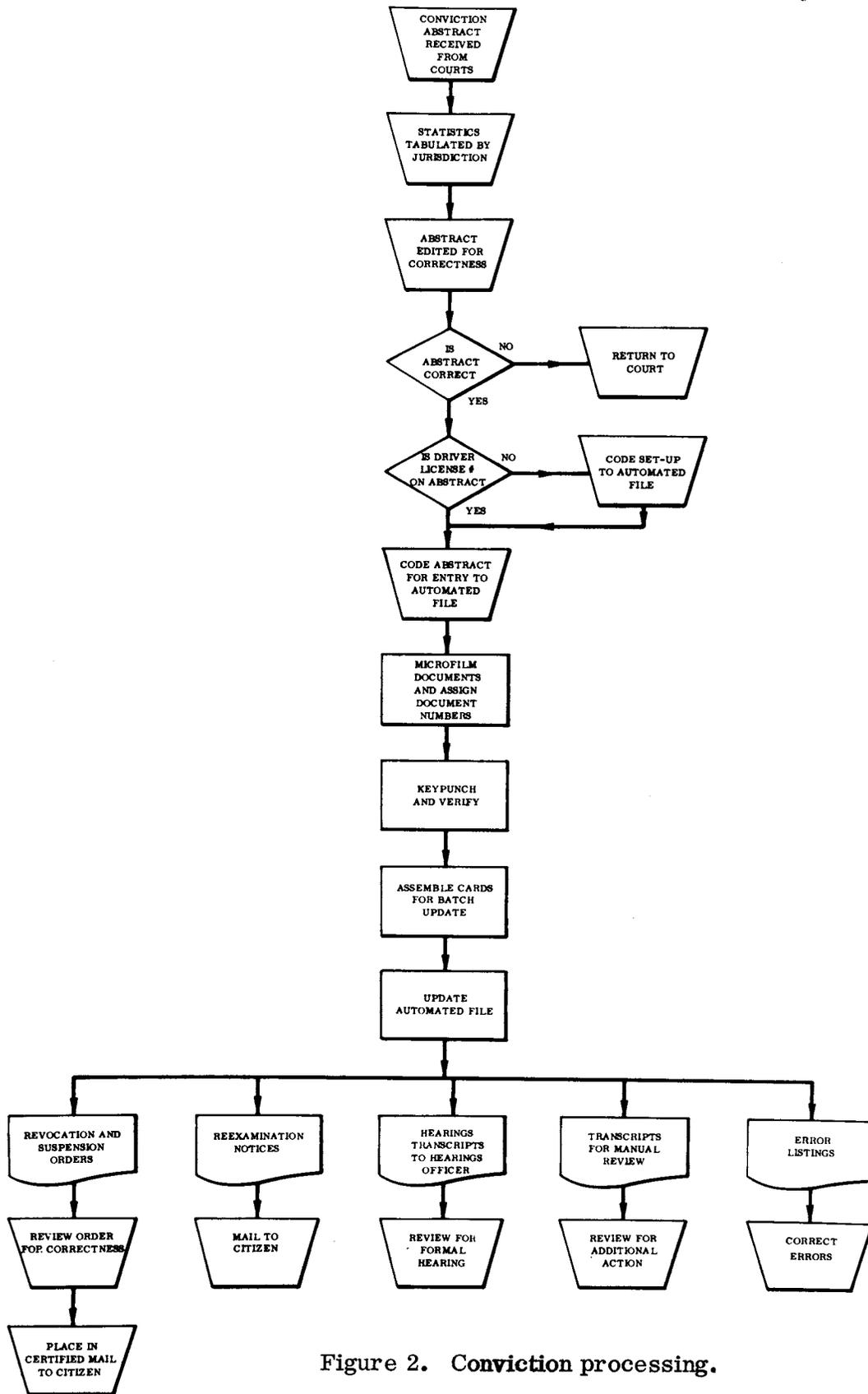


Figure 2. Conviction processing.

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APPENDICES

APPENDIX A

SURVEY OF SANCTIONS FOR VIRGINIA TRAFFIC OFFENSES

18.1-56.1 Impaired Driving.

- a. A presumption of impaired driving arises when the blood alcohol level is between 0.10 and 0.15.
- b. The offense is punishable as a misdemeanor under 18.1-9.
 - (1) 0-\$1,000 fine.
 - (2) 0-12 months in jail.
- c. An additional penalty of license suspension is provided by 18.1-56.1.
 - (1) 1st offense — 6 months' suspension.
 - (2) 2nd offense in 5 years — 12 months' suspension. (Void after July 1, 1972)

18.1-58 Penalty for Violation of 18.1-54 (Driving While Intoxicated).

- a. Misdemeanor for first offense.
 - (1) \$200 — \$1,000 fine.
 - (2) 30 days to 6 months in jail.
 - (3) License revocation for 6-12 months (18.1-59).
- b. 2nd or subsequent offense within 10 years.
 - (1) Fine \$200 — \$1,000.
 - (2) 1-12 months in jail.
 - (3) License revocation of 36 months.

46.1-25 General Powers and Duties of DMV (Issuance, Suspension and Revocation of Operator's and Chauffeurs' Licenses).46.1-26 Authority to Adopt Rules and Regulations Subject to 9-6.1 et seq. (General Administrative Agencies Act) the Commissioner may:

- (1) Adopt such reasonable administrative rules and regulations as may be necessary to carry out the laws administered by the Division, and
- (2) may enforce such rules and regulations and laws through such agencies of the state as he may designate.

A violation of any such rule or regulation shall be a misdemeanor and punished as prescribed in 46.1-16.

46.1-16 Penalties for Misdemeanors.

It is a misdemeanor to violate any of the provisions of 46.1-1 through 46.1-347 unless other statutes designate the violation a felony.

- (1) 1st offense — \$10-\$100 — 10 days in jail.
- (2) 2nd offense — \$20-\$200 — 20 days in jail.
- (3) 3rd offense — \$50-\$500 — 10 days — 6 months in jail.

46.1-167.4 Suspension of Operator's License and Registration when Uninsured Motor Vehicle Involved in Reportable Accident.

Suspension until such person has complied with 46.1-442 et seq. and paid \$75.00.

46.1-177.1 Revocation for Violation of 46.1-176 (Hit and Run).

- a. Revocation up to 6 months by court or judge.
- b. License surrendered to court, disposed of in accordance with 46.1-425.
- c. Section does not limit authority of Commissioner to revoke licenses as provided in Chapter 6 (Motor Vehicle Safety Responsibility Act, 46.1-388 to 46.1-514).

46.1-191 Reckless Driving (Racing on Highways).

- a. Court of judge shall suspend license for 6 months to 2 years.
- b. Disposed of in accordance with 46.1-425.

46.1-192 Reckless Driving Penalties.

- a. 1st offense 18.1-9 (Misdemeanors)
 - (1) Fine 0-\$1,000
 - (2) 0-12 months in jail
- b. 2nd offense* within 12 months or subsequent.
 - (1) Fine \$100-\$1,000
 - (2) 10 days to 12 months in jail

*See also 46.1-417 (Required Conviction for Certain Offenses) 46.1-422 (Suspension of License upon Conviction of Reckless Driving).

46.1-192.1 Reckless Driving and Disregarding Signal to Stop by Police Officers.

- a. Additional penalty of 0-12 months' revocation of license invoked by court or judge where accused is violating reckless driving statute and disregards police officer. (Section also provides for \$50-\$1,000 fine and 60 days to 12 months in jail.)
- b. 90 days' to 12 months' revocation for disregarding police officer and exceeding speed limit by 15 mph where posted limit equals or exceeds 55 mph. (Penalties also include \$50-\$1,000 fine and 60 days to 12 months in jail.)

46.1-197 Suspension of License Where Speed Limit Exceeded by 5 mph.

- a. License shall be suspended for 60 days for 2 or more convictions for speeding 5 miles over the posted speed within a two year period.
- b. Does not apply for violations in cities or towns.
- c. Does not apply unless posted speed is 45 mph or greater.
- d. Revoked in accordance with 46.1-425.
- e. 46.1-418 (Suspension of Registration and License Plates by Commissioner) and 46.1-438 (License Renewed when License Suspended or Revoked) do not apply.

46.1-239 Punishment for Violation of 46.1-237 (Failure to Stop for Blind Pedestrians) and 46.1-238 (Unlawful for Other than Blind Person to Use Red-tipped Cane).

- a. 0-\$25.00 fine and 0-10 days in jail.

46.1-324 Violation of 46.1-315 to 46.1-326.1 (Inspections).

- a. 1st offense -- Fine of \$25-\$500
- b. 2nd and subsequent offenses -- Fine of \$100-\$1,000

46.1-341 Penalty for Violation of 46.1-339 (Weight of Vehicles and Loads) and 46.1-340 (Crossing Bridge with Vehicle Exceeding Bridge Weight Limit).

- a. Misdemeanor punished in accordance with 46.1-16.

46.1-342 Liquidated Damages for Violation of Weight Limits.

- a. Penalty provided by fine for excess weight as set forth in 46.1-342.

46.1-349 Driving without License Prohibited.

- a. No one except those exempted in 46.1-352 through 46.1-356 shall drive a motor vehicle without a valid operator's license.
- b. Convictions.
 - (1) 1st offense punished in accordance with 46.1-387 (0-\$500 fine and 0-6 months in jail).
 - (2) 2nd or subsequent conviction occurring within one year of the first.
 - (a) 10 days to 6 months in jail.
 - (b) \$100-\$500 fine.

46.1-350 Driving While Permit Suspended or Revoked.

- a. 1st offense.
 - (1) 10 days to 6 months in jail.
 - (2) \$100-\$200 fine.
- b. 2nd offense.
 - (1) 60 days to 12 months in jail.
 - (2) \$200-\$1,000 fine.
- c. "The Court" shall suspend or revoke the license for an additional period of time equivalent to the original suspension or revocation.
- d. The court may impose an additional suspension or revocation of 0-90 days if the original suspension or revocation was "... not for a definite period of time."

46.1-351 Driving While Restoration of License is Contingent Upon Furnishing Proof of Financial Responsibility (Required by 46.1-467 et seq.).

- a. 1st offense.
 - (1) 10 days - 6 months in jail.
 - (2) \$100-\$500 fine.
- b. 2nd or subsequent violation.
 - (1) 30 days - 12 months in jail.
 - (2) \$100-\$1,000 fine.

46.1-387 Penalty for Violation of Chapter 5 (Operator's and Chauffeurs' License Act) of Title 46.1.

- a. It shall be a misdemeanor to violate the provisions of Chapter 5 unless the violation is declared by law to be a felony.
- b. Punishment for misdemeanor under Chapter 5.
 - (1) \$0-\$500 fine.
 - (2) 0-6 months in jail.

46.1-387.7 Punishment for Habitual Offenders.

- a. 46.1-387.2 (Habitual Offender Defined).
 - (1) Basically a habitual offender is a person who commits three violations such as voluntary or involuntary manslaughter, driving while intoxicated or impaired, or any offense punishable as a felony, etc.; or,
 - (2) 12 or more convictions which are reportable to DMV, each of which requires a minimum license suspension for 30 days or more. (Serious offense as pointed out in a. (1) above are counted in the 12.)
- b. Punishment provided.
 - (1) License taken away for a 10 year period and must be restored by an order of a court of record.

46.1-387.8 Punishment for Habitual Offender Who Later Drives.

- a. Confinement in penitentiary for 1-5 years.

46.1-398 General Penalty for Violation of Chapter 6 (Motor Vehicle Safety Responsibility Act) of Title 46.1.*

- a. 0-90 days in jail.
- b. \$50-\$1,000 fine or both.

46.1-399 Driver to Give Immediate Notice of Certain Accidents.

- a. Punished as a misdemeanor under 46.1-16.

*Unless a specific penalty authorized by law.

46.1-405 Failure to Report Accident or to Give Correct Information.

- a. Punished as a misdemeanor.
- b. Shall constitute ground for license suspension until correct report filed.

46.1-416 Penalty for Failure to Forward Record of Conviction of Judgement for Damages Without Reasonable Cause.

- a. \$10-\$50 fine.

46.1-417 Required Revocation for One Year upon Conviction of Certain Offenses* (as indicated below).

- a. Voluntary or Involuntary Manslaughter Resulting from Operation of a Motor Vehicle.
- b. Violation of 18.1-54 (Driving While Intoxicated) or 18.1-60 (Driving after Forfeiture of License).
- c. Perjury or False Affidavit to DMV, or Making False Statement on Application for Driver's License.
- d. Any Crime Punishable as a Felony Under the Motor Vehicle Laws or Any Felony in Which a Motor Vehicle is Used.
- e. Two "Charges" convictions) of Reckless Driving or Two Forfeitures of Bail upon Two Charges, When Both are Committed Within a 12 Month Period.
- f. Failure to Stop and Disclose Identity at Scene of Accident After Killing or Injuring Another.
- g. Two Convictions (in a 12 Month Period) of Failure to Stop and Disclose Identity at the Scene of an Accident Where There is Damage to Property in Excess of \$100.

46.1-417.1 Required License Suspension upon Conviction of Certain Offenses.

- a. Offenses are:
 - (1) Theft of motor vehicle, or
 - (2) unauthorized use thereof, or
 - (3) theft of any part thereof.

*Statute is Self-executing upon Receipt of Notice of Convictions by DMV. No Hearing required.

- b. Suspension is from 60 days to 6 months for 1st offense.
- c. 2nd or subsequent offense (no time limit) -- suspension from 60 days to 12 months.

46.1-419 Required Revocation upon Convictions of Exceeding Speed Limit.

- a. Revocation of license for 60 days to 6 months upon two speeding convictions within a 12 month period.
- b. Three or more convictions within 12 months -- the license may be suspended from 60 days to 12 months.

46.1-420 Required Revocation upon Separate Convictions for Reckless Driving and Speeding.

- a. For two separate convictions, one for speeding and one for reckless driving within a 12 month period, the license shall be revoked for 60 days.

46.1-421 Revocation for Conviction of Driving under the Influence of Drugs, Intoxicants, etc.

- a. Paragraph (a) of this section makes no sense. It apparently provides for a 3 year license revocation for a subsequent 2nd violation of either 18.1-54 (driving while intoxicated) or 18.1-60 (driving after license revoked under 18.1-54), if the two convictions occur within a period of 10 years. See also 18.1-59 which parallels 46.1-421 (a).
- b. Paragraph (b) provides a 10 year revocation for 3 convictions of violation of 18.1-54, regardless of time interval; but they must occur after July 1, 1968.

46.1-422 Suspension of License Upon Conviction of Reckless Driving.

- a. Allows revocation of license from 10 days to 6 months for a violation of Chapter 5 (Operators' and Chauffeurs' License Act. § 46.1-348 et seq.) of Title 46.1.
- b. This provision is in addition to the penalties for reckless driving prescribed under 46.1-192.
- c. Provision excepts those revocations available under 46.1-417.

46.1-423 Same; Reckless Driving -- When Convicted of 46.1-190 (i)

- a. Provides license revocation of 60 days to 6 months for a conviction of driving 20 mph over the speed limit or in excess of 80 mph.

46.1-423.2 Revocation of License Upon Fourth Conviction of Any Such Offense.

- a. Provides a 5 year revocation for a fourth offense as covered in 46.1-423.1.

46.1-424 Suspension of License for Certain Violations While Transporting Explosives.

- a. Sets forth a discretionary 90 day suspension for a conviction of 46.1-189, 46.1-190, 46.1-213, 46.1-221, 46.1-422, 46.1-223 or any applicable speed limit prescribed in 46.1-193, if such violation was committed while transporting explosives.
- b. This penalty shall be in addition to any other penalties for such violation.

46.1-426 Revocation of License for Improper Use or Failure to Pay Road Taxes.

- a. DMV shall revoke (no time provided) the license of anyone who permits someone else to use it or who refuses to pay road taxes due the state.

46.1-427 Suspension of License of Person Incompetent Because of Mental Illness, Mental Deficiency, Epilepsy, Inebriety or Drug Addiction.

- a. License to be returned upon satisfaction of Commissioner, after exams under 46.1-369, that such person is competent to operate a motor vehicle with safety to persons and property.

46.1-430 When Commissioner May Suspend or Revoke License for Maximum of One Year.

- a. Applies in following cases:
 - (1) Reckless or unlawful operation of a motor vehicle which contributes to death or injury to another, or serious property damage,
 - (2) incompetency to drive,
 - (3) afflicted with mental or physical infirmities rendering it unsafe to drive a motor vehicle,
 - (4) habitually a reckless or negligent driver,
 - (5) committed a serious violation of the motor vehicle laws,
 - (6) habitual drunkard, or
 - (7) addicted to the use of drugs.
- b. Requires hearing and notice.

46.1-436 When Commissioner May Revoke for Maximum Time of Five Years.

- a. You may have your license revoked up to five years for:
 - (1) Any reasonable grounds appearing in the records of DMV, or
 - (2) where the Commissioner deems it necessary for the safety of the public on the highways.
- b. Requirements.
 - (1) Notice.
 - (2) Hearing.

46.1-441.1 U. S. Commissioner Authorized to Revoke Operators' and Chauffeurs' Licenses Under Certain Conditions.

- a. Any person found guilty of a violation of any traffic regulation by a U. S. Commissioner where the violation occurred on a federal reservation may have his license revoked if:
 - (1) The violation on state property could be punished by license revocation, and
 - (2) the license is forwarded to DMV.

46.1-442 Suspension for Failure to Satisfy Judgement.

- a. The commissioner (DMV) shall suspend an operator's license of any person who fails to satisfy a judgement for 30 days after certain accidents.
- b. This provision does not apply where an insurance company was qualified to do business and then went into liquidation subsequent to the accident but prior to liquidating the claim.

[A value judgement by the author recommends that the sections regarding suspension for failure to pay judgements be eliminated from the point system because the point system should strive to control driver behavior rather than the problem of driver insolvency.]

46.1-462 Power Over Nonresidents.

- a. The commissioner may suspend or revoke the:
 - (1) Privilege of a nonresident operator or chauffeur to operate a motor vehicle in the state, and
 - (2) suspend the privilege of operating a vehicle owned by a non-resident whether such vehicle is registered in this state or not.

46.1-495 Penalty for Operation of Motor Vehicle in Violation of Chapter 6 (Motor Vehicle Safety Responsibility Act) of Title 46.1.

- a. Any person driving a vehicle or who knowingly lets another operate his vehicle where the registration is suspended or revoked for lack of financial responsibility is guilty of a misdemeanor and shall be punished by:
 - (1) 2 days to 6 months in jail
 - (2) \$50-\$500 fine

46.1-496 Penalty for Forging Proof of Responsibility

- a. It's a misdemeanor punishable by:
 - (1) 0-30 days in jail
 - (2) 0-\$1,000 fine.

APPENDIX B

DEFINITION OF TERMS

(Adapted from Baker, Stannard, Driver Improvement Through
Licensing Procedures, Washington, D. C.;
American Association of Motor Vehicle Administrators, 1956.)

Definition of Terms

Advisory Letter. (Sometimes called preliminary letter or warning letter.) Any of various form safety letters sent by the driver improvement bureau to repeaters calling attention to the fact that their records are not what they should be and intimating that further steps will be taken by the driver license division if the records do not improve.

Driver Licensing Agency. (Sometimes called: safety bureau, repeater bureau, hearing bureau, suspension and revocation bureau.) The bureau of a driver license division which (1) receives the records of drivers, especially repeaters, to find out, if possible, why they drive dangerously, (2) investigates complaints, (3) tries to improve drivers who are apparently dangerous, (4) withdraws the privileges of those who cannot and will not improve, (5) handles the routine of all mandatory suspensions, cancellations and revocations, (6) suspends drivers' licenses under a financial responsibility law, (7) secures the surrender of license certificates when necessary, (8) receives and tabulates records of arrests, convictions, warnings and complaints before filing, (9) stimulates the reporting of convictions, official complaints and warnings, (10) receives all communications from other states for the records of local drivers, (11) sends to their home states reports of foreign drivers, and (12) does other allied things. Many of these functions are performed in Virginia by the Department of Motor Vehicles.

Driver Interview. An informal meeting between a reviewing officer or someone in another bureau acting for the driver improvement bureau and a driver (usually a repeater having had a preliminary letter and review examination, if that seems desirable) for the purpose of getting a personal understanding of his problems, of trying to persuade him to drive safely, and of reaching a definite agreement as to the future course of his case. The record of an interview is a succinct written report summarizing the information obtained and the agreement reached.

Driver License Revocation or Suspension. Presumably divorce of the driver from his privilege for protection of the public. A specified time, usually a year, must elapse before a new license may be applied for.

Habitual Traffic Violator. Any driver whose record, during a consecutive 12 month period, shows reports of more than three convictions of traffic violations. In Virginia under 46.1-430 of the Va. Code Ann., the Commissioner of the DMV has power to suspend or revoke the license of habitually reckless or negligent drivers.

Point System. Systems that utilize a method of numerically "rating" the recorded violations and accidents of drivers for the purpose of: (1) Issuing a warning letter when a specified number of points have been accumulated; (2) issuing a letter suggesting an interview if a driver continues to accumulate points, (3) issuing summons for a formal hearing if a driver's point total reaches the critical state, and (4) in some cases, issuing an order suspending the driving privilege for a specified period of time.

Problem Driver. A driver who, because of his driving record, his physical or mental condition or other information known about him, is reasonable believed to be an unacceptable risk on the highways and is receiving or should receive driver improvement attention.

Reviewing Officer. (Sometimes called: hearing deputy, reviewing deputy, investigator, inspector, hearing judge.) An employee in the driver improvement bureau especially selected and trained to (1) review and analyze the records of drivers, (2) investigate complaints, and (3) hold educational interviews and represent the department in hearings concerning the privilege of driving. Sometimes an employee of the examining bureau, usually a supervising examiner or special examiner, is qualified to do such work in connection with his other duties.

Traffic Conviction. A conviction, plea of guilt, forfeiture of bail not vacated or a compromise of charges for a traffic law violation regardless of whether penalty is rebated or suspended.

Traffic Warning. A written notice issued by an enforcement officer to a driver calling his attention to a violation or unsafe driving practice of which the driver was presumably ignorant, being unaware of driving with a burned-out tail light or unconscious of an error like violating a speed limit which was lower than he thought. Such notices are usually acknowledged by the driver's signature.

Unit System. Systems that use an informal, unpublicized method of determining the type of action that should be taken to control problem drivers. In most cases, when a predetermined number of units or convictions of motor vehicle violations are recorded against a driver's record, some type of action is initiated. The unit system is similar in form to the present method of driver conviction record keeping used by the DMV.

APPENDIX C

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A MODEL MILITARY POINT SYSTEM

MILITARY POINT SYSTEM

TRAFFIC POINT SYSTEM — AN ADMINISTRATIVE AID FOR COMMANDERS

1. Purpose. The purpose of the traffic point system is to provide commanders with an impartial and uniform administrative device for evaluating the driving performance of personnel under their jurisdiction. Assessment of points for a moving violation is not to be construed as disciplinary action. Furthermore, adoption of the point system is not intended to interfere in any way with the reasonable exercise of the commander's prerogative to issue, suspend, revoke, or refuse to issue the installation operating privilege without regard for point assessments made under the system.
2. Application. The point system applies to military and civilian personnel operating Government vehicles on or off the installation; to military personnel operating privately owned vehicles on or off the installation; and to dependents, civilian employees, and contractors operating privately owned vehicles on the installation.
3. Scope. The traffic point system provides that —
 - a. Points will be assessed against the driving record of personnel who have been adjudged responsible for specific traffic violations, on and off installations.
 - b. When a violator has accumulated a specified number of points, he should be counseled by his commander or supervisor in safe driving practices, warned that his installation operating privilege is in jeopardy, and informed that the action described in paragraph d, below could ultimately follow.
 - c. When a driver accumulates a specified number of points, his installation operating privilege will be suspended for a stipulated period of time or, in some instances, revoked permanently.
 - d. When the installation driving privilege has been revoked as a result of point accumulation or other action, appropriate State motor vehicle authorities should be notified of this action.
4. Responsibility. Installation commanders will insure that point system control of the installation operating privilege is established on conformance with policies and procedures outlined herein.
5. Assessment Method. Points will be assessed and recorded on DD Form 1409 (Vehicle Registration and Driver Record) whenever the violator —
 - a. Has been convicted of a traffic violation.
 - b. Has forfeited bail in a civilian court in lieu of hearing or trial for a traffic violation (Figure 1).
 - c. Has received nonjudicial punishment pursuant to Article 15, UCMJ, for a moving traffic violation.

- d. Has received notification of a violation for which points are assessable, such as DD Form 1408 (Armed Forces Traffic Ticket) or other report, when the violation charged has been reviewed and substantiated by the commander or supervisor of the violator.
 - e. Has willfully and knowingly failed to comply with installation registration requirements.
6. Procedures. When an individual authorized to drive on the installation is issued a traffic ticket for a traffic violation alleged to have been committed on the installation, the report on the alleged violator will be transmitted through command channels to the unit commander, or designated official in the case of a civilian employee, with a request for return report of action taken or other disposition made of the offense. The same procedure will also be followed for off-installation violations by drivers of government vehicles and by military operators of private vehicles.
- a. Upon receipt of the return indorsement, the custodian of the driver record (DD Form 1409) will enter the violation, disposition, and the number of points assessed for the violation.
 - (1) In case of a conviction by court-martial, the unit commander will not forward his report on disposition until the convening authority has acted upon the findings of the court-martial.
 - (2) If, upon appellate or supervisory review, the findings of guilty (whether by court-martial or civilian court) are set aside, the points charged will be deleted.
 - b. When an individual has accumulated six points, his commander or the the designated official, in the case of civilian employees, will be advised. This will permit counseling of the individual on the responsibilities of a vehicle operator.
 - c. When an individual has accumulated a total of 12 or more points, his unit commander or superior will be notified through command channels that action is being taken to suspend the installation operating privilege for a period of 6 months or longer or to revoke the operating privilege for 6 months or for an indeterminate period longer than 6 months. The commanding officer may reconsider the revocation after 6 months and continue a further stipulated period or continue the revocation for an indeterminate period. The individual's permit to operate a government vehicle may also be suspended or revoked for the same or different length of time. The unit commander or designated official will notify the individual of this action.
 - d. Points assessed against an individual will remain in effect for a 24-month period or until reenlistment, whichever comes sooner. Expiration of suspension period will, of itself, serve to cause removal from the record of all points assessed.

- e. When an individual whose installation operating privilege has been suspended is apprehended driving on the installation, action will be taken to convert the suspension order to permanent revocation.
- 7. Appeal. Any person whose installation operating privilege has been suspended or revoked as a result of maximum point accumulation under this system may appeal. Appeals or grievances of civilian employees will be processed in accordance with appropriate civilian personnel regulations.
- 8. Optional Provisions. Removal of decals or installation identification tags. It will be discretionary with the installation commander whether or not the decal (or other device) used to identify installation registered vehicles is removed following maximum accumulation of points under this system.
- 9. Personnel Transfer. When an individual who has accumulated point assessments is transferred to another installation, his DD Form 1409 will be forwarded to his new duty station or installation of employment with his personnel records, subject to the policy adopted by each military service. In the event the individual has lost his installation driving privilege at his previous station, the gaining installation may continue the suspension or revocation, or place the driver in question on probation. When restoration of driving privilege is approved by the gaining installation, this information should be disseminated to state agencies, as appropriate. Points accumulated will not be deleted from the DD Form 1409, except as provided in 6a (2) and d, above.

<u>Offense</u>	<u>Points Assessed</u>
Driving under the influence of intoxicating liquor -----	12
Owner knowingly and willfully permitting another under the influence of intoxicating liquor to operate his vehicle -----	12
Manslaughter, negligent homicide, or assault by an automobile. -----	12
Intentionally leaving the scene of an accident involving death or personal injury without rendering aid or information --	12
Using automobile to commit a felony -----	12
Operating a vehicle after suspension or revocation of the operator's permit or installation driving privilege -----	12
Reckless driving. (Two convictions in any 12-month period results in automatic suspension of installation driving privilege for 6 months.) -----	5
Intentionally leaving the scene of an accident involving damage to property or another, without making identity known -----	6

<u>Offense</u>	<u>Points Assessed</u>
Speeding:	
Up to 10 mph over posted speed limit -----	2
11-20 mph over posted speed limit -----	4
Grossly excessive speed + 20 mph over posted speed limit -----	6
Failure to obey traffic signs or signals, or instructions of traffic officer -----	3
Failure to report being involved in an accident, when required by regulation or law -----	2
Knowingly operating an unsafe vehicle -----	3
Failure to comply with installation registration require- ments -----	1

APPENDIX D

FORMS FOR USE IN ADMINISTRATION OF A POINT SYSTEM
(Adapted from The Department of Motor Vehicles of Maryland)

Vern L. Hill
Commissioner

2015



Commonwealth of Virginia
Division of Motor Vehicles
2220 West Broad Street
Richmond, Virginia 23220
Tel. (703) 770-3300

NOTICE OF SUSPENSION

You have accumulated a total of _____ points on your Virginia Driving Record within a period of two years.

Under the Virginia Point System Law your driving privilege will be suspended for 30 days on

Credit for the period of suspension will begin when all Virginia licenses issued in your name are received at this Department. At the end of the suspension period your license(s) will be returned

A written request for a hearing, if received at this office before the suspension becomes effective, will delay the suspension action until a hearing is scheduled.

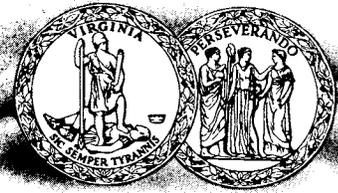
Please remember, it is a serious offense to operate a motor vehicle, under any condition, during a period of suspension.

Very truly yours,

Vern L. Hill
Commissioner

Vernon L. Hill
Commissioner

2016



Commonwealth of Virginia
Division of Motor Vehicles
2220 West Broad Street
Richmond, Virginia 23220
Tel. (703) 770-3300

NOTICE OF HEARING

You are hereby directed to appear for a Departmental Hearing at:

Place :
Date :
Time :
Room Number:

To show cause why your Virginia driving privilege should not be refused, suspended or revoked as a result of:

- () Accumulation of points under the Virginia Point System Law.
- () Conviction of violation(s) of the Virginia Motor Vehicle Laws.
- () Complaint relative to your license or driving privilege.

Bring all Virginia driver licenses with you. If the hearing results in a suspension of revocation, your license will be taken by our License Reviewer. Therefore, you should bring a licensed driver with you in order to drive your vehicle home. (You may be represented by an attorney at this hearing.)

IMPORTANT:

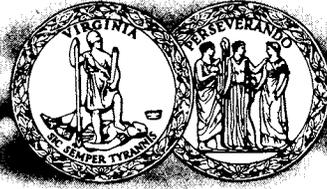
Failure to appear as scheduled will result in an immediate Refusal, Suspension or Revocation of your Virginia driving privilege. The Refusal, Suspension, or Revocation will remain in effect from the date of the hearing until such time as you make a written request for a hearing and attend that hearing.

NOTE IF CHECKED:

- () Present this letter for eye test.
- () License on file at this Office.
- () Attorney notified.

Vernon L. Hill
Commissioner

2017



Commonwealth of Virginia
Division of Motor Vehicles
2220 West Broad Street
Richmond, Virginia 23220
Tel. (703) 770-3300

REQUEST FOR HEARING

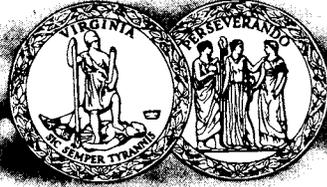
I hereby request a hearing concerning the Notice of Revocation on the attached Notice Of Revocation. I understand that the revocation will be held in abeyance pending a scheduled hearing.

Signature

Address

Address

Vernon L. Hill
Commissioner



0 2018

Commonwealth of Virginia
Division of Motor Vehicles
2220 West Broad Street
Richmond, Virginia 23220
Tel. (703) 770-3300

NOTICE OF REVOCATION

You have accumulated _____ points on your Virginia driving record within a period of two years.

Under the Virginia Point System Law your driving privilege will be REVOKED on

You may apply for reinstatement of your revoked driving privilege after all licenses issued in your name have been received by this Department.

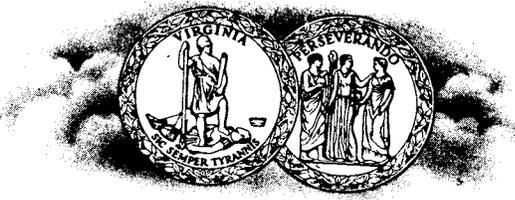
You are entitled to a hearing concerning this action if a written request is made within 10 days of this notice. Your request for a hearing will delay the revocation, until a hearing is scheduled.

Please remember it is a serious violation for you to continue to drive a motor vehicle under any condition during a period of revocation.

Very truly yours,

Vern L. Hill
Commissioner

Commonwealth of Virginia
 Division of Motor Vehicles
 2220 West Broad Street
 Richmond, Virginia 23230
 Tel. (703) 770-3300



2019

NOTICE DATE

CAN YOU AFFORD TO LOSE YOUR DRIVER'S LICENSE ?

DRIVER LICENSE NUMBER	NAME AND ADDRESS	HEIGHT	WEIGHT	RACE	SEX	BIRTH DATE	RESTRICTIONS
		TYPE OF LICENSE ISSUED		EXPIRATION DATE		CASE FILE NO.	

SPECIAL →
 RESTRICTIONS

YOUR RECORD OF MOVING VIOLATIONS FOR THE LAST TWO YEARS

DATE	TICKET NO.	DISPOSITION	DESCRIPTION	POINTS
TOTAL POINTS				

Dear Virginia Driver:

Can you really afford to lose your driver's license?

Frankly, we do so much with our cars nowadays our bet is that your answer is NO . . . not even for a few days.

Yet, a recent check of your driving record reveals that you have run up at least three points within a 24 month period. You're now at the danger level. One or more convictions could push you to five or more points and we would have to call you in for a conference. At eight points you could lose your license for an extended period. And so, this friendly note of caution. We want you to continue driving . . . but safely and legally.

Above is a summary of the current moving violations on your driving record. We urge you to look it over carefully . . . then do your part to make Virginia a safer and better place to live and drive.

Sincerely,

Vern L. Hill
 Commissioner

