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VIRGINIA COMMENTS

REVOCATION OR SUSPENSION OF DRIVER'S LICENSES

The Virginia General Assembly has passed a number of statutes designed to keep off the roads persons whose mental or physical weaknesses or frequent or flagrant disregard of motor vehicle laws render them unfit to drive.¹ During the year ending June 30, 1963, pursuant to these statutes, 23,669 operators' licenses² were revoked³ and 1,316 were suspended by the Commissioner of the Division of Motor Vehicles. During this same period Virginia courts suspended 10,361 licenses.⁴

These statutes can be divided into two groups: those which authorize action by the Commissioner of the Division of Motor Vehicles,⁵

¹This article is not concerned with other statutes which keep drivers off the roads for reasons not related to their conduct on the road and ability to manipulate an automobile, such as those bearing on financial responsibility and automobile registration.

²Certain statutes provide for revocation or suspension of vehicle license plates, but here the term license is used to refer to operator's license. Also, it should be noted that where the offender is a nonresident his privilege to drive in Virginia, rather than his license, is revoked or suspended. Although a nonresident may be requested to surrender his license, he is not forced to do so, as Virginia should not interfere, except in Virginia, with the use of a license granted by another state.

³The statutes use the terms suspension and revocation interchangeably. Judicial terminology seems to vary from court to court. The Division of Motor Vehicles uses the term suspension when the effectiveness of the license is suspended or held in abeyance until the cause for the suspension has been removed. The Division uses the term revocation when the license is terminated so that another license can be obtained at the appropriate time only by following the procedures required upon application for a first license. In this regard, Va. Code Ann. § 46.1-383 (Supp. 1962) requires that a person convicted of two moving offenses or involved in two accidents involving personal injury or property damage in excess of fifty dollars, within a twelve-month period, or any person whom the Commissioner with good cause believes to be an incompetent driver, must take another licensing test in order to continue to drive. This makes the term revocation clearly applicable under the "second-offense" statutes, and leaves the matter to the discretion of the Commissioner under other statutes. In this comment, the term suspension is used with regard to all court action. With regard to action by the Commissioner of Motor Vehicles, every effort is made to use the terms as used in his office.

⁴Annual Report of the Commissioner of the Division of Motor Vehicles, Commonwealth of Virginia, for the year ending June 30, 1963, exhibit 5. These figures include action taken against nonresidents. See *supra* note 2.

⁵Revocation or suspension of a license by the Commissioner is a civil rather than a criminal matter, and not a part of the punishment for the offense itself. *Prichard v. Battle*, 178 Va. 455, 17 S.E.2d 393 (1941).

and those which authorize action by a competent court. A division can also be made on the basis of whether such action is mandatory or discretionary.

MANDATORY ACTION BY THE COMMISSIONER

Statutes providing for mandatory revocation or suspension by the Commissioner upon receipt of notice of certain convictions play a most important role in Virginia's plan to keep unfit drivers off the road. These statutes are particularly effective because neither discretion nor political influence can be factors in their operation.

The Commissioner is required to revoke for one year the license of any person convicted of manslaughter with a motor vehicle or of driving under the influence of alcohol or self-administered drugs.⁶ For a second conviction within a ten year period for this latter offense, there is a three-year mandatory revocation.⁷ One year's revocation is required upon conviction for a felony in the commission of which a motor vehicle is used,⁸ two charges of reckless driving within a twelve-month period, or "hit and run" involving death or personal injury.⁹

The Commissioner is required to revoke for sixty days the license of any driver convicted of two speeding offenses,¹⁰ or one speeding offense and one reckless driving offense,¹¹ within one year.¹²

The Virginia Supreme Court of Appeals has upheld the Commissioner in a liberal construction of the statutory definition of "conviction" to be applied in these statutes. Conviction is defined as "conviction upon 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 for-

⁶Va. Code Ann. § 46.1-417 (Supp. 1962).

⁷Va. Code Ann. § 46.1-421 (Supp. 1962). Thus the penalties imposed under the Motor Vehicle Code (Title 46.1) are the same as those provided by Virginia's "drunk driving" statutes. Va. Code Ann. § 18.1-59 (Supp. 1962).

⁸This does not include larceny of an automobile. *Lamb v. Driver*, 196 Va. 393, 83 S.E.2d 741 (1954). This decision is criticized in 45 Va. L. Rev. 316 (1959).

⁹Va. Code Ann. § 46.1-417 (Supp. 1962).

¹⁰Va. Code Ann. § 46.1-419 (Repl. Vol. 1958). If there are more than two offenses within a twelve-month period, the Commissioner may increase the revocation up to six months.

¹¹The two offenses must not have arisen out of the same incident. For example, a person may drive at such a high rate of speed as to be guilty of both speeding and reckless driving; however, this incident could not provide the convictions necessary for revocation under this statute.

¹²Va. Code Ann. § 46.1-389 (Repl. Vol. 1958).

feiture has been vacated"¹³ It has been held that if the offender intended to forfeit a deposit, such action will be considered a forfeiture and thus a conviction even though the transaction was not carried out in complete compliance with the statutory requirements.¹⁴

No hearing is required under these statutes.¹⁵ Provision is made for an appeal to an appropriate court,¹⁶ but on appeal only two defenses can be raised. The first involves identity: was the person whose license was revoked the person who was convicted;¹⁷ the second is that the conviction upon which the action is based is void on its face.¹⁸

Section 46.1-466¹⁹ further extends the scope of these statutes by requiring the Commissioner to revoke the license of any Virginia resident upon receipt of notice of a conviction in any other state or territory of the United States or any province of Canada, if such conviction would require revocation had the offense occurred in Virginia. The effectiveness of this provision is determined by the number of states which send notices of convictions of Virginia residents.²⁰

¹³Va. Code Ann. § 43.1-389 (Repl. Vol. 1958).

¹⁴Va. Code Ann. § 19.1-130-132 (Repl. Vol. 1960). *Lamb v. Scarce*, 196 Va. 398, 83 S.E.2d 771 (1954); *Nelson v. Lamb*, 195 Va. 1043, 81 S.E.2d 762 (1954); *Lamb v. Lanzarone*, 195 Va. 1038, 81 S.E. 760 (1954); *Lamb v. Lowe*, 195 Va. 1024, 81 S.E. 2d 753 (1954); *Badalson v. Lamb*, 195 Va. 1018, 81 S.E.2d 750 (1954).

¹⁵A hearing is not necessary to satisfy the requirements of due process. *Law v. Commonwealth*, 171 Va. 449, 199 S.E. 516 (1938).

¹⁶This appeal is either to the Circuit Court for the City of Richmond, or to any court of record having jurisdiction in the city or county where the appealing party resides. Va. Code Ann. § 46.1-437 (Supp. 1962).

¹⁷Va. Code Ann. § 46.1-437 (Supp. 1962). This provision is applied in *Lamb v. Curry*, 197 Va. 395, 89 S.E.2d 329 (1955); *Morrison v. Commonwealth ex rel. Joyner*, 190 Va. 527, 58 S.E.2d 30 (1950).

¹⁸*Dillon v. Joyner*, 191 Va. 559, 66 S.E.2d 583 (1951); *Scott v. Commonwealth ex rel. Joyner*, 191 Va. 73, 60 S.E.2d 14 (1950).

¹⁹Va. Code Ann. § 46.1-466 (Repl. Vol. 1958).

²⁰In an effort to determine which states send records of convictions to Virginia, a letter of inquiry was directed to the Commissioners of the Division of Motor Vehicles in the various states. Alabama, Colorado, Connecticut, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, Vermont, Wisconsin, Wyoming, and the District of Columbia indicated that records of convictions for all offenses or all moving violations are sent to Virginia. New Hampshire, Rhode Island, Tennessee, and Washington indicated that they send notices to Virginia only if the conviction has resulted in a suspension of driving privileges in their states. Nevada indicated that notices were sent only for convictions for drunk driving and reckless driving. Alaska and California indicated that they do not send any notices of conviction to Virginia. Other states did not respond. The Virginia Commissioner is required to send notices to all other states whose residents are convicted for motor vehicle offenses in Virginia. Va. Code Ann. § 46.1-465 (Repl. Vol. 1958).

The Commissioner is required to revoke the license of any person legally adjudged²¹ "mentally ill, epileptic, or mentally deficient," unless such person has subsequently been released from an institution as cured, or upon further examination has been found not to be mentally ill. This revocation continues until the person convinces the Commissioner of his competency to drive.²² The Commissioner is also required to revoke the license of any person admitted to an institution²³ as an inebriate or habitual user of drugs; and such revocation shall continue until after the person's release and until the superintendent of the institution or the judge of the circuit court certifies that the person has recovered so as to be capable of operating a motor vehicle.²⁴

DISCRETIONARY ACTION BY THE COMMISSIONER

A large number of the obviously unfit drivers have their licenses revoked on the basis of specific mandatory provisions. However, should these provisions not be applicable, more general statutes invest the Commissioner with discretionary authority to suspend licenses, after holding a hearing at which the driver's record is reviewed. This hearing, although held before the Commissioner or someone designated by him, is conducted in a manner similar to a judicial hearing.²⁵ A driver whose license is thus suspended may appeal to the courts²⁶ for a reversal of the Commissioner's action.²⁷

The Commissioner may suspend a license for a period of up to one year for reckless or unlawful driving causing or contributing to an accident resulting in death, personal injury or serious property damage;²⁸ incompetency to drive; mental or physical infirmities rendering a person an unfit driver; habitual negligent or reckless driving;²⁹ commis-

²¹The clerk of the court in which such adjudication is made is required to send a notice of the finding to the Commissioner. Va. Code Ann. §46.1-427 (Repl. Vol. 1958).

²²*Ibid.*

²³The person in charge of any institution for "the mentally ill, epileptic, mentally deficient, inebriates or habitual users of drugs" is required to report to the Commissioner the admission of every patient. Va. Code Ann. § 46.1-429 (Repl. Vol. 1958).

²⁴Va. Code Ann. § 46.1-428 (Supp. 1962).

²⁵Va. Code Ann. §§ 46.1-431-46.1-435 (Repl. Vol. 1958).

²⁶See *supra* note 16.

²⁷Va. Code Ann. § 46.1-437 (Supp. 1962).

²⁸Destruction of another automobile was held to be serious property damage under this provision. *Lamb v. Mozingo*, 198 Va. 432, 94 S.E.2d 457 (1956).

²⁹This relates to present driving habits and the offender should be allowed to introduce testimony of observers to show careful driving habits. *Lamb v. Mozingo*, *supra* note 28.

A driver who was convicted three times for speeding, three times for dis-

sion of a serious violation of Virginia motor vehicle laws;³⁰ habitual drunkenness; or addiction to drugs.³¹

The Commissioner may suspend a license for from one to five years for any violation of the Motor Vehicle Code.³² This suspension must be "necessary for the safety of the public."³³

PROCEDURES

Revocation and suspension pursuant to these statutes, especially revocation based on repeated convictions, can be imposed only if accurate records of convictions and accidents are at the disposal of the Commissioner. The procedures followed by the Division of Motor Vehicles³⁴ are as follows. The Division maintains a Conviction and Accident File, compiled from accident reports, abstracts of convictions which clerks of court and judges are required by statute to send to the Commissioner,³⁵ and notices of convictions sent from other jurisdictions. Additional information is obtained from the National Driver Registration, which is maintained by the United States Department of Commerce, and contains records of convictions for drunken driving,

regarding stop signs, and twice for not having proper inspection stickers was properly found habitually negligent or reckless. *Lamb v. Clark*, 199 Va. 374, 99 S.E.2d 597 (1957). A driver who had been convicted nine times within seven years, seven times for speeding, was properly found to be habitually negligent or reckless. *Lamb v. Rubin*, 198 Va. 628, 96 S.E.2d 80 (1957).

³⁰Crossing a double center line and hitting another vehicle is a serious violation. *Lamb v. Mazingo*, supra note 26. Driving down a narrow street at night at a speed of 50 miles per hour in a 25-mile zone, and passing where there is a dip in the pavement constitutes a serious violation. Racing at 40 miles per hour in a 25-mile zone is serious. *Commonwealth v. Hill*, 196 Va. 18, 82 S.E.2d 473 (1954). Driving 65 miles per hour through a stop sign at a major highway, driving 75 miles per hour in heavy traffic, and driving 65 miles per hour around a curve while focusing a spotlight in the eyes of an approaching driver have all been held to constitute serious violations. *Commonwealth ex rel. Joyner v. Butler*, 191 Va. 193, 61 S.E.2d 12 (1950). However, whether crossing a double "no-passing" line is a serious violation depends on the circumstances. *Commonwealth ex rel. Joyner v. Willis*, 194 Va. 210, 72 S.E.2d 269 (1952). A driver who was unfamiliar with the road and did not stop at a faded stop sign was found not to have committed a serious violation. *Lamb v. Taylor*, 198 Va. 621, 96 S.E.2d 124 (1957).

³¹Va. Code Ann. § 46.1-430 (Repl. Vol. 1958).

³²Va. Code Ann. § 46.1-436 (Repl. Vol. 1958), referring to §§ 46.1-1-437.

³³This concept is discussed in *Butler v. Commonwealth*, 189 Va. 411, 53 S.E.2d 152 (1949).

³⁴The information dealing with procedure and records at the Virginia Division of Motor Vehicles was supplied by Mr. A. T. Beale, Administrative Assistant to the Commissioner, and by Mr. Robert P. VanBuren, Assistant Director, Bureau of Operators' Licenses, Division of Motor Vehicles, during interviews in their offices in Richmond, Virginia, on October 24, 1963.

³⁵Va. Code Ann. § 46.1-413 (Supp. 1962).

manslaughter and other major offenses. The name of the offender, along with any available information to aid in identification, and the nature of the offense are entered, either as a new record or as an addition to an existing one. This record is then reviewed to determine if revocation or suspension is required by the mandatory provisions or desirable under the discretionary ones. If discretionary action is deemed appropriate, a notice of hearing is sent to the offender who may then appear to argue his case. If a license is suspended or revoked, an appropriate order is entered and notice thereof is sent to the licensee and to licensing authorities in his home state if he is a nonresident.³⁶ A similar notice, along with available identifying information, is sent to law enforcement officers in the home locality of a resident, or in the area of the state in which a nonresident is known to drive frequently. This is done to effectuate the purpose of the statute, to keep the unfit driver off the roads of Virginia.

MANDATORY COURT ACTION

The statutes authorizing action by the courts and those authorizing action by the Commissioner often overlap. Thus it might be said that there is a two-pronged attack in the battle to make Virginia roads safe.

The courts are "required" to suspend a license for a period of from sixty days to six months when a person is convicted of reckless driving for operating an automobile at a speed in excess of 75 miles per hour, or for operating a truck or towing vehicle at a speed in excess of 65 miles per hour.³⁷ The license is to be suspended for five years when a person is convicted for a fourth time within five years for any combination of the following offenses: driving under the influence of alcohol or narcotics, failure to stop at the scene of an accident in which one is involved, racing on the highways, driving after revocation or suspension of license, and manslaughter committed while operating a motor vehicle.³⁸ The license is suspended for sixty days when a person is convicted a second³⁹ or subsequent time within one year of driving more than five miles per hour above the speed limit.⁴⁰ The

³⁶With regard to nonresidents this is a notice of revocation or suspension of the privilege to drive in Virginia. The licensing state may or may not take action with regard to the license which it has issued, depending upon its own law. See *supra* note 3.

³⁷Va. Code Ann. § 46.1-423 (Supp. 1962), referring to § 46.1-190(i)(1).

³⁸Va. Code Ann. § 46.1-423.2 (Supp. 1962).

³⁹Prior to 1960 this code section also provided for a ten-day revocation upon conviction for a first offense of this kind.

⁴⁰Va. Code Ann. § 46.1-197 (Supp. 1962). This provision is applicable only where the speed limit is 45 or more miles per hour.

license is suspended for a period of from six months to two years when a person is convicted for racing on the highway.⁴¹

While these statutes require suspension, it is within the judicial discretion to suspend the operation of the penalties so imposed. Further, with regard to the provisions for suspension for a combination of convictions, law enforcement officers do not have at their disposal the records which would permit them to charge such offenses as subsequent violations, and the Attorney General of Virginia has ruled that under present law judges cannot consider previous convictions in determining the sentence to be imposed, unless the offense has been charged as a subsequent violation.⁴²

DISCRETIONARY COURT ACTION

Two statutes give the courts discretionary authority to suspend licenses. The most important is the provision which allows the courts to suspend for a period of from ten days to six months the license of any person convicted of reckless driving.⁴³

The other statute provides for a suspension of up to ninety days if the offender was hauling explosives or other flammable material while driving recklessly, following too closely behind another vehicle, failing to yield to a party having the right of way, failing to stop upon entering a public highway, or failing to observe posted speed limits.⁴⁴

When a court suspends a license, it orders the surrender of the license, and after the time for an appeal has elapsed, sends the license to the Division of Motor Vehicles.⁴⁵

CONCLUSION

Virginia's motor vehicle laws are broad in scope, and because of their over-lapping provisions giving authority to both courts and the Commissioner of the Division of Motor Vehicles, broad in appli-

⁴¹Va. Code Ann. § 46.1-191 (Repl. Vol. 1958).

⁴²Letter from Robert Y. Button, Attorney General of Virginia, to Edward E. Willey, State Senator, March 5, 1963.

The Virginia Advisory Legislative Council has recommended that the law be changed to prevent judges from suspending such sentences, and to authorize judges to examine records of offenders between the times of conviction and sentencing. See "VALC Unveils 13-Point Package of Highway Safety Measures," Richmond Times-Dispatch, November 3, 1963, p. A-1, col. 1.

⁴³Va. Code Ann. § 46.1-422 (Repl. Vol. 1958).

⁴⁴Va. Code Ann. § 46.1-424 (Repl. Vol. 1958).

⁴⁵Va. Code Ann. § 46.1-425 (Repl. Vol. 1958).