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A STUDY OF ADMINISTRATIVE HEARINGS CONDUCTED BY STATE DRIVER LICENSING AGENCIES
Volume I

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16. Abstract

This report contained in two volumes, documents the results of a study of administrative hearings conducted by driver licensing agencies as part of their procedures in withdrawing drivers' licenses. Current practices of these agencies, as determined through a nationwide survey and observations of selected State operations, were compared with the anticipated requirements of due process to evaluate for compliance with these legal precepts.

The first volume contains the findings of the research, a summary of due process requirements, the evaluation for provision of due process, and recommendations for improvements. The second volume includes the results of the nationwide survey and of the visits to selected States. It also contains the paper written by Professor Robert Force of the Tulane School of Law titled "Procedural Due Process Requirements in Administrative Suspension and Revocation of Drivers' Licenses", which summarized his research of case law and determination of applicable due process requirements that were used in the evaluation of current practices.

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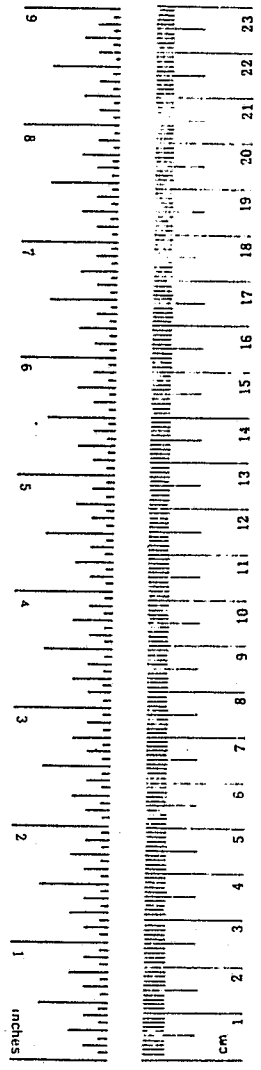
METRIC CONVERSION FACTORS

Approximate Conversions to Metric Measures

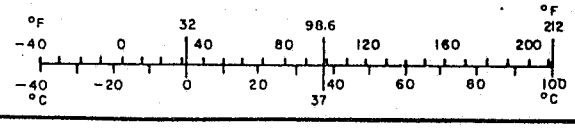
Symbol	When You Know	Multiply by	To Find	Symbol
		LENGTH		
in	inches	*2.5	centimeters	cm
ft	feet	30	centimeters	cm
yd	yards	0.9	meters	m
mi	miles	1.6	kilometers	km
		AREA		
in^2	square inches	6.5	square centimeters	cm^2
ft^2	square feet	0.09	square meters	m^2
yd^2	square yards	0.8	square meters	m^2
mi^2	square miles	2.6	square kilometers	km^2
	acres	0.4	hectares	ha
		MASS (weight)		
oz	ounces	28	grams	g
lb	pounds	0.45	kilograms	kg
	short tons (2000 lb)	0.9	tonnes	t
		VOLUME		
tsp	teaspoons	5	milliliters	ml
Tbsp	tablespoons	15	milliliters	ml
fl oz	fluid ounces	30	milliliters	ml
c	cups	0.24	liters	l
pt	pints	0.47	liters	l
qt	quarts	0.95	liters	l
gal	gallons	3.8	liters	l
ft^3	cubic feet	0.03	cubic meters	m^3
yd^3	cubic yards	0.76	cubic meters	m^3
		TEMPERATURE (exact)		
°F	Fahrenheit temperature	5/9 (after subtracting 32)	Celsius temperature	°C

*1 in = 2.54 (exactly). For other exact conversions and more detailed tables, see NBS Misc. Publ. 286, Units of Weights and Measures, Price $2.25, SD Catalog No. C13.10:286.



Approximate Conversions from Metric Measures

Symbol	When You Know	Multiply by	To Find	Symbol
		LENGTH		
mm	millimeters	0.04	inches	in
cm	centimeters	0.4	inches	in
m	meters	3.3	feet	ft
m	meters	1.1	yards	yd
km	kilometers	0.6	miles	mi
		AREA		
cm^2	square centimeters	0.16	square inches	in^2
m^2	square meters	1.2	square yards	yd^2
km^2	square kilometers	0.4	square miles	mi^2
ha	hectares (10,000 m^2)	2.5	acres	
		MASS (weight)		
g	grams	0.035	ounces	oz
kg	kilograms	2.2	pounds	lb
t	tonnes (1000 kg)	1.1	short tons	
		VOLUME		
ml	milliliters	0.03	fluid ounces	fl oz
l	liters	2.1	pints	pt
l	liters	1.06	quarts	qt
l	liters	0.26	gallons	gal
m^3	cubic meters	35	cubic feet	ft^3
m^3	cubic meters	1.3	cubic yards	yd^3
		TEMPERATURE (exact)		
°C	Celsius temperature	9/5 (then add 32)	Fahrenheit temperature	°F



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I. INTRODUCTION AND SUMMARY

All States have enacted driver licensing laws and established agencies to administer those laws. Driver licensing agencies have historically issued licenses to qualified drivers, collected licensing fees, and maintained information on those licensed to drive. Initially, these agencies were concerned, primarily, with fee collection and driver identification. With the advent of traffic safety programs, these agencies took on new responsibilities to identify problem drivers, to conduct driver control and improvement programs, and to withdraw licenses from those determined no longer qualified to drive.

Agency actions to withdraw driver licenses led many courts to direct that certain individual rights must be afforded to drivers before their licenses may be suspended or revoked. Some courts have regarded the driver license as a right in itself, once it is issued, although other courts deemed it a privilege extended by the State; these differences in intepretation resulted in numerous court decisions which upheld or denied various individual rights in the license withdrawal process. In 1970, in considering the dependency of Americans on their driver licenses in the case of Bell v. Burson, the Supreme Court went beyond the basic question of whether a license is a right or a privilege and determined that: before a State could withdraw a driver's license the State must afford the individual certain due process rights. This particularly recognized the right of the individual to request a hearing, with the State, on the reasons for a proposed license withdrawal.

Although the Supreme Court ruled that hearings are required in license withdrawal actions, it did not set forth how these hearings are to be conducted or what aspects of due process are appropriate to license withdrawal proceedings. Many States have implemented administrative procedures to guarantee due process rights, some of which provide for formal hearings, yet many others have not done so. Part of the problem is that lower courts have differed in their interpretations as to which specific procedures are necessary to guarantee individuals' rights in license withdrawal actions. For these reasons, this research was undertaken to: (1) provide guidelines as to the due process rights that must be afforded in license withdrawal proceedings and, (2) identify the extent to which State driver licensing agencies have adopted adequate procedures.

1. STUDY OBJECTIVES AND METHODOLOGY

The overall goal of the project, as stated above, was to identify whether States are meeting due process requirements with respect to the withdrawal of driver licenses. This goal was further broken down into four specific study objectives. Each of these are described below, along with a summary of the methodologies used to achieve them:

(1) Determine Current License Withdrawal Hearing Practices

It was not known to what extent State driver licensing agencies are providing adequate hearings to drivers during license withdrawal proceedings. There was a general lack of understanding as to what type of hearings were being conducted, who was conducting these hearings, and what procedures were available to drivers to request these hearings. To answer these and many related questions, the first objective was to survey the States to determine current practices with respect to license withdrawal hearings.

A two-part survey approach was selected, due to the detailed procedural concerns of this research. First, a nationwide written questionnaire survey was conducted to identify basic practices of driver licensing agencies. The second part consisted of in-depth studies of selected driver licensing agencies through on-site visits by project staff. With responses from all States, the mail-out survey provided national statistics on driver license hearings. The State visits enabled the research team to analyze, in much more detail, the implications of certain practices. The combination of these two surveys provides a fairly complete picture of how States are currently conducting driver license withdrawal hearings, as well as an understanding of the due process implications of particular license withdrawal procedures.

(2) Define Existing Due Process Requirements

The second objective was to provide States with guidelines as to what specific procedures may have to be adopted to guarantee individual rights in a license withdrawal proceeding. This necessitated legal research to determine what due process requirements apply to these actions. For this purpose, Professor Robert Force, of the Tulane School of Law, assisted the project team by researching the case law applicable to driver license withdrawal and related proceedings, and prepared a statement of his interpretations of the due process requirements. His paper is incorporated as an appendix to this report.

(3) Evaluate Levels of Compliance with Due Process Requirements

The third objective was to compare the findings from the survey of State agency practices with the benchmark provided by Professor Force, to evaluate the extent to which agency procedures meet due process requirements. This comparative analysis identifies where current State practices may be insufficient, and provides a guideline to State agencies for which procedures must be improved if their license withdrawals are to stand up to court tests.

(4) Develop Guidelines for Assuring Provision of Due Process in License Withdrawal

The final project objective was to develop a generalized process and organizational model that would satisfy the legal requirements for the withdrawal of driver licenses. This model includes specific procedures to assure that due process is afforded drivers in license withdrawal proceedings, while assuring that administrative agencies efficiently and effectively administer their driver licensing and traffic safety programs.

2. OVERVIEW OF THE LICENSE WITHDRAWAL PROCESS AND HEARING

State legislatures have authorized driver licensing agencies to withdraw licenses for several different reasons. For example, to deter violations of traffic laws, the suspension of the driver license is used as a sanction against those convicted by the courts of serious or repeated traffic violations. License withdrawals also serve as an administrative sanction to enforce other statutes, such as laws requiring drivers to take alcohol tests when requested by enforcement officials, or laws requiring drivers to be financially responsible for liabilities due to their involvement in automobile accidents. Licenses may be suspended for a specific period of time, or revoked indefinitely, depending upon the particular reason for the action. The term "license withdrawal" is used in this paper to refer to both actions.

Driver licensing agencies have developed various methods for identifying drivers whose licenses may have to be withdrawn. Once an agency determines that license withdrawal proceedings should be initiated against an individual, a notice is sent to that driver to inform him of the reasons that his license may be withdrawn and when the withdrawal will take place. Drivers may be given an opportunity to request a hearing with driver licensing officials as part of the license withdrawal proceeding. The driver may request this hearing for several reasons: he may want further explanation of why his license is being withdrawn, he may contest the factual basis of the license withdrawal action, or he may want to communicate his dependency on his driver's license.

States follow different procedures in responding to requests for hearings from drivers subject to license withdrawal actions. In some States a formal hearing is scheduled before a hearing officer. The driver may present his case in person, sometimes with the assistance of an attorney. The hearing officer then determines whether the driver will be allowed to keep his license, and if so, under what conditions.

In other States the driver is told to come in for an interview before a driver improvement officer or other similar official. Driver improvement officers are the State officials, working in the traffic safety programs, who may conduct driver improvement sessions, interview problem drivers, or identify those who should attend certain driver improvement clinics. Interviews before a driver improvement officer

may be very informal, and sometimes the proceedings overlook certain basic due process rights.

Some States do not give the driver any opportunity for a hearing until after the withdrawal takes effect, depending upon the reason for the license withdrawal. To summarize, drivers are not always provided an opportunity for a hearing as part of a license withdrawal proceeding. Moreover, there is great variation in the types of hearings provided and the due process which is afforded within license withdrawal proceedings and hearings.

3. SUMMARY OF FINDINGS

The national survey confirmed that there were many variations related to when, and how, driver licensing agencies conduct license withdrawal hearings. What some States refer to as a "hearing" is only an "interview" in other States. Some States conduct formal hearings in addition to driver improvement interviews, while others offer only interviews. Professor Force distinguished a "trial type" hearing, as one providing for the submission and rebuttal of evidence before an impartial tribunal, from other proceedings such as interviews. He believes a "trial type" hearing was the type contemplated by the Supreme Court in Bell v. Burson.

Using this definition of a hearing, Professor Force determined when, and in what cases, a "trial type" hearing is required to satisfy due process in a license withdrawal proceeding. Generally he believes a hearing is required when there are questions as to the factual basis for the State acting to withdraw the driver's license. Morever, Professor Force asserted that even when the factual basis for withdrawal is not being contested, yet additional factors (such as the driver's attitude or need for his license) may enter into the agency's decision as to whether or not to withdraw the license, then some "opportunity to be heard" should be extended to the driver before this decision is made. Professor Force has defined a new area -- a middle ground between the absolutes of requiring or not requiring a hearing -- when an informal interview, for example, would be appropriate in providing an opportunity to be heard.

To determine what consitutes an adequate hearing, Professor Force reviewed case law for those specific procedures that may be appropriate for driver license withdrawal actions. For example, he reviewed the notice requirements which would insure that the opportunity for a hearing is extended to a driver, and that the driver is informed of his rights. Specific procedures applicable to the conduct of the hearing were analyzed, and it appears that drivers must be allowed to bring an attorney to the hearing, to present evidence on their behalf, and to cross-examine those testifying against them. Additionally, it may be necessary that States notify drivers of the final decision resulting from the hearing, and also of the factual reason for taking that action.

With respect to those responsible for conducting the hearings, Professor Force identified few limitations as to who may be assigned to this function in a driver licensing agency. Although the hearing officer must be able to weigh facts and make a decision, he does not have to be an attorney. Driver improvement officers may serve as hearing officers with no conflict in due process, but enforcement officials may not.

In comparing the findings of the national survey with Professor Force's criteria for whether license withdrawal proceedings are satisfying the requirements of due process, we found that, many States are meeting these requirements, with exceptions in certain situations. The survey revealed that most States provide opportunities for hearings as per the requirements, but several did not hold the hearing until after licenses were withdrawn. Amost all States provide "opportunities to be heard" when necessary.

The area of greatest concern is that numerous inadequacies were cited in how drivers are notified that their licenses may be withdrawn; often they were insufficiently informed of either the opportunity for a hearing or of their rights in the license withdrawal proceeding. Additionally, there was a general lack of notification to the driver of the reasons for the final determination.

With respect to the actual conduct of "trial type" hearings, we found several instances where States were conducting interviews, instead of the formal hearings, when compared to the criteria established by Professor Force. Even when only interviews are necessary to provide an "opportunity to be heard," there was some lack of procedural concern with due process requirements.

Lastly, with few exceptions, qualified personnel are being assigned by the States to conduct the hearings, as compared to minimum due process requirements. However, we believe that although these personnel meet minimum due process qualifications, they lack training in how to conduct "trial type" hearings, in basic due process requirements, and in how to protect individual's rights.

There are additional measures, beyond the requirements of due process, that may be used to judge whether adequate hearings are being conducted. Obviously there are many traffic safety implications in this overall process, because the original reason for withdrawing driver licenses was to remove those from our highways who may pose a safety risk to other drivers and passengers. We have also reviewed the conduct of hearing with respect to the traffic safety objectives of driver licensing agencies.

For example, the implications of whether hearings or interviews should be used to identify drivers for lesser driver control sanctions, were explored. We concluded that the importance of protecting a driver's rights in a license withdrawal proceeding, warrants separation of "trial type" hearings from other driver control programs. The

interview, as used to satisfy the "opportunity to be heard," may provide a mechanism for sending drivers to defensive driving school or issuing occupational licenses, rather than withdrawing the license. These choices depend upon each State's traffic safety and driver control policies.

4. ORGANIZATION OF REPORT

Each of the objectives identified above is addressed in a separate chapter of this volume. The next chapter provides an overview of license withdrawal practices. The four project objectives are discussed in Chapters III - VI, which cover:

- Current conduct of driver license withdrawal hearings
- Due process requirements applicable to license withdrawal actions
- Evaluation for satisfaction of due process requirements
- A generalized process for license withdrawal proceedings and hearings.

The chapter on due process requirements is a summary of Professor Force's full examination of the due process requirements for license withdrawal proceedings, which is provided in Appendix C to the report. The complete results of the survey questionnaire answers from each driver licensing agency are provided in Appendix A. Narrative observations of the findings from our visits to selected States are included in Appendix B. The appendices are bound separately in Volume II of the report.

II. DRIVER LICENSE WITHDRAWAL PRACTICES

This chapter is devoted to a review of existing license withdrawal practices in State driver licensing agencies. It provides a background for the analysis, in the next chapter, of the hearings conducted on license withdrawals.

1. OVERVIEW

The description of present practices in this report is based on three primary sources of information. First, where prior driver licensing research delved into related hearings, it is referenced as appropriate. Secondly, survey questionnaires were mailed to each of the fifty States, the five territories and the District of Columbia, asking them over forty-five basic questions concerning practices in withdrawing driver licenses and conducting hearings in their jurisdictions. All States and the District of Columbia responded to the survey, and the survey results are tabulated and presented in Appendix A. The third and most important source of information were visits by the project staff to eight States during which we interviewed officials of driver licensing agencies and observed numerous hearings. Previously we had tested the survey questionnaire by short visits to two additional States, and, where observations made during these visits are relevant, they have also been included in the text. A report on our findings from the visits to various States is included in Appendix B.

The presentation of the current status of driver licensing hearings begins with a review of agency authority to issue and withdraw driver licenses and to conduct hearings, followed by an analysis of the driver licensing organizations performing these functions. The general processes for withdrawing driver licenses, and identifying drivers for possible license withdrawal actions, are described. This leads up to a discussion of the role of hearings in the license withdrawal process.

2. AUTHORITY TO ISSUE AND WITHDRAW DRIVER LICENSES

State legislatures have historically exercised the power to enact traffic laws, motor vehicle laws, and laws for licensing individuals to operate motor vehicles. The laws normally authorize a specific State agency to administer the State's policy and procedures for the issuance and withdrawal of driver licenses. Driver licensing laws are incorporated within the motor vehicle codes enacted by the legislatures of each State, and are often modelled after the Uniform Vehicle Code.1/

1/ Uniform Vehicle Code and Model Traffic Ordinances, National Committee on Uniform Traffic Laws and Ordinances, 1968 and Supplement II, 1976.

Existing State motor vehicle codes vary widely in their definition of the licensing agency responsibilities. One of the greater variations occurs in the amount of discretion that the agency has in implementing the intent of the law; license withdrawal procedures are a very visible example of the range of discretion that exists. The following discussion of how authority for license withdrawal actions is conferred and controlled, and when license withdrawals are mandatory or not, demonstrates the variation of the discretionary powers of driver licensing agencies from State to State.

(1) Authority Conferred

State statutes governing driver licensing were initially designed to identify drivers and collect licensing fees. This authority was later broadened to allow a State agency to establish minimum qualification requirements for drivers, (i.e., age, knowledge of the traffic laws, driving ability, etc.) and conduct tests of prospective drivers. Many State legislatures specified some of these criteria, while allowing the State licensing agencies much discretion in other areas. For example, all States have incorporated minimum ages for licensed drivers in their motor vehicle codes.[2] In contrast, most legislatures have delegated authority to the agencies to establish medical requirements for licensed drivers; this discretionary authority is based on broad statutory provisions, allowing license denials "when the Commissioner has good cause to believe that such person by reason of physical or mental disability would not be able to operate a motor vehicle upon the highways".[3]

Driver licenses were, at first, issued for life or automatically renewable upon payment of a fee. However, the increase in the usage of the automobile brought with it an increasing toll of deaths, injuries, and property damage. The cause of many accidents was believed to be the driver, so States gradually developed criteria and procedures for withdrawing licenses from individuals deemed te he highway safety risks. Legislatures modified the original motor vehicle codes to authorize driver licensing agencies to withdraw licenses from such individuals. The delegation of this authority has been done with varying amounts of discretion. Many State legislatures have mandated the withdrawal of licenses from drivers convicted of specific offenses, such as homicide with a motor vehicle. On the other hand, driver licensing agencies have been granted the discretion to remove the license of anyone deemed "incompetent to drive a motor vehicle."[4]

2/ Driver Licensing Laws Annotated, National Committee on Uniform Traffic Laws and Ordinances, 1973, pp. 62-63.

3/ Uniform Vehicle Code, op cit, Section 6-103 (b) 7.

4/ Unfirom Vehicle Code, op cit, Section 6-206 (a) 4.

The increasing dependency of Americans upon the automobile for their livelihood has influenced many State legislatures to protect individuals' rights in the license withdrawal process. Motor vehicle codes have been amended to authorize State agencies to conduct adjudicatory hearings on driver license withdrawals. The power to adjudicate is a relatively new one for many State agencies in that it previously was solely in the purview of the courts. This authority allows State driver licensing agencies to hold hearings whenever they are considering withdrawing an individual's license, although the hearings are usually provided upon request by the driver. Several legislatures have mandated that hearings take place prior to the license withdrawal taking effect.

(2) Controls Over The Driver Licensing Authority

There are several types of controls over the exercise of discretionary administrative power to issue and withdraw driver licenses. The ultimate control is that the State statutes and actions of the driver licensing agency must conform with the precepts of the U. S. Constitution, as interpreted by the U. S. Courts. Additionally, a motor vehicle code must not conflict with the constitution of that State; the State courts play an important role in protecting citizens' rights by acting as general overseer of an agency's activities. The directives of the State legislature also serve to control agency actions whether they are incorporated within the motor vehicle codes or expressed during legislative hearings. Finally, many States have enacted Administrative Procedures Acts establishing procedural controls over State agencies, especially over their rule issuance and adjudicatory functions.

The courts serve the important function of reviewing administrative actions to determine whether they adhere to the requirements of the U. S. Constitution, the State Constitution, the Motor Vehicle Code, the Administrative Procedure Act, and any other relevant State statutes. Their role is to guarantee an individual's rights to due process and equal protection, as set forth by these laws and legal precedents. The courts act in a passive role as overseer of administrative agencies, as compared to the role of the legislatures, because judicial review of an agency's action occurs only upon appeal of an administrative determination, such as appealing the agency's final decision following a hearing.

The legislatures often establish controls over a driver licensing agency within the motor vehicle code or in expressing legislative intentions during hearings. As indicated previously, some motor vehicle codes specify when and how hearings on driver license withdrawals are to be afforded a driver. Seventeen States indicated, in the survey, that they had specific statutes rather than an administrative procedures act to control this function, and often these were incorporated within the motor vehicle code.

The Uniform Vehicle Code was amended in 1975, to delete phrases such as "authorized to suspend the license of a driver without preliminary hearing" and to incorporate a new section entitled, "Opportunity for Hearing Required."5/ This section requires the agency to afford a driver a hearing before a license withdrawal becomes effective, to provide the hearing in the driver's county, to make a record of the hearing, and to use the hearing to reaffirm, modify, or rescind the withdrawal order.

Administrative Procedures Acts (APAs) have been adopted by most States. Only, 63% of the States direct that the actions of their licensing agencies be covered by these APAs. (Thirteen States which have APAs do not apply them to the driver licensing agencies.) Generally these acts are modelled after the Federal Administrative Procedures Act or the Uniform Law Commissioners' Revised Model State Administrative Procedure Act, to set forth uniform procedures for State agencies which will guarantee constitutional due process to individuals affected by agencies' actions. These acts include provisions for administrative rulemaking as well as the conduct of hearings related to agency determinations. The APAs serve to clearly define administrative procedures and responsibilities as well as to inform the public of their rights before the administrative agencies.

Our survey showed that seven States have neither an APA nor special statutes to define requirements for driver licensing hearings. However, even in these situations, an individual's due process rights are still protected via judicial review of agency actions upon appeal by the driver. Additionally, the State Attorney General's Office often serves in a control capacity when it provides interpretations of case law or statutes as guidance in setting the agency's policy and procedures. In summary, there are numerous controls over the discretionary authority of a State agency to issue and withdraw driver licenses. It is, however, often incumbent upon the driver to exercise his rights as afforded by these controls. These data are summarized in Table 5, Appendix A, Vol. II.

(3) Mandatory vs. Discretionary Authority

As indicated earlier, State legislatures authorize varying amounts of discretion to agencies with respect to the issuance and, particularly, the withdrawal of driver licenses. One researcher has categorized these driver licensing statutes into three areas:

1. Motor vehicle and driver licensing statutes that contain provisions which permit no administrative choice but impose ministerial duties on administrators, such as minimum age requirements;

5/ Uniform Vehicle Code, op cit, Section 6-206.1.

2. Statutes which contain provisions that appear specific and non-delegatory but require interpretation and implementation and are thus delegatory, such as license denials for habitual drunkards or users of narcotics;

3. Statutes which contain provisions that authorize the administrator to use his judgement regarding the issuance, suspension, or revocation of a license.[7]

The first category includes those State statutes which mandate the agency to withdraw the driver's license, such as upon a driver's conviction of homocide by motor vehicle, commission of a felony using a motor vehicle, or driving while intoxicated (if the legislature specified the blood alcohol content level which defines intoxication). These statutes normally set forth the type of license withdrawal (suspension or revocation), the period of withdrawal, and sometimes the conditions for reinstatement. In these situations the licensing agency is required to withdraw the license of the convicted driver upon receipt of a notice of conviction from a court of law. If any hearing is involved, it is strictly to confirm the facts of the case -- the identification of the driver and the record of conviction -- and no discretion may be exercised by the agency over the withdrawal action.

The second type of statute necessitates agency interpretation. This usually is provided by agency directors, policymakers, or counsel who develop specific guidelines to be followed in implementing the statutory provisions. For example, agencies must sometimes establish criteria for satisfying the implied consent or financial responsibility laws,[8] as well as criteria for habitual drunkards or persons deemed unqualified to drive for medical reasons. However in such cases, once these criteria or guidelines are met, the license withdrawals are mandatory and no discretion is exercised during each withdrawal proceeding. Hearings related to license withdrawals for these cases are almost always limited to fact-determination sessions, and once the facts are established, there is no discretionary authority over the withdrawal action.

Finally, there are several areas in which an agency has full discretion in taking a license withdrawal action. Primarily these cases are related to a States' highway safety program in which the legislature has delegated authority to the agency to develop programs for identifying and controlling "problem" drivers. Usually, an agency has a range of sanctions available for use in driver control programs. The ultimate action of these driver

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7/ Reese, John H., Power, Policy, People: A Study of Driver Licensing Administration, 1971, pp. 27-29.

8/ See Section 4 (1) of this Chapter for a description of the implied consent and financial responsibility laws.

control programs is withdrawal of the license, and an agency normally has discretion over the type and length of withdrawal. Some agencies have developed specific procedural guidelines for this process, thus restricting the amount of discretion exercised in individual cases. Even in these cases, there often remains considerable leeway in determining whether license withdrawal is appropriate, and for how long.[9/] As part of these guidelines, many agencies afford a driver the opportunity for a hearing before the license withdrawal becomes effective. This type of hearing is held to make two determinations:

- Confirmation of the facts in the individual case and whether they warrant license withdrawal or other type of action

- Consideration of the particulars of the case (where action is warranted) in setting an appropriate sanction (license control action)

The amount of discretion actually exercised in these hearings depends upon the specificity of the agency guidelines and, as we have observed, varies considerably among the States. The next several sections will concentrate on the exercise of this discretion by the States in conducting driver license hearings.

3. HEARING RESPONSIBILITIES WITHIN DRIVER LICENSING AGENCIES

The driver licensing function is generally assigned to an organization of State government characterized as "The Department of Motor Vehicles". The principal functions of a DMV include: testing and licensing of drivers to operate motor vehicles, registration and titling of motor vehicles, and administration of the State's financial responsibility laws for drivers.

A review of State motor vehicle organizations indicates that many States have taken highly individualistic approaches toward the establishment of the "Department of Motor Vehicles" and these frequently appear to reflect the primary orientation of the State in establishing the objectives and goals of the agency. These approaches may be characterized as "revenue generation", "enhancement of traffic safety", "law enforcement", "regulatory or recordkeeping", and most likely, some combination of these approaches. The general orientation of the motor vehicle organization impacts the policy direction of the driver licensing functions and, to some extent, the role of the hearings.

9/ Point systems are one example of specific guidelines, as further described in Section 4 (1) of this Chapter.

(1) The Driver Licensing Agency in State Governments

Our survey indicated that the driver licensing function is usually located within one of six organizational structures within a State Government:

Location of Driver Licensing Function	Number of States
Department of Revenue	12
Department of Justice, Public Safety, or Law Enforcement	12
Department of Transportation	10
Department of Motor Vehicles	10
Department of Highway Safety	4
Department of State	3
	51

When driver licensing is assigned to a Department of Revenue, it reflects the original purposes for licensing drivers: fee collection and driver identification. The Department may be more concerned with revenue collections than with driver improvement programs for highway safety purposes. Moreover, Departments of Revenue are probably responsible for all licensing functions within the State, and driver licensing may be just one of these. The withdrawal of a license by these Departments probably involves minimal discretion and associated procedures, including any hearings, are likely to be very formal. The same could be said if the driver licensing function is located in a Department of State, although there may be less emphasis on fee collections.

A Department of Justice, Public Safety, or Law Enforcement is normally directed by the State Attorney General. The purview of these departments is much broader in that it can include law enforcement (State police) and the State prosecutor as well as motor vehicle registration and driver licensing. The Department may be more concerned about the legal aspects of issuing and withdrawing licenses, than would other organizational structures. This concern was evident in some of these State Departments, which have separated the hearing function from other driver licensing and other operational organizations, and established it as an independent unit.

A Department of Transportation often combines the motor vehicle, driver licensing, highway, aviation and waterway organizations under a single umbrella agency reporting to the Governor. The motor vehicle and driver licensing functions may operate separately, or be combined into one administration within

the department. Departmental orientation is most probably towards a total transportation policy for the State, with a high degree of emphasis on transportation and highway safety. Thus, the driver licensing function may well reflect greater utilization of driver improvement techniques prior to initiating license withdrawal actions.

The effect of assigning the driver licensing function to a independent Department of Motor Vehicles is very similar to that for a Department of Transportation. Although departmental purview may be more limited, policy direction over the driver licensing function probably differs very little from that described above for a Department of Transportation. This is also true if driver licensing is within a Department of Highway Safety. These latter departments often include the highway patrol and may be affected by the law enforcement orientation described above for Departments of Justice.

To summarize, we believe the assignment of department-level responsibility for driver licensing reflects, to some extent, the State's orientation and emphasis towards the several purposes of licensing drivers: revenue collection, law enforcement, regulatory, or public safety. Of course the policies of each department are also affected by the background of the department director and by local politics. Additionally, many driver licensing agencies have, over time, developed a level of independent operations, such that the organizational location has became simply a convenient reporting relationship to the Governor.

(2) Driver Licensing Functions

A brief review of the several functions of a driver licensing organization is requisite to understanding the relationship of the hearing function to these other responsibilities. The driver licensing operation involves four primary, and relatively separate, functions or organizational units:

- Driver Examination -- the administration of tests for eyesight, knowledge of traffic laws, and driving skills to individuals as a basis for license issuance or renewal

- Records Maintenance -- the maintenance of records on all drivers licensed in the State, including their driving history; the identification of problem drivers, often with the automatic issuance of certain notices to problem drivers

- Driver Improvement and Control -- post-licensing control programs to improve individual driving performance, or to remove those deemed most dangerous from the highways; includes other license control programs such as those required by implied consent laws

- Financial Responsibility -- the administration of a State's financial responsibility law to protect the interests of those injured in motor vehicle accidents.

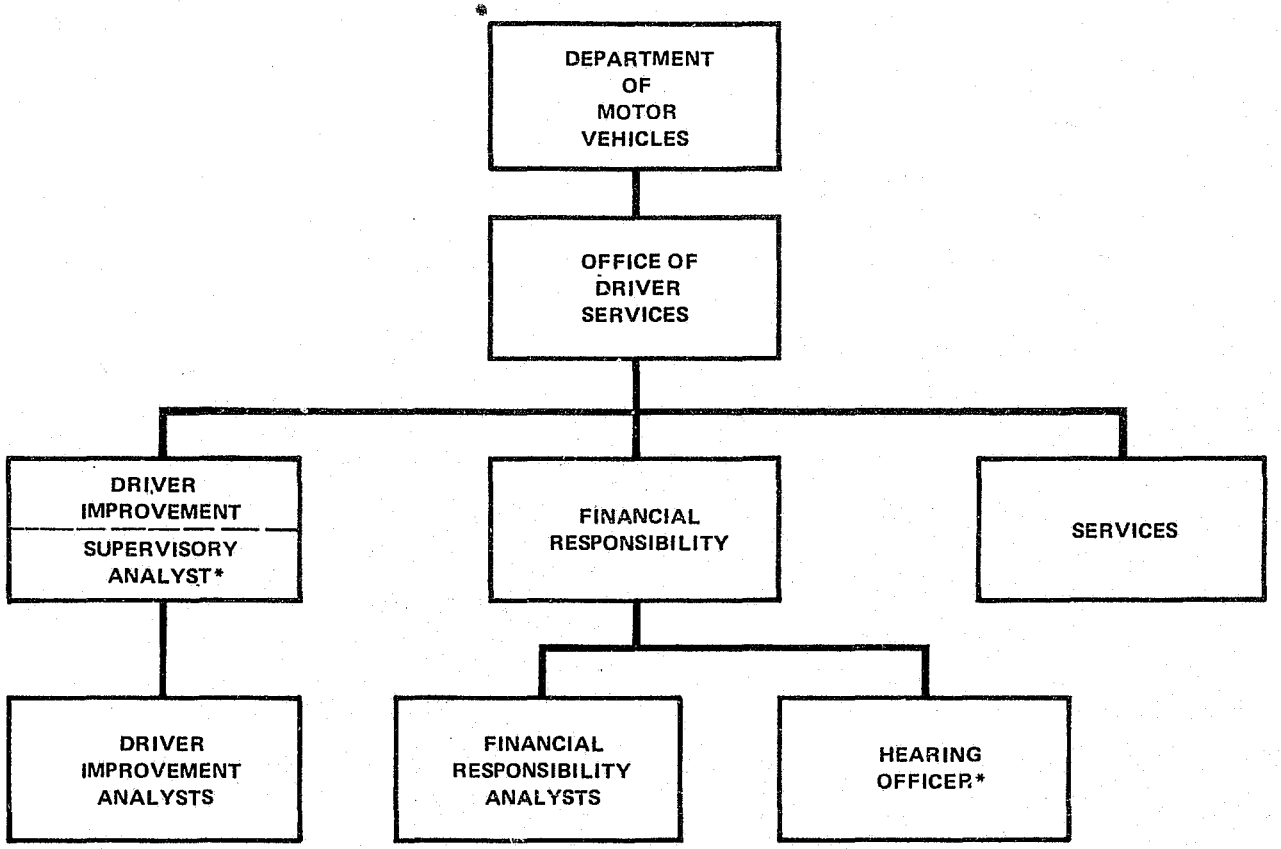
(3) Organizational Placement of the Hearing Function

The assignment of responsibility for conducting driver licensing hearings varies considerably from State to State. Generally, there appears to be three basic approaches to this assignment: (1) hearings conducted by each of the above listed functional groups; (2) hearings conducted by a separate driver licensing organization established just for this purpose; (3) hearings conducted by an organization outside of the driver licensing agency. Individual States may reflect only one of these approaches or may have selected a combination depending upon the type of hearing, as illustrated in the examples below:

- When hearings are conducted by each functional group, there are usually certain people within the group who are responsible for holding the hearings for their organization. For example, in the State of Washington, the Supervisor of the Driver Improvement Section and the Hearing Officer in the Financial Responsibility Section each conduct the hearings for their respective organizations as illustrated in Exhibit II-1. In some States, the majority of hearings are conducted by one section and hearing officers in that section may conduct occasional hearings for other organizations. An example is New Jersey, where the hearing officers in the Office of Safety and Driver Improvement will occasionally hold financial responsibility hearings for the Office of Driver Responsibility. The assignment of responsibility for conducting hearings to personnel within the functional organizations, takes maximum advantage of their experience and knowledge with the particular type of case.

- Several States have established separate organizations within the driver licensing agency whose primary responsibility is to conduct driver licensing hearings. These groups may also conduct other types of hearings (e.g., dealer licenses, inspection station licenses, etc.) but the driver licensing hearings constitute a very high percentage of the total hearings conducted. For example, all hearings for the Motor Vehicle Administration in Maryland are conducted by the Administrative Adjudication Branch, which is separate from the Financial Responsibility and Investigative Services Branches, while still within the Safety Responsibility Division (See Exhibit II-2). New York and Louisiana have separated the hearing organization even further by having the hearing officers under the agency's counsel rather than any of the licensing functional groups. Exhibit II-3 shows how this is done in Louisiana. These approaches try to establish some independence within the

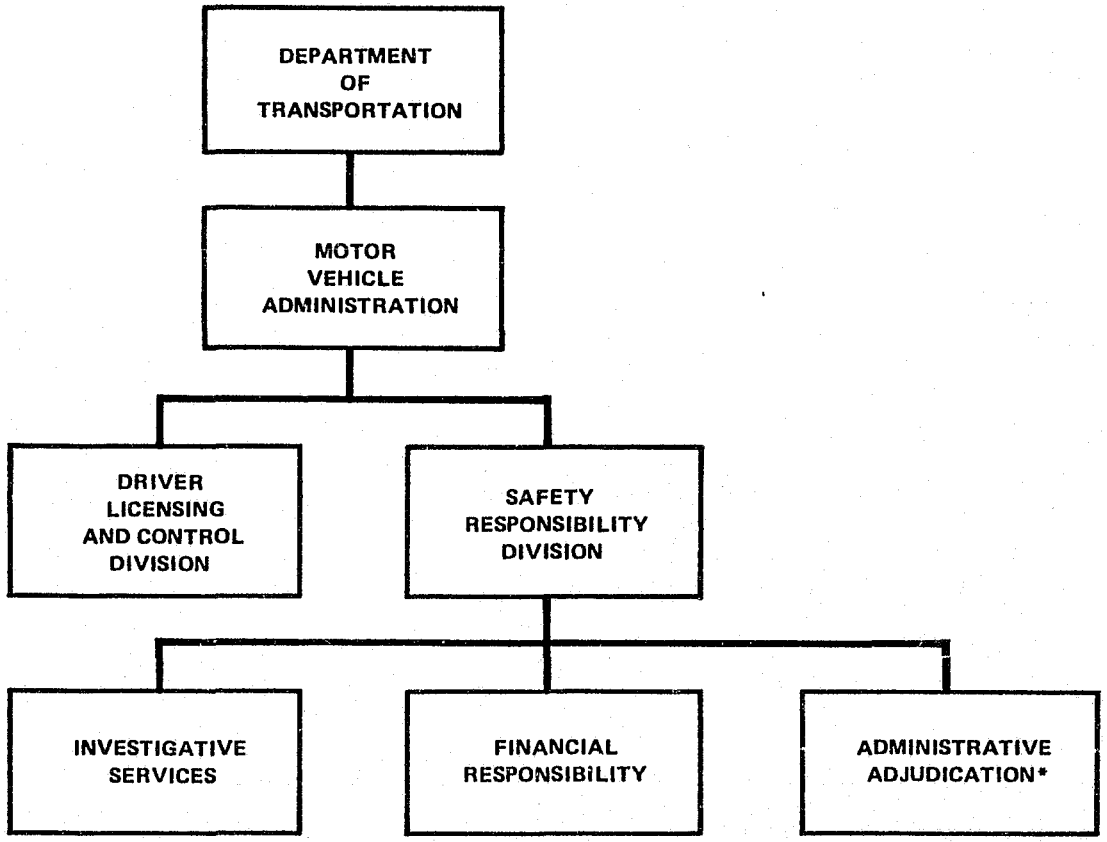
ORGANIZATIONAL RESPONSIBILITY FOR DRIVER LICENSE HEARINGS
IN THE
STATE OF WASHINGTON



*CONDUCTS HEARINGS

EXHIBIT II-1

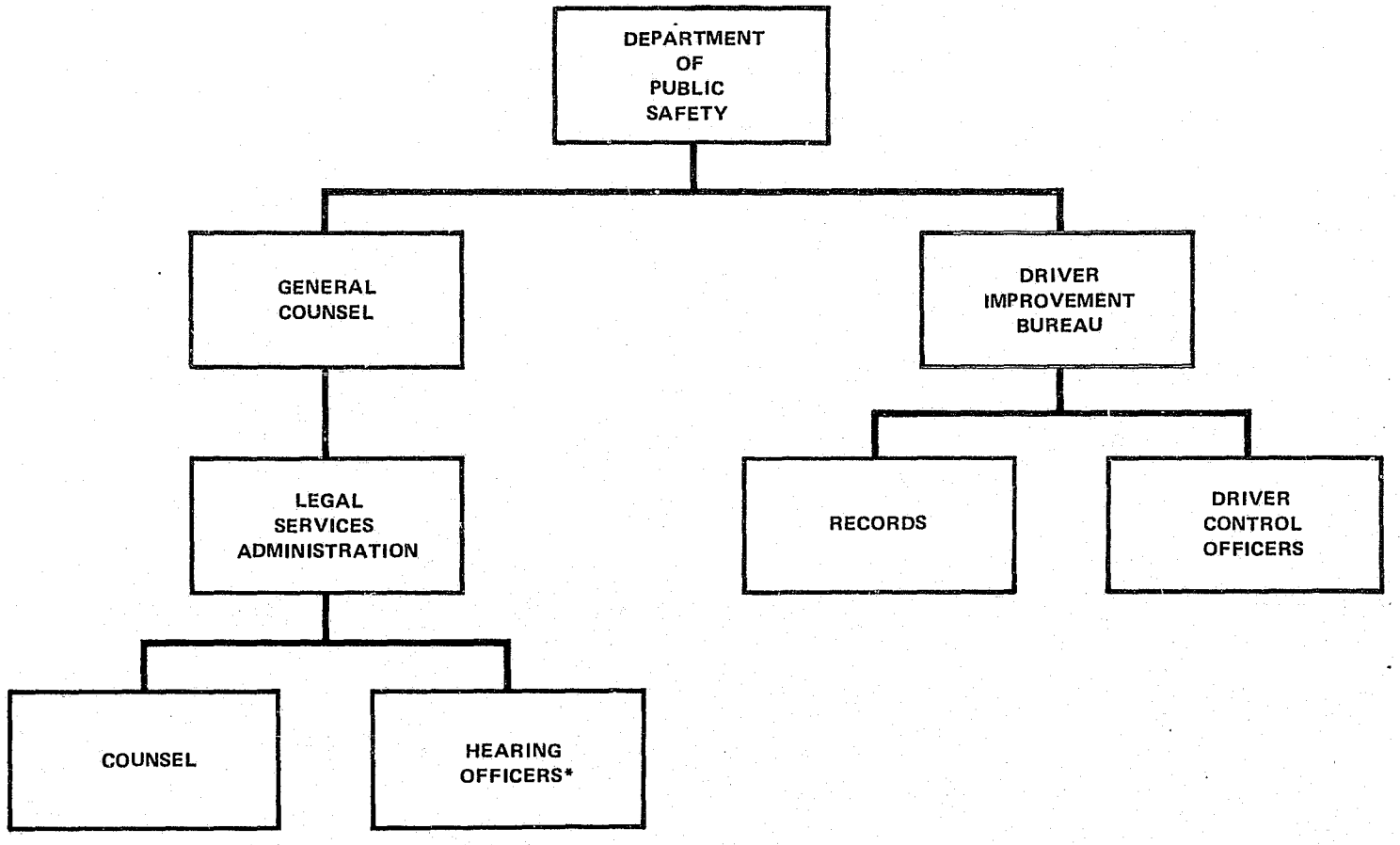
ORGANIZATIONAL RESPONSIBILITY FOR DRIVER LICENSE HEARINGS IN THE STATE OF MARYLAND



*CONDUCTS HEARINGS

EXHIBIT II-2

ORGANIZATIONAL RESPONSIBILITY FOR DRIVER LICENSE HEARINGS IN THE STATE OF LOUISIANA



*CONDUCT HEARINGS

EXHIBIT II-3

hearing organization while retaining contact with the operation of a driver licensing agency.

The third approach to the hearing function is to utilize an organization that is outside the driver licensing agency. Seventeen States have taken this approach by assigning jurisdiction over implied consent cases to courts, while retaining responsibility for other types of hearings within the driver licensing agency.[10/] One State which we visited -- Idaho -- utilized independent attorneys hired by the agency's legal counsel to hear driver license cases. Some States have established a special State agency to conduct administrative hearings for most State departments (commerce, welfare, commercial licenses, etc), although as yet none have included driver license hearings in this centralization. The use of a hearing resource outside the driver licensing agency represents the greatest emphasis on assuring the independence and impartiality of those conducting the hearings.

(4) Organizational Implications

The location of the driver licensing activity within State Government determines the reporting relationships and hierarchial distance of its chief administrator to law making (the legislature) and State policy determinations (the Governor). Driver licensing policy is also affected by the overall responsibilities of the department director and whether his general orientation is towards revenue generation, regulation, law enforcement, or public safety. Within the driver licensing agency there are further organizational considerations impacting the conduct of the principal licensing functions. In particular, the organizatonal location of responsibility for conducting hearings may affect the hearing officer's knowledge of driver licensing and highway safety programs, as well as the level of his independence and impartiality.

4. THE LICENSE WITHDRAWAL PROCESS

In this section, we provide an overview of post-licensing driver control programs which may culminate in withdrawal of a driver's license. This presentation begins with a review of the reasons why drivers' licenses can be withdrawn, followed by a discussion of how drivers are identified for license withdrawal actions.

(1) Reasons for License Withdrawals

As indicated previously, State legislatures have authorized driver licensing agencies to initiate license withdrawal actions for numerous reasons. However, our study has been limited to the

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10/ Driver Licensing Laws Annotated, op cit, p. 290.

three causes for license withdrawals that account for almost all hearings: violation of traffic laws, refusal to take an alcohol test, or failure to comply with financial responsibility requirements. One other major reason for license withdrawal is for medical causes; this has recently been researched by the American Association of Motor Vehicle Administrators (AAMVA) and American Medical Association (AMA).[11] The three primary reasons for license withdrawals, upon which we have concentrated our research, are briefly described below:

- Violation of Traffic Laws -- All States have adopted programs for identifying drivers who seriously or frequently violate the traffic laws. Selected serious offenses which the Uniform Vehicle Code suggests for mandatory revocation of the license upon conviction include: homocide by vehicle, operation while under the influence of alcohol or drugs, commission of a felony by use of a motor vehicle, failure to stop to render aid to those injured as the result of an accident, and making false statements relating to the ownership or operation of motor vehicles.[12] Some States have expanded the list of mandatory revocations to include additional specific violations or multiple convictions of selected offenses (such as reckless driving) in a given period of time.

  The conviction of a series of lesser offenses is usually grounds for the department to discretionarily suspend or revoke a driver's license. These are often referred to as persistent or frequent violators. Examples of such cases include repeated speeding or other moving violations,[13] involvement in a fatal or serious accident,[14] evidence that the driver is negligent or unqualified to drive,[15]

11/ "The Role of Medical Advisory Boards in Driver Licensing", American Medical Association and the American Association of Motor Vehicle Administrators, August, 1976.

12/ Uniform Vehicle code, op cit, 6-205.

13/ Eighteen States provide for such discretionary withdrawals, Driver Licensing Laws Annotated, op cit, 1973, p. 301, and 1975 Annual Supplement, p. 70.

14/ Twenty-eight States provide for such discretionary withdrawals, Driver Licensing Laws Annotated, op cit, 1973, p. 311, and 1975 Annual Supplement, pp. 74-75.

15/ Thirty-two States provide for discretionary withdrawals of licenses from negligent drivers and forty States can withdraw licenses from those found incompetent to drive, Drive Licensing Laws Annotated, op cit, 1973, pp. 304-305, and 1975 Annual Supplement, pp. 70-72.

and failure to appear in court as the result of a traffic offense.[16]

For the most serious offenders, twenty-two States have adopted statutes by which a driver can be classified as an habitual offender and have the license withdrawn for a substantial period of time.[17] These statutes usually require the department to have an individual declared an habitual offender by the courts, so the department does not have to hold a hearing.

For this report, we will hereafter consider withdrawal actions for serious offenders and for frequent violators as two separate reasons for withdrawal. The major portion of hearings conducted by driver licensing agencies in these cases are for frequent violators. Because of the discretionary nature of withdrawals for frequent violations, most licensing agencies recognize the need for hearings on these cases. Hearings are less likely to occur in serious offender cases as the license withdrawal actions are usually mandatory.

Refusal to Take an Alcohol Test -- All States have adopted laws, commonly referred to as implied consent statutes, which establish a basis for withdrawing licenses of drivers who refuse to take a test to determine the alcohol content of their blood, when requested by a law enforcement officer.[18]

Most of the laws are similar to that in the Uniform Vehicle Code, which generally provides that:

- if a driver is arrested for suspicion of driving while under the influence of alcohol or drugs, and
- if the law enforcement officer requests the driver to take a test of his blood, breath, or urine to determine blood alcohol content, and
- if the driver refuses to take the test after being warned of the consequences of refusal,

then the driver's license shall be revoked.[19] These

16/ Twenty-two States have this type or a related provision, Driver Licensing Laws Annotated, op cit, 1973, pp. 306-309, and 1975 Annual Supplement, pp. 72-73.

17/ Driver Licensing Laws Annotated, op cit, 1973, p. 327, and 1975 Annual Supplement, pp. 82-84.

18/ Driver Licensing Laws Annotated, op cit, pp. 267, 284-286

19/ Uniform Vehicle Code, op cit, Section 6-205.1 (a) and (c).

provisions are known as implied consent statutes because any individual who is issued a driver's license and drives on the highways is deemed to have consented to taking an alcohol test when requested by an enforcement official.

In adopting these provisions, States have varied in whether they have mandatory or discretionary power to suspend or revoke the licenses, but all States have initiated some type of license withdrawal action for chemical test refusals. Laws in 20 States provided for mandatory license revocations, while in 27 States, the license is suspended, and in one State, the license is "forfeited and suspended". In the remaining 3 States, the department has discretion over whether to suspend or revoke the license.[20/]

Financial Responsibility -- Prior to 1971, the Uniform Vehicle Code included provisions whereby:

- following an accident involving injury or damage in excess of $100, where one of the drivers was uninsured,
- the agency would determine the amount of security required from the uninsured driver to satisfy any judgements as a result of the accident, and
- if the driver failed to post the required security,
- then the driver's license would be suspended until such time as: the security was posted, he had satisfied all judgements, or he had been released or adjudicated free from all liability.[21/]

By 1971, all States but one had adopted some form of financial responsibility statute. However, in May 1971, the Supreme Court ruled in Bell v. Burson that a driver's license could not be summarily withdrawn under these provisions without first affording the driver an opportunity for a hearing. This hearing would serve to determine, "whether there is a reasonable possibility of a judgement being rendered against him as a result of the accident."[22/] States have since had to provide such hearings in administering their financial responsibility laws.

As a result of the Bell v. Burson Supreme Court decision, the Uniform Vehicle Code was modified in 1971 to delete the post-accident financial responsibility requirements and to

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20/ Driver Licensing Laws Annotated, op cit, 1973, pp. 286-287.

21/ Uniform Vehicle Code; op cit, 1968, Chapter 7.

22/ Bell v. Burson, 402 U. S. 535 (1971).

add provisions for mandatory insurance.[23] The Code presently suggests insurance coverage for all motor vehicles to prevent drivers from knowingly driving an uninsured vehicle. Consequently, under the Code, licenses are withdrawn only if: a driver is uninsured, operates an uninsured vehicle, or cannot satisfy a judgement. Thus, the volume of hearings has been drastically reduced, or in the experience of some States, practically eliminated. An increasing number of States are following this change in the Code, and as of January 1, 1976, twenty-four States had adopted compulsory insurance laws.[24]

In addition to these three primary reasons, there may be other cases in which States initiate action to withdraw driver licenses. For instance, South Carolina may suspend a driver's license for failure to pay property tax,[25] and New York may suspend upon conviction of any felony.[26] Moreover, many States have broad discretionary powers to withdraw licenses for violations of motor vehicle laws or other actions endangering safety on the highways.[27] The remainder of the report is limited to the four types of license withdrawal cases for which the vast majority of hearings are conducted: implied consent, financial responsibility, serious offenders, and frequent violators.

(2) Driver Identification Processes

A brief overview of the processes used by driver licensing agencies to identify drivers subject to license withdrawals, is necessary to understand how the agency initiates license withdrawal proceedings.

The processes for administering the serious offense, implied consent, and financial responsibility statutes are relatively standard and straightforward, while those for identifying frequent violators vary considerably from State to State. These latter processes can be quite simple or can involve a complex set of criteria. Each process is reviewed briefly below.

Implied Consent

When a driver refuses to submit to a chemical test following arrest on suspicion of driving while under the influence of

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23/ Uniform Vehicle Code, op cit, Supplement II, 1976, Chapter 7.

24/ Summary of Selected State Laws and Regulations Relating to Automobile Insurance, American Insurance Association, January, 1976.

25/ S.C. Code of Laws, Section 46-17.1

26/ N.Y. Vehicle and Traffic Laws, Section 510(3).

27/ Driver Licensing Laws Annotated, op cit, 1973, pp. 312-314.

alcohol, the police officer must complete a report of the refusal. This report generally documents the reason for the arrest and that the driver refused to be tested. In some States the report also requires certification that the officer advised the driver of the consequences of refusal. The officer usually must swear to the contents of the report, in order that it may serve as evidence in any hearing requested by the driver. The report is filed with the records section of the driver licensing agency, which then initiates the license withdrawal action against the driver by mailing a notice of proposed suspension or revocation.

Financial Responsibility

States with financial responsibility laws have often established a financial responsibility section within the driver licensing agency. Drivers involved in accidents resulting in injury, or property damage in excess of a specified dollar amount, are required to file accident reports with the department. The financial responsibility section must identify drivers involved in accidents who were uninsured at the time of the accident. If there is any possibility that these uninsured drivers could have been at fault in the accident, then the driver becomes subject to the financial responsibility requirements. These provide the driver with the options of:

- filing proof of insurance at the time of the accident,
- demonstrating that there is no reasonable possibility that a judgement will be rendered against him,
- obtaining releases from persons receiving property damage or injuries as the result of the accident, or
- posting a bond or security with the State in an amount determined to cover the potential liabilities.

A driver who fails to comply with any of these provisions will be subject to suspension under most financial responsibility statutes. Although some States correspond by letter with these uninsured motorists to initially inform them of their options and to further investigate the facts of the case, a suspension notice is usually issued as the formal notification of the financial responsibility requirements.

Frequent Violators

Almost all States have developed a driver improvement/ control program to:

- identify potentially dangerous drivers who may pose a threat to the safety of the highways

- improve the skills or attitudes of these drivers through driver clinics or group counselling sessions

- impose restrictions or withdraw the driver licenses of those deemed most dangerous.

States primarily rely on records of drivers' convictions of traffic law violations or accident histories to identify the potentially dangerous drivers, as measured by the frequency and/or seriousness of the violations or crashes. Many States have established point systems or other formal mechanisms to identify frequent violators for driver control actions.[28]

Within their driver control programs, most States utilize several driver improvement/control actions with less sanction than license withdrawal. These include: warning letters, driver improvement clinics, individual driver counselling sessions, and placing a driver on probation. A point system may incorporate multiple action levels at which drivers are identified for enrollment in these programs. Attendance at clinics or counselling sessions may be voluntary, with a reduction in points offered as an inducement. They may also be mandatory, with automatic withdrawal of the license for non-attendance. The notices mailed to the drivers for each of these action levels may indicate the type of driver control program and the possibility of license withdrawal if the program is ignored, but at these action levels, the notices generally do not constitute a notification that the State is initiating license withdrawal procedures.

States initiate procedures to withdraw a driver's license when a driver has continued to violate traffic laws (accumulated additional points), violated the terms of a probationary period, or has been convicted of such serious traffic violations that the driver is considered a highway safety risk. Examples of each of these situations were evident in the States we visited:

- upon accumulation of 8 points in Maryland, "the license shall be suspended" and for 12 points "the license shall be revoked,"[29] while South Carolina "may suspend" a driver with 12 points[30] (the actual point value for particular offenses varies between these two States)

28/ A discussion of the use of point systems as a basis for license withdrawal actions can be found in Reese, J., Power, Policy, People: A Study of Driver Licensing Administration, 1971, Chapter II.

29/ Motor Vehicle Laws of Maryland, Article 66 1/2, Section 6-405.

30/ South Carolina Motor Vehicle Laws, Section 46-196.2.

- once a driver is placed on probation in Louisiana, the conviction of any moving violation, during the probation period, mandates license suspension[31]

- upon conviction of manslaughter by use of a motor vehicle, two convictions of driving while under the influence, or three convictions of reckless driving, the suspension of the driver's license is mandatory in Louisiana.[32]

The types of license withdrawal actions initiated by the States also vary. As evidenced above, some State statutes mandate license suspensions for point accumulations or conviction of specific offenses, while others allow the agency discretion over license withdrawals. The license withdrawal may be a suspension (for a fixed period of time set by statute or as determined by the agency) or a revocation for an indefinite period of time. Yet each of these situations requires the licensing agency to take steps to notify the driver of the license control action, informing him whether it is a proposed or mandated withdrawal and what he must do (or may do) in response.

5. THE HEARING WITHIN THE DRIVER CONTROL PROCESS

Proper study of hearing proceedings and their impact upon the driver requires an understanding of the role of the hearing in the overall driver control process. During our State visits, it was apparent that the relative point in time that hearings occur, as a part of the driver control process, varies considerably from State to State especially for frequent violator cases. Part of the variation is due to each State's definition of a "hearing" (e.g., as compared to an interview). We purposely conducted the State visits without a preconceived definition of a "hearing" in order to discover these variations. Therefore, in this section we review hearings as they are currently conducted by the States without judging whether the "hearing," as they refer to it, is in fact an adequate and fair hearing. Our definition of what constitutes an adequate hearing will be presented in subsequent chapters.

Some of the factors that impact the timing of the hearing include whether the hearing is scheduled automatically, whether the State uses the hearing to screen drivers for driver improvement programs, and whether the hearing takes place before, or after the license withdrawal becomes effective. The impact of these are explored in this section. Other factors, such as whether a driver is informed of his right to a hearing or of the purpose and possible consequences of the hearing, are discussed in the next chapter.

31/ Louisiana Revised Statutes, Title 32, Section 414.

32/ Ibid.

The survey questionnaire requested that each responding State indicate whether a hearing is available to the driver and when such a hearing would be held.

With respect to mandatory license withdrawals, 18 States indicated that no hearing is offered for persons subject to mandatory revocation, and 13 indicated that no hearings are offered to drivers subject to mandatory suspension. Further, of those offering hearings, 50% of the States offer hearings prior to mandatory revocation and 40% offer hearings prior to mandatory suspension.

In those cases where the agency has discretion over the license withdrawal action, 68% of the States offered hearings before a revocation and 56% offered hearings before a suspension becomes effective. All States provide the opportunity for a hearing in these discretionary cases (although one State does not provide it for discretionary revocations). The details for these and other license withdrawal actions are shown in Exhibit II-4 and Table 10 of Appendix A, Vol. II.

It appears that, in most States, where the offense would indicate a mandatory action, the driver appears before the hearing officer after his driver license has been withdrawn. In more than 30% of the States, where action is discretionary, the license suspension or revocation becomes effective before a hearing is conducted.

There are, of course, many more factors determining when a hearing may be requested other than just the type of withdrawal action and whether it is mandatory or discretionary. We will illustrate these factors by reviewing the hearing as it relates to the overall driver control process for each of the four primary types of license withdrawal actions: implied consent, financial responsibility, frequent violator, and serious offender.

(1) Implied Consent

The laws of all States except Pennsylvania provide drivers with the opportunity for a hearing in implied consent cases, and fourteen States schedule hearings automatically. The hearing must take place before the license withdrawal becomes effective in 33 States; the other 18 States may suspend the license prior to a hearing, after which they may revoke the license. In 34 States, administrative implied consent hearings are conducted, while the courts hold the hearings in the other 17 States.[33/]

The action to withdraw a driver's license is initiated by the law enforcement official who forwards the report of test refusal, often accompanied by a copy of the arrest report, to the driver records section of the licensing agency. The notice of pending suspension is then prepared by the driver licensing agency and mailed to the driver, who may request a hearing if desired.

33/ Driver Licensing Laws Annotated, op cit, p. 290.

OPPORTUNITIES FOR HEARINGS RELATED TO DRIVER LICENSE WITHDRAWALS

TYPE OF WITHDRAWAL	NUMBER OF STATES PROVIDING:			
	Hearing Prior to Withdrawal	Hearing After Withdrawal	No Hearing	No Response
MANDATORY LICENSE WITHDRAWALS				
DENIAL	11	13	16	11
CANCELLATION	12	13	10	16
RESTRICTION	11	14	9	17
SUSPENSION	17	13	13	8
REVOCATION	13	13	18	7
DISCRETIONARY LICENSE WITHDRAWALS				
DENIAL	23	17	1	10
CANCELLATION	16	15	3	17
RESTRICTION	20	13	3	15
SUSPENSION	33	14	0	4
REVOCATION	26	12	1	12

EXHIBIT II-4

Two States which we visited -- Maryland and Utah -- automatically scheduled a hearing for every implied consent case. Both States automatically withdrew the licenses of drivers who failed to appear for the scheduled hearings, on the presumption that the driver could not or did not choose to defend his refusal to take the test.

(2) Financial Responsibility

Of the States visited, four -- Louisiana, New Jersey, Washington, and Wisconsin -- had financial responsibility laws requiring drivers to prove insurability, post security, or lose their licenses if there was a reasonable possibility of their being at fault in an accident. Additionally, although a compulsory insurance law became effective on July 1, 1975, in South Carolina, the State previously had a financial responsibilty law and had developed detailed procedures for the hearings; we will refer to these procedures because they are so relevant to this research.

The general process in each of these States is that if, after the review of accident reports and other documents it is determined that a driver was uninsured and there appears to be a reasonable possibility of fault, then the driver is notified of the financial responsibility requirements. The driver must decide either to post security or request a hearing, if he desires to retain his license. Upon request for a hearing, the case is then forwarded to those responsible for conducting the hearing.

The State of Washington provides an intermediate step in the process before a driver may request a hearing. The driver must come in for an interview with a Financial Responsibility Analyst during which the case is reviewed and the driver is informed of his rights and responsibilities. These interviews are informal, without sworn testimony or a record being made, and drivers may bring their attorneys (although they are often advised it is not necessary). At the conclusion of the interview, the Financial Responsibility Analyst may reduce or eliminate the amount of security to be deposited. If security is still required, the driver is informed that his license will be suspended unless the security is deposited, and that he may request a formal hearing prior to the suspension taking effect.

(3) Frequent Violators

The license withdrawal hearing for frequent violators of traffic laws, may occur at distinctly different points in the driver control process. Each State that we visited had adopted its own driver improvement and control program for frequent violators. The purpose, timing, and emphasis placed on the hearing within this process were unique to each State's approach to driver control. We observed, however, two primary orientations to the hearing, looking at it from the driver's perspective. This difference in orientation depended upon whether it was the

driver's first or final contact with driver control officials (as compared to driver examining officials). Therefore, we will review the hearing as it relates to the overall driver control process as the driver views it. This analysis relies heavily upon our State visits to illustrate the role of the hearing in the driver control process.

i) The Hearing as the First Contact

In four of the States that we visited, the license withdrawal hearing is, in essence, the first personal contact the driver has had with the licensing agency other than that related to license issuance or renewal. The driver may have received warning letters or similar correspondence, but has not previously met with driver control officials or attended driver improvement programs, as illustrated in Exhibit II-5. There were two mechanisms observed by which a driver could appear for a hearing as his first contact:

- Three States using point systems simply issued suspension notices to drivers accumulating a certain number of points. The only previous correspondence might have been a warning letter to the effect that further violations could jeopardize retention of the driver's license. It is the driver's responsibility to request a hearing, which would then be his first personal contact with driver control officials. The States of Florida, Wisconsin, and South Carolina have systems similar to that described above.

- New York has mandatory hearings for drivers convicted of certain offenses as well as those accumulating a specific number of points. For example, drivers under 21 convicted of any moving violation, drivers convicted of speeding in excess of 30 mph over the speed limit, and drivers involved in a fatal accident are automatically scheduled for hearings. The hearing could easily be the first contact the driver has with the agency even for point system cases. As will be discussed later, the hearing officer in New York may exercise a great deal of discretion in sanctioning drivers appearing for these hearings and, conceivably, can withdraw the license from drivers appearing for any of the aforementioned reasons.

The hearing officers in these States seemed to have considerable discretion in determining the sanctions against drivers appearing before them for the "first" time. For instance, South Carolina essentially used the hearing to identify drivers for enrollment in driver safety schools. Very frequently the driver's need for the license was an important consideration in these hearings, such as in Florida where the driver had to submit an affidavit of his need and

THE LICENSE WITHDRAWAL HEARING AS THE FIRST CONTACT WITH DRIVER CONTROL OFFICIALS

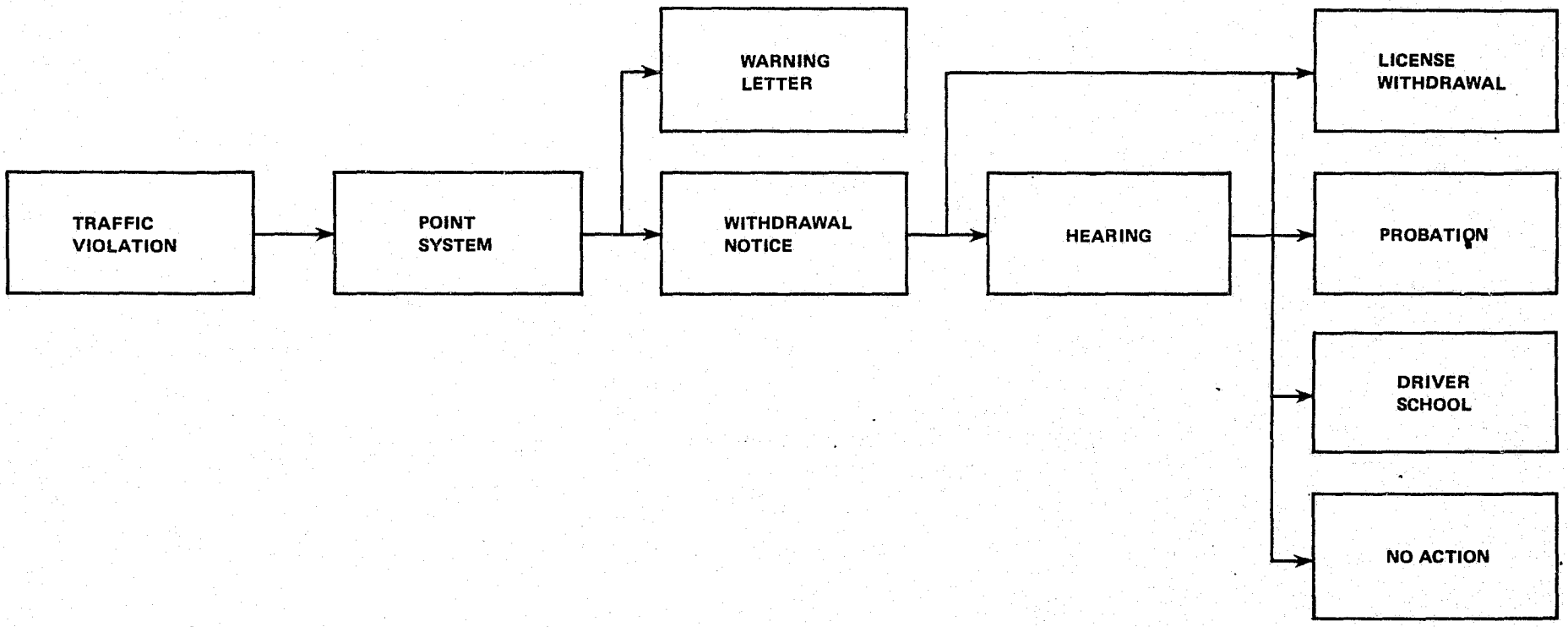

EXHIBIT II-5

much of the hearing was devoted to considering this need. The combination of these factors is that, in South Carolina for example, only about 10% of the hearings result in withdrawal of the license.

ii) The Hearing as the Final Contact

In the other four States the hearing is essentially the last administrative chance the driver has to retain his license. Each State has a point system or other mechanism for identifying problem drivers and enrolling them in a driver improvement school or counselling session. Three of the States place drivers on probation, often during or after a driver improvement school, and make it very clear to the driver that a subsequent traffic conviction, within a specified time period, will result in withdrawal of the license. Thus, when the driver appears for a hearing he should realize that it may be his final contact with driver control officials before the license is withdrawn. A pictorial presentation of this process is shown in Exhibit II-6.

The specific mechanisms used by each of these States for driver control, differ considerably within this framework:

- Utah notifies drivers accumulating 150 points to suggest that they attend a defensive driving course, the completion of which will give them a 50 point reduction. Upon accumulation of 200 points, the driver is requested to appear for an individual interview which may result in placing the driver on probation. Non-attendance at this interview or subsequent conviction of a traffic violation will cause the State to seek to suspend the driver's license. At this point the driver may request a hearing.

- Idaho uses a point system to identify "problem drivers", and gives them the option of enrolling in a Driver Improvement and Counselling Program (DICP), in lieu of their first suspension. Most drivers request enrollment in the program. A screening interview is conducted with each driver before enrollment in the DICP and the interviewer may: enroll the driver into the program, refer him to other community services agencies, issue him a license conditional upon attendance at the DICP, issue a license restricted to certain driving hours, or deny him entrance to the DICP and recommend that his license be suspended. In this latter case, the driver may request a formal hearing, and the suspension is stayed pending the hearing.

THE LICENSE WITHDRAWAL HEARING
AS THE
FINAL CONTACT WITH DRIVER CONTROL OFFICIALS

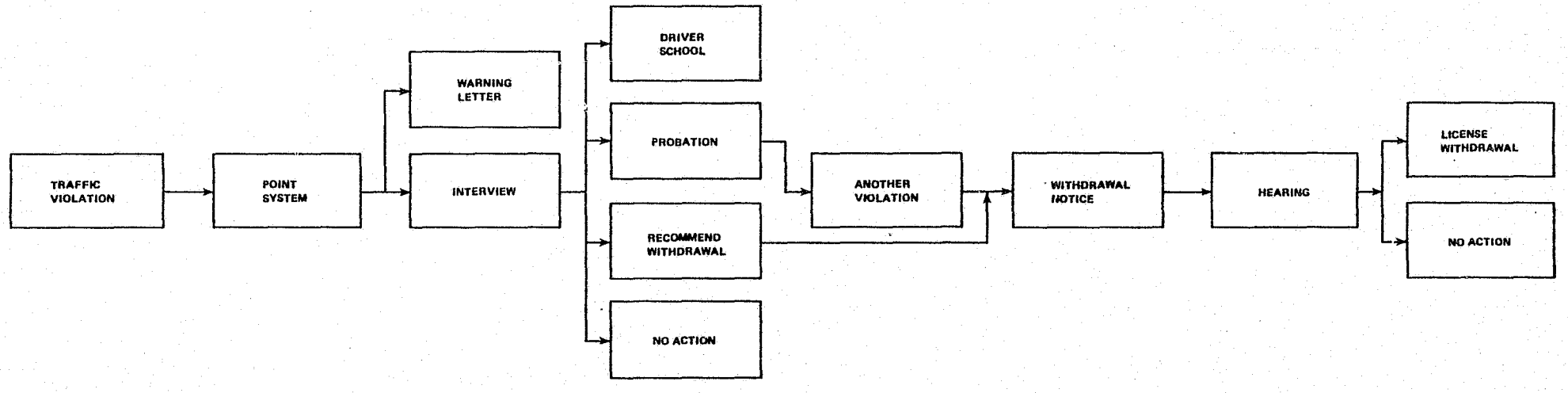

EXHIBIT II-8

- Problem drivers in Washington must attend an individual interview with a Driver Improvement Analyst, from which they are frequently referred to a group counselling session. At the end of the group session they are usually placed on probation and are told that one more conviction, during the probationary period, will result in suspension of the license. Upon a subsequent conviction while under probation, the driver is called in for another interview with the Driver Improvement Analyst. During this interview, the driver's record is reviewed and the driver is asked to show cause why he should not be suspended; he cannot use his need to drive as a reason for keeping the license. These interviews are informal, off the record, and without sworn testimony. The analyst then recommends whether the driver's license should be suspended and, if so, the driver may request a formal hearing with the Senior (supervisory) Driver Improvement Analyst. Although the interviewing analyst has much discretion in determining driver sanctions, including attendance at another group session, about 70% of these interviews result in recommendations for suspension.

- In Louisiana, problem drivers are interviewed by Driver Control Officers, attend driving schools, and are placed on formal probation. A driver's license is suspended for frequent violations only after he has been convicted of a moving violation <u>while on probation</u>. The notice of suspension is then sent to the driver, who may request a hearing with the Legal Services Administration, a division separate from Motor Vehicles within the Department of Public Safety.

It appears in each of these four States that by the time a driver requests a hearing concerning the withdrawal of his license, he would clearly realize that it is his last chance before withdrawal. In each case, he had been convicted of a traffic violation after interviews with driver control officials and, while on probation, he was aware of the potential circumstances of a subsequent conviction. These hearings tend to be quite formal and legally oriented. In some States there was absolutely no consideration of a person's need to drive. Another indication that these hearings are the driver's last contact with the agency, is that approximately 90% of the frequent violator hearings in Washington result in confirmation of the recommendation for license withdrawal.

Frequent violators in many States are often required to attend mandatory interviews or hearings at some point in the driver control process. Drivers who fail to attend usually have their license automatically withdrawn. However, in New York, this caused an overwhelming administrative burden in their attempt to

interview all frequent violators as well as youthful offenders and selected serious offenders. To reduce the workload, New York instituted a hearing waiver program for frequent violators, eliminating many of the initial interviews. The waiver program provides, for drivers subject to their first suspension due to point accumulation, that the State may offer drivers a waiver of the mandatory hearing if the driver will accept a shorter suspension period (than that which might be determined by a hearing officer as a result of a hearing). The driver may accept the waiver and the suspension, or may request a hearing on the proposed license withdrawal.

(4) Serious Offenders

As indicated earlier, not all States provide hearings for mandatory license withdrawals. Even if they do offer a hearing, it frequently occurs only after the withdrawal has taken effect. However, the process for taking withdrawal acton is relatively consistent, regardless of whether or when a hearing is held.

The adjudication of the specific, serious traffic violation takes place in a court of law. If the driver is convicted, then the court must forward the notice of conviction to the driver licensing agency. Some courts will actually retain the driver's license, effecting the license withdrawal immediately. In most States, though, the court will leave the responsibility for license withdrawal to the administrative agency.

Upon receipt of the conviction notice, the driver licensing records section will prepare a notice of suspension/revocation and mail it to the driver. If the option for a hearing is provided before the effective date, this will be a notice of pending suspension/revocation, subject to the hearing. In many cases, the license withdrawal is effective upon mailing of the notice, and the driver can only request a hearing after the withdrawal takes effect. Normally, this hearing would be limited to confirming the identification of the driver and the validity of the conviction notice; if these facts are established, the withdrawal must, by law, take effect.

6. SUMMARY

This chapter has provided an overview of the driver licensing and control process as currently administered by the State driver licensing agencies. Four reasons for license withdrawal were identified as being those which involve the greatest number of hearings:

- implied consent
- financial responsibility

- frequent violators
- serius offendors.

For each of these types of license withdrawal actions, the discussion covered the authority for the action, how the withdrawal action is initiated, and the relationship of the hearing to the license withdrawal process. These characteristics are summarized in Exhibit II-7. They will serve later to distinguish between which due process requirements apply to each type of license withdrawal action.

SUMMARY OF CURRENT CHARACTERISTICS OF LICENSE WITHDRAWAL ACTIONS AND HEARINGS

MAJOR CHARACTERISTIC	REASON FOR LICENSE WITHDRAWAL			
	IMPLIED CONSENT	FINANCIAL RESPONSIBILITY	FREQUENT VIOLATIONS	SERIOUS OFFENSE
AUTHORITY	STATUTE	STATUTE	STATUTE AND AGENCY POLICY	STATUTE
TYPE OF ACTION	MANDATORY UPON FINDING OF FACTS	MANDATORY UPON FINDING OF FACTS	DISCRETIONARY	MANDATORY
INITIATING EVENT	REFUSAL REPORT	ACCIDENT REPORT – UNINSURED DRIVER	ACCUMULATION OF POINTS	CONVICTION OF OFFENSE
HEARING PROVIDED	UPON REQUEST	UPON REQUEST	UPON REQUEST; SOMETIMES MANDATORY	USUALLY NOT
TIMING OF HEARING	OFTEN AFTER WITHDRAWAL	USUALLY BEFORE WITHDRAWAL	OFTEN AFTER WITHDRAWAL	AFTER WITHDRAWAL
ORGANIZATION GIVING HEARING	DRIVER LICENSING AGENCY OR COURT	DRIVER LICENSING AGENCY	DRIVER LICENSING AGENCY	DRIVER LICENSING AGENCY

III. HEARINGS ON DRIVER LICENSE WITHDRAWALS

This chapter provides a detailed analysis of the hearings presently conducted by driver licensing agencies as part of license withdrawal proceedings. This analysis concentration on those aspects of license withdrawal proceedings to which due process is applicable. These areas of concern include:

- Notification to drivers of a pending license withdrawal action and of their due process rights with respect to that withdrawal
- Conduct of the hearing
- Analysis of the decision making process
- The availability of avenues of appeal
- Responsibilities and qualifications of those serving as hearing officers.

1. NOTIFYING THE DRIVER AND REQUESTING THE HEARING

This section analyzes procedures leading up to the hearing including: mailing of notice to a driver, guidelines as to how a driver requests a hearing, and the scheduling of the hearing by the hearing authority.

(1) Overview of Driver Notices

A post-licensing driver control program may require the driver licensing agency to send a variety of notices to problem drivers. A typical list of notices would include:

- Warning letter -- A letter, generated after a driver has accumulated a minimal number of points, warning him that further convictions of traffic law violations will result in driver control actions being taken.
- Interview notices -- Drivers continuing to accumulate points may be called in for either group or individual interviews. If the interview is mandatory, the notice will indicate that failure to attend will result in withdrawal of the license.
- Notice of pending license withdrawal -- This notice informs the driver that the agency has initiated action to withdraw his driver license. The effective date of the action may be some time in the future, before which a driver may request a hearing. This constitutes the initial notification to the driver of a license withdrawal action.

- Notice of hearing schedule -- This notice informs the driver of when and where a hearing is scheduled. It might also describe the hearing, identify the driver's rights, or list information he is required to bring with him to the hearing.

- Final notice of license withdrawal -- This is the final notice a driver receives with regard to a license withdrawal action. The withdrawal is usually effective immediately and it often requests the driver to mail his license to the agency. These notices are used following a hearing which upholds the proposed license withdrawal.

In our study of driver licensing hearings, we are concerned with two of the above notices: the initial notice of a license withdrawal action and the notice of the hearing schedule. Each of these is discussed below. Of course some States (such as New York) schedule mandatory hearings when initiating license withdrawal proceedings, so these two notices are, in effect, combined; the implications of this approach have also been considered in this study.

(2) Initial Notice of License Withdrawal Proceeding

Our analysis of initial notices is based on three information sources: responses to specific questions in the survey, examination of sample forms provided by many States, and interviews and observations made during the State visits.

In considering how notification takes place, the questionnaire asked about the methods used for delivery. Of 45 States responding to the question: "If any action to deny, suspend, restrict, revoke, or cancel a driver's license is to be taken, how is driver initially notified?" 33 States (67%) indicated they use first class mail, while 13 States (29%) use certified mail. Three States use certified mail for specific types of cases: one for implied consent or habitual offenders, one for point suspensions, and the third for emergencies only. Six States use hand delivered mail (sometimes in addition to regular mail) and only one State uses registered mail. These data are summarized in Table 6 of Appendix A, Volume II.

Sixty-six samples of driver notification forms were provided by 35 States in response to the survey. Obviously many States utilize more than one form for notifying drivers of proposed license withdrawal actions. States having multiple forms usually have developed special ones for implied consent, financial responsibility, frequent violators, and even for specific offenders. Five States have designed universal forms or have combined most of the cases onto a single form, such as that used by Alabama (See Exhibit III-1). Several States rely on computers to prepare the entire notice on department stationery rather than on pre-printed forms with the result that each notice is in effect

DEPARTMENT OF PUBLIC SAFETY

DRIVER LICENSE DIVISION

STATE OF ALABAMA

TO:

DOB_____ RACE____ SEX____

DRIVER LICENSE NO._____

TEMPORARY PERMIT NO._____

SURRENDERED_____YES _____NO

Effective, _____, you are hereby notified, that, as provided by the laws of the State of Alabama, your driving privilege, driver license and/or temporary permit have been:

(.) REVOKED ( ) SUSPENDED ( ) CANCELLED ( ) DENIED DURATION _____DAYS_____MONTHS

REASON FOR ACTION

( ) Failure to Appear for Examination
( ) Failure to pass Re-examination on Cite
( ) Driving While Intoxicated
( ) Driving While Revoked or Suspended
( ) 3 Reckless Driving Convictions in a period of 12 months
( ) Auto used in commission of a felony
( ) Manslaughter
( ) Violating Restriction of 15 year old permit
( ) Leaving the Scene of an Accident
( ) Court Order—By order of the Court
( ) Falsely Obtaining License
( ) Not Entitled To
( ) Alcoholic
( ) Visual Acuity
( ) Violation of Restriction Code
( ) Suspension Pending Trial
( ) Refusing to Submit to Chemical Test
( ) Unlawful Use of Anothers License
( ) Habitual Violator
( ) Allowing Another to Use License
( ) Fraudulent Use of Driver License
( ) Taking or Attempting to Take the Driver License Exam unlawfully and fraudulently to obtain a driver license for another.
( ) License Deposited in Lieu of Bond
( ) Failure to Appear in Court
( ) Incompetent (Mental—Physical)
( ) Mutilating, Defacing, or Marring driver license, temporary driver permit, learner permit, renewal notice, temporary instruction permit and receipt.

REMARKS: _____

( ) IN ACCORDANCE WITH THE ALABAMA DRIVER LICENSE LAW. (Title 36, 1940 CODE OF ALABAMA AS RECOMPILED, 1958) All Motor Vehicle, Registration Plates (tags), and Registration Certificates issued in your name are suspended, and must be surrendered to the Driver License Division, Department of Public Safety, no later than midnight of that date. (NOTE: Surrender of your registration plates is not required if you furnish this department with proof of Financial Responsibility as described on the back of this page on or before midnight of that date.)

You must maintain proof until_____or surrender your plates. Additional convictions of traffic violations may extend the period for which you are required to file proof.

( ) Proof of Financial Responsibility filed:_____Yes_____No

IN ACCORDANCE WITH THE ALABAMA SAFETY RESPONSIBILITY LAW, (TITLE 36, SECTION 74(581)

( ) You are entitled to a pre-suspension administrative hearing on this action at a reasonable time on a business day. Such hearing will be granted only if requested in writing to the undersigned. The hearing will be afforded in the county of your residence. The date of suspension will be postponed until the date this department can set you an administrative hearing only if a written request is received within ten days of the date hereof.

( ) All driver license in your possession are not valid after date shown above. Any delay in sending the driver license and/or temporary permit to this office will be added to the period of withdrawal. THE CREDIT GIVEN YOU ON YOUR SUSPENSION STARTS THE DAY THE DEPARTMENT OF PUBLIC SAFETY RECEIVES ALL DRIVER LICENSES IN YOUR POSSESSION.

SEE REVERSE SIDE FOR ADDITIONAL INFORMATION

ELDRED C. DOTHARD, DIRECTOR
DEPARTMENT OF PUBLIC SAFETY

Direct all inquiries to:
Driver Improvement Unit
P. O. Box 1471
Montgomery, Alabama 36130
Telephone 832-5100

BY G. L. McGriff
G. L. McGRIFF, CHIEF
DRIVER LICENSE DIVISION

DI-1
(Rev. Jan. 1975)

NOTICE

If you have any legal or lawful reason as to why this revocation should not be placed into effect, you may contact this office by written notice within ten days of this notice and a hearing will be conducted into the matter. A mere need for a driver license is not a legal or lawful reason.

PROOF OF FUTURE FINANCIAL RESPONSIBILITY

Any person who makes himself subject to Financial Responsibility is required by law to file a Certificate of Financial Responsibility (Form SR-22), or post a surety bond in the amount of at least Twenty-Five Thousand Dollars. Your insurance company must furnish us with proof that you have at least the minimum insurance required. (NOTE: A receipt for payment of premium, or the policy is not proof—have your agent file form SR-22). Proof of Insurance must be filed covering all owned or registered vehicles in your name. If you do not own a motor vehicle you should request that your Insurance Company file on you as a non-owner: or, you may have your Employer or a relative request the Insurance Company to file SR-22 on their vehicle(s) in your behalf. When you are re-licensed you will be restricted to driving only those vehicles on which proof has been filed in your behalf.

UPON RECEIPT OF FORM SR-22, REGISTRATION PLATES AND REGISTRATION CERTIFICATES WILL BE RETURNED IF YOUR FILE IS OTHERWISE IN ORDER.

PENALTIES

FAILURE TO COMPLY MAY RESULT IN A FINE OF NOT MORE THAN FIVE HUNDRED DOLLARS, OR IMPRISONMENT FOR NOT MORE THAN 30 DAYS, OR BOTH, (TITLE 36, SECTION 74(72) 1940 CODE OF ALABAMA AS RECOMPILED 1958).

RESTORATION

SUSPENSION

When your suspension period expires, your driver license will be returned to you upon your written request and payment of the $25.00 reinstatement fee which is required by law. The fee should be submitted by either cashier's check, certified check, or money order made payable to the Department of Public Safety, Driver License Division.

PERSONAL CHECKS ARE NOT ACCEPTABLE

REVOCATION

You must apply for authority to be re-licensed after revocation. To be eligible you must have proof of Financial Responsibility Insurance (Form SR-22) on file with this department. Pay the reinstatement fee of $25 as required by law and undergo a complete re-examination. The fee should be submitted by either cashier's check, certified check or money order made payable to the Department of Public Safety, Driver License Division.

PERSONAL CHECKS ARE NOT ACCEPTABLE

uniquely generated from a collection of standard paragraphs, as illustrated by a North Carolina notice of suspension (Exhibit III-2). However, the majority of States use multiple pre-printed forms, each oriented to a general type of license withdrawal, on which case-specific information is often computer printed. Examples of the various forms used by Arizona provide an illustration of notices oriented to specific purposes (See Exhibit III-3). Forms were received from states pertaining to the following reasons for license withdrawal:

Reason for Withdrawal	Number of States Providing Forms
Frequent Violations	8
Implied Consent	11
Financial Responsibility	9
Cancellation	2
Violation of Probation	2
Conviction of Specific Offense	8

The review of these forms revealed a very wide variation in format, style, and content of the notices among the States and occasionally within a single State, so that it is difficult to generalize about the current status of driver notification. Nevertheless, we will utilize examples of these forms to illustrate certain points under consideration in reviewing them for specific items of content.

The notices serve to inform a licensee of an action, either proposed or effective upon receipt, to withdraw the driver license. The reason for the withdrawal action was stated on all notices reviewed but one; in this case, several forms were provided by the State, some of which obliquely identified the reason (only one form omitted the reason entirely, although the driver was requested to appear before the department). In stating the reason for the action on the notice, all but 6 States made reference to a State statute authorizing the action; 25 of the 29 States which referenced the statutes identified the specific section(s) applicable to the particular type of license withdrawal.

Most notices contained information on whether and how the driver could request a hearing with the agency, but there were some notable exceptions. In 6 States, one or more forms lacked any reference to a driver's right to a hearing (usually these notices related to frequent violator cases). All forms pertaining to financial responsibility cases contained notices as to how to

EXHIBIT III-2

North Carolina Department of Transportation and Highway Safety
Division of Motor Vehicles
Driver License Section
Raleigh 27611
FEBRUARY 25, 1976

OFFICIAL NOTICE AND RECORD OF SUSPENSION OF DRIVING PRIVILEGE

EFFECTIVE 12.01 A. M. MARCH 6, 1976 YOUR NORTH CAROLINA DRIVING PRIVILEGE IS SUSPENDED FOR THE ACCUMULATION OF TWELVE (12) OR MORE POINTS ON YOUR DRIVING RECORD - G.S.20-16A(5).

AS REQUIRED BY CHAPTER 20 OF THE MOTOR VEHICLE LAWS, YOU ARE DIRECTED TO MAIL ALL DRIVER LICENSES IN YOUR POSSESSION TO THE DIVISION OF MOTOR VEHICLES ON OR BEFORE THE EFFECTIVE DATE OF THIS ORDER UNLESS YOU HAVE PREVIOUSLY SURRENDERED THEM TO THE COURT OR THE DIVISION.

G.S.20-16 (D) PROVIDES THAT THE DIVISION SHALL AFFORD A HEARING WITHIN TWENTY (20) DAYS AFTER RECEIPT OF A WRITTEN REQUEST, UNLESS A PRELIMINARY HEARING WAS HELD BEFORE SUSPENSION. UPON SUCH HEARING THE DIVISION MAY RESCIND, MODIFY OR AFFIRM ITS ORDER OF SUSPENSION. YOU ARE NOT ENTITLED TO OPERATE A MOTOR VEHICLE PENDING THE HEARING.

G.S.20-7 (I1) REQUIRES THAT A PERSON WHOSE LICENSE OR PRIVILEGE TO OPERATE A MOTOR VEHICLE IN THIS STATE HAS BEEN REVOKED OR SUSPENDED SHALL PAY A RESTORATION FEE OF FIFTEEN DOLLARS ($15.00) TO THE DIVISION PRIOR TO THE ISSUANCE OF A NEW LICENSE OR RESTORATION OF THE DRIVING PRIVILEGE.

IF YOUR UNEXPIRED LICENSE IS IN THE DIVISION, IT WILL BE RETURNED TO YOU ON APRIL 5, 1976 PROVIDED THE RESTORATION FEE OF FIFTEEN DOLLARS ($15.00) HAS BEEN PAID AND THERE IS NO OTHER SUSPENSION OR REVOCATION IN EFFECT AT THAT TIME. TO INSURE PROMPT RESTORATION, THE REQUIRED FEE SHOULD BE SUBMITTED TO THE DIVISION, IN THE FORM OF A CERTIFIED CHECK OR MONEY ORDER, AT LEAST TWO (2) WEEKS BEFORE THE REINSTATEMENT DATE.

G.S.20-28 RENDERS IT UNLAWFUL TO DRIVE WHILE LICENSE SUSPENDED OR REVOKED. UPON RECEIVING A NOTICE OF SUCH CONVICTION, THE DIVISION SHALL SUSPEND OR REVOKE THE DEFENDANT'S DRIVING PRIVILEGE FOR THE ADDITIONAL TIME REQUIRED UNDER THIS SECTION.

Edward L. Powell

EDWARD L. POWELL
COMMISSIONER

ARIZONA DEPARTMENT OF TRANSPORTATION
MOTOR VEHICLE DIVISION
DRIVERS LICENSE GROUP

2339 North 20th Avenue
PHOENIX, ARIZONA 85009

In the Matter of Operating a Motor Vehicle
on the Highways of Arizona by:

ORDER OF SUSPENSION

Case No. _____

Operator's License _____

Chauffeur's License _____

IT APPEARING From the records of this Division that the herein named person:

- ☐ Has been convicted of driving under the influence of intoxicating liquor.
- ☐ Has been convicted of serious and frequent moving traffic violations.
- ☐ Has been convicted or permitted unlawful use of license.
- ☐ Has been involved in an accident involving death or personal injury or serious property damage.
- ☐ _____
- ☐ _____

THEREFORE, IT IS ORDERED THAT THE LICENSE OF SUCH PERSON TO OPERATE A MOTOR VEHICLE UPON THE PUBLIC HIGHWAYS OF THIS STATE IS HEREBY SUSPENDED. Any and all Operator's and Chauffeur's licenses must be immediately surrendered. The SUSPENSION shall remain in effect for a minimum period of _____.

As early as practical, within not to exceed (20) days after receipt of a request from you for a hearing, such hearing will be held in _____ county to determine whether this suspension shall be rescinded, modified or affirmed.

This action is taken under authority of Section _____ of the Vehicle Code of Arizona.

DEMAND IS HEREBY MADE for the surrender in person or by mail within 3 days after receipt of this Order to the Motor Vehicle Division of any and all operator's and chauffeur's licenses issued to you. Failure to comply with this demand is punishable as a misdemeanor under the authority of Section 28-471 A.R.S.

ARIZONA DEPARTMENT OF TRANSPORTATION
Assistant Director, Motor Vehicle Division

By _____

Detach and Return to Sender

ACKNOWLEDGMENT OF RECEIPT OF ORDER OF SUSPENSION

I, the undersigned, _____ do hereby acknowledge receipt of the original copy of this Order of Suspension to operate a motor vehicle upon the public highways of Arizona, and I surrender herewith my

operator's license No. _____ and/or chauffeur's license No. _____

Dated at _____ Arizona, this _____ day of _____, 19 _____

Signed _____

Witness _____ Title _____

REQUEST FOR HEARING

Case No. _____

I, _____, hereby request a hearing in reference to your suspension order entered against me.

Date _____ Signed _____

LICENSEE

40-9903 7/74

ARIZONA DEPARTMENT OF TRANSPORTATION

MOTOR VEHICLE DIVISION

DRIVER LICENSE GROUP

2339 North 20th Avenue
Phoenix, Arizona 85009

In the Matter of Operating a Motor Vehicle on the Highways of Arizona by:

IMPLIED CONSENT LAW
ORDER OF SUSPENSION

(STATUTORY AUTHORITY: SECTION 28-691, AS AMENDED, ARIZONA REVISED STATUTES)

Case No. _____

License or
Permit No. _____

A.R.S. § 28-691 D., as amended, provides in part:

> "...The department, upon the receipt of a sworn report of the law enforcement officer that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public highways of this state while under the influence of intoxicating liquor and that the person had refused to submit to the test, shall suspend for a period of six months his license or permit to drive, or any nonresident operating privilege..."

The department, having received such a sworn report naming you, hereby orders the suspension of your license, permit or non-resident driving privilege for six months, beginning **FIFTEEN DAYS AFTER YOU RECEIVE THIS NOTICE**, unless the department receives your written request for a hearing on or before that date.

ABOUT THE HEARING

Unless otherwise agreed upon, your written request for a hearing will be scheduled in the county where you reside within twenty (20) days of the request. The scope of the hearing will cover the issues of whether there were reasonable grounds to believe you were driving or in actual physical control of a motor vehicle upon the public highways of this state, whether you were arrested and whether you refused to submit to the test after having been advised of the consequences of so doing. The officer submitting the sworn report will be present at the hearing and will testify. If you desire any other persons to be present you may obtain a subpoena for such person(s) from the department.

IF YOU DO NOT REQUEST A HEARING

YOU MUST SURRENDER YOUR ARIZONA DRIVER'S LICENSE OR PERMIT BY THE EFFECTIVE DATE OF THIS NOTICE. IF YOU DO NOT DO SO, A CRIMINAL COMPLAINT WILL BE FILED AGAINST YOU AND YOU WILL BE ARRESTED. A.R.S. § 28-471.4.

YOU ARE ALSO ADVISED THAT IT IS UNLAWFUL TO OPERATE A MOTOR VEHICLE ON THE PUBLIC HIGHWAYS OF THIS STATE AFTER THE EFFECTIVE DATE OF THIS SUSPENSION. SUCH OPERATION MAY RESULT IN YOUR ARREST AND EXTENSION OF THIS SUSPENSION. A.R.S. § 28-473.

Assistant Director
Motor Vehicle Division

By _____

ACKNOWLEDGEMENT OF RECEIPT OF ORDER OF SUSPENSION

I, the undersigned _____ do hereby acknowledge receipt of the original copy of this Order of Suspension to operate a motor vehicle upon the public highways of Arizona, and I surrender herewith my

operator's license No. _____ and/or chauffeur's license No. _____

Dated at _____ Arizona, this _____ day of _____, 19_____

Signed _____

Witness _____ Title _____

40-9917 11/74

ARIZONA DEPARTMENT OF TRANSPORTATION
MOTOR VEHICLE DIVISION
DRIVER LICENSE GROUP
2339 North 20th Avenue
PHOENIX, ARIZONA 85009

1801 W. JEFFERSON
PHOENIX, AZ 85007

In the Matter of Operating a Motor Vehicle
on the Highways of Arizona by:

ORDER OF SUSPENSION

Case No. _____

Operator's License _____

Chauffeur's License _____

IT APPEARING From the records of this Division that the herein named person: _____
Failed to provide Proof of Financial Responsibility (SR22) required until _____

Pleased be advised that before your driving privilege is restored, you must give and maintain proof of financial responsibility for a three year period following the date your revocation expires. Section 28-1166-ARS, 1972.

This showing of financial responsibility can be made by any of the following:

(a) A Form SR22 sent to the Driver License Group, by any insurance company authorized to do business in Arizona, showing that you have in force, a motor vehicle liability policy. Section 28-1168 and 28-1169, ARS 1956.
(b) Bond of a surety company authorized to do business in Arizona, or a bond with at least two sureties owning real estate in Arizona. Section 28-1173, ARS 1956
(c) A deposit with the State Treasurer of $40,000 in cash or acceptable Securities, accompanied by evidence that there are no unsatisfied judgements of any character against the depositor. Section 28-1174, ARS, 1972.
(d) A certificate of self insurance as provided in Section 28-1222, ARS, 1956.

THEREFORE, IT IS ORDERED THAT THE LICENSE OF SUCH PERSON TO OPERATE A MOTOR VEHICLE UPON THE PUBLIC HIGHWAYS OF THIS STATE IS HEREBY SUSPENDED. Any and all Operator's and Chauffeur's licenses must be immediately surrendered. The SUSPENSION shall remain in effect for an INDEFINITE period of time.

This action is taken under authority of Section 28-1166 of the Vehicle Code of Arizona.

DEMAND IS HEREBY MADE for the surrender in person or by mail within 3 days after receipt of this Order to the Motor Vehicle Division of any and all operator's and chauffeur's license issued to you. Failure to comply with this demand is punishable as a misdemeanor under the authority of Section 28-471 A.R.S.

Assistant Director, Motor Vehicle Division

By _____

ACKNOWLEDGMENT OF RECEIPT OF ORDER OF SUSPENSION

I, the undersigned, _____ do hereby acknowledge receipt of the original copy of this Order of Suspension to operate a motor vehicle upon the public highways of Arizona, and I surrender herewith my

operator's license No. _____ and/or chauffeur's license No. _____

Dated at _____ Arizona, this _____ day of _____, 19 _____

Signed _____

• 40-9925 8/74

ARIZONA DEPARTMENT OF TRANSPORTATION

MOTOR VEHICLE DIVISION

DRIVER LICENSE GROUP

2339 North 20th Avenue
Phoenix, Arizona 85009

IT APPEARING From the records of this Division that the herein named person

ORDER OF REVOCATION

Docket No. _____

Operator's License No. _____

Chauffeur's License No. _____

Has been convicted twice of:

- ☐ DWI. ARS 28–692.
- ☐ Reckless driving. ARS 28–693.
- ☐ Exhibition of speed. ARS 28–708
- ☐ or Manslaughter resulting from the operation of a motor vehicle. ARS 28–445–1.
- ☐ _____
- ☐ _____

AND IT FURTHER APPEARING that convictions for said offenses require the Asst. Director of the Motor Vehicle Division to forthwith REVOKE the license of the person so offending. NOW, under and by virtue of the authority conferred upon me by the laws of the State of Arizona, Section 28–445 ARS 1959,

IT IS HEREBY ORDERED that the above described MOTOR VEHICLE _____ License issued to the subject named person BE and the same is hereby REVOKED, AND

IT IS FURTHER ORDERED that you, the above named person, shall NOT operate any MOTOR Vehicle nor make application for a new DRIVER'S LICENSE until the expiration of one year from the date of REVOCATION, and that you forthwith surrender to this Division in person or by mail within 3 days, all operator's and chauffeur's licenses (unless heretofore surrendered) as provided in Sections # 28–448 & 449, ARS 1956.

* PLEASE NOTE BELOW *

Pleased be advised that before your driving privilege is restored, you must give and maintain proof of financial responsibility for a three year period following the date your revocation expires. Section 28–1166–ARS, 1972.

This showing of financial responsibility can be made by any of the following:

(a) A Form SR 22 sent to the Driver License Group, by any insurance company authorized to do business in Arizona, showing that you have in force, a motor vehicle liability policy. Section 28–1168 and 28–1169, ARS 1956.

(b) Bond of a surety company authorized to do business in Arizona, or a bond with at least two sureties owning real estate in Arizona. Section 28–1173, ARS 1972.

(c) A deposit with the State Treasurer of $40,000 in cash or acceptable Securities, accompanied by evidence that there are no unsatisfied judgements of any character against the depositor. Section 28–1174, ARS, 1972.

(d) A certificate of self insurance as provided in Section 28–1222, ARS, 1956.

Assistant Director, Motor Vehicle Division

By _____

ACKNOWLEDGEMENT OF RECEIPT OF ORDER OF REVOCATION

I, the undersigned, _____, do hereby acknowledge receipt of the original copy of this order of revocation to operate a motor vehicle upon the public highways of Arizona, and I surrender herewith my

OPERATOR'S LICENSE NO. _____ and/or CHAUFFER'S NO. _____

Dated at _____ Arizona, this _____ day of _____ 19____

SIGNED _____

Witness _____ Title _____

ARIZONA DEPARTMENT OF TRANSPORTATION
MOTOR VEHICLE DIVISION
Drivers License Service
2339 North 20th Avenue PHOENIX, ARIZONA 85009

In the Matter of Operating A Motor Vehicle on the Highways of Arizona By:

ORDER OF CANCELLATION

Case No. _____

Operator's License _____

Chauffeur's License _____

IT APPEARING From the records of this Division that the herein named person:

- ☐ Has given false information on the application for a license.
- ☐ Has given false date of birth.
- ☐ Whose operation of a motor vehicle would be inimical to public safety.
- ☐ Has an altered license.
- ☐ Whose parents request their signatures be removed from the license.
- ☐ Voluntary Surrender
- ☐ Applied while under financial responsibility suspension
- ☐ Failed to appear for re-exam
- ☐ _____

THEREFORE, It Is Ordered That such person cannot operate a motor vehicle upon the public highways of this State and any and all operators' and chauffeurs' licenses issued are hereby cancelled effective:

_____

This action is taken under authority of Section 28-441, Arizona Revised Statutes.

DEMAND IS HEREBY MADE for the surrender to the Motor Vehicle Division in person or by mail within 3 days after receipt of this order of any and all operators' and chauffeurs' licenses issued to you. Failure to comply with this demand is punishable as a misdemeanor under authority of Section 28-181, Arizona Revised Statutes.

Assistant Director
Motor Vehicle Division

ACKNOWLEDGEMENT OF RECEIPT OF ORDER OF CANCELLATION

BY _____

I, the undersigned, _____ *do hereby acknowledge receipt of the original copy of this Order of Cancellation to operate a motor vehicle upon the public highways of Arizona, and I surrender herewith my*

operator's license No. _____ *and/or chauffeur's license No.* _____

Dated at _____ *Arizona, this* _____ *day of* _____ *19*_____

Signed _____

Witness _____ *Title* _____

40-9902 7/74

request a hearing, and there was only one example of a form designed for all types of cases which did not contain such information (although it did provide an address for any correspondence). Another State used forms which referenced a hearing associated with reinstatement, but did not advise the driver as to how the hearing could be requested or whether it would be scheduled automatically. Some of the notices reviewed were oriented to specific offenses, the conviction of which mandated withdrawal of the license; these made no reference to a hearing.

Of 33 States which provided notices that referenced a hearing, 27 of them placed the responsibility on the driver to request the hearing. This was consistent with the States' responses in the survey questionnaire which indicated that, in most cases, the driver must request the hearing. The responses are summarized below from Table 9, Appendix A, Vol. II.

Type of Action	Number of States Where Driver Must Request Hearing	Number of States Where Hearing Scheduled Automatically
Mandatory Suspension	28	2
Discretionary Suspension	36	11
Mandatory Revocation	30	3
Discretionary Revocation	30	9

In fact, of those responding, only 12 States had any type of withdrawal action for which they automatically scheduled the hearing. Usually these were for discretionary suspensions or discretionary revocations. Of the notices reviewed which referred to automatically scheduled hearings, most made it clear that failure to appear at the hearing would result in withdrawal of the license.

Some States provided, with the initial notification, additional information about the opportunity for a hearing or other procedural considerations. This was often incorporated within the notice of the right to a hearing, and sometimes included a reference to the driver's right to be represented by counsel, right to bring witnesses, how to request postponement (if a mandatory hearing), or what issues would be considered at the hearing. A detailed statement of rights was printed on the reverse side of a few forms or was provided as an attachment to the initial notification. Exhibit III-4, which illustrates such a statement, is currently included with notices mailed to drivers by the State of Mississippi.

Several forms listed options available to the driver. This was particularly true for financial responsibility cases in which a driver was often informed that he could take one of several alternatives to satisfy the requirements of the financial

EXHIBIT III-4

STATE OF MISSISSIPPI-DEPARTMENT OF PUBLIC SAFETY
DRIVER SERVICES DIVISION
SAFETY RESPONSIBILITY BUREAU
P. O. BOX 958-JACKSON, MISSISSIPPI 39205

Re: Accident Case No._____

In keeping with procedural due process, should you feel the attached order of suspension is not justified, you are entitled to an administrative hearing wherein you may present any facts, evidence, affidavits or witnesses in your behalf that you have bearing or knowledge of your involvement in this accident. This hearing is for the sole purpose of determining whether or not there exists a reasonable possibility of a judgment being rendered against you for damages incurred in this accident.

This hearing will be scheduled upon receipt of your request and will be held at the _____

_____

and must be requested in writing and received within twenty-five (25) days from the date of the attached order of suspension.

Failure on your part to timely request such a hearing will leave this Department with no alternative but to believe that no such hearing is desired and the provisions of the Mississippi Safety Act as set forth in the attached order of suspension shall be enforced.

You have the right to be represented by counsel and may have a transcript of the hearing made at your expense. If there is adverse decision by the Department of Public Safety. You may appeal within ten (10) days after notice of the decision to the Circuit Court in the county where you reside.

SR -33
(8-73)

responsibility act; as an example, the Wisconsin notice is shown as Exhibit III-5. Idaho also provides options, in lieu of license withdrawal, to frequent violators or those convicted of certain traffic law violations, and lists the options on the Notice of Proposed Suspension, as reproduced in Exhibit III-6.

One final observation pertains to the initial notification of proposed license withdrawals for frequent violations. In these cases many States simply made reference to a driver's point total or the number of convictions which formed the basis for the proposed license withdrawal. Only a few States provided the driver with information from the State driver record system of the convictions (including date, location, type of offense), to assist the driver in ascertaining whether there was a proper basis for the withdrawal. These States list this information on the notice or include a computer printout of the driver record when the notice that is mailed to the driver.

It is clear that many States do not provide a great deal of information to the driver at the time the initial notice is given. Many of these States expect a driver who wants to question or contest the proposed withdrawal to contact the department on his own initiative. This expectation may be due to the inclusion of procedures for requesting hearings in the Vehicle Code or in "driver's handbook", the latter of which is normally provided to each driver upon application for a license. For example, one State which fails to mention anything about hearings on its notice of suspension for frequent violators, has a chapter entitled, "Keeping Your License" in its driver's handbook in which the point system and bases for suspensions are explained. It contains the statement:

> "It is suggested that when you receive a suspension notice because you have accumulated too many points, you contact the local Departmental Office to request a review."[1/]

Another State's driver's handbook described the driver improvement and counseling program which is provided, upon request, to certain drivers as an option to suspension of their licenses. The inclusion of this type of information in the driver's handbook raises the question of whether this source constitutes adequate notification to a driver of his rights, as compared to inclusion of such information in an initial notice of suspension.

(3) Requesting the Hearing

We have already discussed how most States place the responsibility upon the driver to request a hearing with respect to a proposed license withdrawal. The initial notification forms

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1/ South Carolina Driver's Handbook, 74-75, p. 39.

EXHIBIT III-5

State of Wisconsin \ DEPARTMENT OF TRANSPORTATION

MVD-3008 12-74

DATED AT MADISON, WISCONSIN

DIVISION OF MOTOR VEHICLES

Safety Responsibility Unit
P.O. Box 2653.
Madison, WI 53701

REFER ANY INQUIRY OR CORRESPONDENCE TO THIS

FILE NO. _____

TELEPHONE: (608) 266-1751

NOTICE: As a result of a motor vehicle accident which occurred on _____, in which you or a motor vehicle owned by you were involved, you have become subject to the Wisconsin Safety Responsibility Law.

Therefore, before _____, you must deposit $ _____ as security to satisfy any possible judgment or judgments arising out of such accident; **OR**

Furnish proof of motor vehicle liability insurance meeting the minimum requirements under Section 344.15(1) Wisconsin Statutes, in effect at the time of the accident by completing Form SR-19-21, giving the corporate name of the insurance carrier, policy number and policy period; **OR**

File legal releases or notarized installment agreement to pay damages signed by the following persons who have received injuries and/or property damage in the above accident.

(It may be necessary to also contact insurance carriers for the above if they prove their interest after this date.) The listing of the above names does not necessarily include other persons with injury or damage.

HEARING REQUEST PROCEDURE

If you question the reasonable possibility that a judgment may be rendered against you as a result of this accident; you may request a hearing thereon. Such hearing request must be made in writing and be received by the Division during the Notice period.

PLEASE TAKE NOTICE that unless the above requirements are complied with the operating privileges of the above named operator and all registrations of the above named owner will be suspended in accordance with Section 344.14 of the Wisconsin Statutes.

Either driver or owner may furnish security in the full amount or they may jointly furnish it. (NOTE: PERSONAL CHECKS ARE NOT ACCEPTABLE UNLESS CERTIFIED BY YOUR BANK.)

Security deposits are returned after 13 months from the accident if no court action has been started within 12 months from the date of the accident and filed before the 13 months has expired.

James O. Peterson

Administrator, Division of Motor Vehicles

EXHIBIT III-6

STATE OF IDAHO

DEPARTMENT OF LAW ENFORCEMENT

P.O. BOX 34 - BOISE, IDAHO 83731

LIC.: OP IDENT:
DATE OF BIRTH:
FILE NO:

NOTICE OF PROPOSED SUSPENSION.

IN THE MATTER OF THE DRIVING PRIVILEGES AND/OR LICENSE OF THE ABOVE, THE RECORDS IN THE DEPARTMENT OF LAW ENFORCEMENT SHOW THAT YOU WERE CONVICTED OF:
DRIVING UNDER INFLUENCE LIQUOR/DRUGS I.C. 49-1102
IN THE COURT OF

BY IDAHO STATUTE THE DEPARTMENT OF LAW ENFORCEMENT IS AUTHORIZED TO SUSPEND YOUR DRIVING PRIVILEGES AND/OR LICENSE FOR A PERIOD OF 90 DAYS.

PRIOR TO BEING SUSPENDED YOU HAVE THE FOLLOWING ALTERNATIVES:

1. IF YOU ARE IN NEED OF RETAINING YOUR DRIVING PRIVILEGES, YOU MAY MAKE A WRITTEN REQUEST TO BE CONSIDERED FOR ENROLLMENT IN THE DRIVER IMPROVEMENT AND COUNSELING PROGRAM. IF ACCEPTED, THE DEPARTMENT WILL STAY ITS ACTION AND YOU MAY BE ALLOWED LIMITED DRIVING PRIVILEGES. YOUR WRITTEN REQUEST MUST BE RECEIVED WITHIN THIRTY (30) DAYS FROM THE DATE BELOW.
2. YOU MAY REQUEST AN ADMINISTRATIVE HEARING AS TO THE PROCEDURE OF THE DEPARTMENT'S ACTION (TITLE 67, CHAPTER 52, IDAHO CODE). A WRITTEN REQUEST MUST BE RECEIVED WITHIN THIRTY (30) DAYS FROM THE DATE BELOW. PLEASE ADVISE US IF YOU PLAN TO APPEAR WITH AN ATTORNEY.
3. IF YOU DO NOT REQUEST EITHER OF THE ABOVE, YOU MAY VOLUNTARILY SURRENDER ANY IDAHO LICENSE IN YOUR POSSESSION TO THE DEPARTMENT.
4. A FINAL ORDER OF SUSPENSION WILL BE MADE IN THIRTY (30) DAYS IF THERE IS NO RESPONSE FROM YOU.

DATED AT

DEPARTMENT OF LAW ENFORCEMENT STATE OF IDAHO

JOHN BENDER, Director
Department of Law Enforcement
State of Idaho

ENCL.

FORM. 21

91901

usually contained the agency's address to which a driver must write to request the hearing, and some States provided specific mailing instructions to the departmental hearing group. A few States even provide a tear-off form on the notification (see Maryland's form in Exhibit III-7) or include a separate hearing request form with the notice (see Washington's Request for Administrative Hearing Form used for financial responsibility cases, in Exhibit III-8).

The amount of time allowed for a driver to request a hearing may be as little as 10 days in some States. However, several States do not set a time limit and allow a driver to request a hearing any time before or after the license withdrawal takes effect. At least one State permits drivers to appear at department headquarters and obtain a hearing on an unscheduled basis. Forty-two States identified the time allowed for requests, in response to the survy question:

> "If the driver must make the request for a hearing, how many days after notice does he have to file his request?"

The answers have been summarized as follows from Table 7, Appendix A, Vol. II.

Number of Days To Request Hearing	Number of States
10 days or less	12
11 - 20 days	11
21 - 30 days	9
Over 30 or no limit	10
No response	9

To request a hearing, a driver normally needs only to write a letter to the agency indicating that he desires a hearing on the pending license withdrawal. We have observed no requirement in which the driver must state why he is requesting a hearing or what facts might be contested at the hearing.

(4) Notice of the Hearing Schedule

Once a licensee has requested a hearing, the agency must notify the driver of the date for the hearing and give the driver sufficient time to plan for the hearing. Currently States schedule the hearing from 5 to 60 days after giving notice to the driver, as indicated in the following table which summarizes responses to Question 11 in our survey (see Table 7, Appendix A, Vol. II):

Maryland Department of Transportation
MOTOR VEHICLE ADMINISTRATION
GLEN BURNIE, MARYLAND 21061

Harry R. Hughes
Secretary
Ejner J. Johnson
Administrator

CERTIFIED MAIL

Notice Date

NOTICE OF 30 DAY POINT SUSPENSION

As required by the Vehicle Laws of Maryland, Art. 66½, Sec. 6-405 your driving privilege in this State will be Suspended on as a result of an accumulation of points on your Maryland Driving Record.

A written request for a hearing made within fifteen (15) days of this Notice, will delay the Suspension until a hearing is concluded.

In the event a hearing is not requested, your privilege will be Suspended and your Maryland driver's license must be returned to this office on the Suspension date.

When the Suspension period has terminated, your driver's license will be returned.

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

Driver Improvement Section

SIGN AND RETURN THIS LETTER WITH THE APPLICABLE SECTION CHECKED:

☐ I hereby request a hearing.

☐ I waive my right to a hearing. I am returning my license herewith.

SIGNATURE

DEPARTMENT OF MOTOR VEHICLES

EXHIBIT III-8

REQUEST FOR ADMINISTRATIVE HEARING

NOTICE

WITHIN FIFTEEN (15) DAYS OF THIS LETTER, YOU MAY REQUEST A HEARING BY THIS DEPARTMENT IN THE MATTER OF THE SUSPENSION OF YOUR DRIVING PRIVILEGE TO DETERMINE:

1. whether the licensee was the owner or driver of any motor vehicle of a type subject to registration under the Motor Vehicle Laws of this state which was in any manner involved in an accident within this state.
2. whether the accident resulted in bodily injury or death of any person or damage to the property of any one person in an amount of $200.00 or more.
3. whether the licensee is entitled to an exception to the requirement of security pursuant to RCW 46.29.080.
4. whether there is a reasonable possibility of a judgment being entered against the licensee in an amount required by the order fixing the security deposit.

IF YOU REQUEST A HEARING, YOU MUST SEND THIS FORM TO:

Department of Motor Vehicles
Division of Financial Responsibility
Highways-Licenses Building
Olympia, Washington 98504

THE DEPARTMENT WILL PLACE A STAY ON THE SUSPENSION ORDER DURING THE PENDENCY OF THE HEARING.

Effective Date _____

Driver License No. _____

Date Mailed _____

I HEREBY REQUEST A DEPARTMENTAL HEARING ON THE SUSPENSION OF MY LICENSE PURSUANT TO THE FINANCIAL RESPONSIBILITY LAW.

☐ I will NOT have an attorney.

☐ I will have an attorney.

_____ / _____
Signature Date

_____
Attorney's Name

_____
Print Name (Last) (First) (Middle)

_____
Address

_____
Address

_____
City State

_____
City State

_____
Phone Number

_____ _____
Date of Birth

FR-530-119 Req. for Adm. Hearing
(R/2/76)

Number of Days from Date of Notice to Date of Hearing	Number of States
10 days or less	3
11 - 20 days	21
21 - 30 days	11
More than 30 days	1
No response	15

In the questionnaire completed by the States, we asked several questions pertaining to the notice of the hearing schedule. Of those responding, all but one identified the time and place of the hearing, over 70% indicated the sanctions that could be imposed as the result of the hearing or as the result of the driver failing to appear, but only a third of the notices included a statement of the driver's rights or where information on hearing procedures could be obtained.

We analyzed 24 hearing notices received from 19 States in response to our request for sample forms. These 24 notices included:

Reason for Hearing	Number of States Providing Forms
Financial Responsibility	7
Implied Consent	3
Frequent Violations	2
Reinstatement	1
General	10

The general notices could probably be used for any type of license withdrawal action. Two of the implied consent notices were confirmations of the driver's request for the hearing and indicated that the driver would subsequently be contacted to schedule the hearing. With these two excepted, all of the notices identified the date and location of the hearing, and all but one of those identified the time for the hearing. Five notices also gave the name of the hearing officer who would conduct the hearing.

The notices were, for the most part, form letters to the drivers with space for typing pertinent information, although there were some that were official, formal notices and others that were computer generated letters. Drivers had requested most of the hearings referenced in the notices, as indicated by 17 of

the notices; 5 notices related to mandatory hearings and thus contained no reference to a driver's request for the hearing. One notice informed the driver that he was "summoned to appear" at the hearing. Eleven of the notices warned the driver of the consequences of his not attending: either an automatic withdrawal of his license or forfeiture of his right to a hearing.

Most notices informed the driver of the reason for the license withdrawal. As indicated above, 13 of the notices were oriented to a specific type of license withdrawal action. Moreover, 5 of them cited the specific statutory authority for the withdrawal action and hearing, and 2 others provided a general statement of purpose. Of the 10 notices which were general, all but 4 had space to fill in the type of case or reason for the proposed withdrawal, and 6 out of the 10 provided space for statutory citations. There was only one notice which precisely identified the issues to be considered in the hearing (See Exhibit III-9), and this notice was a confirmation of a request for an implied consent hearing rather than a notice of scheduled hearing. (A few of the initial notices identified issues which could be covered in a hearing.)

Hearing notices were also analyzed as to whether they informed the driver of his rights during the hearing. None of the notices described how the hearings would be conducted, except that one notice (for a financial responsibility case) indicated that the State would be represented by the Office of the Attorney General. Eight notices stated the right to be represented by counsel, and sometimes a copy of the notice was sent to an attorney if one had been previously identified. There were eight notices which advised the driver to bring evidence or documents in his behalf; another notice indicated that the submission of affadavits was permissible in lieu of testimony. One notice even listed the evidence that the State would submit at the hearing, and that it would be available to the driver for inspection prior to and during the hearing. Eight notices identified the right to bring witnesses and three of them indicated the State would subpoena the enforcement officer or other witnesses, if the driver so requested and paid witness fees.

Some States imposed requirements on the driver as prerequisite for attending the hearing. In one State, this meant bringing the notice to the hearing. There was one State, however, that required the driver to bring:

- three letters of personnel recommendation
- a list of his police record
- proof of enrollment in driver improvement school, and

EXHIBIT III-9

Form 478-2

SOUTH CAROLINA
STATE HIGHWAY DEPARTMENT
MOTOR VEHICLE DIVISION
DRAWER 1498
COLUMBIA, S. C. 29216

Driver License #

ORDER OF DRIVER LICENSE REINSTATEMENT

Following a receipt of notification as to your desire for hearing under provisions of paragraph (e) Section 46-344, Code of Laws of South Carolina, 1962, as amended, the driver's license suspension of the above named resulting from refusal to submit to chemical test following arrest on charge of driving while under the influence is herewith rescinded pending disposition of the requested hearing.

Copy of this reinstatement order is being transmitted to Captain Commanding Officer of District , South Carolina State Highway Patrol, S. C., who will within the immediate future contact you for scheduling of a date and place for disposition of the hearing which will be held as early as practicable and within the twenty day period specified by law.

The sole issues to be resolved in the hearing are limited by statute to be as follows:

(1) Were you placed under arrest?

(2) Were you informed that you did not have to take the test, but that your driving privilege would be suspended or denied if you refused to take the test?

(3) Did you refuse to take the test upon request of the officer?

Director, Motor Vehicle Division
South Carolina Highway Department

- a notarized affadavit of the driver's personal identification, employment information, and statement of driver needs.2/

Another notice put the responsibility on the driver who does not speak English to bring an interpreter to the hearing.

In summary, very little information as to the driver's rights or responsibilities seemed to be provided to the driver on the hearing notices. The major fault of the notices is the general lack of information rather than with any particular style or format. The specific information which we believe should be required for both of these notices will be discussed in the respective sections of subsequent chapters.

2. CONDUCT OF THE HEARING

This section analyzes the conduct of hearings: the environment, the participants, and the proceedings. Most of the discussion is based on our observations of hearings during our State visits as well as interviews with hearing officers who described how typical hearings are conducted.

(1) General Hearing Environment

The fairness of a hearing is often first impacted by the environment in which the hearing is held. Environmental factors which affect the appearance of justice include: the location of the hearing, the setting in the hearing room, and the hearing officer's and manner of dress.

Whether a driver requests or attends a hearing may depend upon how close it would be held to his home or place of business. We surveyed the States regarding the location of the hearings and the following is summarized from the responses shown in Table 11, Appendix A, Vol. II.

Location of Hearing	Number of States
Driver's County Seat	19
Driver's City or Town	7
Nearest Office of the Driver Licensing Agency, Department of Revenue, etc.	14
State Capital (only)	7

2/ Florida Form DHSMV-D-308L (Rev. 12-75), notifying driver of scheduled hearing.

Of the seven States which hold hearings in the State Capital, one of them also provides hearings in its largest city. Two of the other six are small States and one is the District of Columbia. States which hold hearings in multiple locations indicated the number of such locations range from 3 in Delaware to 119 in California. Obviously, it is difficult to determine how convenient these are to the driver, unless one is familiar with each State's geography. However, it appears that conveniently located facilities are generally used throughout each State.

The environment of the hearing is first affected by the appearance of the facilities used for the hearings. Hearing rooms are most often a small office in the same building used by driver examination, motor vehicle registration, county or State Police, or the courts. The office usually has a desk for the hearing officer with several chairs for the driver and witnesses. Many States assigned hearing officers to a multi-county geographic area, (i.e., a circuit) so one county would serve as their base where they would use their own office as the hearing room, and they would have to use an empty office for the hearings in other counties. Waiting areas with chairs were sometimes provided outside or nearby the hearing room.

The manner and dress of the hearing officer is another major factor in the appearance of justice. A few States used uniformed (commissioned) officers to serve as hearing officers, whose primary job was driver examiner or improvement officer. In one State, a uniformed officer of the State Police conducted the hearings. Otherwise the hearing officers wore business suits, but never judges' robes.

The way in which a hearing officer introduces himself and explains the purpose of the hearing also effects the appearance of the hearing. Some hearing officers took special care to clearly identify their role and describe why the hearing was being convened, the possible outcomes, and the issues which could be considered. Others simply began the hearing and left it to the driver to inquire as to the proceedings. A few hearing officers gave the driver ample opportunity to ask questions about the hearing, off-the-record, before the hearing was actually begun.

(2) Participants

Other than the driver himself, the hearing officer is the primary participant in the hearing. In this context the term "hearing officer" is used to connote the person conducting the hearing, rather than any particular job title. The position title of those responsible for holding hearings range considerably, as will be described in Section 5, "Hearing Officers".

Additional participants in the hearing may include: the driver's counsel, witnesses, police officers, and other driving licensing officials. All States allow drivers to be represented by counsel at the hearings, although there was considerable variation among the States (and even within individual States) in the percentage of hearings where drivers were represented by attorneys. Drivers seemed to bring witnesses to financial responsibility hearings more often than other types of hearings. Some States required police officers to testify if an arrest report or other charge was in question, particularly for implied consent cases, while other States only subpoenaed the police officer upon a driver's request. Occasionally other driver licensing officials attend hearings, such as a driver improvement analyst or a financial responsibility analyst who has had prior involvement in the case. The roles of some of these participants is further illustrated in the several scenarios of hearings presented in the next subsection.

(3) Hearing Procedures

The conduct of the hearings varies considerably, from the informal, counselling session to the formal legal proceeding complete with prosecutor, defense, and adjudicator. This is evident from the survey results and became very obvious in our interviews with hearing officers and observations of hearings in the states we visited.

The answers to several questions in the national survey provide insight into some of the differences in hearing procedures. (Refer to Table 15, Appendix A, Vol. II.) For example, 27 States (59% of those responding indicated that hearings are electronically recorded (sometimes just for one type of hearing) although 2 of those States indicated it is done only if the licensee pays. Additionally, 8 States will use a stenographer to record the proceedings, if requested by the driver, with some States requiring the driver to pay the cost of the stenographer. The range of procedural difference is further evident by the variations in the rights accorded to a driver at the hearing, as summarized from Tables 12 and 13 of Appendix A, Vol. II:

Does Driver Have a Right To:	Percent of Respondents Answering Yes
Be Represented by Counsel	100
Present Evidence	100
Examine Witnesses	98
Subpoena Witnesses	83
Subpoena Records	76

We observed a wide range of approaches to the hearing during our State visits. There was considerable variety even within some States, particularly if the hearings were conducted by different organizations. Sometimes, there were different hearing procedures used for each of the three major types of cases. It generally appeared that frequent violator hearings were the least formal, while implied consent and financial responsibility hearings were, in certain States, very formal proceedings.

To illustrate the range of hearing procedures we have written brief scenarios of the hearings observed during our State visits. Several are presented below; these were selected simply to indicate variations in approaches and not necessarily as good or bad examples. The order of these scenarios is roughly from an informal hearing to a very formal proceeding, within each type of hearing:

Frequent Violators

- Frequent violators in South Carolina appear for hearings before a uniformed officer of the Driver Examining Section of the Motor Vehicle Division. No record of the hearing is made and neither the driver nor any witnesses are sworn in. The hearing is begun by reviewing the driver's record of traffic violations and discussing informally with the driver the circumstances surrounding each violation. The driver is then asked why he needs to drive and given an opportunity to demonstrate his attitude towards driving. At the end of the hearing the driver is counselled on the importance of safe driving and the risks of losing his license.

- The interviews conducted by Driver Improvement Analysts for frequent violators in Washington are very similar to those in South Carolina, except that the driver is not allowed to

discuss his need for retaining the license. Furthermore, the emphasis of the interview is placed more upon the driver to show cause why his license should not be withdrawn.

Frequent violator hearings in New York and Florida are tape recorded, with evidence submitted formally into the record and all testimony given under oath. In New York the hearings are conducted by hearing officers who are lawyers in the Division of Hearing and Adjudication of the DMV, while in Florida hearing officers are within the Driver License Field Service Bureau of the Driver Licensing Division. In both hearings, considerable time is devoted to reviewing the driver's record, a copy of which was provided to the driver with the initial notification, to allow the driver to discuss or challenge it. Drivers are invited to explain their need to drive, and in Florida this is done formally using an affidavit of driving needs which the driver must bring to the hearing. In New York, once this portion of the hearing is concluded and all evidence is submitted, the hearing officer turns off the tape recorder and counsels the driver on the importance of safe driving. These hearings will vary somewhat if the driver's counsel is present. For example, if there is no counsel, the hearing officer will introduce all evidence and lead the driver in discussing the circumstances of each traffic violation and his need to drive. However, if an attorney is present, the hearing officer will allow the attorney to ask the driver these questions, although he may ask further questions if the attorney fails to clarify the issues. Thus, the hearing officer will certainly act as judge and prosecutor, and may also act as counsel for the defense.

In Louisiana frequent violator hearings are conducted formally by hearing officers of the Legal Services Administration. The hearings are tape recorded, witnesses are sworn in, all evidence is submitted formally into the record, and a fairly strict procedure is followed. The State's evidence must have been collected and sealed into an envelope by the Driver Improvement Bureau. At the beginning of the hearing, the envelope is opened in front of the driver. The tape is then turned off to allow the hearing officer and the driver to examine informally all documents in the envelope (the driver's record, initial notice of suspension, notice of hearing, etc.) When the tape is turned on again, each document is identified and submitted for evidence. The hearing officer then summarizes the "State's case against the driver" as presented by the evidence from the sealed envelope, and allows the driver (or his counsel) to testify in his behalf. If no counsel is present, the hearing officer will question the driver on his driving record, driving habits, and attitude. After the driver has finished his testimony and submitted any

supporting evidence, the hearing is concluded. (No counselling on safe driving was evident at any of these hearings which we observed in Louisiana).

In Idaho, frequent violator hearings are conducted by private attorneys retained by the Department of Law Enforcement. Official transcripts of the hearing are taken. However, if the driver wants stenographic notes he must bear the expense of the reporter's attendance fees. The process and procedures for the hearing are governed by the State Rules of Practice and Procedure for the Department of Law Enforcement. Practice and appearance before the agency at hearings is limited to attorneys admitted to practice in the State of Idaho. The rules permit the Presiding Officer to hold a prehearing conference for purposes of: formulating, or simplifying the issues, obtaining admissions of fact and of documents which will avoid unnecessary proof, arranging for the exchange of exhibits or prepared expert testimony, limiting the number of witnesses, and consolidating procedures and other matters to expedite the orderly conduct and disposition of the proceedings. At the hearing, the driver's case is presented first and then the Department submits its case against the driver.

Implied Consent

Implied consent hearings are inherently more formal because they are almost always limited to certain specific issues concerning the arrest and refusal to take the alcohol test. Several States make this clear by listing the issues to be considered on the initial notice or hearing notice mailed to the driver. Moreover, some States provide their hearing officers with check-off forms to be used during the hearings, such as that shown in Exhibit III-10.

Of the 34 States which hold administrative implied consent hearings, (as compared with those where the hearings are held by the courts), all but 4 responded to survey questions concerning several issues which might be considered during the hearing. (Answers pertaining to both administrative and judicial hearings are provided in Table 19, Appendix A, Vol. II.) All of the respondents indicated that the "fact of refusal to submit to test" was covered, while only 20 considered the "reasonableness of refusal to take the test." Further, 27 considered the "legality of arrest" and 26 the "reasonableness of arrest." While not an exhaustive list, these issues give some indication of differences in the matters which are considered relevant at implied consent hearings. Moreover, the Driver Licensing Laws Annotated identifies 15 States which, during the hearing, will consider whether the driver was properly warned of the consequences of refusal.3/ The DLLA also lists States which consider some

3/ Driving Licensing Laws Annotated, op cit, 1973, pp. 291-295.

WASHINGTON STATE DEPARTMENT OF MOTOR VEHICLES
DRIVER IMPROVEMENT DIVISION

HABITUAL OFFENDER REINSTATEMENT HEARING REPORT

PETITIONER'S NAME PIC#

ADDRESS

CITY STATE ZIP

ATTORNEY'S NAME

BUSINESS ADDRESS

CITY STATE ZIP

SUMMARY OF PETITIONER'S TESTIMONY:

WITNESS' NAME

RELATIONSHIP TO PETITIONER

ADDRESS

CITY STATE ZIP

SUMMARY OF WITNESS' TESTIMONY:

ALCOHOL TREATMENT REQUIRED? ◯ YES ◯ NO

REPORT SATISFACTORY? ◯ YES ◯ NO

HEARING OFFICER'S FINDINGS:

RECOMMENDATION:

REINSTATEMENT on probation for balance of habitual offender revocation period ◯ YES ◯ NO ◯ OTHER

HEARING OFFICER: Date Tape #

DI-510-252 H.O. Reln/Hear Rpt
(N/2/76)

BEFORE THE DEPARTMENT OF MOTOR VEHICLES OF THE

STATE OF WASHINGTON

In the Matter of the Suspension of the Driver's License of FR#_____, Appellant.	FINDINGS, CONCLUSIONS AND ORDER

FINDINGS

I

The appellant (was) (was not) the (driver) (owner) of a vehicle of a type subject to registration under the motor vehicle laws of this state which was involved in an accident within this state.

II

The accident referred to in Finding I (did) (did not) result in bodily injury or death of any person or damage to property of any one person in excess of $200.00.

III

The appellant (is) (is not) entitled to an exception to the requirement of security pursuant to RCW 46.29.080.

IV

There (is) (is not) a reasonable possibility of a judgment being entered against the appellant.

V

The amount of security required (does) (does not) exceed that amount which would be sufficient to satisfy any judgment or judgments for damages as may be recovered against each driver or owner. The amount required as a security deposit should be $_____.

CONCLUSIONS

/__/ The appellant is subject to the provisions of the Financial Responsibility Act and the department's orders should be affirmed.

/__/ The appellant is not subject to the provisions of the Financial Responsibility Act and the department's orders should be reversed.

/__/ The appellant is subject to the provisions of the Financial Responsibility Act, but the departmental order fixing the amount of security required should be modified.

ORDER

/__/ The orders of the department in the above referenced case are affirmed in all respects and the department is directed to suspend the drivers license of the appellant.

/__/ The orders of the department in the above referenced case are reversed and the department is directed to forthwith cancel such orders.

/__/ The orders of the department are affirmed and the department is directed to suspend the drivers license of the appellant except the amount of security deposit required is fixed at $_____.

DATED THIS_____Day of_____, 197____.

FINANCIAL RESPONSIBILITY HEARING COMMITTEE

_____

STATE OF WASHINGTON
DEPARTMENT OF MOTOR VEHICLES
DRIVER SERVICES

Hearing Summary
RCW 46.20.308

_____ FINDING FOR THE PETITIONER

_____ FINDING AGAINST THE PETITIONER

_____ VERBAL NOTICE OF APPEAL TO SUPERIOR COURT

_____
PETITIONER'S NAME

_____
OPERATOR LICENSE

_____
HOME ADDRESS

1. The Petitioner is _____ is not _____ the person named in the sworn report.

2. The Petitioner was _____ was not _____ arrested.

3. The officer did _____ did not _____ have reasonable grounds to believe the Petitioner was driving or was in actual physical control of a motor vehicle while under the influence of liquor.

4. The Petitioner was _____ was not _____ informed as to the consequence of refusing to take the test. (Revocation for six (6) months)

5. The Petitioner was _____ was not _____ advised of right to additional tests.

6. The Petitioner did _____ did not _____ refuse to take the test.

7. The SR - 101 sworn report was _____ was not _____ signed by the arresting officer and notarized.

8. Argument by the Petitioner.

9. Findings and Summary:

_____
Hearing Officer Date

SR-110 (R/6/74)

of the same issues identified above, and, while this list does not correspond exactly with our survey results, it does further confirm the variations in issues considered during the hearing.

Descriptions of the implied consent hearings in some of the States which we visited are provided below to illustrate some of the differences:

- In Louisiana, implied consent hearings are conducted in the same manner as frequent violator hearings, except that the relevant issues are more limited. The State must prove that each part of the implied consent statute is met (arrest, refusal, etc.) and does so by formally entering into evidence the arrest report, alcohol influence report (completed by the arresting officer to indicate the basis for suspicion for DWI), and refusal report. The documents themselves are sufficient evidence without the police officer's testimony. However, the driver may have the police officer subpoenaed and, if so, may cross-examine him. The driver may also testify in his own behalf or submit supporting evidence.

- South Carolina's implied consent hearings are conducted by Highway Patrol Captains or Lieutenants. The hearings are not recorded, although all witnesses are sworn in. Both the arresting officer and the breathalizer operator must testify in order to present the State's case. The driver or his attorney may cross-examine either officer, and the driver may testify in his own behalf, even going beyond the issues considered and explaining the circumstances of the incident.

- In New York, the hearings are tape recorded, witnesses must be sworn in, and the police officers must present the case. It is up to the police officer to testify to each of six points covered in the implied consent statute in order to make a sufficient case against the driver. The driver may cross-examine the police officer and testify in his own behalf.

- In Utah the implied consent hearings are the only type of hearings that are recorded. Hearing procedures provide that sworn testimony be taken and the driver may present witnesses in his behalf, may offer testimony, and may cross-examine those who testify against him. The arresting officer presents testimony to support his original affidavit of refusal, relating the testimony to the five elements of the State implied consent statute. If the arresting officer's testimony does not show that he informed the arrested individual of his rights, the driver's license cannot be revoked. The Department has developed a guide for conducting hearings which advises hearing officers to maintain control during the hearing and not to permit the driver's attorney to dominate the hearing.

CONTINUED

1 OF 4

Financial Responsibility

Procedures for financial responsibility hearings tended to be the most formalized, probably due to State reactions to the Bell v. Burson decision. One State (South Carolina) had even gone so far as to document a detailed proceeding to be closely followed during the hearing. There were still differences in approaches, as illustrated by the following scenarios:

- Louisiana financial responsibility hearings were conducted in the same manner as their other hearings. The accident report and other documents were submitted formally as evidence. They are considered sufficient to prove the State's case that there was "reasonable possibility" of a judgement. It was up to the driver to testify, present witnesses, or submit evidence to prove that he was free from fault.

- In Wisconsin, the emphasis during the hearing was on the extent of damages for which the driver might be responsible as a result of the accident and the issue of fault. Therefore, much of the hearing was devoted to reviewing all the elements of the accident, including the prior condition of the driver and specific circumstances leading up to the accident.

- In South Carolina, under the former financial responsibility statues (the State now has a mandatory insurance law), a written "script" had been prepared, which provided for:

  - Identification of the hearing officer, petitioner, and counsel.

  - Statement of the purpose of the hearing and of the procedures to be followed.

  - Entering of information from the accident report into the record.

  - Statement that the petitioner was notified of the financial responsibility requirements and requested a hearing.

  - Swearing-in of the petitioner and witnesses

  - Exclusion of witnesses from hearing each other's testimony.

  - Opportunity for petitioner to present his case and cross-examine witnesses.

- Instructions to the hearing officer to question witnesses to clarify any discrepancies in the testimony.

- Further instructions to be given to the driver at the conclusion of the hearing, including:

  .. That the driver will be notified by mail of the decision

  .. In the event of the suspension being upheld, the driver will have an additional 20 days to comply with the financial responsibility statutes.

  .. Instructions as to how to appeal the Department's decision.

. The Washington financial responsibility hearings are very formal and are conducted by the lawyer hearing officer in the Financial Responsibility Section. The State's case is formally presented by an attorney from the Attorney General's Office who, in effect, is representing the accident victim's interests. The hearing is on the record, with sworn testimony and cross-examination. The State must establish the record and prove reasonable possibility of judgement, although the driver must still demonstrate he is free from fault. Accident records and police reports are not submittable as evidence, and the police and other witnesses must appear to support the State's case. A major problem is that the State does not subpoena these witnesses, with the result that, if the other driver or accident victim does not appear, the case is frequently thrown out.

These scenarios have been presented to demonstrate the wide range of approaches that States are using for driver licensing hearings. In Chapter V, we will analyze many of these approaches to determine whether they satisfy the due process requirements identified in Chapter IV, and we will also describe a procedure for conducting hearings which we believe is fair and equitable. In the next subsection we will look at how a hearing officer decides the issues of a case once the hearing has been held.

3. THE DECISION

The decision-making process is the focal point of our analysis of the hearings. Agency actions leading up to and following the decisions must be justified to support final disposition of the case. Because of this importance, we will attempt to analyze the decision-making process in detail, segregating it into discrete steps for better understanding. In this section, we will also review the questions: who makes the determination, when is it made, and who reviews the case dispositions.

(1) Analysis of the Decision

The basic determination to be made as the result of a hearing is whether the agency's proposed action to withdraw a driver's license should be denied or upheld. However, there are multiple factors impinging on this decision; further, in many cases it is necessary to determine the length of withdrawal or whether alternative sanctions should be applied. The factors affecting these decisions vary considerably by type of case. We will discuss them as they pertain to the three principle types of license withdrawals involving hearings.

Implied Consent

In implied consent cases the determinations are usually made on a specific number of well-defined points, usually set out in a State's statutes. As indicated in the previous section, these may include such points as:

- Did the law enforcement officer have a reasonable basis for suspecting the individual was driving under the influence?
- Was the driver stopped and arrested for drunken driving?
- Was the driver requested to take a test for the alcohol content of his blood?
- Was the driver warned of the consequences of refusing to take the test?
- Did the driver refuse to take the alcohol test?

It must be determined whether each and every one of these points is true for the particular case. This may not be a simple task, depending upon a State's laws and how the courts have interpreted these laws. For example, in some States the police officer must have actually observed the individual driving, a fact which can be disputed by cross-examination of the arresting officer or by the testimony of other witnesses. The question of what constitutes refusal is not always clear under some State statutes, particularly with respect to how long a driver can delay testing before it must be considered "avoidance" and therefore "refusal". These are some of the reasons why several States assign implied consent hearings to their attorney hearing officers who may be better qualified to interpret and apply the many court decisions in this area.

There is little discretion available to the hearing officer in disposing of these cases once a determination is made that the specific criteria have been met. If the facts do not support all of the criteria, then the license withdrawal action must be aborted. On the other hand, if all criteria are satisfied, then

in most States there is no discretion as to whether or not, or for how long, to withdraw the driver's license. The action is usually mandatory for a period of time established by the legislature.

Financial Responsibility

There are two primary determinations to be made in these cases: whether the driver must meet the provisions of the financial responsibility statutes and, if so, what financial responsibility provisions must be satisfied in order for him to retain his license. The former generally requires a determination as to whether there is a reasonable possibility that a driver could incur liability for the affects of the accident, while the latter is based on the extent of damages for which he might be responsible, if there is a judgement against him for any liability resulting from the accident.

The process of determining whether the driver may potentially be liable and subject to financial responsibility requirements, is not usually pursued if the driver submits evidence that he was adequately insured at the time of the accident. Should such coverage not have been in effect, then the agency must determine the driver's potential liability. It must be based on available evidence, such as the accident reports and testimony by those involved in the accident. This determination requires extensive familiarity with fault law in the particular State, although it is not a determination of responsibility for the accident. Rather, it is a determination of whether there is a reasonable possibility of a judgement being rendered. Without direct evidence that no liability will be incurred (such as assumption of liability by others involved in the accident or notice by the injured parties that no suits will be brought) then the agency must assume financial responsibility applies to the driver.

Once it is decided that there is reasonable possibility of a judgement and that the driver must meet financial responsibility requirements, then it is necessary to establish an amount of security which must be posted by the driver to retain his license. This amount is based on an analysis of the accident reports together with any estimates for repairs. A dollar amount must be established which might be adequate to cover these damages in the event of a judgement being rendered.

In financial responsibility cases, there is actually no determination of whether a license should be withdrawn. Rather the determination is whether there is potential for liability (i.e., that the driver must meet the requirements of the financial responsibilities law) and how much security must be posted. The driver then has the option of posting security or losing his license. If, after a certain period of time following the

decision, the licensee does not post the required security, the agency must withdraw his driver's license. The withdrawal is a mandatory action for an indefinite period of time, until (1) security is posted, (2) all judgements are satisfied, or (3) releases are obtained from the injured parties. Thus, there is no specific determination by the agency of whether or for how long a license should be withdrawn.

Frequent Violators

The dispositon of frequent violator cases requires two separate determinations, one of which may involve a great deal of discretion. First, it must be determined whether there is a basis for a license withdrawal action and, secondly, what type and length of withdrawal is appropriate. In this second determination the laws of many States authorize discretion in setting sanctions with lesser impact than license withdrawal.

The first determination is whether the State can withdraw the driver's license. Depending upon the State statutes, this may be based on objective measures or the agency's interpretation of subjective criteria. For example, if statutes provide for license withdrawal upon accumulation of a specific number of points, then the only determination is whether the records of traffic violation convictions are correct and account for the particular point total. This then becomes the factual basis on which the State may proceed with a license withdrawal action. Where State statutes only set general criteria for license withdrawal, some agencies have administratively adopted point systems to simplify the decision, while others may use a probationary system. In these latter cases, the determination is whether the driver was convicted of a traffic violation (of a specified degree of seriousness) while on probation. If so, the State then has a basis for license withdrawal. In either of these situations, the factual determination of whether a driver's license may be withdrawn is quite straightforward. Moreover our observations are that these facts are rarely challenged by the driver during the hearing, as this determination can readily be made prior to the hearing or at the very beginning of the hearing.

The second decision is to determine what sanction, if any, is to be applied, assuming that the State has determined, as above, that it has the authority to apply some sanction. We observed a wide range in the amount of discretion allowed by different State licensing agencies in making this determination:

- There was little discretion exercised in Idaho or Louisiana, because once the facts were set forth, the proposed suspension was almost always upheld or denied for the specific time period shown in the initial notice of suspension

- In South Carolina, Utah, and Washington, the hearing officer may deny or shorten the suspension, or send the driver to a driver improvement school

- In New York the hearing officers have a wide range of choices including:
  - No action
  - Attendance at a driver safety clinic
  - Restricted licenses
  - Suspension of the license from 10 days to a year or more
  - Suspension of the license plus some contingency for reinstatement
  - Revocation

In some States, lesser sanctions may be applied, such as driver improvement school, even if the driver has fewer points than that which would justify withdrawal of the license.

The decision making process for determining sanctions for frequent violators often involves an analysis of which sanction would be most appropriate towards improving a driver's attitude or driving ability. This is not necessarily an objective determination. It requires an understanding of driving behaviors and the various driver control or improvement programs in order to choose the one most suitable (from among those available) for each particular situation. This is a very different determination from any of the other decisions discussed previously.

(2) The Decision Makers and Reviewers

In our survey of all the States, we asked several questions concerning authority for license withdrawal decisions following hearings. Most States authorize the hearing officer who conducted the hearing to make the final decision and to proceed with the withdrawal action. However, 14 States indicated the DMV commissioner or department director made the final decision following review of a hearing officer's recommendations, and 2 States rely on a review board for the final determination (See Table 18 of Appendix A, Vol. II). In visiting some States which had indicated that the department director made the decision we found that this decision was simply the administrative adoption of the hearing officer's recommendation. In effect, the hearing officer was determining the final, administrative case disposition.

It is interesting to note how a decision is made if someone other than the hearing officer must make it. For example, by analyzing responses to survey questions, we found that in 11 States the hearing officer's recommendation was simply adopted, that in 8 the decision is based upon his findings and conclusions, while in 3 the hearing officer's findings are used exclusively (higher authorities must reach their own conclusions and decisions). We observed an example of this process in Florida,

where the hearing officer's recommendation is considered by the Review Board along with the driver's record, affidavit of driving need, and other documents before a final determination is made.

Several States have established procedures for internal review of hearing officer decisions. This is not part of an appeal process, but a mechanism for "quality control" of hearing decisions to assure consistency in applying the law and departmental policy. These reviews rarely led to reversals of hearing officer's decisions (unless additional information became available such as another conviction). Instead they assist supervisors in identifying any hearing officers who may be improperly applying particular legal interpretations, and serve as a general evaluation of hearing officer performance. As would be expected, States differed in their approach to reviewing case dispositions:

- In Louisiana, the Chief Hearing Officer normally reviews every decision. Additionally, because the hearings are held by a section independent of the Bureau of Driver Improvement, this Bureau may review decisions to check whether they had properly prepared the cases and a reasonable number of recommended license withdrawals are upheld.

- In New York, cases are only reviewed by the Supervising Referees following appeal of the decision by the driver. However, case disposition statistics are maintained to help evaluate hearing officer performance.

- In South Carolina, final case dispositions of frequent violator cases are made by the Headquarters of the Driver Examining Section. Thus, the review of hearing officer decisions is combined with the decision making process, although the final disposition rarely differs from the hearing officer's recommendation.

- In Washington the quality control review is also part of the decision making process. Every case is reviewed by the senior analyst before the decision is forwarded for signature to the Assistant Director for Driver Services.

- In Idaho, the retained lawyer who serves as hearing officer makes the decision, however, the Department reserves the right to overturn it for good cause.

- In Utah, the hearing officer makes the decision, although he may discuss the case with the Department either prior to or after conducting the hearing.

(3) Driver Notification of the Decision

The question of when a driver is notified of the decision is dependent upon who makes the decision. Nine states indicated (in questionnaire responses summarized in Table 21, Appendix A, Vol. II) that the hearing officer informs the driver of the decision at the end of the hearing. In these cases and in all others, the driver is also officially notified of the decision by mail, with 58% of the notices being mailed within 20 days of the hearing. Of the States which we visited, there were five which had some situations when the driver was told of the decision during the hearing:

- All implied consent cases in Washington
- All hearings in New York except those involving serious controversy or those concerning fatal accidents
- Frequent violator hearings held at department headquarters in South Carolina (headquarters reviewed frequent violator decisions on hearings conducted elsewhere in the State)
- Frequent violator cases in Florida where the suspension is for thirty days or less and it is the driver's first suspension
- In Utah the driver is told that the hearing officer's recommendation is a tentative decision and that he will be later informed of the official disposition.

After telling the driver of the decision, only a couple of States advised him of his right to appeal, although one State with an administrative appeal board did provide the driver with a written procedure on how to file an appeal.

Drivers are usually notified of the decision via a final order of license withdrawal or a letter that the proposed withdrawal is rescinded. In addition, many States require some internal documentation of the decision. In most of the eight States visited, the hearing officers had to document the reasons behind the decision. This was most frequently evident for decisions pertaining to implied consent and financial responsibility hearings. Some States used a check-off form, particularly for implied consent cases, such as that shown previously in Exhibit III-10. Others required a summary of findings to be written. In one State, the hearing officer documents the evidence submitted, testimony given, and the reasoning behind the decision in a signed memorandum which is mailed to the driver along with the final notice. Two States, where lawyers served as hearing officers, required them to write legal briefs to document the decision in addition to taping the hearings, although one was only for financial responsibility decisions. None of the States transcribed the tapes unless an appeal was made or the driver requested (and paid for) the transcription.

4. THE APPEAL PROCESS

Following receipt of the decision resulting from a hearing, a driver can appeal the decision to a higher authority. In most States the appeal is first to a higher agency official or an administrative appeals board. Only after an individual has exhausted available avenues of administrative appeal can the case be appealed to the courts.

(1) Administrative Appeals

Our survey of the States revealed that 25% of the States provided for the initial appeal to be directed to the commissioner of motor vehicles. An additional 31% allowed them to be directed to another executive officer, such as a chief hearing officer, director of driver improvement, or director of driver licensing (refer to Table 22 in Appendix A). Examples of various avenues of administrative appeal were observed during our visits to the following States:

- In New York, drivers can appeal hearing decisions to an Administrative Appeals Board which reviews the case on the record. Affadavits may be submitted into the record as part of the appeal but there is no hearing before the Board.

- In Louisiana, a rehearing can be requested before another hearing officer if prejudice on the part of the first hearing officer is suspected. However, most cases are appealed directly to the courts.

- In Idaho, the driver can request a rehearing of the case by another presiding officer, however, following the rehearing there is no appeal available to the courts. The rehearing decision is final. (This finding is qualified in the last paragraphs of this section)

- In South Carolina, a driver can request reconsideration of the case by the Commissioner of Motor Vehicles before appealing it to the courts. This is not a mandatory appeal procedure, as a driver may appeal directly to the courts.

Drivers are usually required by the courts to exhaust all avenues of administrative appeal prior to any appeals to a court of law. However, some State procedures for administrative appeal are relatively informal (and not specified in the statutes), so the driver can opt to appeal administratively to the agency or directly to the courts. Officials in one such State which we visited indicated an administrative appeal was usually a wasted effort and they would usually advise drivers to seek judicial review from the outset. Four States indicated they provide no avenue for administrative appeal and require a driver to make his appeal directly to its courts.

(2) Stays

When drivers make an administrative appeal of the hearing decision, the license withdrawal action is usually stayed pending the final administrative determination (see Table 22 of Appendix A). This is true of 86% of the States surveyed. However, when the case is appealed to a court of law, only 35% of the States automatically stay the order of license withdrawal. In the other States a driver must obtain a court injunction to retain his license, pending outcome of the appeal.

(3) Judicial Appeals

Judicial review of administrative orders for driver license withdrawal is frequently established by statutory provision. States vary as to the scope and method of the review. In some States, judicial review requires a trial de novo, which is essentially a new trial without considering prior proceedings. This expressly provides that the court has the responsibility to take testimony, examine the facts of the case, and determine whether the motorist is entitled to retain his driver license or is subject to a license withdrawal action. In these circumstances, the court ignores the findings of the hearing and considers only the facts and evidence pertaining to the driver's license suspension or revocation presented at the trial. In a de novo trial, the judge is required to make an independent finding of fact and exercise his discretion in determining whether the proposed license withdrawal should be upheld.

Appeals on the record to the court will result in a judicial review of all evidence presented and obtained at the hearing. Thus, the sworn testimony of the driver and witnesses, as well as the hearing officer, will be considered by the court. On the record trials are limited to a review of the department's action to assure due process and equal protection, and to review the decision from the perspective of whether the action was supported by substantial evidence. However, statutes (of those States directing appeal on the record) generally limit the court to reviewing the decision and action of the driver licensing agency but do not permit the courts to substitute their discretion for that of the department. On this basis, the court's decision would be either (1) to uphold or deny the license withdrawal action, or (2) to demand a new hearing by the licensing agency.

Another type of judicial review is directed towards determining whether the administrative agency acted within or exceeded its authority. Some States limit appeals to just those questioning the authority of the agency.

Most State statutes specify what type of court appeal is available in driver licensing cases. However, one State we visited allowed its driver the choice of whether appeals would be on the

record or de novo. The implications of this decision are complicated and will be further explored in later sections of this report.

Although one State responded to our survey by indicating that there was no avenue of appeal to the courts, the driver always has the Constitutional right to appeal. The U.S. Constitution guarantees everyone the right to request judicial review of administrative actions. As discussed above, this appeal may be limited to a review of the procedural handling of the case by the licensing agency, but it is still a judicial review of administrative actions. Moreover, the right of appeal to the courts exists even though there may first be a requirement for an administrative appeal.

5. HEARING OFFICERS

In this section we present our findings on those who serve as hearing officers in the States, including: what other duties are assigned to hearing officers, what are their qualifications and salaries, and what training they receive. Answers to these and other related questions will provide an overall picture of those individuals who currently hold responsibility within the States for conducting the hearings and determining whether a driver's license is to be withdrawn.

(1) State Employees Who Serve as Hearing Officers

The written questionnaire completed by the States contained detailed questions on who serves as hearing officers, their position titles, their salaries, and other pertinent information (see Table 30, Appendix A, Vol. II). Of 44 States responding to one of these questions, 73% of the States use employees of the driver licensing agency as hearing officers, while 20% use employees of another division of the motor vehicle department (e.g., an independent hearing division). The remaining States utilize assistant attorney generals, (assigned to either the State Attorney General's office or to the motor vehicle department) or independent attorneys on a retainer basis.

Of a total of 769 State employees serving as driver licensing hearing officers in 36 of those States, only 16% of them are attorneys. However, of the 541 who are employees strictly within the driver licensing agency, less than 5% are attorneys. Of the States we visited, Idaho utilized independent attorneys while New York and Maryland were the only two which required a law degree of those applying to become hearing officers (this was made effective only recently in Maryland). Additionally, in Washington, the financial responsibility hearing officer was an attorney, although it did not require this of other hearing officers. While these States stipulated that hearing officers had to have a law degree, they did not have to be members of the Bar.

Many States do not designate specific people as "hearing officers" but instead assign the hearing officer duties to other employees in addition to their regular responsibilities. The extent of this practice is indicated by the number of States which responded that the following people perform as hearing officers (refer to Table 28 of Appendix A, Vol. II):

Position Title	Number of States Where They Serve As Hearing Officers
Driver Improvement Officer	26
Head of Driver Improvement Division	19
Counsel to Motor Vehicle Department	11
Head of Driver Licensing Division	10
Director of Motor Vehicle Department	8
Driver Licensing Examiner	6
Head of Driver Records Division	4
Assistant Attorney General	4

Our State visits revealed that the question of who serves as hearing officers may depend upon the type of case. This often is related to the agency's approach to assigning responsibibility for conducting hearings. For example, if hearings are assigned to a single organizational unit within the driver licensing agency (such as the Legal Services Administration in Louisiana) or to an independent organization outside the licensing agency, then these organizations tend to employ a staff of hearing officers to hold all hearings. However, if hearing responsibilities are assigned to functional groups within a driver licensing agency the hearings are often conducted by existing employees of those groups who have other duties within their groups. In these situations, different personnel may be responsible for frequent violation hearings, implied consent hearings, or financial responsibility hearings. For example, while 23 States allow any hearing officer or driver improvement analyst to conduct implied consent hearings, 5 States designate special hearing officers and 3 States utilize only attorney hearing officers. (Further data are provided in Table 27, Appendix A, Vol. II.) Actual practice may vary even within a State, as exemplified by the policy of one State that we visited, which assigned all implied consent hearings in the State's major metropolitan area to an attorney hearing officer, while in rural areas any hearing officer could hear these cases.

The specific position titles of State employees who serve as hearing officers vary from State to State. We have summarized below the number of States which identified their position titles, the number of employees in each position, and whether they are civil service. Many States gave us information on employees for each grade within a position title (i.e., Hearing Officer I, II, III, etc.) which we have combined in our summary below. Because some States may use more than one of the position titles, particularly if hearing responsibilities are assigned to multiple organizations, 10 States have been counted two or three times in the summary below. The detailed data is provided in Table 30 of Appendix A.

Position Title	Number of States Using This Position Title	Total Number of Employees in this Position
Hearing Officer/Referee	23	216
Driver License Examiner/ Evaluator	9	41
Driver Improvement Analyst/Officer	8	256
Bureau Chief/Supervisor/ Manager (exclusively)	4	20
Counsel/Attorney	2	9
Trooper	2	31
Administrative Assistant	2	6
Investigator	1	4

Thirty States reported that these positions are classified within a civil service or merit system.

(2) Hearing Officer Duties

As indicated above, over half of the States use driver improvement officers to conduct driver licensing hearings. In these cases it would appear that the same person has responsibility for driver counselling and conducting driver improvement programs, in addition to holding the hearings. Similarly, in States where department attorneys or division heads must conduct hearings, they also must share this responsibility with their other duties.

Our questionnaire to the States included questions to further identify whether this sharing of assignmnents is common.

Twenty-four States indicated that hearing officers also serve as driver improvement counsellors. Moreover, in 9 States the hearing officers conduct driver examinations, in 4 States they conduct driver training sessions, and in 4 States they serve as the legal counsel to the department (see Table 25 of Appendix A).

We would conclude from these statistics that a large proportion of the States do not employ personnel as full time hearing officers. The people who serve as hearing officers either have other jobs as their primary responsibilities or are given significant other duties in addition to conducting hearings. This was confirmed by our State visits. We identified several States with no personnel having the title of hearing officer or devoting their full time to conducting hearings. Most frequently those responsible for the hearings were also serving as driver improvement counsellors.

In the States we visited where personnel were dedicated full time as hearing officers, they also had responsibility for conducting other administrative hearings in addition to those for driver license withdrawals. Of course, driver licensing hearings comprised the overwhelming percentage of hearings conducted, but they were also responsible for other motor vehicle hearings, such as those related to dealer licenses or motor vehicle inspection. This appeared in our national survey in which 14 States indicated that their hearing officers were responsible for non-driver-related administrative hearings (see Table 25).

(3) Hearing Officer Qualifications and Salaries

In the majority of States, the qualifications for hearing officers are established by the State civil service. These usually only require a high school degree and are quite general with respect to other qualifications. As indicated earlier, only a few States require hearing officers to be legally trained.

During our site visits we interviewed supervisory personnel who looked for certain personal qualities in candidates for hearing officer positions. The individual must be able to communicate well and, particularly, must be a good listener. Additionally, the ability to be diplomatic and tactful with people is important. Of course, knowledge of the motor vehicle laws and departmental policies is important, but these can readily be taught to new personnel. However, an individual should demonstrate abilities to apply the law and policy to a variety of situations. Thus, supervisors tended to look for a combination of skills and personal attributes which would enable someone to assess a driver's situation, reach a reasonable determination for the case, and apply the proper sanctions.

Due to the differences in position titles for hearing officers among the States, it is difficult to summarize salary

data for those serving as hearing officers. However, we have analyzed salary information submitted by those States having a specific position title of hearing officer, below a supervisory level. This analysis led to the averaging of a general salary scale for hearing officers, ranging from an approximate minimum annual salary of $12,000 to an approximate maximum of $15,000. Actual salaries for hearing officer positions range from $7,000 to $24,000 (see Table 30).

(4) Training

Questions in the nationwide survey were directed to the States on both pre-service and refresher training. Within each of these areas, we asked whether training was provided with respect to hearing procedures, driver improvement, or traffic safety. Generally, States which provide any training, indicated that they do so in all three areas, although hearing officer training in traffic safety was least often identified.

Twenty-four States answered that they have some type of pre-service training program (refer to Table 31 of Appendix A). Of these 24, 96% train hearing officers in hearing procedures, 83% train them in driver improvement, and 63% train them in traffic safety. A few States indicated in the questionnaire that their pre-service training consisted of a combination of on-the-job training and meetings with supervisors. This was confirmed in our State visits where we found that most States relied on closely-supervised, on-the-job training for new hearing officers. The new personnel would often be required to observe hearings conducted by senior hearing officers and be monitored in the conduct of their first several hearings. This would be in addition to their study of the motor vehicle statutes, applicable case law, and departmental policy, under the direction of their supervisor.

Only one State that we visited had a formal, classroom training program. This one-week program was given just one time when a separate hearing division was established, separate from the driver licensing agency, by reassigning several driver improvement officers. These officers were trained by a law professor in: procedures for conducting hearings, the motor vehicle statutes and case law, and how to apply legal precedents to driver license cases. There are no plans to repeat this course, although course materials will undoubtedly be made available to new hearing officers to guide their on-the-job training.

With respect to in-service refresher training, 28 States indicated they have some type of regular program, with 86% covering driver improvement, and 54% covering traffic safety (refer to Table 31). In researching this type of training during our State visits, we found that it consisted primarily of occasional Statewide meetings or conferences suplemented by policy memoranda and frequent communications with supervisors. Some States regularly

scheduled meetings of all their hearing officers (e.g., semi-annually or annually) to discuss recent court decisions, changes in departmental policy, or new driver improvement programs. Between these meetings, the agencies relied on memoranda or contact by supervisors to communicate new court or departmental decisions. For example, legal opinions provided by departmental counsel may be forwarded to hearing officers as guidelines for certain cases. This informal approach to in-service training was very common in the States we visited.

Another aspect of hearing officer training was the use of hearing officer manuals by a few States. These manuals generally contained procedures, forms, and guidelines for administrative matters of concern to the hearing officers. Only one or two included information on legal precedents, guidelines for case determination and disposition, or procedural rules for conducting hearings.

In summary, the training of hearing officers by State driver licensing agencies is usually informal and primarily dependent upon on-the-job experience and supervisory direction. This is reflective of the fact that many States do not have full-time hearing officers, but assign responsibility for conducting hearings to regular departmental personnel, and most often to driver improvement officers.

IV. SUMMARY OF DUE PROCESS REQUIREMENTS

This chapter summarizes the principal elements of "Procedural Due Process Requirements in Administrative Suspension and Revocation of Drivers' Licenses", a paper prepared by Professor Robert Force of the Tulane University School of Law. His complete manuscript is provided in Appendix C. It should be read in its entirety to assure clear understanding of the findings presented in this section.

This analysis of procedural due process requirements was performed to document both the minimal requirements of the law and various interpretations of those requirements where the law has not been clearly set forth. Subsequent chapters of this report evaluate the current levels of compliance to these requirements and make recommendations for improving the driver licensing hearing function based on the findings of this analysis.

Professor Force's analysis of procedural due process requirements is based primarily on determinations of the United States Supreme Court. Additionally, he has reviewed many decisions of lower Federal Courts and the highest State Courts. However, the difficulty in performing this analysis was that many of these decisions were interpretations of specific State statutory requirements, or were narrow applications of procedural requirements, and do not necessarily provide broad interpretations of administrative due process requirements pertaining to license withdrawal actions. In fact, only very few Supreme Court decisions specifically relate to administrative requirements for driver licenses withdrawals, and many aspects of the withdrawal proceedings or the hearings are not even mentioned in these decisions.

Professor Force has attempted to review important case law as it relates to each facet of withdrawing a driver's license and has indicated where definitive procedural due process requirements appear to be applicable. Where exact precedent does not exist, possible interpretations of the law are examined. In some areas, this suggests new approaches to administrative law and the procedures appropriate for guaranteeing due process.

The organization of this chapter parallels that of Professor Force's paper and contains the following six sections:

- Bell v. Burson: Narrow or Broad Application
- The Hearing Requirement
- The Notice Requirement

- Hearing Procedures
- Impartial and Competent Tribunal
- Judicial Review

Reference notations in this chapter are to pages in Appendix C.

1. BELL v. BURSON: NARROW OR BROAD APPLICATION

The case law interpreting administrative due process in driver license withdrawal decisions is primarily based on the 1971 Supreme Court decision, Bell v. Burson. This case involved the suspension of a driver's license under the Georgia Safety Responsibility Act, which required that the licenses of uninsured drivers who were involved in accidents be withdrawn unless they posted security sufficient to satisfy liabilities resulting from those accidents. In the particular case, the driver had not been given a hearing prior to his license being withdrawn. The Supreme Court determined that the driver should be afforded an opportunity for a hearing prior to the withdrawal of his license, because "except in emergency situations (and this is not one) due process requires that when a State seeks to terminate an interest such as that here involved, it must afford 'notice and opportunity for hearing appropriate to the nature of the case' before the termination becomes effective" (page 4). The first concern is whether this decision by the Supreme Court should be applied to only those license withdrawal actions involving financial responsibility statutes, or whether it may be applied broadly to the overall process of withdrawing drivers' licenses.

Professor Force reviewed numerous court decisions, in actions by both Federal and State courts, and analyzed their interpretation of the Bell v. Burson decision in applying it to subsequent court cases. He concluded that, in general, Bell v. Burson is a case of doctrinal significance in defining procedural due process requirements (pages 8-9). The use of Bell v. Burson by the United States Supreme Court in similar civil and administrative proceedings, including those not involving driver's licenses, implies that the Supreme Court would apply Bell v. Burson to all driver license withdrawal actions except those truly involving emergencies (page 10). There has been considerable difference of opinion by legal researchers on how broadly the emergency doctrine of Bell v. Burson may be applied. However, Professor Force maintains the position that, except where a real emergency can be demonstrated (e.g., medical cases), the due process requirements set forth in Bell v. Burson should be applied generally to all driver license withdrawal proceedings (page 10).

2. THE HEARING REQUIREMENT

To analyze when a hearing is required, Professor Force first set forth a definition of "hearing" as he understands it to be applicable to driver license withdrawal actions. In defining a "hearing", the

term "trial type" hearing can be used to distinguish an oral proceeding that includes presentation of evidence, cross examination, and disposition of the case by an impartial tribunal (pages 12-13). The key to this type of hearing is whether each party has an opportunity to view the evidence and present opposing arguments. This definition of a "trial type" hearing is consistent with that contemplated by the Revised Model State Administrative Procedure Act, which is referenced by the Uniform Vehicle Code in the latter's provisions for hearings in license withdrawal actions. This definition of a "trial type" hearing allows for flexibile procedures, and does not imply the formality of the procedure used in criminal trials. It does, however, entail certain specific procedural requirements as will be described later in this section.

In applying Bell v. Burson to driver license withdrawal actions, the question must then be asked: In what situation is a licensee entitled to a "trial type" hearing? In general, due process requires "a State to provide a licensee with an opportunity to be heard as part of its suspension and revocation procedures" (page 16). However, further analysis of those procedures is necessary to determine when this opportunity to be heard must include a "trial type" hearing. Professor Force theorizes that this differentiation is dependent upon the extent of the licensing agency's role and authority in determining whether to withdraw a driver's license.

Professor Force identified three different situations affecting whether a hearing is required or not. These can be summarized from pages 18-21 of his paper as follows:

- If the license withdrawal by the agency is mandatory, such as following the finding of facts and guilt of a serious traffic offense by a court of law, then the agency is acting in ministerial fashion in withdrawing the driver license and no administrative hearing is required.

- If the license withdrawal by the agency is mandatory upon the finding of certain essential facts by the licensing agency, such as in implied consent and financial responsibility cases, an opportunity for an administrative "trial type" hearing is required.

- If the license withdrawal by the agency is discretionary, following a court's finding of essential facts relating to particular traffic violations and the agency's determination of facts relating to exercise of discretion, such as for frequent violator cases, a "trial type" hearing is not required but an "opportunity to be heard" must be extended.

Professor Force has thus identified a middle ground between "no hearing" and the "trial type" hearing. The "opportunity to be heard" is appropriate whenever agencies must develop additional facts to determine whether, and for how long, the license should be withdrawn,

once the reasons for withdrawal have been established. This opportunity would allow the driver to participate in the development of those facts which may have an adverse impact upon him in the final determination. Various mechanisms could be used to provide the opportunity to be heard, such as formal investigatory procedures, the submission of affadavits by the driver, or an informal interview of the driver by agency officials.

In addition to the three situations described above, Professor Force emphasized the need to give drivers full opportunity to correct any mistakes made in records of traffic offense convictions. States must provide an opportunity for a hearing, or an equivalent mechanism, for drivers to identify and rectify recordkeeping errors, before their licenses are withdrawn. This would apply to cases of mistaken identity, incorrect recording of convictions by the courts, or administrative errors by the licensing agency.

Many of the applicable court cases were concerned with the issue of when a hearing must occur: prior to or following a license withdrawal action. Bell v. Burson is interpreted to require both the opportunity for the hearing and the conduct of the hearing, prior to the withdrawal for all but emergency situations. As indicated previously, Professor Force does not believe that driver licensing cases present emergencies except in extraordinary circumstances. Therefore, if opportunity for a hearing is required according to guidelines set forth above, then the driver must be given that hearing prior to his license being withdrawn (pages 24-28).

3. THE NOTICE REQUIREMENT

Following the analysis of the requirement for a hearing, a review was made of the due process requirements for "notice" to a driver subject to license withdrawal action. Three types of notices were considered: notice of hearing, notice of suspension or revocation, and notice of right to appeal.

(1) Notice of Hearing

Professor Force equates the requirement for giving notice with the requirement for a hearing. This generally means that "where a pre-suspension hearing is a matter of right, pre-suspension notice is a comparable right" (page 34). Thus, the initial notice of proposed license withdrawal (and the notice of the hearing schedule) must be provided before the agency can effect the withdrawal of the license. This notice must be a formal document "reasonably calculated" to be received by the licensee. The notice requirement cannot be satisfied by advice provided in a driver's license manual or the publication of general administrative procedures (pages 34-36).

Professor Force believes that it is necessary to inform the driver of the reason for the possible license withdrawal, to

enable the driver to intelligently react to the notice of hearing. However, this requirement does not imply that the driver be informed of te factors upon which a hearing officer may make a determination.

Professor Force defined what he considers to be the requisite contents of the notice of hearing. In cases where the State is notifying a driver of a right to request a hearing, the driver must be informed:

- "That he may request a hearing
- The time period within which the request be made
- The person, agency, or court to which the request must be addressed
- Consequences of failure to request a hearing
- The matter to be determined at the hearing
- The reason for the hearing (factual and legal basis)
- The potential consequences of the hearing" (page 36).

In situations where States opt to schedule drivers for mandatory hearings, the driver should be informed:

- "That there is to be a hearing which he must attend
- The consequences of not attending
- Time and place of hearing
- The matter to be determined at the hearing
- The reason for the hearing (factual and legal basis)
- The potential consequences of the hearing" (pages 36-37)

Drivers do not have to be specifically informed of their right to be represented by counsel (page 37).

(2) Notice of Suspension or Revocation

This notice, which reflects the final determination in the administrative license withdrawal proceedings, whether a hearing was held or not, must be given a driver to properly inform him that his license has been withdrawn. Professor Force showed that, for a State to effectively attempt to remove a driver from the highways, the State must notify the individual that he no longer possesses a license to drive (page 38).

(3) Notice of Right to Appeal

There appears to be no procedural due process bases requiring notification of a right to administrative or judicial appeal, following the hearing and notice of license withdrawal (page 38).

4. HEARING PROCEDURES

In this section Professor Force analyzed which specific procedural rights ought to be incorporated in "trial type" hearings

conducted in license withdrawal cases. He does not believe that due process requires this type of hearing to be as rigorous as criminal proceedings; thus, the right to be formally charged, the right to trial by jury, and the right to a speedy trial do not apply. The specific procedures that are necessary for these "trial type" hearings, as discussed on pages 38-53, include:

(1) The driver has the right to be informed of the basis for the withdrawal action, as discussed above under the notice requirement (page 41).

(2) The driver has the right to the assistance of retained counsel. However, there is no right to appointed counsel, except possibly in cases involving extremely complex procedures (pages 41-42).

(3) The driver has the right to present evidence on his behalf, and to be informed of the evidence against him (pages 43-44).

(4) The strict rules for presentation of evidence, as practiced in a court of law, generally do not apply to these "trial type" hearings. Although evidence should be entered into a record of the proceedings, documents and reports may be submitted without the testimony of the originators. The issue of illegally obtained evidence is not applicable to these hearing (pages 44 and 47-49).

(5) The driver has the right to cross examine those testifying against him. However, there is no authoritative case law guiding whether there is a right to compulsory process; this right would allow a driver to confront those submitting evidence or testifying against him but who do not appear voluntarily at the hearing (pages 45-46).

(6) The privilege against self-incrimination does not apply to the license withdrawal proceeding. Yet it may be invoked by a driver during a hearing if his testimony would impact any criminal proceedings arising from the same event (pages 46-47).

(7) As a general precept, the burden of proof lies with the moving party. In license withdrawal actions, the State is usually the moving party and must bear the burden of proof of establishing the basis for withdrawing the license (pages 49-52).

(8) Although there are but a few references to whether the licensee has a right to a written decision with a brief statement of reasons for the determination, Professor Force believes that this is a basic ingredient of due process (pages 52-53).

5. IMPARTIAL AND COMPETENT TRIBUNAL

A basic due process right is that the hearing be conducted by an impartial and competent tribunal. In this section of his paper, Professor Force analyzed how agencies can assure that an impartial and competent hearing officer conducts the hearing. To be impartial, the hearing officer(s) can have no personal or pecuniary interest in the determination (page 52). Beyond this basic tenet there are several additional questions which must be examined.

The first is whether there are any due process requirements which would dictate or constrain the organizational position of the hearing officer within the driver licensing agency. Professor Force concluded that, as long as the hearing officer is not the same individual who initiated the license withdrawal action, then the impartiality of the process is preserved (pages 55-56). Thus, it would appear that individuals may be assigned responsibility to conduct hearings in combination with other responsibilities in the agency (e.g. driver improvement) and not be in violation of due process requirements. One exception is that the law enforcement and adjudication functions must be kept separate even in an administrative organization. Therefore, law enforcement officers should not serve as hearing officers nor on review or appeal panels; similarly, the hearing should not be held under the direct purview of a law enforcement agency (page 58).

The second question is whether there is any due process conflict in persons functioning as both hearing officers and driver improvement officers for the same case. Professor Force does not believe that this necessarily provides an untenable situation. He provides an illustration to demonstrate how an individual can be impartial even though he has prior knowledge of the case, while acting as a driver improvement officer (pages 59-60).

Another area of concern relates to the role of the hearing officer in the hearing. This includes both his role as investigator (in discovering facts related to the case) and his role as adjudicator. Professor Force believes that these dual roles, and sometimes the additional responsibility of protecting the driver's rights imposed when the driver has not retained counsel, are not unusual in administrative proceedings and are acceptable within the definition of fairness and impartiality (pages 57-58).

The final question concerned the qualifications of a hearing officer to satisfy the requirements for competency. In comparing license withdrawal actions to other administrative actions and even some criminal adjudications, Professor Force demonstrated that there is no due process requirement that the hearing officer must be an attorney (page 61). Beyond that, case law has not specified any particular qualifications that would be required of a competent tribunal. Professor Force further stated that the final disposition of the case may be made either by the hearing officer acting under authority delegated by the agency director, or by supervisory

personnel, based upon recommendations of the hearing officer (pages 61-62).

6. JUDICIAL REVIEW (THE APPEAL PROCESS)

With respect to judicial review, Professor Force first pointed out that an opportunity must be provided to consider constitutional objections to actions of an administrative agency. Judicial appeals may be based on contentions that the statutes or procedures under which the agency is acting are unconstitutional, that the agency's actions were not consistent with the requirements of the law, or that they were not based on facts (page 62).

The critical question concerns what degree of judicial review is appropriate when agencies have made factual determinations to exercise their discretion in license withdrawal cases. There do not appear to be definitive requirements that determine whether judicial review must be de novo or on the record. While a de novo review would of course provide a broader level of judicial review, Professor Force believes a review on the record would be sufficient to meet due process requirements, assuming that an adequate record has been established as part of agency proceedings (pages 63-64). The determination of what constitutes an adequate record and how it can be created during the license withdrawal process must be made by the individual States through either legislative enactment or judicial direction.

V. EVALUATION FOR SATISFACTION OF DUE PROCESS REQUIREMENTS

This chapter compares current practices in conducting driver license withdrawal hearings with the due process requirements applicable to those hearings. It also identifies recommended procedures or guidelines for the administration of the hearing responsibility in State driver licensing agencies, as appropriate to meeting due process requirements.

1. OVERVIEW

The evaluation of driver license withdrawal processes and hearing procedures are limited, in this chapter, to a comparison with applicable due process requirements. There are several other criteria that can be used to evaluate driver licensing hearings (such as their role in highway safety programs or the consideration of administrative efficiencies), and these are considered in recommendations set forth in the next chapter. This separate evaluation responds to the project objective to analyze current practices for compliance with due process requirements.

The presentation in this chapter parallels that of the previous chapters. It is divided into the five sections summarized below, and followed by a summary of major problems.

- Authority and Responsibility to Conduct Hearings

  An analysis of whether States are providing sufficient opportunity for driver license withdrawal hearings.

- Driver Notification

  The minimum notification requirements and an analysis of initial withdrawal notices and hearing notices for satisfaction of these requirements.

- Hearing Procedures

  An evaluation of the current conduct of hearings and disposition of contested cases with respect to applicable due process requirements.

- Appeal Procedures

  A review of administrative and judicial appeal procedures as related to due process.

- Hearing Officers

  An analysis of the due process requirements which would apply to the qualifications and responsibilities of hearings officers.

2. AUTHORITY AND RESPONSIBILITY TO CONDUCT HEARINGS

In Chapter II, we reviewed the existing authority of State administrative agencies to issue and withdraw driver licenses, and to conduct hearings related to license withdrawal actions. Due process determines when a State must extend opportunities for hearings, as described below, but it does not specify whether hearings must be conducted administratively or judicially. Yet in each State, whether this authority is implied or explicit, it should be very clear to the public which organization has the responsibility for conducting hearings.

In most States, the authority for whether the courts or the licensing agency has responsibility for driver license withdrawal hearings is clearly delineated.

This is true in all but a few States where the courts have instructed the agencies to hold hearings in certain cases, and the agencies may have disregarded, to some extent, the orders. Such situations usually arise because the State legislature has failed to specifically confer this authority upon either the licensing agency or the courts.

An additional problem occurs in a few States where the licensing agency has been delegated responsibility for holding hearings, but has insufficient authority to conduct adequate hearings. As an example, some agencies do not have the power to subpoena witnesses. Furthermore, many courts with backlogged calendars do not have the needed resources to handle these hearings, and the the delay or failure to hold these hearings may represent inequitable justice. This is also a traffic safety problem, in that potentially unsafe drivers are allowed to retain their licenses while waiting long periods of time for their hearings.

With respect to States' responsibilities for conducting hearings, due process requires that:

- "Trial type" hearings be offered whenever facts must be determined as a basis for license withdrawal
- An "opportunity to be heard" be provided whenever the agency may exercise discretion in withdrawing a license, even though factual determinations are made by the courts
- Opportunities to correct mistakes be made available during a license withdrawal proceeding

- If a hearing is required, it must be provided prior to the license withdrawal.

These rules are applied to the four major types of license withdrawal cases as follows, to determine when "trial type" hearings or "opportunities to be heard" are appropriate:

- Implied Consent

  These cases involve the determination of certain specific facts in order to withdraw a driver's license. For example, it usually must be determined whether a driver was properly arrested for drunken driving and subsequently refused to take a test for blood alcohol content. These must be factual determinations based on evidence or testimony. Therefore, a "trial type" hearing would be necessary to afford the driver an opportunity to challenge the evidence against him.

- Financial Responsibility

  Many State financial responsibility laws require the licensing agency to identify drivers involved in accidents who were uninsured. These States then may require the driver to post a security bond if there is reason to believe that the driver may be found liable by a court of law. The driver's license is withdrawn if the bond is not posted, until any liabilities are satisfied. A State's actions must be based on facts concerning the accident, which must be reviewed prior to the State's withdrawing the driver's license. The prinicipal determination, in these cases, is whether or not there is reasonable potential for liability on the part of the driver. A "trial type" hearing would be required to confirm such a determination.

- Frequent Violators

  The normal basis for withdrawing licenses of frequent violators is the accumulation of a certain number of points, according to a point system established either legislatively or administratively. An alternate reason for license withdrawal is multiple convictions of a specific offense, again as set by statute or administrative order. In either situation, the factual basis for whether a license may be withdrawn is determined in the adjudication of the traffic offenses. The agency then acts administratively in determining whether or not to take the authorized action. Most agencies have some discretion over whether, and for how long, to withdraw the licenses of frequent violators, and thus should provide the driver with an "opportunity to be heard". Additionally, frequent violators must be afforded an opportunity to challenge the records of convictions upon which the proposed action would be based.

- Serious Offenders

  Upon a driver's being convicted of a serious traffic offense, the licensing agency acts only as the recordkeeper and administrator in the mandatory withdrawal of the driver's license. No hearing would be necessary in the license withdrawal proceeding. As above, the driver must be given an opportunity to contest recordkeeping errors, but need not be given a hearing on the license withdrawal itself.

In each of the above cases, we are setting forth the minimum requirements for affording an opportunity for a hearing, as prescribed by due process. Many State motor vehicle codes have adopted provisions similar to the Uniform Vehicle Code that require hearings in most license withdrawal actions, thus exceeding the due process requirements.

In evaluating current license withdrawal practices for satisfaction of due process requirements, we must examine whether an opportunity for a hearing exists, either before an administrative agency or the courts.

(1) "Trial Type" Hearings

Based on the results of our mail-out questionnaire (see Section II.5), it can generally be concluded that:

Most States do afford the required opportunity for a hearing.

For example, all States (except one) provide hearings in implied consent cases, with 17 of them providing judicial hearings and the rest being conducted by the licensing agencies. Similarly, of the States which we visited that had financial responsibility statutes, they all had developed specific procedures by which a driver could request a hearing on the license withdrawal. We did not survey the procedures for correcting recordkeeping errors, so it cannot be determined whether they are sufficiently adequate vis a vis due process requirements for frequent or serious violator cases. Nevertheless, 68% of the States indicated that they conduct hearings for discretionary cases, of a type which should provide an opportunity to rectify mistakes in the agency's records on the driver.

Although opportunities for hearings are provided by most States,

many States do not provide a hearing before the license is withdrawn.

More than 30% of the States conduct hearings on discretionary license withdrawals after the license withdrawal becomes effective. While discretionary withdrawals in this situation may

include many for frequent violators (for which only an "opportunity to be heard" is required), this still appears to be a significant problem. However, eighteen States can suspend a driver's license, for refusal to take an alcohol test, before a hearing is conducted. The opportunity for the hearing, and the conduct of the hearing, must occur before the driver's license is actually withdrawn.

(2) Other Opportunities to be Heard

There are often situations when a "trial type" hearing may not be necessary even though it would be advantageous to afford the driver an opportunity to present his case prior to the license withdrawal decision. These situations arise when the licensing agency may exercise discretion over whether or not to withdraw the driver's license, once the criteria authorizing the withdrawal have been met. This occurs primarily in determining whether to withdraw licenses of frequent violators.

In our analysis of the decision process for frequent violator cases, (see Section III.3), we found that the authority of the agency to withdraw the license is rarely challenged. Instead, the questions considered are most often oriented towards the circumstances of the violations and the driver's record, attitude, attendance at driver improvement schools, need for the license, etc. Departmental policy determines which of these may be considered in deciding whether or not to: (1) withdraw the license, or, (2) apply a lesser sanction, such as attendance at a driver improvement school, establishment of a probationary period, or imposition of license restrictions. Although this determination does not require a formal "trial type" hearing, an "opportunity to be heard" before the agency is necessary. The format used most frequently to provide a driver an "opportunity to be heard" is the interview.

Most States indicated in our survey that they provide opportunities for hearings in discretionary withdrawal cases. However, our site visits revealed that these were often informal interviews rather than "trial type" hearings. The interviews tended to be procedurally less formal than the hearings and yet, as we observed them, would satisfy the "opportunity to be heard" requirement. We, therefore, conclude that:

> "opportunities to be heard" are provided by most States as required by due process, although not all occur before the license withdrawal.

Those few States that provide formal hearings for these discretionary cases more than meet due process criteria.

An interview must afford an individual the opportunity to present his case before an impartial and competent representative

of the agency, without the formal procedural rules applicable to "trial-type" hearings. Our observations indicate that this is generally how those interviews are conducted. Thus,

> when interviews are provided before withdrawing licenses of frequent violators, the interviews usually satisfy the need for an "opportunity to be heard".

3. DRIVER NOTIFICATION

The requirement for notifying drivers of license withdrawal proceedings is closely linked to whether opportunities for hearings must be extended. This means that:

- Notice of the right to a hearing must be given whenever the opportunity for a hearing is required
- If an "opportunity to be heard" is provided, notice of such must be given
- The driver must be notified sufficiently far in advance to exercise his right to a hearing
- Notices may be mailed, first class, to licensees at their last known address (as contained in agency's driver license files)

The notice to a driver of his right to a hearing (or interview) should be included in the initial notice of the proposed license withdrawal, mailed or otherwise served to the driver at his address of record. Referring to our analysis of sample initial notifications (see Section III.1(2)), it would appear that:

> Although States generally notify drivers of proposed license withdrawals, many notices fail to inform them of their opportunities to be heard.

Notices often meet all of the above criteria, except that the driver is not told that he may have a hearing before the withdrawal becomes effective. Several notices pertaining to frequent violator cases did not contain any reference to an "opportunity to be heard". Drivers must be sufficiently informed of the proposed action and their rights so they can detemine whether to request a hearing, before the license is withdrawn.

(1) Initial Notice of Withdrawal Proceeding

When initial notice is used to inform the driver of a proposed license withdrawal and of his right to request a hearing (or interview), the State is obliged to give the driver certain information. The driver should be told:

- The basis for the proposed license withdrawal
- Possible reasons for requesting the hearing
- How, and the time frame within which, he may request the hearing
- What happens if he does not make a request (e.g., that the license suspension will take effect in thirty days)
- Items to be discussed at the hearing
- Potential consequences of the hearing.

The review of initial notification forms revealed only a small number of States which fully provided the information cited above.

Most States informed the driver of his right to a hearing, and almost two-thirds of the States warned the driver of the consequences of not requesting the hearing (or failure to appear at a mandatory hearing); yet, sometimes the notices did not explicitly inform the driver how to request a hearing. The only mailing address appearing on some notices was that contained in the letterhead: no specific reference to the organization responsible for conducting the hearings was provided.

Very few States provided the driver with his driving record or other evidence the agency will use as the basis for the withdrawal. With respect to the issues to be considered and possible consequences of the hearing, most notices that we reviewed identified the issues at hand, yet only five of the notices referenced possible outcomes as the result of a hearing. None specifically explained why a driver might want to request a hearing. In summary, it appears that most States are only partially complying with these due process requirements for the initial notification of a license withdrawal action.

(2) Notice of Hearing

The second notice in the license withdrawal process is the notice of the scheduled hearing. Whether this is a notice of a mandatory hearing (serving also as the initial notice) or the notice of the hearing schedule (following a request by the driver for a hearing), certain basic information should be provided to the driver. This includes:

- The time and place for the hearing
- The issues to be discussed

- Consequences of not attending the hearing
- Potential outcomes of the hearing.

As several of these required contents are similar to those for the initial notice, a State could choose which of these two notices should contain information on the issues and consequences of the hearing. Due process is satisfied as long as the driver is properly notified prior to the hearing. States which scheduled mandatory hearings tended to more fully meet due process notice requirements.

The results of our survey and subsequent analysis of hearing notices, as documented in Section III.1(4), indicate that:

> almost all States meet the basic due process requirements for informing the driver of the time, place, and potential consequences of the scheduled hearing.

Although most notices informed the driver of the reason for the license withdrawal proceedings, only a few of them identified specific issues which could be discussed during the hearing.

The determination of whether a particular State satisfies the due process notice requirements, particularly with respect to the reasons for, issues, and possible consequences of hearings, depends upon their overall use of these several forms. For example, if a State has developed a detailed and comprehensive initial notice to provide much of the information on the withdrawal action and the hearing, then the notice of the hearing could probably be a simple statement of its schedule. The important point is that the State inform the driver (using one or more of these notices before the hearing) of the reasons for the proposed license withdrawal, the issues to be discussed at the hearings, the consequences of failing to appear, and the potential results of the hearing.

4. HEARING PROCEDURES

In section II.5 we showed that, in many States, the hearing has been combined with other driver control functions. However, in evaluating hearing procedures for satisfaction of due process, we have attempted to analyze only those procedures and actions related specifically to the hearing. This concerns us with the procedural due process rights which should be provided during the hearing to individuals subject to license withdrawal actions. The rights listed below apply to "trial type" hearings in cases involving contested facts:

- Right to be Represented by Counsel

All States allow individuals to be represented by counsel in driver licensing hearings. This is generally sufficient relative to the right to counsel, because the right to appointed counsel is not recognized in such administrative proceedings, except where complex legal requirements are imposed as part of the hearing process. To our knowledge, no States provide counsel to drivers for license withdrawal hearings. Yet in at least two States -- Idaho and Pennsylvania -- the procedures for filing for the hearing and submitting evidence seem legally complex and might practically require a member of the bar to effectively perform them. In these situations, it would appear that the proceedings should be simplified so as to improve the potential for full availability of rights.

- Right to Present Evidence

The survey also showed that all States respect an individual's right to present evidence at a hearing. Our observations of hearings confirmed the use of relaxed rules of evidence, rules which are allowed in these types of hearings. This relaxation would generally allow the submission of accident reports, alcohol test refusal reports, and other evidence without the accompanying testimony of the official who completed the reports. Some States do this, while others still require the testimony of the report originator. Moreover, drivers generally have the opportunity to review their driving records, accident reports, implied consent reports or other evidence submitted by the State agency to establish the basis for license withdrawal.

- Right to Examine Witnesses

Almost all States allow drivers to examine witnesses at the hearing (as indicated by 98% of the survey respondents). Yet we are aware of at least one example where drivers may be excluded during the testimony of witnesses as well as prohibited from cross-examining them. This practice appears to be contrary to due process requirements.

A related consideration is the ability of drivers to subpoena witnesses, particularly for cross-examination purposes. Of States responding to the question, 83% indicated that they give drivers the right to subpoena witnesses. Some States levy charges for this service, while others limit the number of witnesses who can be subpoenaed. Although there is insufficient case law to determine whether drivers have a right to compel the presence of witnesses, compulsory process may be applicable to hearings where there are disputed facts. Thus, it would seem that a State agency would have to give drivers the right to subpoena opposing witnesses when there are contested facts in a case. This could prove to be a

problem for any administrative agencies which currently do not have subpoena powers.

Burden of Proof Lies with the Moving Party

The burden must be placed on the State, as the moving party, to provide sufficient evidence to substantiate the license withdrawal. However, once sufficient basis for withdrawal has been established, the burden may shift to the driver, particularly when a hearing officer is exercising discretionary powers in determining whether or not to withdraw the license and for how long. This difference is demonstrated below for each type of license withdrawal action:

- Financial Responsibility

  The State must show that the driver was uninsured and involved in an accident, using the driver's record and the accident report. Additionally, the State must demonstrate (via the accident report, testimony of witnesses, or other evidence) that there is some basis on which the driver might be found at fault. In our observations of hearings, it seemed, initially, as if this latter burden had shifted to the driver. However, if the agency reviewed the accident reports prior to initiating the license withdrawal action, and if during this review it was determined that there was some possibility of the driver being at fault, then the agency's submission of the accident report at the hearing would serve as prima facie evidence. The driver would then have to demonstrate convincingly that there is no potential for liability as a result of the accident. Once the basis for license withdrawal has been established, the State must show reasonable basis for the amount of bond (e.g. repair estimates), although the driver must also demonstrate valid reasons for its reduction. Although we are aware of minor cases where this procedure may not be properly followed, most States adequately meet this burden of proof requirement.

- Implied Consent

  Depending upon a State's implied consent statute, certain specific items must be demonstrated prior to withdrawal of a driver's license. These may include: proof that the driver was properly arrested, advised of his rights as well as the consequences of refusing the test, and that he refused to take the alcohol test. The State must bear the responsibility of proving these

facts. Our observations of hearings showed that States usually are very careful to establish the necessary supporting evidence. Some States require the arresting officer to testify to the relevant facts, even though these facts are contained in arrest or refusal reports; this appears to exceed the burden of proof and acceptability of evidence requirements, yet may be mandated by State statutes or State court decisions. Of course once the State has established its case, it is up to the driver to refute the evidence in the hearing record.

- Frequent Violator

The statutory or administrative basis for withdrawing licenses of frequent violators is usually the accumulation of a certain number of points or multiple conviction of specified traffic offenses. Sufficient evidence of this can usually be obtained from a listing of the driver's record and this can be submitted into the record to satisfy the State's burden of proving reason for withdrawal. Most States meet this requirement through use of the agency's record of the driver's traffic offense convictions. If the driver does not dispute the record, then the burden of proof may be shifted to him to demonstrate why he should keep his license. This is allowed because, once the basis for withdrawal is established, the remaining decision is whether or not to withdraw the license, a discretionary determination. (Refer to our analysis of the decision process in Section III.3(1)). Similarly, in interviews to provide an "opportunity to be heard," the burden is on the driver to show reasons for retaining his license.

Right to Notice of the Decision

A final requirement concerns the notification of the agency's actions following the heaearing. Due process appears to require that a driver be notified of the disposition of the case, and be given a summary of the basis for that action. Our experience is that all States do notify drivers whether or not their license is withdrawn as the result of the hearing, and most cite the statutory reasons therefore. However, very few provide a summary of the factual findings of the hearing and the basis for the hearing officer's determination. Thimay very well be required by the courts in the future so it would behoove State agencies to provide this information to drivers as part of the notice of final case disposition.

5. APPEAL PROCEDURES

A State may offer various avenues of appeal to a driver, upon an adverse determination from an administrative hearing. An individual has the right to seek judicial review if he believes he has been denied due process during the administrative proceedings.

All States but one indicated this right to appeal existed.

Although appeals are provided, only a third of the States automatically stay the withdrawal upon appeal to a court of law. States may, of course, allow appeals on other grounds and may establish procedures for administrative appeal as well as for judicial appeal.

Generally an individual does not have to be notified of his right to appeal. However, it would appear reasonable for a State to inform an individual of any administrative appeal procedures, if individuals must exercise these procedures before being allowed to appeal for judicial review. It would also be fair to indicate possible reasons or grounds for appeal. This information should be provided to the driver when he is notified of the hearing officer's decision or, optionally, at the end of the hearing. While many agencies allow administrative appeals to a higher agency official, we are familiar with only one that formalized this procedure and provided notice. Yet most States indicated they stay the withdrawal pending final administrative determination.

6. HEARING OFFICERS

A hearing officer does not, according to due process, have to be a lawyer. It is only necessary that they be fair, impartial, and competent. Beyond that, due process has yet to specify other qualification requirements for hearing officers, such as whether traffic safety training is necessary. Active law enforcement officers are excluded from serving as hearing officers, yet there appear to be no restrictions on prior experience. Therefore, individuals with previous work as enforcement officials would be eligible to serve as hearing officers. Based on this criteria and our evaluation of States' current practices, we find that:

Only those few States using law enforcement officials as hearing officers are not meeting due process requirements with regards to the impartiality and competency of hearing officers.

For an individual to be a competent decision maker, he or she must possess the qualifications associated with a hearing officer's position, such as an adequate education, experience, and the ability to judge facts and make determinations. Hearing officers should also be familiar with legal procedures for conducting "trial type" hearings, accepting evidence, and properly creating a record and documenting findings. Using this as a criteria, we found that: few States had staffs of properly trained hearing officers.

Another concern is whether hearing officers must be organizationally separated from other functions within a driver licensing agency. With one qualifying factor, due process does not require this. The impartiality of the hearing officer is preserved as long as he is not the individual who initiated the action to withdraw a driver's license. From our observations, most driver licensing agencies use standard criteria for initiating license withdrawal actions (see Section II.4) and also utilize computers and/or clerical staff to take this initial action. Assuming hearing officers do not also function in this role, there appear to be no due process conflicts with their ability to be impartial. Due process permits a hearing officer to perform most other functions in the driver licensing agency, including those of a driver improvement analyst.

One example should be mentioned where possible conflict may occur. Some States have set up systems for identifying frequent violators and requesting their appearance for a safety interview with a driver improvement analyst. These interviews are generally not part of a license withdrawal proceeding, although failure to appear for the interview may be sufficient basis for withdrawing the license. If, as a result of the interview, the analyst recommends withdrawal of the license following the interview, then it would seem that the analyst should not function as the hearing officer if the driver subsequently requests a hearing on the proposed withdrawal action.

The retention of individuals from outside the agency to serve as hearing officers is acceptable by due process standards. However, the process by which these individuals are retained and paid must be scrutinized for fairness. The individual within the agency who is responsible for their retention should not have an interest in the outcome of any particular cases they hear, but only be concerned with their capability and responsiveness to the hearing requirement.

In Section III.1 we analyzed the functions of hearing officers in conducting a license withdrawal hearing. Many of them performed as prosecutor, counsel for the defense, or judge at various times during a hearing. This is entirely appropriate within due process guidelines, especially if a hearing officer is to develop all the relevant facts and adjudicate accordingly. The hearing officer may also solicit advice and counsel from others within the agency, even if it occurs before or after the hearing. This practice is acceptable in making discretionary determinations, and is otherwise inappropriate only if it results in the identification of additional, related facts, in which case the driver must also be made aware of these facts.

With respect to hearings held by court personnel, non-lawyer judges are already trying minor criminal cases. Therefore, it would certainly seem allowable for the courts to use non-lawyer judges or para-judicials to hold these hearings, just as agencies may use non-lawyers.

7. SUMMARY OF INADEQUATE SATISFACTION OF DUE PROCESS

The major areas where current practices by State driver licensing agencies fail to meet the requirements of due process are summarized below:

- Opportunities to be heard are frequently not provided before licenses are withdrawn
- Inadequate notification is provided to drivers of their rights
- Driver licensing agencies sometimes lack full authority to conduct proper "trial type" hearings
- Formal procedures for administrative appeals of hearing officer decisions often do not exist and are poorly communicated
- Those serving as hearing offices are not properly trained to conduct "trial type" hearings.

VI. RECOMMENDATIONS

This chapter summarizes our findings, conclusions, and recommendations concerning license withdrawal hearings conducted by State driver licensing agencies. It reflects, in addition to the due process concerns expressed in preceding chapters, the traffic safety and operational considerations which driver licensing agencies must consider in setting policy and establishing procedures relating to these hearings. Recommendations are presented in this chapter concerning:

- The authority to conduct hearings
- Organizational considerations
- Hearings within the driver control process
- Recommended methods for notifying drivers
- Conducting fair hearings
- Preferred review and appeal procedures
- Hearing officers.

1. THE AUTHORITY TO CONDUCT HEARINGS

Our research has demonstrated that States must extend an "opportunity to be heard" to drivers, before their licenses may be withdrawn if there is discretion over the withdrawal. Additionally, whenever there are contested facts involved in the license withdrawal decision, the driver is entitled to a "trial type" hearing. State legislatures have full power to determine where within the State -- the courts or an executive agency -- the authority (1) to exercise this discretion and (2) to conduct license withdrawal hearings, should be vested. We have already shown examples in which this authority has been given to each of these different organizations.

Recommendation: That the authority to withdraw the driver license and to conduct driver license hearings be vested with the administrative agency responsible for issuing and controlling driver licenses.

Traffic laws and other regulations concerning driver licenses have been enacted, historically, as measures to protect the public safety on our highways. Driver licensing agencies have been given the primary responsibility for administering traffic safety programs affecting drivers, and for determining when (and sometimes for what

reason) a driver's license should be withdrawn. Therefore, we believe that full authority and control over procedures for the issuance and withdrawal of driver licenses should be vested within a single agency.

There are additional reasons for vesting the hearing authority with the driver licensing agency, rather than the courts. In recent years, courts have become more and more concerned with the backlog of criminal areas, hence are tending to lower their attention to traffic offenses and license hearings. Moreover, it can be demonstrated that administrative agencies can more efficiently, and frequently more effectively, conduct hearings like those concerning the withdrawal of the driver license.

Recommendation: That State legislatures delegate sufficient authority to driver licensing agencies to support their conduct of these hearings and the subsequent administrative decisions concerning license withdrawals.

The authority for issuing and withdrawing driver licenses, and particularly for conducting related hearings, should be directly conferred by State legislatures to driver licensing agencies. It is much preferred that this authority be specifically conferred rather than implied. This avoids disagreements between the administrative agencies and the courts as to who has the authority to withdraw licenses, conduct hearings, and the extent to which administrative actions are subject to judicial review. If agencies are to be held responsible for administering traffic safety programs and exercising discretion over the issuance and control of driver licenses, then they must be given full authority to conduct hearings in order to make the final determinations whether driver licenses should be withdrawn.

Recommendation: That Administrative Procedures Acts be adopted and made applicable to driver license withdrawal proceedings.

Legislatures should specify the type of hearing required in driver license withdrawal proceedings, as well as guidelines for judicial review of administrative actions. This can be done either by inserting specific language in the motor vehicle code or by requiring the licensing agency to comply with an Administrative Procedures Act (APA). The Model State Administrative Procedures Act incorporates these concepts through provisions for:

- Opportunities for hearings in contested cases
- Sufficient and reasonable notice of the issues at hand
- Development of an adequate record to document the administrative proceedings

- Documentation of findings, decisions, and orders
- Appeals to a court of law based on the record of the proceedings.

The authority of an administrative agency to conduct hearings and make determinations is further strengthened by provisions in the model APA which set forth procedures and conditions under which a court of law may reverse or modify the agency decisions. First, judicial reviews are to be conducted by the court on the record, with the addition of needed oral argument or written briefs. The Model APA identifies specific reasons for which a court may reverse or modify a decision, and these generally relate to the agency's interpretation or application of the law. The Model APA specifically states that "the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact,"[1/] and thus clearly delineates the authority and responsibility of both the administrative agency and the court with respect to the conduct of such hearings. This concept should certainly apply to driver license cases in that the driver licensing agency has sole jurisdictional authority to issue licenses and, similarly, should have sole authority to determine when a driver's license is to be withdrawn, subject to judicial review to guarantee due process.

2. ORGANIZATIONAL CONSIDERATIONS

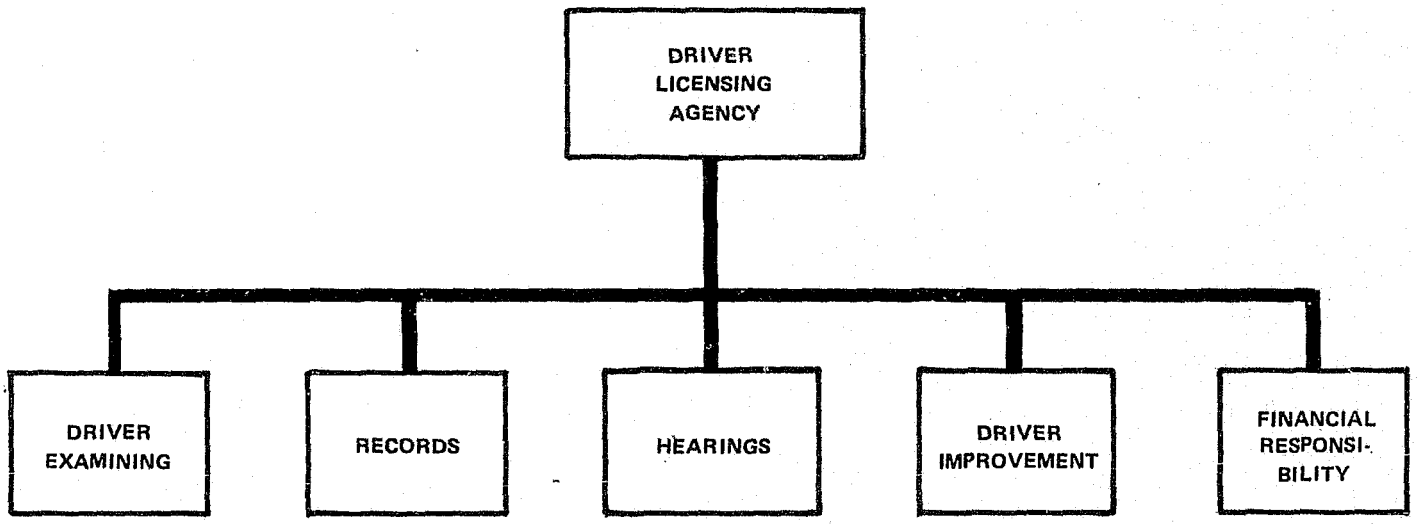
Due process requires the separation of adjudicatory functions from enforcement functions within administrative agencies. This single constraint only precludes a State from having enforcement officials conduct license withdrawal hearings. However, beyond due process there are other factors, such as the public perception of the fairness of a proceeding, that should be considered in establishing an organizational entity to conduct these hearings. The appearance of justice is often dependent upon the perceived degree of independence of the decision-maker, and this impacts the acceptable organizational relationships of the various State personnel involved in the proceeding.

Recommendation: That an independent unit responsible for conducting "trial type" hearings be established.

A driver licensing agency within a department of motor vehicles or other administrative department is normally organized according to the several functional responsibilities illustrated in Exhibit VI-1. Our recommendation is to have an independent unit, within this organizational framework, responsible for conducting all types of driver license withdrawal hearings. Alternatively, it would also be appropriate for the independent unit to be part of the motor vehicle department to conduct other hearings, such as those for motor vehicle titling, dealer licensing, etc.

1/ Model State Administrative Procedure Act, Subsection 15(g)

ORGANIZATIONAL FUNCTIONS OF DRIVER LICENSING AGENCIES



It is important to separate the hearing function from the normal operation of other driver licensing units, in order to demonstrate to the public a level of independence in making license withdrawal determinations in contested cases. This unit would be staffed by personnel specially trained in hearing procedures, under the supervision of a chief hearing officer. It would have responsibility for scheduling, conducting, and handling appeals of all "trial type" hearings.

Recommendation: That hearing officers be given full authority to make license withdrawal decisions.

To function independently, the hearing unit must have sufficient authority and responsibility to consider evidence and make determinations. This depends upon the hearing officer serving as an independent and impartial adjudicator of facts in order to decide whether a driver's license may be withdrawn. Other organizational units should be responsible for providing adequate evidence to support the proposed withdrawal. This also enables procedures to be set up by which the chief hearing officer or his supervisor would hear administrative appeals of hearing officer decisions.

3. HEARINGS WITHIN THE DRIVER CONTROL PROCESS

If either an "opportunity to be heard" or a "trial type" hearing is required, it must occur prior to a driver's license being withdrawn.

Recommendation: That action be taken by each driver licensing agency to ensure that drivers are heard before their licenses are withdrawn.

This is the least that each State must do to meet due process requirements. License withdrawal procedures must be changed to extend the opportunity to drivers to contest the basis for the withdrawal. Moreover, if the agency has some discretion over the length of the withdrawal, the driver must have an opportunity to influence the determination. These proceedings must allow the driver to appear for any of these reasons before the withdrawal becomes effective.

Recommendation: That "trial type" hearings be provided in all license withdrawal actions involving contested facts.

Due process requires "trial type" hearings for those license withdrawal proceedings that depend upon the agency's determination of the facts, such as implied consent and financial responsibility cases. Additionally, if there are contested facts in frequent or serious violator withdrawals (e.g., a case of mistaken identity), the licensee must be given a hearing on these issues.

An additional situation may also require a "trial type" hearing in frequent violator cases. This would occur in those States having

administratively-adopted point systems, if the licensee challenges the adequacy of the point system as a predictor of accident-prone drivers and as a basis for withdrawing licenses. A hearing might be necessary on this issue, although it would more than likely have to be determined by the courts on an appeal.

Recommendation: That interviews be used to meet the requirement for an "opportunity to be heard".

Frequent violator cases primarily involve questions on the driver's attitudes or need for a license, rather than on the factual basis for the license withdrawal. These can more readily be addressed in an informal interview than in a formal hearing. Interviews entail less formal proceedings, time, and cost (i.e., no need to record the proceedings), and thus it is advantageous to conduct interviews, instead of hearings, whenever possible. These interviews should be conducted by personnel in the driver improvement unit who are most knowledgeable of the factors impacting whether, and for how long, a driver license should be withdrawn.

Unless a driver disputes the conviction shown on his driver record, the interview is sufficient to meet the requirement for an "opportunity to be heard". The onus will be on the driver to indicate whether he is contesting the factual basis for the withdrawal. If any question of this factual basis comes up during the interview, the interview should be adjourned and a hearing scheduled to consider the contested facts.

Recommendation: Driver control interviews and other driver screening mechanisms should be clearly separate from license withdrawal hearings.

We viewed the hearing from the perspective of the driver as either a first or a final contact with driver control officials, and demonstrated how licensing agencies may be using the driver's appearance for a license withdrawal hearing as the initial mechanism for screening problem drivers. This use of the hearing is, we believe, inappropriate and demeaning to the importance of the hearing. For the driver, the hearing has great import in that it may determine whether he retains his means to earn a livelihood. This serious determination should not be subverted by using license withdrawal appearances as simply a screening mechanism.

It would seem beneficial to all parties that drivers fully comprehend the importance of the hearings and the fact that it may be their last contact with the agency before losing their license. This understanding can probably best be communicated to drivers who have previously appeared befe the agency for interviews or who have attended driver improvement schools. At either of these appearances, if the driver had been informed that he was being placed on probation or given some other type of conditional license (such that another offense would probably lead to withdrawal of the license), then the driver

would clearly understand that his license is in jeopardy when he appears as part of a license withdrawal proceeding.

Some States use informal interviews in their driver safety programs to determine who should be subject to certain driver control measures. The threat of license withdrawal serves to compel drivers' attendance at these interviews. While there is no due process problem with this approach, it would still be necessary for a State to offer the opportunity for a subsequent hearing on the withdrawal proceeding, in order to allow an individual to contest whether he appeared or to present explanation for his non-appearance. States may, of course, adopt policies to determine whether or not such explanations may be accepted to permit the driver to retain his license; however, the right to the hearing must still be extended.

4. RECOMMENDED METHODS FOR NOTIFYING DRIVERS

In our evaluation of current practices for their satisfaction of due process requirements, we indicated that the area of greatest weakness was in notifying drivers that their licenses may be withdrawn and that they have an opportunity for a hearing.

Recommendation: That a system be adopted using two notices: a notice of proposed license withdrawal, and a notice of scheduled appearance.

Due process requires that all drivers be given an opportunity to be heard in license withdrawal actions. It is sufficient to give notice of this opportunity; hearings only have to be scheduled upon request by the licensee. We do not see a need for mandatory appearances in license withdrawal proceedings, thus a system giving notice of the proposed action is adequate. If a hearing were requested, the driver would be subsequently notified of when he is scheduled to appear.

Recommendation: That the notice of proposed license withdrawal clearly inform the driver of his rights.

The notice of proposed withdrawal is the key document which provides the driver with sufficient information concerning the reasons for the withdrawal action and his rights, so that he can determine whether or not to request a hearing. This is the initial notice to the driver of the license withdrawal proceeding. It should clearly state the reason that the license may be withdrawn, including a narrative explanation as well as a specific citation to the statute authorizing the agency to withdraw the license. When appropriate, the date and time of the traffic offense should be indicated, particularly for implied consent or financial responsibility cases. For frequent violator cases, the notice should include a list of the specific offenses which culminated in the agency's seeking to withdraw the license.

The notice should indicate when the proposed license withdrawal would become effective, the length that the license would be withdrawn, and how much time the driver has to request the hearing. The right to request a hearing should be clearly identified on the notice, along with instructions on how to request a hearing. Additionally, it may be appropriate to identify any consequences of not requesting a hearing, reasons a driver might consider in requesting a hearing, or issues that may be discussed at the hearing. Examples of notices incorporating these points are illustrated in Exhibit VI-2.

Recommendation: That hearing request forms be used.

The examples shown in Exhibit VI-2 include a hearing request form on the notice. An alternative approach is to include, with the notice, a standard form that the driver would use to request a hearing. In either case, the form could list reasons for requesting a hearing or potential issues to be discussed at the hearing, as a guide to the driver in determining whether or not to request a hearing. The driver would indicate on the form whether he is requesting a hearing, and would return the form to the licensing agency.

For frequent violator cases, the hearing request form should also serve for drivers to indicate if they are contesting actual basis for the case (as compared with explaining his need for the license). This would assist the agency in determining whether a "trial type" hearing or an interview is appropriate.

Recommendation: The notice of scheduled appearance should clearly inform the driver of the schedule and purpose of the appearance.

This notice should remind the driver of the reasons that his license may be withdrawn. The date, time, and place of the hearing or interview should be clearly communicated. It would be helpful if the driver were also advised as to the issues to be discussed, the matters to be determined at the hearing, and the choices that the hearing officer may exercise. This would distinguish whether the driver is appearing for a "trial type" hearing or an interview. Finally, the driver should be informed as to the consequences of failing to attend the hearing. An example of this type of notice is shown in Exhibit VI-3.

In further consideration of the need to clearly communicate to drivers their due process rights, we suggest that additional attempts be made to insure that drivers understand these rights. For example, a list of rights could easily be displayed in close proximity to the hearing rooms or waiting area. Additionally, a pre-printed notice containing a summary of the driver's rights could be included with each notice sent to the driver, particularly with the notice of proposed withdrawal.

STATE OF _____
DEPARTMENT OF TRANSPORTATION
DRIVER LICENSE DIVISION

TO: DRIVER'S NAME
ADDRESS

DATE: _____
DRIVER LICENSE NO: _____
CASE NO: _____

NOTICE OF PROPOSED LICENSE SUSPENSION

You are hereby notifice that your driver's license will be suspended due to your accumulation of _____ points on your driving record as a result of the following traffic violations:

Date	Time	Location	Violation

Under the authority of Section _____ of the State Code of Laws, your license will be suspended for _____ days beginning on _____ _____, unless you request a hearing.

YOU HAVE A RIGHT TO A HEARING BEFORE YOUR LICENSE IS SUSPENDED,

IF A WRITTEN REQUEST FOR A HEARING IS RECEIVED BY THIS DEPARTMENT WITHIN 30 DAYS OF THE DATE OF THIS NOTICE

The hearing will determine whether there is adequate reason for the proposed suspension, or whether you may be allowed to attend driving school and retain your license because of your need to drive. To request a hearing, please detach and complete the form below and mail it to:

Driver License Division
P. O. Box
City, State
Telephone:

_____
John Doe, Director
Driver License Division

Driver's Name: Driver License No.:

Notice Date: Case No.:

I request a hearing on the proposed suspension of my driver's license. This request is make to (check one):

- ☐ refute the traffic convictions shown above
- ☐ discuss my need to drive at work or to my job
- ☐ discuss my driving record and the reasons for the above violations
- ☐ other: _____

_____ (signature) _____ (date)

STATE OF _____
DEPARTMENT OF TRANSPORTATION
DRIVER LICENSE DIVISION

TO: DRIVER'S NAME
ADDRESS

DATE: _____
DRIVER LICENSE NO: _____
CASE NO: _____

NOTICE OF PROPOSED LICENSE SUSPENSION

You are hereby notified that your driver's license will be suspended because on ____(date)____, at ____(location)____, you refused to take a test for driving while intoxicated. Under the authority of Section _____ of the State Code of Laws, your license will be suspended for _____ days beginning on _____, unless you request a hearing.

YOU HAVE A RIGHT TO A HEARING BEFORE YOUR LICENSE IS SUSPENDED,

IF A WRITTEN REQUEST FOR A HEARING IS RECEIVED BY THIS DEPARTMENT WITHIN 30 DAYS OF THE DATE OF THIS NOTICE

The hearing will determine whether or not your license should be withdrawn due to the above incident. This will only be based on whether:

- You were properly arrested for suspicion of driving while intoxicated
- You were asked to take an alcohol test and were told of the consequences of refusing to take the test, and
- You refused to take the test.

To request a hearing, please detach and complete the form below and mail it to:

Driver License Division
P. O. Box
City, State
Telephone

_____
John Doe, Director
Driver License Division

Driver's Name: Driver License No.:

Notice Date: Case No.:

I request a hearing on the proposed suspension of my driver's license.

_____ _____
(signature) (date)

EXHIBIT VI-3

STATE OF _____
DEPARTMENT OF TRANSPORTATION
DRIVER LICENSE DIVISION

TO: DRIVER'S NAME
ADDRESS

DATE: _____
DRIVER LICENSE NO: _____
CASE NO: _____

NOTICE OF HEARING

As per your request, an administrative hearing has been scheduled to consider whether or not your license should be suspended. The suspension of your license was proposed due to an alleged refusal to take a test for driving while intoxicated on (date) at (location).

The hearing will be conducted by a Hearing Officer in the Hearing Unit of the Driver License Division on:

Date: Place:

Time:

The only issues to be discussed at the hearing are:

- Whether you were properly arrested for suspicion of driving while intoxicated
- Whether you were asked to take an alcohol test and were told of the consequences of refusing to take the test, and
- Whether you refused to take the test.

At the conclusion of the hearing, the Hearing Officer will decide whether or not your license will be suspended.

_____
J. Jones, Director
Hearing Unit

Recommendation: That the driver be informed of the findings of the hearing and reasons for the agency's determinations.

Following the hearing, the driver should be adequately informed of the hearing officer's decision and resulting consequences. The driver ought to be told of the basis and reasons behind the agency's determination in clear, understandable terms. This does not require that a legal brief be provided, but rather that a simple explanation be included along with the final notice of withdrawal. For example, a check-off form might be utilized to indicate the hearing officer's factual findings. A copy of this would be included with the final notice to the driver as an explanation for the agency's decision. Similarly, if the driver is allowed to retain his license, the reasons for this should also be communicated.

Recommendation: That drivers be informed of any procedures for administrative appeals of a hearing officer's decision.

We believe that a driver should be informed of any administrative appeal procedures that are used by the licensing agency. Thus, if the hearing officer's decision may be appealed to the agency director before it is appealed to the court, then drivers should be so informed. They should be notified of how to file for an appeal and the basis for making an appeal. This could readily be accomplished by including a preprinted information slip with the final notice, or so informing the driver at the conclusion of the hearing.

5. CONDUCTING FAIR HEARINGS

In this section we consider how to conduct a "trial type" hearing that would provide the driver with a forum for discovering and challenging the evidence presented by the State for withdrawal of his license.

Recommendation: That formal hearing procedures be used in "trial type" hearings.

The hearing should be conducted formally, with evidence being submitted, examined, and challenged as necessary. The agency must bear the responsibility to prove sufficient cause for withdrawal of the driver's license. The hearing should be recorded in order to establish a record of the proceedings which would stand up to review by a court of law; this could, in most States, be accomplished by recording the hearing on tape, and transcribing later if an appeal is made.

Many agencies did not have any guides or manuals documenting the procedures to be used during these hearings. These procedures should be written down for all hearing officers to follow, in order to assure that hearings are conducted consistently throughout the State. A Hearing Officers' Manual, which would include procedural and other

relevant information, should be assembled and made available to hearing officers and their supervisors in each State.

Recommendation: That sanctioning determinations be separated from factual determinations during the hearing.

In many "trial type" hearings, the hearing officer must also determine whether, and for how long the license should be withdrawn, or whether to impose a lesser sanction such as probation and/or attendance at a driver'school. This sanctioning portion of the hearing should be separated as much as possible from the previous portion of the hearing; this can be done by summarizing the findings of the factual portion of the hearing as described above.

The information considered during the sanctioning portion of the hearing depends primarily upon the policy of each licensing agency as to what may be considered in withdrawing the driver's license. For example, some States may provide occupational licenses to those using their license as a means for earning their living; other States do not believe that the need to drive should impact on whether or not a problem driver is permitted to retain his license. Further, the driver's attitude, as demonstrated by his conduct during the hearing, may be considered more by some States than by others in setting the sanction. It would be beneficial if specific guidelines were set forth governing the amount of discretion over this process; these should also apply to interviews providing the "opportunity to be heard".

6. PREFERRED REVIEW AND APPEAL PROCEDURES

We indicated previously the benefits in establishing a procedure within the licensing agency or motor vehicle department for administrative review of the hearing officer's decision. This assumes the hearing officer is given full authority to make a decision based on his findings, with this decision becoming final unless appealed by the driver.

Recommendation: That first appeals be made to the agency.

This would allow a driver to request administrative review of the decision when he might not be inclined to appeal for formal court review. Procedures for administrative appeal must be readily available to all to avoid any possibilities of favoritism. The license withdrawal should be stayed, pending the final administrative determination.

The licensing agency should also establish quality control procedures which would require regular review of hearing officers' decisions by their superiors. This review would be to monitor decisions, particularly for whether hearing officers are properly applying the law; this could also serve to identify cases that could be used as examples in training programs. More importantly, it would provide assurance that cases are treated consistently throughout a State.

Recommendation: That appeals to a court of law be made on the record.

Judicial appeals should be limited to court review of proper administrative procedures. This recommendation is based on our analysis of the need to clearly delineate the authority and responsibilities of licensing agencies from those of the courts. For these reasons, appeals should be made to the courts based upon records established during hearings, including all evidence submitted, as well as any records resulting from administrative appeals.

7. HEARING OFFICERS

Driver licensing administrators are concerned with whether a special staff of legally-trained hearing officers must be established to conduct license withdrawal hearings. While this is not necessary to satisfy due process, many agencies may take this approach to obtain the capability for conducting proper hearings.

Recommendation: That trained specialists serve as hearing officers.

Earlier, we have argued for the creation of a separate organizational unit, within the driver licensing agency, responsible for conducting all license withdrawal hearings. Senior level personnel should be assigned to this unit, with their primary responsibilities being to serve as hearing officers. It is preferred that these be full time positions. These personnel should be specially trained in procedures for conducting "trial type" hearings.

Due process does not require that hearing offices be lawyers. Nevertheless, the type of hearing that is envisioned will require someone who is familiar with many legal techniques, such as how to accept evidence and enter it into a record, how to create a record which will stand up to court review, and how to judge facts and make decisions. These skills can, of course, be taught through training programs, such as that being conducted by NHTSA (although this program may require updating to reflect the findings of this study).

Hearing officers must be able to control the conduct of the hearing and to interact with lawyers representing licensees (these counsel often lack an understanding of the procedures applicable to driver license hearings). States which are faced with a choice of providing training to non-lawyer hearing officers or of hiring new personnel, may opt for hiring lawyers as an effective means to obtain qualified personnel as hearing officers.

Recommendation: That the hearing officer position be a senior level position in the agency.

There are additional traits which are desirable in selecting good hearing officers. These include the ability to listen, the ability to

interact with the public, the ability to elicit testimony from those appearing in hearings, and the ability to judge facts and weigh evidence in order to make a fair determination. Moreover, hearing officers usually must be very familiar with traffic safety considerations, and often must balance the rights of the public with regard to traffic safety against the rights of the individual and his need for a driver license to earn a living. These characteristics often require a mature individual with extensive experience in making difficult decisions. This is particularly true when the hearing officer has considerable discretion in determining the appropriate sanction for problem drivers. In many States, the hearing officer must also act as a counselor to the driver in an attempt to impart safe driver habits to those appearing before him. When combined, all of these traits require that the position of the hearing officer be one of high seniority in the driver licensing agency.

8. SUMMARY

To summarize our research and analysis of driver license withdrawal hearings, there are several areas of concern where improvements should be made by agency personnel. These are in addition to the specific due process problems cited in the previous chapter. They are summarized below:

- Driver Licensing Agencies Should Have Full Authority and Responsibility to Conduct Driver Licensing Hearings

  State legislatures should explicitly assign this authority to the licensing agencies. Moreover, the agencies should be fully empowered to conduct "trial type" hearings, and not share this responsibility with the courts. Driver licensing agencies should follow the requirements of Administrative Procedure Acts which delineate this authority and establish formal hearing procedures.

- Hearing Responsibilities Should be Consolidated within the Agency

  The responsibility for conducting hearings is spread among the various functional units in many State driver licensing agencies. These responsibilities should be consolidated within a single, independent organizational unit reporting to the agency director. This unit should have the authority and capability of conducting all driver licensing withdrawal hearings.

- Few Full Time Hearing Officers

  Few State driver licensing agencies have established positions within their organization with the title of hearing officer. A senior level position for a full time hearing officer should exist in each agency.

- Need for Procedural Changes

Various practices by State agencies in withdrawing drivers' licenses have been identified as being violative of due process requirements. These must be corrected to enable license withdrawals to withstand court review. Certain, additional procedures were suggested to provide an appearance of justice to the public, and these should also be adopted, as appropriate, by State driver licensing agencies. In particular, agencies should provide opportunities to be heard in all license withdrawal actions and adopt procedures to conduct formal "trial type" hearings in contested cases.

- Separation of Hearings from Driver Control Procedures

In many States, license withdrawal hearings are intermingled with interviews used as part of driver improvement/control programs. These need to be clearly separated, so that drivers understand the difference between the two proceedings. A "trial type" hearing on a license withdrawal is a serious matter and should not be degraded into an interview and conseling session.

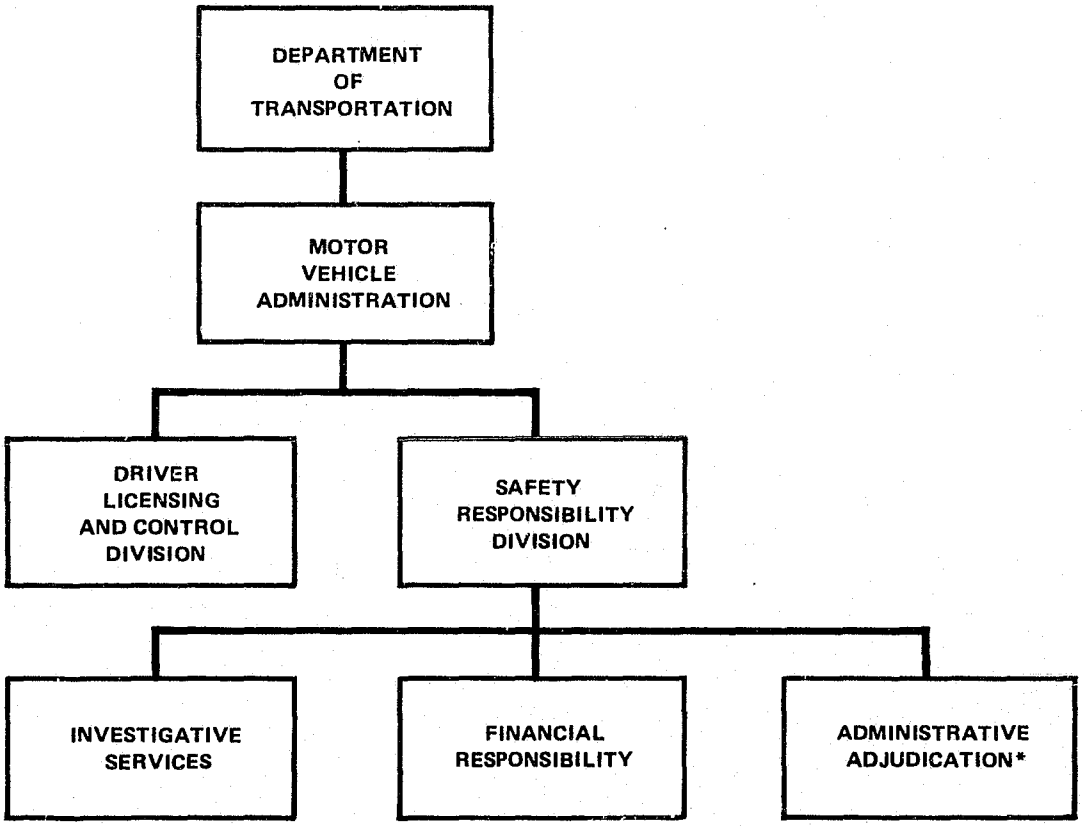
- Notices Need to be Revised

We have cited numerous deficiencies in the notices currently in use, and have suggested additional areas for improvement. These forms should be revised to provide clear, complete, and timely notice to the driver of the license withdrawal proceeding and his rights.

- Appeal Procedures Must be Specified

Appeal procedures are often unclear, particularly those concerning administrative appeals. These need to be clarified and communicated to those appearing for hearings. Procedures for administrative appeals should be adopted by each agency.

ORGANIZATIONAL RESPONSIBILITY FOR DRIVER LICENSE HEARINGS IN THE STATE OF MARYLAND



*CONDUCTS HEARINGS

EXHIBIT II-2

DOT HS 803 258

A STUDY OF ADMINISTRATIVE HEARINGS CONDUCTED BY STATE DRIVER LICENSING AGENCIES
Volume II

Robert F. Whitcomb

Arthur Young & Company
1025 Connecticut Avenue, N. W.
Washington, D.C. 20036

Contract No. DOT HS 5-01252
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Final Report
April 1977

Prepared for
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National Highway Traffic Safety Administration
Office of Traffic Safety Programs
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15. Supplementary Notes

16. Abstract

This report contained in two volumes, documents the results of a study of administrative hearings conducted by driver licensing agencies as part of their procedures in withdrawing drivers' licenses. Current practices of these agencies, as determined through a nationwide survey and observations of selected State operations, were compared with the anticipated requirements of due process to evaluate for compliance with these legal precepts.

The first volume contains the findings of the research, a summary of due process requirements, the evaluation for provision of due process, and recommendations for improvements. The second volume includes the results of the nationwide survey and of the visits to selected States. It also contains the paper written by Professor Robert Force of the Tulane School of Law titled "Procedural Due Process Requirements in Administrative Suspension and Revocation of Drivers' Licenses", which summarized his research of case law and determination of applicable due process requirements that were used in the evaluation of current practices.

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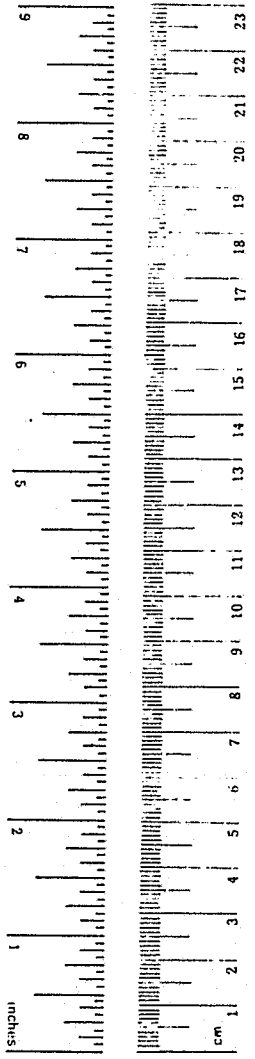
Form DOT F 1700.7 (8-72) Reproduction of completed page authorized

METRIC CONVERSION FACTORS

Approximate Conversions to Metric Measures

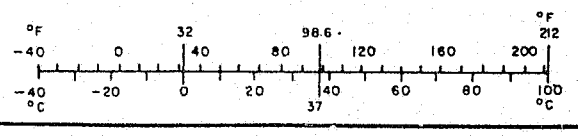
Symbol	When You Know	Multiply by	To Find	Symbol
		LENGTH		
in	inches	*2.5	centimeters	cm
ft	feet	30	centimeters	cm
yd	yards	0.9	meters	m
mi	miles	1.6	kilometers	km
		AREA		
in^2	square inches	6.5	square centimeters	cm^2
ft^2	square feet	0.09	square meters	m^2
yd^2	square yards	0.8	square meters	m^2
mi^2	square miles	2.6	square kilometers	km^2
	acres	0.4	hectares	ha
		MASS (weight)		
oz	ounces	28	grams	g
lb	pounds	0.45	kilograms	kg
	short tons (2000 lb)	0.9	tonnes	t
		VOLUME		
tsp	teaspoons	5	milliliters	ml
Tbsp	tablespoons	15	milliliters	ml
fl oz	fluid ounces	30	milliliters	ml
c	cups	0.24	liters	l
pt	pints	0.47	liters	l
qt	quarts	0.95	liters	l
gal	gallons	3.8	liters	l
ft^3	cubic feet	0.03	cubic meters	m^3
yd^3	cubic yards	0.76	cubic meters	m^3
		TEMPERATURE (exact)		
°F	Fahrenheit temperature	5/9 (after subtracting 32)	Celsius temperature	°C

*1 in = 2.54 exactly. For other exact conversions and more detailed tables, see NBS Misc. Publ. 286, Units of Weights and Measures, Price $2.25, SD Catalog No. C13.10:286



Approximate Conversions from Metric Measures

Symbol	When You Know	Multiply by	To Find	Symbol
		LENGTH		
mm	millimeters	0.04	inches	in
cm	centimeters	0.4	inches	in
m	meters	3.3	feet	ft
m	meters	1.1	yards	yd
km	kilometers	0.6	miles	mi
		AREA		
cm^2	square centimeters	0.16	square inches	in^2
m^2	square meters	1.2	square yards	yd^2
km^2	square kilometers	0.4	square miles	mi^2
ha	hectares (10,000 m^2)	2.5	acres	
		MASS (weight)		
g	grams	0.035	ounces	oz
kg	kilograms	2.2	pounds	lb
t	tonnes (1000 kg)	1.1	short tons	
		VOLUME		
ml	milliliters	0.03	fluid ounces	fl oz
l	liters	2.1	pints	pt
l	liters	1.06	quarts	qt
l	liters	0.26	gallons	gal
m^3	cubic meters	35	cubic feet	ft^3
m^3	cubic meters	1.3	cubic yards	yd^3
		TEMPERATURE (exact)		
°C	Celsius temperature	9/5 (then add 32)	Fahrenheit temperature	°F



APPENDICES

APPENDIX A

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HEARING DECISIONS AND APPEALS

HEARING OFFICERS

APPENDIX A

OVERVIEW OF RESPONSES TO SURVEY QUESTIONNAIRE

A primary objective of the project was to ascertain the current practices of State driver licensing agencies in providing license withdrawal hearings. To this end, a written questionnaire was designed and mailed to all States and Territories. A copy of the questionnaire is found on the following pages. All fifty States and the District of Columbia responded to the survey, and their responses have been compiled in the tables included in this appendix.

Following receipt of most of the completed questionnaires, the project team visited several driver licensing agencies to: 1) study, in detail, the conduct of hearings, and 2) validate the results of the survey. Having gained a much greater understanding of how and when hearings are provided, we are concerned with the way in which questions may have been interpreted and with the reliability of some of the answers. Thus, caution should be used before interpreting the survey results too literally.

The primary cause for misinterpretation was that "hearing" was not defined in the questionnaire. We learned from our State visits that the proceedings which constitute a hearing in one State may be only an interview in another State, with many variations in between. This greatly impacted how States responded to Section III of the questionnaire, as well as how many hearings they reported that they held in 1975 (question 4).

Our on-site research revealed that some States have different procedures and conduct different hearings, for each type of license withdrawal action. Except for a few questions on implied consent hearings, the questionnaire did not request separate information on each type, nor did it inquire whether different procedures were used. As a result, it is difficult to ascertain how the answers to questions in Sections II and III apply to each type of license withdrawal action, particularly for those States where responsibility for conducting hearings rests with more than one organization.

In addition to these two major concerns, several of the questions were found to be confusing or ambiguous. Others attempted to distinguish between narrow differences in procedures which apparantly were not always understood by the respondents.

In comparing some of the answers, we found errors in logic which must have been caused by these misunderstandings. The questions where this occured are listed below:

- Answers to questions 28, 29, and 31 did not clearly differentiate between administrative appeals and judicial appeals.

- The distinction between a hearing officer having power to make the license withdrawal decision, as compared to only making a recommendation, was not always understood, as evidenced by answers to questions 25 and 26.

- Statistical data often was non-existent in States that we visited for such questions as 16, 38, and the number of appeals in question 4, so many answers were the educated guesses of supervisory personnel.

- More States answered that they had a special statute covering hearing procedures than had indicated that they had "no APA" or "the APA did not apply to driver license withdrawals", as found by comparing responses to questions 5, 6, and 7.

The responses to all questions have been assembled and are presented in the following tables. Some are shown by individual State, while others reflect the compiled answers to reveal the number of States with certain practices. The tables are organized into five sections according to whether the questions related to:

- General Information

- Notification Procedures

- Hearing Procedures

- Hearing Decisions and Appeals

- Hearing Officers

Many of the tables are composites of two or more related answers. For each set of answers, the number of the question is identified as a reference to the questionnaire.

O.M.B. No. 004-S75058
Approval Expires January 31, 1976

NATIONAL SURVEY OF STATE DRIVER LICENSING AGENCY HEARING AUTHORITY

Conducted by
Arthur Young & Company
With the Cooperation of the
American Association of Motor Vehicle Administrators
for the
U.S. Department of Transportation
National Highway Traffic Safety Administration
Under Contract No. DOT-HS-5-01252

Please return completed survey questionnaire to:

DLAHA
Arthur Young & Company
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036

SURVEY OBJECTIVES

The National Highway Traffic Safety Administration set three major objectives to be accomplished to assist the States in the development of adequate driver licensing agency hearing procedures and resources. These objectives are:

- To determine the current state of development of driver licensing agency hearing authorities through a general overview of all States and in-depth studies of selected States
- To develop due process guidelines relative to the rights of individuals in an administrative driver license action hearing process
- To develop a model of the administrative process and organizational structure necessary to meet the due process requirements for administrative adjudication of driver license denials, suspensions and revocations and which will be responsive to the States' highway safety objectives pertaining to effective driver control.

SURVEY METHODOLOGY

The general overview of the state of development of the driver licensing agency hearing authority will be developed from this detailed questionnaire which has been sent to all 50 States, the District of Columbia, and the 4 commonwealths and territories. Upon initial analysis of the completed questionnaires, 12 States will be selected for in-depth, on-site survey of the nature of the hearing authority, the organization structure of the licensing agency, the hearing procedures now in use, the characteristics of the hearing officers, and the nature of the hearings.

QUESTIONNAIRE INSTRUCTIONS

This questionnaire has been designed to be completed by checking the appropriate boxes in multiple choice questions, by "yes" or "no" answers, by providing some basic statistical data, and by providing a minimum of narrative answers. All terms used herein are defined as in the Driver Licensing Laws Annotated, 1973.

A number of documents from each State are requested in an itemized list on the final page of the questionnaire, and these items are as important to the survey as the response to the questionnaire itself.

In order to maintain the survey schedule, it is requested that all questionnaires be completed and returned within two weeks to:

DLAHA, Arthur Young & Company
1025 Connecticut Avenue, N.W.
Washington, D. C. 20036

Any inquiries concerning this questionnaire should be directed to:

William H. Petersen; Telephone: (202) 785-4747

or

Robert Whitcomb; Telephone: (202) 785-4747

SECTION I
GENERAL STATE INFORMATION

1. This questionnaire completed for: _____
State or Territory

2. Name of State Driver Licensing Agency: _____

3. Number of licensed drivers in State in 1975: _____

4. Provide annual data for the following actions on drivers' licenses:

	Total Number	Number Involving Implied Consent Law	Hearings Held	Cases Appealed to Courts
A. New licenses issued	_____	XXX	XXX	XXX
B. Licenses renewed	_____	XXX	XXX	XXX
C. Licenses denied by DMV	_____	_____	_____	_____
D. License suspensions	_____	_____	_____	_____
E. License revocations	_____	_____	_____	_____
F. License cancellations	_____	_____	_____	_____

5. Does your State have an Administrative Procedures Act? Yes ☐ No ☐

6. If yes, does the Administrative Procedures Act apply to driver license hearing procedures? Yes ☐ No ☐

7. If no, is there a statute setting forth specific requirements for driver license hearing procedures? Yes ☐ No ☐

SECTION II
NOTIFICATION PROCEDURES

8. If any action to deny, suspend, restrict, revoke or cancel a driver's license is to be taken, how is the driver initially notified?

_____

_____

9. When the driver is notified of an intended administrative action described above, does he have to request a hearing if he desires one, or is a hearing automatically set?

(Check appropriate spaces)

Action	Must Request Hearing	Hearing Set Automatically
A. Mandatory denial		
B. Discretionary denial		
C. Mandatory suspension		
D. Discretionary suspension		
E. Mandatory restriction		
F. Discretionary restriction		
G. Mandatory revocation		
H. Discretionary revocation		
I. Mandatory cancellation		
J. Discretionary cancellation		

10. If the driver must make the request for a hearing, how many days after notice does he have to file his request? _____ days

11. How much time is required from date of notice until date of hearing? _____ days

12. Does the notice of hearing include:

A.	Time and place of hearing	Yes ☐	No ☐
B.	Details of the reason the license is in jeopardy	Yes ☐	No ☐
C.	A statement of where the burden of proof will lie	Yes ☐	No ☐
D.	What sanctions can be imposed as a result of hearing; e.g., license suspension	Yes ☐	No ☐
E.	What action will be taken if driver fails to appear	Yes ☐	No ☐
F.	Where information on procedures at hearing is available	Yes ☐	No ☐
G.	A statement of the rights of the licensee	Yes ☐	No ☐

SECTION III
HEARING PROCEDURES

13. When does a driver have a right by statute or by administrative procedure/ policy to a hearing on:

		Prior to Action	After Action	No Hearing Provided
A.	Mandatory denial			
B.	Discretionary denial			
C.	Mandatory suspension			
D.	Discretionary suspension			
E.	Mandatory restriction			
F.	Discretionary restriction			
G.	Mandatory revocation			
H.	Discretionary revocation			
I.	Mandatory cancellation			
J.	Discretionary cancellation			

14. Where are hearings held?

		If yes (√)	No. of Locations
A.	State capital only		
B.	County seat of driver		
C.	City or town of residence of driver		
D.	Nearest court of record of driver		
E.	Nearest DMV office		
F.	Nearest state police post		
G.	Other: Describe _____		

15. Is the driver entitled to have legal counsel present at the hearing? _____

16. At what percent of hearings are counsel present? _____

17. At a hearing are any of the following groups present to testify, and if so, can the defendant examine or cross-examine:

		May be present		If present, can be examined	
A.	Driver improvement counselor	Yes ☐	No ☐	Yes ☐	No ☐
B.	Arresting officer	Yes ☐	No ☐	Yes ☐	No ☐
C.	DMV psychologist/psychiatrist	Yes ☐	No ☐	Yes ☐	No ☐
D.	DMV departmental advocate	Yes ☐	No ☐	Yes ☐	No ☐
E.	Driver License Examiner	Yes ☐	No ☐	Yes ☐	No ☐

Does driver have the right to:

A.	Present evidence and have that evidence considered	Yes ☐	No ☐
B.	Examine witnesses	Yes ☐	No ☐
C.	Subpoena witnesses	Yes ☐	No ☐
D.	Subpoena records	Yes ☐	No ☐

18. Is an electronic recording made of the hearing? _____

19. Is a stenographer or court reporter present? _____

20. Does a stenographer/court reporter take verbatim minutes? _____

21. Is a verbatim transcript prepared

A. All cases _____
B. On request of driver _____
C. All cases involving _____

22. Who pays for verbatim transcript:

A. State _____ B. Driver _____

23. Is summary of proceedings prepared:

A. In lieu of verbatim transcript _____
B. In addition to verbatim transcript _____

24. In IMPLIED CONSENT cases, does the hearing go to matters of:

A.	Fact of refusal to submit to test	Yes ☐	No ☐
B.	Reasonableness of refusal to submit to test	Yes ☐	No ☐
C.	Reasonableness of arrest	Yes ☐	No ☐
D.	Legality of arrest	Yes ☐	No ☐

25. What are the duties and powers of the hearing officer at a hearing?

A.	Subpoena witnesses	Yes ☐	No ☐
B.	Subpoena records	Yes ☐	No ☐
C.	Swear witnesses	Yes ☐	No ☐
D.	Rule on admissibility of evidence	Yes ☐	No ☐
E.	Rule on questions of law	Yes ☐	No ☐
F.	Make findings of fact	Yes ☐	No ☐
G.	Make conclusions of law	Yes ☐	No ☐
H.	Make decision and issue order	Yes ☐	No ☐
I.	Recommend decision and order	Yes ☐	No ☐

26. If hearing officer does not make decision and issue order, who does?

_____

How:

A.	By adopting decision and order of hearing officer?	Yes ☐	No ☐
B.	By separate decision based on findings of hearing officer?	Yes ☐	No ☐
C.	By separate decision based on findings and conclusions of hearing officer?	Yes ☐	No ☐

D. Other (describe) _____

_____

27. How and when is hearing decision and order delivered to defendant?

Within _____ days by:

Reg. or Cert. Mail _____
First Class Mail _____
Personal Service by _____

28. Does an appeal from a court decision on a violation automatically stay administrative action on a license: Yes ☐ No ☐

29. Does an appeal from the initial administrative determination automatically stay action on a license? Yes ☐ No ☐

30. Does an appeal require an injunction to stop enforcement of an administrative decision and order if the appeal is to a:

A. Higher administrative officer Yes ☐ No ☐
B. Court of law Yes ☐ No ☐

31. Are appeals from the original administrative hearing to:

A. The Commissioner of Motor Vehicles Yes ☐ No ☐
B. To another executive officer: Yes ☐ No ☐

If yes, to whom: _____

C. To the Courts: (1) On the record _____ (2) De Novo _____

32. Are appeals from the final administrative decision provided to the Courts?

A. On the record _____ B. De Novo _____
C. Both A & B _____ C. No appeal to Courts _____

33. What sanctions can be imposed against a driver after a hearing:

Reason for Hearing	Sanctions Available					
	Driver Improvement	Denial	Suspension	Restrict.	Revocation	Cancel.
A. Age of Driver						
B. Medical Condition						
C. Motor Vehicle Homicide						
D. Habitual Violator-Determination						
E. Point Accumulation						
F. DWI						
G. Refusal to submit to test						
H. Moving Violation						
I. False statement on application for license						
J. Financial Responsibility						
K. Other_____						

SECTION IV
HEARING OFFICERS

34. Who appoints persons to hearing officer positions?

A.	Commissioner/director of motor vehicles	Yes ☐	No ☐
B.	Head of DMV hearing office	Yes ☐	No ☐
C.	Head of driver licensing division	Yes ☐	No ☐
D.	Head of driver improvement division	Yes ☐	No ☐
E.	Attorney General	Yes ☐	No ☐
F.	Other (specify) _____	Yes ☐	No ☐

_____

35. Give title of official to whom hearing officers report:

_____

36. Who assigns hearing officers to specific cases?

_____

37. What duties does hearing officer have in addition to driver license hearings?

A.	Conducts driver license examinations	_____
B.	Does driver improvement counseling	_____
C.	Does driver training	_____
D.	Provides legal counsel to DMV	_____
E.	Heads DMV license or driver services division	_____
F.	Conducts hearings on traffic violations	_____
G.	Conducts nondriver-related administrative hearings	_____

38. What is the average number of driver license hearings conducted by each hearing officer in a year? _____

39. Who serves as hearing officer in IMPLIED CONSENT cases?

A. Any DL hearing officer _____

OR

B. _____

40. Do any of the following perform as DLA hearing officers?

A.	Driver license examiner	Yes ☐	No ☐
B.	Driver improvement officer	Yes ☐	No ☐
C.	Driver records employee	Yes ☐	No ☐
D.	Head of driver improvement divisions	Yes ☐	No ☐
E.	Head of driver licensing division	Yes ☐	No ☐
F.	Head of driver records division	Yes ☐	No ☐
G.	Director of Motor Vehicle Department	Yes ☐	No ☐
H.	Counsel to Motor Vehicle Department	Yes ☐	No ☐
I.	Assistant Attorney General	Yes ☐	No ☐
J.	Administrative Procedures Unit hearing officer	Yes ☐	No ☐

41. Number of hearing officers who sit in driver licensing action hearings who are:

		Attorneys	Non-Attorneys
A.	Employees of driver licensing agency		
B.	Employees of another division of motor vehicle department		
	Name of division _____		
C.	Employees of state central Administrative procedures agency		
D.	Assistant Attorneys General in AG's office		
E.	Assistant Attorneys General assigned to DMV		
F.	Persons retained as independent administrative judges		

42. Of the hearing officers who are state employees, give position titles, salary ranges and indica.e if they are classified civil service or merit system positions

Position Title	No in Position	Annual Pay Range Lowest		Highest	Check if Civil Service
_____	_____	$ _____	to	_____	_____
_____	_____	_____	to	_____	_____
_____	_____	_____	to	_____	_____
_____	_____	_____	to	_____	_____
_____	_____	_____	to	_____	_____

Please furnish position descriptions or class specifications for each position title listed above for all classified civil service or merit system positions.

43. If hearing officers are <u>not</u> classified civil service or merit system employees, give qualifications for lowest or entry level position:

A. Education - High school graduate — Yes ☐ No ☐
   Years of college required _____

   College graduation required — Yes ☐ No ☐

   Law school graduation required — Yes ☐ No ☐

B. Experience:

   Prior experience in driver improvement — Yes ☐ No ☐
   If yes, how many years _____
   What kind of position _____

Prior practice of law Yes ☐ No ☐
If yes, how many years _____

Other experience requirements _____

_____

C. Special Qualifications:

Admitted to practice of law Yes ☐ No ☐

Special Training in Administrative Procedures Yes ☐ No ☐
If yes, describe _____

_____

Special Training in driver improvement Yes ☐ No ☐
If yes, describe _____

_____

Any other special training Yes ☐ No ☐
If yes, describe _____

_____

SECTION V
HEARING OFFICER TRAINING

44. Does your state have, for DLAHA hearing officers:

A. Formal pre-service training
in hearing procedures _____ No. of hours _____

B. Formal pre-service training
in driver improvement _____ No. of hours _____

C. Formal pre-service training
in traffic safety _____ No. of hours _____

45. Where is pre-service training held? _____

_____

46. Does your state have regular in-service or refresher training:

A. In hearing procedures? _____ How often _____
No. of hrs. each session _____

B. In driver improvement? _____ How often _____
No. of hrs. each session _____

C. In traffic safety? _____ How often _____
No. of hrs. each session _____

To provide a comprehensive analysis of the driver license hearing process and resources in your state, please furnish the materials listed below. We ask that you indicate whether the requested materials are being sent or if they are not available.

	Materials Enclosed	Sent Under Separate Cover	Materials Not Available
1. Organization and staffing chart of Department of Motor Vehicles	_____	_____	_____
2. Copy of state administrative procedures act	_____	_____	_____
3. Copy of statute authorizing driver license hearings	_____	_____	_____
4. Copy of forms of notice of			
A. License denial	_____	_____	_____
B. License suspension/revocation	_____	_____	_____
C. Hearing	_____	_____	_____
5. Position description or class specifications for			
A. Driver license hearing officers	_____	_____	_____
B. Driver improvement analyst	_____	_____	_____
C. Administrative judge or hearing officer	_____	_____	_____
6. Salary schedules for driver license hearing officers	_____	_____	_____
7. Any court decisions affecting the driver licensing hearing authority or procedures in your state	_____	_____	_____
8. Any legislation enacted since January 1975 affecting the driver license hearing functions	_____	_____	_____
9. Handbooks or other occupationsl aids provided to persons acting as hearing officers	_____	_____	_____

Name and Title of Person Completing Questionnaire

Name_____

Title_____

Telephone_____

Name and Title of Person to Contact for Clarification of Answers to Questionnaire

Name_____

Title_____

Telephone_____

Your cooperation in completing this survey questionnaire and providing the requested materials is greatly appreciated.

TABLE 1

TOTAL NUMBER OF LICENSED DRIVERS, LICENSE DENIALS, SUSPENSIONS, REVOCATIONS AND CANCELLATIONS BY STATE FOR 1975

	NUMBER LICENSED DRIVERS	TOTAL DENIED	TOTAL SUSPENSIONS	TOTAL REVOCATIONS	TOTAL CANCELLATIONS
1. ALABAMA					
2. ALASKA					
3. ARIZONA	1,000,000				
4. ARKANSAS	1,350,000	300	4,725	127	300
5. CALIFORNIA	13,500,000	199	102,181	33,997	5,350
6. COLORADO		6,173	52,208	3,915	1,772
7. CONNECTICUT	1,939,157		34,100	3,305	
8. DELAWARE	375,000	Not Available	5,744	2,526	Not Available
9. D.C.	350,000	748	12,863	2,832	25
10. FLORIDA	6,200,000		195,287	51,691	11,032
11. GEORGIA	3,000,000	10,000	12,184	24,716	281
12. HAWAII	609,237	17,629	332	22	78
13. IDAHO	556,254	28	3,115	33	12
14. ILLINOIS	6,300,000	5,630	76,403	16,712	7,552
15. INDIANA	3,500,000		16,939		
16. IOWA	1,900,000	Not Available	18,117	6,488	8,623
17. KANSAS	1,041,166	Not Available	18,547		
18. KENTUCKY	2,000,000		7,097	13,220	
19. LOUISIANA					
20. MAINE	623,579		14,917		
21. MARYLAND			6,584	9,831	
22. MASSACHUSETTS	3,500,000	40,000	29,672	9,815	
23. MICHIGAN	5,950,000	266	181,703	18,347	906
24. MINNESOTA	2,400,000		28,065	16,733	6,172
25. MISSISSIPPI	1,400,000	15	6,130	5,260	50
26. MISSOURI	3,000,000				
27. MONTANA	494,640				
28. NEBRASKA	1,200,000	235			222
29. NEVADA	398,237	Not Available	3,977	1,631	540
30. NEW HAMPSHIRE			7,662		8,249
31. NEW JERSEY	4,500,000	Not Available	253,516	Not Available	Not Available
32. NEW MEXICO	662,274	Not Available	1,415	6,282	Not Available
33. NEW YORK			2,600	4,500	
34. NORTH CAROLINA	3,161,146	114,441	58,605	55,836	2,466
35. NORTH DAKOTA	385,000	Not Available	Not Available	Not Available	Not Available
36. OHIO	7,000,000	Not Available	152,167	1,708	4,375
37. OKLAHOMA	1,722,400				
38. OREGON	1,600,000	N/A	66,000	95	30
39. PENNSYLVANIA	7,866,316		174,720	9,159	
40. RHODE ISLAND	550,000	350	1,621	236	400
41. SOUTH CAROLINA	1,611,176		35,122		
42. SOUTH DAKOTA	425,000		677	4,518	Not Available
43. TENNESSEE	2,932,177	65,305	7,947	32,053	Not Available
44. TEXAS	7,091,010	4,116	10,048	14,548	1,368
45. UTAH	830,000	Not Available	3,236	7,695	Not Available
46. VERMONT	316,000		26,405	1,854	0
47. VIRGINIA	3,154,268	63,186	41,491	21,637	58
48. WASHINGTON	2,150,000	Not Available	54,000		Not Available
49. WEST VIRGINIA	1,221,000				
50. WISCONSIN	2,721,184	2,000	27,188	20,000	6,264
51. WYOMING	280,148	318	2,150	89	113

TABLE 2

TOTAL NUMBER OF LICENSE DENIALS, SUSPENSIONS, REVOCATIONS AND CANCELLATIONS INVOLVING IMPLIED CONSENT LAW BY STATE, 1975

	IMPLIED CONSENT			
	DENIED	SUSPENSIONS	REVOCATIONS	CANCELLATIONS
ALABAMA				
ALASKA				
ARIZONA				
ARKANSAS	0	0	0	0
CALIFORNIA		22,756	N/A	N/A
COLORADO				
CONNECTICUT		0		
DELAWARE			638	
D.C.	N/A	N/A	N/A	N/A
FLORIDA		7,201	0	0
GEORGIA		2,740		
HAWAII				
IDAHO	0	351	0	0
ILLINOIS		8,473	N/A	N/A
INDIANA		252		
IOWA			1,355	
KANSAS		2,245		
KENTUCKY		2,003		
LOUISIANA				
MAINE		779		
MARYLAND				
MASSACHUSETTS		6,828		
MICHIGAN		6,317		
MINNESOTA				
MISSISSIPPI				
MISSOURI				
MONTANA				
NEBRASKA				
NEVADA	N/A	1,063		
NEW HAMPSHIRE		0	958	
NEW JERSEY		4,058		
NEW MEXICO				
NEW YORK				
NORTH CAROLINA	9,197			
NORTH DAKOTA				
OHIO		6,512		
OKLAHOMA				
OREGON		3,522	N/A	N/A
PENNSYLVANIA				
RHODE ISLAND		460		
SOUTH CAROLINA		1,013		
SOUTH DAKOTA			572	
TENNESSEE		783	0	N/A
TEXAS	None	2,221		None
UTAH			449	
VERMONT				0
VIRGINIA				
WASHINGTON			3,000	
WEST VIRGINIA				
WISCONSIN		237		
WYOMING		149		

TABLE 3

TOTAL NUMBER OF HEARINGS HELD BY TYPE OF CASE AND STATE, 1975

	HEARINGS HELD			
	DENIED	SUSPENSIONS	REVOCATIONS	CANCELLATIONS
ALABAMA				
ALASKA				
ARIZONA				
ARKANSAS	5	3,514	99	225
CALIFORNIA	199	29,061	17,161	N/A
COLORADO		57,885	3,881	
CONNECTICUT				
DELAWARE		3,157	349	
D.C.	748	1,857	1,961	25
FLORIDA		14,708	8,370	0
GEORGIA				
HAWAII	10	5	0	0
IDAHO	0	80	0	0
ILLINOIS			0	0
INDIANA		2,066		
IOWA		5,131	271	
KANSAS		5,022		
KENTUCKY		3,660		
LOUISIANA				
MAINE				
MARYLAND				
MASSACHUSETTS				
MICHIGAN		27,395	5,028	429
MINNESOTA				
MISSISSIPPI				
MISSOURI				
MONTANA				
NEBRASKA				
NEVADA	0	520	6	0
NEW HAMPSHIRE		367	312	
NEW JERSEY				
NEW MEXICO				
NEW YORK				
NORTH CAROLINA	14,872			
NORTH DAKOTA		20	98	
OHIO		487	78	
OKLAHOMA				
OREGON		1,098		
PENNSYLVANIA				
RHODE ISLAND				
SOUTH CAROLINA		3,336		
SOUTH DAKOTA			223	
TENNESSEE			530	N/A
TEXAS	None	52,730	None	None
UTAH		801	3,361	
VERMONT				0
VIRGINIA				
WASHINGTON			600	
WEST VIRGINIA				
WISCONSIN		1,000	527	
WYOMING	4	490	11	5

TABLE 4

TOTAL NUMBER OF CASES APPEALED TO THE COURTS BY TYPE OF ADMINISTRATIVE ACTIONS BY STATE, 1975

	DENIED	SUSPENSIONS	REVOKED	CANCELLATIONS
ALABAMA				
ALASKA				
ARIZONA				
ARKANSAS	0	8	1	1
CALIFORNIA	0	220	12	N/A
COLORADO	2	120	212	
CONNECTICUT				
DELAWARE			3	
D.C.	0	0	0	0
FLORIDA		63	7	0
GEORGIA		6		
GUAM				
HAWAII	1	-	-	-
IDAHO	0	4	0	0
ILLINOIS			0	0
INDIANA				
IOWA		74	97	-
KANSAS		50		
KENTUCKY				
LOUISIANA				
MAINE				
MARYLAND				
MASSACHUSETTS				
MICHIGAN	15	2,208	707	
MINNESOTA		2	106	1
MISSISSIPPI				
MISSOURI				
MONTANA				
NEBRASKA				
NEVADA		25	2	
NEW HAMPSHIRE		37	23	
NEW JERSEY		18		
NEW MEXICO				
NEW YORK				
NORTH CAROLINA				
NORTH DAKOTA		-	7	
OHIO		3,224	2	
OKLAHOMA				
OREGON		155		
PENNSYLVANIA				
PUERTO RICO	-	32	-	-
RHODE ISLAND				
SAMOA, AMERICAN				
SOUTH CAROLINA				
SOUTH DAKOTA			N/A	
TENNESSEE			13	N/A
TEXAS	42	1,064	NONE	NONE
UTAH		0	32	
VERMONT				0
VIRGIN ISLANDS				
VIRGINIA				
WASHINGTON			140	
WEST VIRGINIA				
WISCONSIN	-	17	12	5
WYOMING	0	0	0	0

TABLE 5
ADMINISTRATIVE PROCEDURES ACT

	QUESTION 5: DOES YOUR STATE HAVE AN APA?	QUESTION 6: IF YES, DOES THE APA APPLY TO DRIVER LICENSE HEARING PROCEDURES	QUESTION 7: IF NO, IS THERE A STATUTE SETTING FORTH SPECIFIC REQUIREMENTS FOR DRIVER LICENSE HEARING PROCEDURES?
ALABAMA	YES	NO	NO
ALASKA	YES		
ARIZONA	YES	YES	
ARKANSAS	YES	YES	
CALIFORNIA	YES	YES	YES
COLORADO	YES	YES	
CONNECTICUT	YES	YES	
DELAWARE	NO	NO	NO
D. C.	YES	YES	YES
FLORIDA	YES	NO	YES
GEORGIA	YES	YES	
HAWAII	YES	YES	YES
IDAHO	YES	YES	
ILLINOIS	YES	YES	YES
INDIANA	YES	YES	
IOWA	YES	YES	
KANSAS	NO		YES
KENTUCKY	NO	NO	YES
LOUISIANA			
MAINE			YES
MARYLAND	YES	YES	YES
MASSACHUSETTS	YES	YES	
MICHIGAN	NO		YES
MINNESOTA	YES	NO	NO
MISSISSIPPI	YES	YES	
MISSOURI	YES	NO	NO
MONTANA	YES	YES	
NEBRASKA	YES	YES	
NEVADA	YES	YES	
NEW HAMPSHIRE	YES	YES	
NEW JERSEY	YES	YES	
NEW MEXICO	NO		YES
NEW YORK	YES	YES	YES
NORTH CAROLINA	YES	NO	NO
NORTH DAKOTA	YES	YES	
OHIO	YES	YES	
OKLAHOMA	YES	NO	NO
OREGON	YES	YES	
PENNSYLVANIA	YES	YES	
RHODE ISLAND	YES	YES	
SOUTH CAROLINA	NO	NO	YES
SOUTH DAKOTA	YES	YES	
TENNESSEE	YES	YES	
TEXAS	YES	NO	YES
UTAH	YES	YES	
VERMONT	YES	NO	YES
VIRGINIA	YES	NO	YES
WASHINGTON	YES	NO	YES
WEST VIRGINIA	YES	YES	YES
WISCONSIN	YES	YES	YES
WYOMING	YES	YES	

BLANK - NO RESPONSE

TABLE 6

Question 8:

If any action to deny, suspend, restrict, revoke or cancel a driver's license is to be taken, how is the driver initially notified?

METHOD OF NOTICE DELIVERY

First Class Mail	33
Certified Mail	15
Registered Mail	1
No Response	2
	51

TABLE 7

TIME TO REQUEST HEARING

Question 10:
IF THE DRIVER MUST MAKE THE REQUEST FOR A HEARING, HOW MANY DAYS AFTER NOTICE DOES HE HAVE TO FILE HIS REQUEST?

Question 11:
HOW MUCH TIME IS REQUIRED FROM DATE OF NOTICE UNTIL DATE OF HEARING?

	No. Of Days To File	Time Between Date of Notice & Hearing Date
ALABAMA	10	15
ALASKA		
ARIZONA		20
ARKANSAS	10	14
CALIFORNIA	10	14
COLORADO	20	20*
CONNECTICUT	NO LIMIT	
DELAWARE	14	30
D.C.	5	14
FLORIDA	NO LIMIT	
GEORGIA	10	30
HAWAII	30	30
IDAHO	30	20
ILLINOIS	NO LIMIT	30
INDIANA		
IOWA	30	20
KANSAS	20	20
KENTUCKY	10-15	20
LOUISIANA		
MAINE	NO LIMIT	5
MARYLAND	15	30
MASSACHUSETTS	10	14
MICHIGAN		21
MINNESOTA	NO LIMIT	
MISSISSIPPI	20	20
MISSOURI	30	15
MONTANA	30	20-30**
NEBRASKA		
NEVADA	15	60
NEW HAMPSHIRE	NOT SET***	10-20
NEW JERSEY	5-15	
NEW MEXICO	NO LIMIT	20
NEW YORK		
NORTH CAROLINA	NO LIMIT	20
NORTH DAKOTA	10	30
OHIO	30	
OKLAHOMA	15	30
OREGON	20	
PENNSYLVANIA	30	
RHODE ISLAND	****	UNLIMITED
SOUTH CAROLINA	10	20
SOUTH DAKOTA	30	30
TENESSEE	60*****	NOT SET
TEXAS	20	10
UTAH	NO LIMIT	
VERMONT	10	20
VIRGINIA	10	5
WASHINGTON	10	15
WEST VIRGINIA	10	20
WISCONSIN	10-20	20
WYOMING	20	

*POINT & HABITUAL OFFENDER WITHIN 10 DAYS
**DEPENDING UPON TYPE OF HEARING
***IMPLIED CONSENT IS 30 DAYS
****IMPLIED CONSENT CASES IS 15 DAYS
*****MOVING VIOLATION IS 20 DAYS

TABLE 8

CONTENTS OF HEARING NOTICE

QUESTION 12: DOES THE NOTICE OF HEARING INCLUDE?

	YES	NO	NO RESPONSE
TIME AND PLACE OF HEARING	46	1	4
DETAILS OF REASON LICENSE IN JEOPARDY	40	6	5
A STATEMENT OF WHERE BURDEN OF PROOF WILL LIE	14	31	6
LISTING OF SANCTIONS THAT CAN BE IMPOSED	31	12	8
ACTION TAKEN IF DRIVER FAILS TO APPEAR	29	13	9
LOCATION OF INFORMATION ON HEARING PROCEDURES	14	29	8
STATEMENT OF RIGHTS OF LICENSEE	17	26	8

CONTINUED

2 OF 4

TABLE 9

HEARING: AUTOMATIC OR BY REQUEST

QUESTION 9:

WHEN THE DRIVER IS NOTIFIED OF AN INTENDED ADMINISTRATIVE ACTION, DOES HE HAVE TO REQUEST A HEARING IF HE DESIRES ONE, OR IS A HEARING AUTOMATICALLY SET?

ACTION	MUST REQUEST HEARING	HEARING SET AUTOMATICALLY	HEARING NOT AVAILABLE	NO RESPONSE
MANDATORY DENIAL	26	1	15	9
DISCRETIONARY DENIAL	36	5	3	7
MANDATORY SUSPENSION	28	2	9	12
DISCRETIONARY SUSPENSION	36	11	0	4
MANDATORY RESTRICTION	27	2	10	12
DISCRETIONARY RESTRICTION	31	4	8	8
MANDATORY REVOCATION	30	3	7	11
DISCRETIONARY REVOCATION	30	9	5	7
MANDATORY CANCELLATION	29	0	8	14
DISCRETIONARY CANCELLATION	33	3	9	6

TABLE 10

DRIVER RIGHTS TO HEARING: BY TYPE OF ACTION

QUESTION 13: WHEN DOES A DRIVER HAVE A RIGHT BY STATUTE OR BY ADMINISTRATIVE PROCEDURE/POLICY TO A HEARING?

	NUMBER OF STATES			
ACTION	PRIOR TO ACTION	AFTER ACTION	NO HEARING PROVIDED	NO RESPONSE
DENIAL:				
MANDATORY	11	13	16	11
DISCRETIONARY	23	17	1	10
SUSPENSION:				
MANDATORY	17	13	13	8
DISCRETIONARY	33	14	0	4
RESTRICTION:				
MANDATORY	11	14	9	17
DISCRETIONARY	20	13	3	15
REVOCATION:				
MANDATORY	13	13	18	7
DISCRETIONARY	26	12	1	12
CANCELLATION:				
MANDATORY	12	13	10	16
DISCRETIONARY	16	15	3	17

TABLE 11

LOCATION OF HEARINGS

QUESTION 14:
WHERE ARE THE HEARING HELD

	State Capitol	Driver's County Seat	Driver's City - Town	Nearest DMV	Nearest State Police Office	Other
ALABAMA		•				
ALASKA						
ARIZONA		•				
ARKANSAS		•				
CALIFORNIA				•		
COLORADO				•		
CONNECTICUT	•					
DELAWARE				•		
D.C.	•					
FLORIDA				•		
GEORGIA		•	•		•	
HAWAII			•			
IDAHO		•				
ILLINOIS	•					•*
INDIANA		•				
IOWA		•				
KANSAS		•				
KENTUCKY				•		
LOUISIANA		•				
MAINE				•		
MARYLAND		•				
MASSACHUSETTS				•		
MICHIGAN				•		
MINNESOTA		•				
MISSISSIPPI		•			•	•
MISSOURI	•					
MONTANA		•				
NEBRASKA						
NEVADA			•			
NEW HAMPSHIRE	•					
NEW JERSEY	•					
NEW MEXICO				•		
NEW YORK				•		
NORTH CAROLINA		•				
NORTH DAKOTA		•				
OHIO				•		
OKLAHOMA				•		
OREGON		•		•		
PENNSYLVANIA						
RHODE ISLAND	•					
SOUTH CAROLINA		•		•		
SOUTH DAKOTA						
TENNESSEE			•			
TEXAS		•				
UTAH				•		
VERMONT				•		
VIRGINIA			•			
WASHINGTON		•				
WEST VIRGINIA		•				
WISCONSIN		•	•	•	•	
WYOMING	•	•	•	•	•	

*CHICAGO

TABLE 12

LEGAL COUNSEL AT HEARINGS

Question 15:
IS THE DRIVER ENTITLED TO HAVE LEGAL COUNSEL PRESENT AT THE HEARING?

Question 16:
AT WHAT PERCENT OF HEARINGS IS COUNSEL PRESENT?

	Legal Counsel Permitted	% Of Legal Counsel Present
ALABAMA	+	50
ALASKA	+	
ARIZONA	+	60
ARKANSAS	+	12
CALIFORNIA	+	9
COLORADO	+	50
CONNECTICUT	+	
DELAWARE	+	*
D.C.	+	
FLORIDA	+	15
GEORGIA	+	40
HAWAII	+	
IDAHO	+	98
ILLINOIS	+	5
INDIANA	+	10-20
IOWA	+	30-40
KANSAS	+	33
KENTUCKY	+	30
LOUISIANA	+	90
MAINE	+	25
MARYLAND	+	35
MASSACHUSETTS	+	30-35
MICHIGAN	+	Less than 1%
MINNESOTA	+	5
MISSISSIPPI	+	5
MISSOURI	+	15
MONTANA	+	90
NEBRASKA		
NEVADA	+	65
NEW HAMPSHIRE	+	30-40
NEW JERSEY	+	**
NEW MEXICO	+	
NEW YORK	+	50
NORTH CAROLINA	+	25
NORTH DAKOTA	+	85
OHIO	+	70
OKLAHOMA	+	10
OREGON	+	
PENNSYLVANIA		
RHODE ISLAND	+	30
SOUTH CAROLINA	+	10
SOUTH DAKOTA		
TENNESSEE	+	65
TEXAS	+	30
UTAH	+	
VERMONT	+	
VIRGINIA	+	50
WASHINGTON	+	50
WEST VIRGINIA	+	
WISCONSIN	+	10-50
WYOMING	+	35

** REVOCATION 98%*
SUSPENSION 1%
*** 10% INFORMAL HEARINGS &*
60% FORMAL HEARINGS

TABLE 13

RIGHTS OF DRIVER AT A HEARING

QUESTION 17 B: DOES THE DRIVER HAVE THE RIGHT TO:

	YES	NO	NO RESPONSE
PRESENT EVIDENCE AND HAVE THAT EVIDENCE CONSIDERED?	48	0	3
EXAMINE WITNESSES?	44	1	6
SUBPOENA WITNESSES?	37	7	7
SUBPOENA RECORDS?	34	10	7

TABLE 14

CROSS EXAMINATION OF WITNESSES BY TYPE OF WITNESS

QUESTION 17 A: AT A HEARING, ARE ANY OF THE FOLLOWING GROUPS PRESENT TO TESTIFY, AND IF SO, CAN THE DEFENDENT EXAMINE OR CROSS EXAMINE?

	NUMBER OF STATES		
WITNESS	YES	NO	NO RESPONSE
DRIVER IMPROVEMENT COUNSELOR			
MAY BE PRESENT	28	9	14
CAN BE EXAMINED	22	8	21
ARRESTING OFFICER			
MAY BE PRESENT	41	5	5
CAN BE EXAMINED	37	-	14
DMV PSYCHOLOGIST/PSYCHIATRIST			
MAY BE PRESENT	8	25	18
CAN BE EXAMINED	8	4	39
DMV DEPARTMENTAL ADVOCATE			
MAY BE PRESENT	21	17	13
CAN BE EXAMINED	18	4	29
DRIVER LICENSE EXAMINER			
MAY BE PRESENT	29	14	18
CAN BE EXAMINED	24	2	25

TABLE 15

RECORDING OF HEARINGS

	QUESTION:	YES	ONLY IF REQUESTED	ONLY IF LICENSEE PAYS	NO	NO RESPONSE
18.	IS AN ELECTRONIC RECORDING MADE OF THE HEARING?	25	2	2	17	5
19.	IS A STENOGRAPHER OR COURT REPORTER PRESENT?	7	2	3	30	9
20.	DOES A STENOGRAPHER/COURT REPORTER TAKE VERBATIM MINUTES?	7	2	3	31	8

TABLE 16

WHO PREPARES AND WHO PAYS FOR THE VERBATIM TRANSCRIPT?

QUESTION 21: IS A VERBATIM TRANSCRIPT PREPARED?

	YES
ALL CASES	2
ON REQUEST OF DRIVER	23
OTHER:	
IMPLIED CONSENT	1
APPEALS	12
SELECTED CASES	1
FATAL ACCIDENTS	1
NO RESPONSE	11

QUESTION 22: WHO PAYS FOR VERBATIM TRANSCRIPT?

	YES
STATE	15
DRIVER	23
REQUESTOR	3
NO RESPONSE	10

QUESTION 23: IS SUMMARY OF PROCEEDINGS PREPARED?

	YES
IN LIEU OF VERBATIM TRANSCRIPT	23
IN ADDITION TO VERBATIM TRANSCRIPT	18
NO RESPONSE	10

TABLE 17

DUTIES AND POWERS OF HEARING OFFICER AT HEARING

QUESTION 25: WHAT ARE THE DUTIES AND POWERS OF THE HEARING OFFICER AT A HEARING?

	YES	NO	NO RESPONSE
SUBPOENA WITNESSES	32	11	8
SUBPOENA RECORDS	33	10	8
SWEAR WITNESSES	41	5	5
RULE ON ADMISSIBILITY OF EVIDENCE	42	4	5
RULE ON QUESTIONS OF LAW	39	7	5
MAKE FINDINGS OF FACT	45	3	3
MAKE CONCLUSIONS OF LAW	38	7	6
MAKE DECISION AND ISSUE ORDER	28	20	3
RECOMMEND DECISION AND ORDER	36	10	5

TABLE 18

HEARING PROCEDURES: MAKING DECISION AND ISSUING ORDER

QUESTION 26: IF HEARING OFFICER DOES NOT MAKE DECISION AND ISSUE ORDER, WHO DOES?

	NUMBER OF STATES
HEARING OFFICER	21
SUPERVISOR	4
REVIEW BOARD	2
COMMISSIONER/DIRECTOR	13
COURT/JUDGE	1
SECRETARY OF STATE	1
NO RESPONSE	9

TABLE 19

IMPLIED CONSENT HEARINGS BY TYPES OF EVIDENCE CONSIDERED

QUESTION 24: IN IMPLIED CONSENT CASES, DOES THE HEARING GO TO MATTERS OF:

	YES
FACT OF REFUSAL TO SUBMIT TO TEST	38
REASONABLENESS OF REFUSAL TO SUBMIT TO TEST	27
REASONABLENESS OF ARREST	33
LEGALITY OF ARREST	35
IMPLIED CONSENT CASES ARE TRIED BY COURT ONLY	8

TABLE 20

SANCTIONS BY REASON FOR HEARING

QUESTION 33: WHAT SANCTIONS CAN BE IMPOSED AGAINST A DRIVER AFTER A HEARING?

REASON FOR HEARING	SANCTIONS AVAILABLE					
	DRIVER IMPROVEMENT	DENIAL	SUSPENSION	RESTRICTION	REVOCATION	CANCEL-LATION
AGE OF DRIVER	16	21	14	20	11	16
MEDICAL CONDITION	15	35	26	39	22	27
MOTOR VEHICLE HOMICIDE	8	11	12	16	42	4
HABITUAL VIOLATION DETERMINATION	20	13	25	12	21	5
POINT ACCUMULATION	28	10	36	20	11	4
DWI	17	12	24	15	34	5
REFUSAL TO SUBMIT TO TEST	9	9	26	6	16	2
MOVIN(VIOLATION	28	12	35	19	12	4
FALSE STATEMENT ON APPLICATION	12	17	22	6	16	33
FINANCIAL RESPONBILITY	3	11	41	7	10	3
OTHER	0	2	4	1	1	1

NOTE: Multiple sanctions are available for each type of case.

TABLE 21

DELIVERY OF HEARING DECISION AND ORDER BY NUMBER OF DAYS AND CLASSIFICATION OF MAIL

QUESTION 27: HOW AND WHEN IS HEARING DECISION AND ORDER DELIVERED TO DEFENDENT?

	NUMBER OF STATES
TIME:	
UNDER 10 DAYS	6
10-20 DAYS	18
OVER 30 DAYS	7
AS SOON AS POSSIBLE	6
NOT AVAILABLE	4
NO RESPONSE	10
METHOD:	
REGULAR OR CERTIFIED MAIL	25
FIRST CLASS MAIL	24
NO RESPONSE	2

(9 States give decisions at the hearing and then follow it up with a formal notice)

TABLE 22

APPEALS

	YES	NO	NOT AVAILABLE
Question 28:			
DOES AN APPEAL FROM A COURT DECISION ON A VIOLATION AUTOMATICALLY STAY ADMINISTRATIVE ACTION ON A LICENSE?	31	20	3
Question 29:			
DOES AN APPEAL FROM THE INITIAL ADMINISTRATIVE DETERMINATION AUTOMATICALLY STAY ACTION ON A LICENSE?	18	33	-
Question 30:			
DOES AN APPEAL REQUIRE AN INJUNCTION TO STOP ENFORCEMENT OF AN ADMINISTRATIVE DECISION AND ORDER IF THE APPEAL IS TO A:			
HIGHER ADMINISTRATIVE OFFICER	5	30	16
COURT OF LAW	32	17	2
Question 31:			
ARE APPEALS FROM THE ORIGINAL ADMINISTRATIVE HEARING TO:			
COMMISSIONER OF MOTOR VEHICLES	13	24	14
ANOTHER EXECUTIVE OFFICER	16	18	17
COURT	4	-	-
QUESTION 32:			
ARE APPEALS FROM THE FINAL ADMINISTRATIVE DECISION PROVIDED TO THE COURTS:			
ON THE RECORD	24		
DE NOVO	21		
NO RESPONSE	6		

TABLE 23

HEARING OFFICER APPOINTMENT

Question 34:

WHO APPOINTS PERSONS TO HEARING OFFICER POSITIONS?

	Director Motor Vehicles	Head of DMV Hearing Office	Head Drivers License Div.	Head Driver Improvement Div.	Attorney General	Other
ALABAMA	•		•	•		
ALASKA			•			
ARIZONA						
ARKANSAS			•			
CALIFORNIA	•					
COLORADO						•
CONNECTICUT	•					
DELAWARE	•			•		
D.C.	•					
FLORIDA			•			
GEORGIA	•					
HAWAII						•
IDAHO	•					
ILLINOIS						•
INDIANA	•					
IOWA	•					
KANSAS						•
KENTUCKY	•					
LOUISIANA						
MAINE						•
MARYLAND	•					
MASSACHUSETTS	•					
MICHIGAN			•			
MINNESOTA	•					
MISSISSIPPI	•					
MISSOURI	•					
MONTANA						•
NEBRASKA						
NEVADA	•					
NEW HAMPSHIRE	•					
NEW JERSEY	•					
NEW MEXICO	•					
NEW YORK	•	•				
NORTH CAROLINA						•
NORTH DAKOTA	•					
OHIO	•					
OKLAHOMA	•					
OREGON	•					
PENNSYLVANIA	•					
RHODE ISLAND						
SOUTH CAROLINA	•					
SOUTH DAKOTA	•					
TENNESSEE	•					
TEXAS						
UTAH			•			
VERMONT	•					
VIRGINIA	•					
WASHINGTON	•					
WEST VIRGINIA	•					
WISCONSIN			•			
WYOMING						•

TABLE 24

HEARING OFFICER SUPERVISORS

STATE	QUESTION 35: TITLE OF OFFICIAL TO WHOM HEARING OFFICERS REPORT:	QUESTION 36: WHO ASSIGNS HEARING OFFICERS TO SPECIFIC CASES?
	HEARING OFFICERS REPORT TO:	WHO ASSIGNS CASES?
1. ALABAMA	Chief Hearing Officer	Chief Hearing Officer
2. ALASKA		
3. ARIZONA	Supervisor D.I.	Supervisor D.I.
4. ARKANSAS	Chief, D.I. Section	D.I. Case Analyst
5. CALIFORNIA	Supervising D.I. Anal. III & IV	Headquarters Scheduling Unit
6. COLORADO	Chief Motor Vehicle H.O.	Chief Motor Vehicle H.O.
7. CONNECTICUT	Chief Adjudicator	Chief Adjudicator
8. DELAWARE	Manager of D.I.	Manager of D.I.
9. DISTRICT	Chief Permit Control Div.	Senior Hearing Officer
10. FLORIDA	Chief, Bureau of D.I., Div. of Driver Licenses	Hearing Clerks by Geographic Area
11. GEORGIA	Supervisor, Revocation & Suspension Services Section	Supervisor, Revocation & Suspension Services Section
12. HAWAII	Chief of Police	Chief of Police
13. IDAHO	Director	Administrator Legal Division
14. ILLINOIS	Administrator Tech. Services Division	Administrator Tech. Services Division
15. INDIANA	Dep. Commissioner Safety	Assigned by Congressional Districts
16. IOWA	Informal Hearings: D.I. Officer, Formal Hearings: Director	D.I. Section
17. KANSAS	Gen. Counsel, Dept. of Revenue	Gen. Counsel Dept. of Revenue
18. KENTUCKY	Comm. Bureau of Veh. Reg.	Director - Div. of D.L.
19. LOUISIANA	Chief Hearing Officer	Evaluators Under Direction of C.H.O.
20. MAINE	Bureau Chief/Asst. Bur. Chief	Bureau Chief/Asst. Bur. Chief
21. MARYLAND	Director, Admin. Adjudication Division	Docket/Assignment Clerk
22. MASSACHUSETTS	Asst. Deputy Registrar	Asst. Deputy Registrar
23. MICHIGAN	Supervisor, Hearings Section, Bureau D.I.	D.I. Center Manager
24. MINNESOTA	Chief Evaluator	Chief Evaluator
25. MISSISSIPPI	Director of D.I.	Director of D.I.
26. MISSOURI	Bureau Manager	
27. MONTANA	A.G.	Chief Examiner
28. NEBRASKA		
29. NEVADA	Director, D.M.V.	Director, D.M.V.
30. NEW HAMPSHIRE	F.R. Administrator	Same, but generally all H.O.'s review and process cases
31. NEW JERSEY	Bureau Chief	Supervisor
32. NEW MEXICO	Dep. Comm.	Dep. Comm.
33. NEW YORK	Senior M.V. Referee	Clerical Unit
34. NORTH CAROLINA	Chief, D.L., H.O.	H.O. Handle all cases for a specific district
35. NORTH DAKOTA	Chief Legal Counsel and/or Highway Comm.	One H.O. only
36. OHIO	M.V. Registrar	One H.O.
37. OKLAHOMA	Director of D.I.	Director or Asst. Director D.I.
38. OREGON	Manager, Driver & Vehicle Safety Branch	Hearings Section, Section Head
39. PENNSYLVANIA		
40. RHODE ISLAND	Supervisor Oper. Control	Chief Hearing Officer
41. SOUTH CAROLINA	Lieutenant, D.I., Examining - Patrol District Commander	Lieutenant - Patrol Dist. Commander
42. SOUTH DAKOTA	Program Manager	Program Manager
43. TENNESSEE	Supervisor, D.I. Sec. & F.R. Sec.	Supervisor D.I. Section
44. TEXAS	J.P.'s Elected Court Judges appointed by City Govt.	N/A
45. UTAH	D.I. Analyst	D.I. Analyst & C.H.O.
46. VERMONT	Comm. of M.V.	
47. VIRGINIA	Manager D.I. Dept.	Asst. Manager D.I. Dept.
48. WASHINGTON	Asst. Director of Administrator	Administrator or Asst. Administrator
49. WEST VIRGINIA	Director Driver Control Div.	Hearing Officers assigned to specific areas
50. WISCONSIN	"Usual Supervisor"	Full-Time Hearing Officer by Safety Resp. Unit, others by usual supervisor
51. WYOMING	Governor or Tax Commissioner	Forwarded to Head Ex.

TABLE 25

ADDITIONAL DUTIES OF HEARING OFFICERS

Question 37:
WHAT DUTIES DOES A HEARING OFFICER HAVE IN ADDITION TO DRIVER LICENSE HEARINGS?

	Conducts DL Exam	Driver Improvement Counselor	Driver Training	Legal Counsel to DMV	Heads Driver License or Driver Service Div.	Traffic Violations Hearings	Non-driver Administrative Hearings
ALABAMA	+	+	–	–	–	–	–
ALASKA							
ARIZONA	–	+	–	–	–	–	–
ARKANSAS	–	+	–	–	–	–	–
CALIFORNIA	–	+	+	–	–	–	+
COLORADO							
CONNECTICUT	–	–	–	–	–	+	+
DELAWARE	+	+	–	–	–	–	–
D. C.	–	+	–	–	–	–	+
FLORIDA	–	+	+	–	–	+	–
GEORGIA	–	+	–	–	–	+	–
HAWAII	+	–	–	–	+	–	–
IDAHO	–	–	–	–	–	+	+
ILLINOIS	–	–	–	–	–	–	+
INDIANA							
IOWA	+	+	–	–	–	–	–
KANSAS	–	–	–	+	–	–	–
KENTUCKY	–	+	–	+	–	+	+
LOUISIANA							
MAINE							
MARYLAND	–	–	–	–	–	–	+
MASSACHUSETTS	–	+	–	–	–	+	+
MICHIGAN							
MINNESOTA	–	+	–	–	–	–	–
MISSISSIPPI	*	*	–	–	–	+	–
MISSOURI							
MONTANA	**	**					
NEBRASKA							
NEVADA	–	–	–	–	–	–	+
NEW HAMPSHIRE	–	+	–	***	–	****	†
NEW JERSEY							
NEW MEXICO	+	+	–	–	–	+	–
NEW YORK	–	–	–	–	–	+	+
NORTH CAROLINA	–	+	–	–	–	+	–
NORTH DAKOTA	–	–	–	–	–	+	–
OHIO							
OKLAHOMA	*	+		+		+	
OREGON	–	–	–	–	–	–	–
PENNSYLVANIA	–	–	–	–	–	–	–
RHODE ISLAND	–	+	–	–	–	+	–
SOUTH CAROLINA	+	–	–	–	+	+	–
SOUTH DAKOTA	+	+	–	–	–	–	–
TENNESSEE	–	+	+	–	–	+	+
TEXAS							
UTAH	+	+	–	–	–	–	–
VERMONT							
VIRGINIA	–	+	+	–	–	+	+
WASHINGTON							
WEST VIRGINIA	–	+	–	–	+	–	–
WISCONSIN	+	+	–	–	–	–	–
WYOMING	–	–	–	–	–	–	+

+ = YES
– = NO
BLANK = NOT AVAILABLE
** SPECIAL EXAMS*
*** ON OCCASION*
**** PARAPROFESSIONAL*
***** ADMINISTRATIVE ONLY*

TABLE 26

NUMBER OF HEARINGS

Question 38:
WHAT IS THE AVERAGE NUMBER OF DRIVERS LICENSE HEARINGS CONDUCTED BY EACH HEARING OFFICER IN A YEAR?

	AVERAGE NO. PER OFFICER IN A YEAR
ALABAMA	93
ALASKA	
ARIZONA	
ARKANSAS	750
CALIFORNIA	450
COLORADO	2600
CONNECTICUT	
DELAWARE	800
D. C.	2000
FLORIDA	1500
GEORGIA	457
HAWAII	15
IDAHO	150
ILLINOIS	
INDIANA	1000
IOWA	1200
KANSAS	1600
KENTUCKY	523
LOUISIANA	375
MAINE	3700
MARYLAND	
MASSACHUSETTS	4000
MICHIGAN	1500
MINNESOTA	700
MISSISSIPPI	200
MISSOURI	200
MONTANA	
NEBRASKA	
NEVADA	526
NEW HAMPSHIRE	
NEW JERSEY	
NEW MEXICO	
NEW YORK	2000
NORTH CAROLINA	2000
NORTH DAKOTA	100-150
OHIO	
OKLAHOMA	800
OREGON	550
PENNSYLVANIA	
RHODE ISLAND	3600
SOUTH CAROLINA	
SOUTH DAKOTA	
TENNESSEE	396
TEXAS	
UTAH	1984*
VERMONT	237
VIRGINIA	
WASHINGTON	15-60
WEST VIRGINIA	
WISCONSIN	500**
WYOMING	

* *INCLUDES INTERVIEWS*

** *FULL-TIME HEARING OFFICER*

TABLE 27

HEARING OFFICER IN IMPLIED CONSENT CASES

QUESTION 39: WHO SERVES AS HEARING OFFICER IN IMPLIED CONSENT CASES?

	NUMBER OF STATES
ANY HEARING OFFICER	20
DRIVER IMPROVEMENT ANALYST	3
SPECIAL HEARING OFFICER	5
ATTORNEY HEARING OFFICERS	3
LICENSE APPEAL BOARD DIVISION	1
JUDGE OR JUSTICE OF THE PEACE	6
FINANCIAL ADMINSTRATOR OR DIRECTOR MOTOR VEHICLES	1
PATROL DISTRICT COMMANDER	1
DESIGNATED EXAMINERS	1
NO RESPONSE	10

TABLE 28

QUESTION 40: DO ANY OF THE FOLLOWING PERFORM AS HEARING OFFICERS?

	YES	NO	NO RESPONSE
DRIVER LICENSE EXAMINER	6	37	8
DRIVER IMPROVEMENT OFFICER	26	17	8
DRIVER RECORDS EMPLOYEE	0	40	11
HEAD OF DRIVER IMPROVEMENT DIVISION	19	23	9
HEAD OF DRIVER LICENSING DIVISION	10	32	9
HEAD OF DRIVER RECORDS DIVISION	4	37	10
DIRECTOR OF MOTOR VEHICLE DEPARTMENT	8	32	11
COUNSEL TO MOTOR VEHICLE DEPARTMENT	11	29	11
ASSISTANT ATTORNEY GENERAL	4	38	9
ADMINISTRATIVE PROCEDURES UNIT HEARING OFFICER	19	22	10

TABLE 29

Question 41:
NUMBER OF HEARING OFFICERS WHO SIT IN DRIVER LICENSING HEARINGS WHO ARE ATTORNEYS AND NON-ATTORNEYS?

	ATTORNEY HEARING OFFICERS	NON-ATTORNEY HEARING OFFICERS	TOTAL
ALABAMA	1	32	33
ALASKA			
ARIZONA			
ARKANSAS	1	15	16
CALIFORNIA	3	151	154
COLORADO			
CONNECTICUT			
DELAWARE		1	1
D. C.		4	4
FLORIDA		17	17
GEORGIA	55	55	110
HAWAII	4	7	11
IDAHO	1		1
ILLINOIS		15	
INDIANA			
IOWA	2	11	13
KANSAS	5		5
KENTUCKY	4	10	14
LOUISIANA			
MAINE	1	5	6
MARYLAND	13	10	23
MASSACHUSETTS	1		1
MICHIGAN		54	54
MINNESOTA			
MISSISSIPPI			
MISSOURI			
MONTANA		5	5
NEBRASKA			
NEVADA		1	1
NEW HAMPSHIRE	2	6	8
NEW JERSEY	1	10	11
NEW MEXICO		2	2
NEW YORK	14		14
NORTH CAROLINA		19	19
NORTH DAKOTA		1	1
OHIO	1		1
OKLAHOMA	6	15	21
OREGON			
PENNSYLVANIA		51	51
RHODE ISLAND	2	5	7
SOUTH CAROLINA		21	21
SOUTH DAKOTA		31	31
TENNESSEE		18	18
TEXAS			
UTAH	1	25	26
VERMONT			
VIRGINIA	2	17	19
WASHINGTON	1	10	11
WEST VIRGINIA		4	4
WISCONSIN	1	20	21
WYOMING			

TABLE 30
HEARING OFFICER POSITION TITLES AND SALARIES
(QUESTION 42)

STATE	Hearing Officer	Hearing Officer I	Hearing Officer II	Hearing Officer III	Hearing Officer IV	Asst. Chief Hearing Officer	Chief Hearing Officer	Examiner	Examiner I	Examiner II	Asst. Chief Examiner	Dep. Chief Examiner	Chief Examiner	Driver License Evaluator	Contractive Attorney	Lawyer	Technical Advisor	Gen. Counsel	Princ. Atty.	Senior Atty.	Staff Atty.	D. I. Anal. I	D. I. Anal. II	D. I. Anal. III	D. I. Anal. IV	Trooper (CPL)	Trooper (SGT)	Trooper (LT)	Other	Number	Lowest	Highest	Civil Service
ALABAMA																										X				11	511	511	X
																											X			14	462	476	X
																												X		8	448	448	X
ARIZONA	X																													15	10,315	13,220	X
ARKANSAS		X																												16	8,476	12,441	
CALIFORNIA																						X								29	11,196	13,596	X
																							X							85	12,948	15,732	X
																								X						40	14,616	17,784	X
COLORADO		X																												0	9,876	13,236	
			X																											0	11,424	15,324	
				X																										24	13,236	17,736	X
						X																								1			X
							X																							1			X
CONNECTICUT	HEARING OFFICERS IN ADJUDICATION UNIT WHICH IS INDEPENDENT OF DL DIVISION																																
DELAWARE														X																2	8,345	12,518	X
D. C.	X																													4	14,824	19,270	X
FLORIDA	X																													17	7,308	9,708	X
GEORGIA	X (SGT.)																													3	12,816	18,564	X
	X (LT.)																													3	14,052	20,376	X
HAWAII								X																						4	14,856	22,608	X
IDAHO															X															$50 PER HR.			
ILLINOIS																	X													3	20,000	20,000	
															X															12	150/day	200/day	
INDIANA																															7,124	9,380	
IOWA		X																				X								10	11,700	15,886	X
																														2	12,792	17,524	X
KANSAS																X														5	14,000	21,000	
KENTUCKY																		X												1	17,700	24,888	
																			X											1	11,042	17,700	
																				X										1	10,344	16,055	X
																					X									1	9,354	14,555	X
	X																													10	7,716	11,976	
LOUISIANA	X																													8	740	1,140.	X
							X																							1	860	1,360.	X
MAINE	X																													2	9,245	12,380	X
MARYLAND	X																													23	14,000	19,500	X
MASSACHUSETTS	X																												ASST SUPER.				X
																													SUPV INSPECTOR				X
																													SUPV SPECIAL SERV				X
MICHIGAN																													DI ANAL 07	2	9,360	11,648	X
																													" 08	3	9,880	12,376	X
																													" 09	8	10,608	13,338	X
																													" 10	33	11,440	14,456	X
																													" 11	7	12,402	15,912	X
																													" 12	1	13,416	17,316	X

TABLE 30 (Cont.)
HEARING OFFICER POSITION TITLES AND SALARIES
(QUESTION 42)

STATE	Hearing Officer	Hearing Officer I	Hearing Officer II	Hearing Officer III	Hearing Officer IV	Asst. Chief Hearing Officer	Chief Hearing Officer	Examiner	Examiner I	Examiner II	Asst. Chief Examiner	Dep. Chief Examiner	Chief Examiner	Driver License Evaluator	Contractive Attorney	Lawyer	Technical Advisor	Gen. Counsel	Princ. Atty.	Senior Atty.	Staff Atty.	D. I. Anal. I	D. I. Anal. II	D. I. Anal. III	D. I. Anal. IV	Troopes (CPL)	Trooper (SGT)	Trooper (LT)	Other	Number	Lowest	Highest	Civil Service
MINNESOTA														X																8	820	1,015	X
MISSISSIPPI																													DI OFF. ASST DIRECTOR	8 2	12,890	12,848 13,100	
MISSOURI																													ASST BUREAU MANAGER	1	12,000		
MONTANA											X	X	X																	1 1 3	16,583 15,109 13,773	20,862 19,328 16,679	
NEVADA	X																													1	13,566	18,735	X
NEW HAMPSHIRE		X	X																											1 4			
NEW YORK																													MV REFEREE SR REFEREE SUP REFEREE	14 2 1	19,396 21,545 23,900	23,000 24,685 27,284	X X X
NORTH CAROLINA	X				X	X																								1 1 19	11,676 10,644 10,164	14,736 13,416 12,816	
NORTH DAKOTA	X																													1	11,760	15,768	
OKLAHOMA	X																													13	7,800	10,620	*
OREGON																													ADMIN ASST PROG. EXEC.	1 1	801 1,072	1,021 1,371	X X
RHODE ISLAND	X						X																						SUPERV. O. C.	2 1 1	8,606 9,386 11,117	10,088 11,029 13,213	X X
SOUTH CAROLINA										X																X	X			8,299 10,858 12,864	11,440 15,101 18,013	
SOUTH DAKOTA																													DI OFF I DI OFF II DI SUPER	2 2 1	8,059 8,787 9,578	10,222 11,200 12,282	
TENNESSEE	X																													18	8,472	11,724	X
UTAH	X						X		X													X								1 1 4 19	11,268 10,104 9,096 9,096	16,440 14,748 13,284 13,284	X X X X
VERMONT	X																													1	10,036	14,404	X
VIRGINIA									X													X							DI DEPT ASST MGR	15 1 1	10,512 12,000 11,472	13,128 16,400 14,328	
WASHINGTON									X													X							F.R. HO	1 1 8	1,403 997 781	1,791 1,273 1,273	X X X
WEST VIRGINIA																													INVESTI-GATORS	4	9,900	15,936	X
WISCONSIN																													ADMIN ASST 4 ADMIN ASST 3 DL AREA SUPERVISORS	2 2 16	13,000 11,000 11,000	17,000 15,000 15,000	X X X
WYOMING									X																					1			

*MERIT SYSTEM

TABLE 31

Questions 44 and 45:

DOES YOUR STATE HAVE FORMAL PRE-SERVICE TRAINING AND REGULAR IN-SERVICE TRAINING IN HEARING PROCEDURES, DRIVER IMPROVEMENT AND TRAFFIC SAFETY?

	Pre-Service Training			Inservice or Refresher Training		
	HEARING PROCEDURES	DRIVER IMPROVEMENT	TRAFFIC SAFETY	HEARING PROCEDURES	DRIVER IMPROVEMENT	TRAFFIC SAFETY
ALABAMA	•	•	•			
ALASKA						
ARIZONA						
ARKANSAS	•	•	•	•	•	•
CALIFORNIA	•	•				
COLORADO	•	•	•	•		
CONNECTICUT					•	
DELAWARE				•	•	•
D.C.	•	•	•	•	•	•
FLORIDA	•	•	•	•	•	•
GEORGIA	•	•	•	•	•	•
HAWAII						
IDAHO					•	
ILLINOIS				•		
INDIANA	•	•		•		
IOWA				•		
KANSAS						
KENTUCKY	•	•	•	•	•	•
LOUISIANA	•	•		•		
MAINE	•	•	•			
MARYLAND	•	•	•			
MASSACHUSETTS	•	•	•	•	•	•
MICHIGAN	•	•		•	•	•
MINNESOTA	•	•		•	•	
MISSISSIPPI			•	•	•	
MISSOURI						
MONTANA				•	•	
NEBRASKA						
NEVADA						
NEW HAMPSHIRE						
NEW JERSEY						
NEW MEXICO						
NEW YORK	•	•	•	•	•	•
NORTH CAROLINA	•			•	•	
NORTH DAKOTA	•					
OHIO						
OKLAHOMA					•	
OREGON				•	•	•
PENNSYLVANIA				•	•	•
RHODE ISLAND						
SOUTH CAROLINA	•	•	•	•	•	•
SOUTH DAKOTA	•	•				
TENNESSEE	•	•	•	•	•	•
TEXAS						
UTAH				•	•	•
VERMONT						
VIRGINIA					•	
WASHINGTON	•					
WEST VIRGINIA						
WISCONSIN	•	•	•	•	•	•
WYOMING						

APPENDIX B

OBSERVATION REPORTS FROM STATES VISITED

This appendix contains narrative reports on the findings of the project staff during their visits to the eight States selected for on-site observations of the conduct of driver license withdrawal hearings. Each report describes the organization of the hearing authority within the driver licensing agency; the process and procedures used in withdrawing licenses and conducting hearings; and the number and type of personnel serving as hearing officers.

FLORIDA

Driver licenses are administered by the Driver License Division of the Department of Highway Safety and Motor Vehicles. This Division has responsibility for maintaining driver records, initiating license withdrawal actions, and conducting hearings on all license withdrawals except those for implied consent. Hearings for implied consent cases are conducted by the courts.

I. ORGANIZATION

The Driver License Division consists of three Bureaus: (1) Bureau of Records; (2) Bureau of Driver Improvement; and (3) Bureau of Field Operations. The Bureau of Field Operations has responsibility for conducting the hearings, undertaking driver license investigations, and other field operations. This Bureau has 17 hearing officers located throughout the State. Additionally, there are 20 driver license revocation and suspension officers who serve as driver license investigators. A Review Board in Tallahasee reviews Departmental decisions on driver license withdrawals; this Board is comprised of four driver license review officers.

II. PROCESS AND PROCEDURES

1. Notification

For implied consent cases, the Division initiates the license withdrawal action upon receipt of a sworn statement of refusal from an enforcement officer. The Division sends a form letter to the driver informing him that his refusal to submit to the alcohol test will result in suspension of driver license beginning in 10 days, unless the driver files a petition for a hearing with the court of jurisdiction. The driver must file a petition with the court within these 10 days in order to stay the license suspension; he is also responsible for notifying the Department of his petition. The driver is informed that he may be represented by legal counsel, and he is told of the issues which will be considered by the court in the hearing. Due to large backlogs in many courts, considerable time may pass until the hearing is held, during which the driver retains a valid license.

For frequent violators, the State uses a point system to identify unsafe drivers. They are notified of the suspension action by certified mail. This suspension order identifies the reasons for the license withdrawal and the period of time that it will be withdrawn; a complete copy of the driver record is also enclosed with this correspondence. A driver may request that a hearing on the license withdrawal be given and, if so, he receives another formal notice from the Division. This second notice informs the driver of the date, time, and place of the scheduled hearing; it requests the driver to complete an enclosed affidavit form concerning information on the driver's need for his license, driving habits, and employment; and it tells the driver that

he must enroll in a driver improvement school prior to his appearance at the hearing. The affidavit must be completed and signed by applicant, notarized, and presented as evidence at the hearing. A written certification of enrollment in a driver improvement school must also be presented at the hearing.

Upon conviction of driving while intoxicated (DWI), drivers are subject to suspension and, if they request a hearing, special investigative efforts are initiated. These investigations are conducted by the driver license revocation and suspension officers, who may contact the court (which convicted the driver of this offense), law enforcement officers, the driver's employer, or his neighbors regarding the driver's character and drinking habits. A formal report is prepared and presented as a result of this investigation to the hearing officer prior to the hearing.

2. The Hearing

Hearings are all scheduled by the central office in Tallahassee. They are conducted in 32 of the 111 driver license examining offices throughout the State. The State is divided into regions and hearing officers are responsible for traveling within a region and conducting the hearings in that region. Each hearing lasts approximately 30 minutes.

Generally, three (3) major issues are discussed at the hearing:

- The driving record of the driver. Drivers are allowed to question this record, which was furnished to them with the initial notice of suspension, and hearing officers usually go over the record as part of the hearing.

- The affidavit presented by the driver of his need for a driver's license. By presenting this affidavit, the driver is given the opportunity to testify as to his employment or other needs for his license. Considerable time is spent discussing the hardship that will result in license withdrawal, and this may effect greatly the suspension decision.

- For DWI suspension cases, the investigation report is discussed and the driver is questioned on his drinking habits and driving behavior.

Evidence presented by the driver or his attorney in these hearings is either by affidavit or sworn testimony. All hearings are tape recorded. At the conclusion of the hearing, the driver is informed that the final decision will be made by the Review Board in Tallahassee, based upon the recommendation of the hearing officer, and that he will be notified within seven days of this decision. Occasionally, the hearing officer will indicate what his recommendations will be and what the driver may do if an unfavorable decision is reached. If the

suspension would be the first license withdrawal for the driver and would be for one month or less, hearing officers are authorized to make the final decisions in these cases and so inform the driver.

3. Review and Appeal Process

Hearing officers forward their recommendations to the Review Board in Tallahassee. Before the Review Board handles the case, a check is made of the driver's record for whether any additional infraction convictions have been recorded. The Review Board considers the driver's record, his affidavit and other supporting information, and the hearing officer's recommendation. A decision is usually made within seven days of receipt of the recommendation, and the driver is subsequently notified. Upon notification of the final decision, the driver is informed that he may request a reconsideration by the Review Board, or that he may appeal directly to a court of law. The appeal to the court will be on the record and would not stay the license withdrawal unless an injunction is obtained. Appeals are generally based on questions of whether the Department acted with proper authority or had reasonable basis for thei' action.

III. HEARING OFFICERS

Seventeen hearing officers in the Bureau of Field Operations are located through the State. The minimum requirement for the position is a high school degree and one year's experience as an examiner, supervisor, or suspension officer. None of the hearing officers are lawyers. Many of them have previously retired from other careers, such as the military, administrative positions, or counseling. All officers received pre-service training on hearing procedures and driver improvement, and refresher training is also provided at least every two years.

IDAHO

The Motor Vehicle Division (MVD) within the Department of Law Enforcement administers the driver licensing statutes in Idaho. The State's policy is to give drivers every opportunity to retain their licenses. It has developed a Driver Improvement and Control Program (DICP) and uses restricted or probationary licenses as much as possible; licenses are withdrawn only as a last resort. Formal hearings on license withdrawals (for frequent violators) are conducted by independent attorneys retained by the MVD; they held about 150 hearings in 1975. Implied consent cases are handled by the courts. Idaho has a mandatory insurance law which does not require financial responsibility hearings.

I. ORGANIZATION

The Driver License Bureau of the MVD manages the DICP through its Driver Improvement and Control Section. The majority of driver license sanction activities are handled by the Driver Improvement Counselors in this Section. If the MVD seeks to withdraw a driver's license and the driver requests a hearing, the case is then referred to the MVD Legal Division Administrator. He is responsible for retaining an outside attorney to hold the formal hearing.

II. PROCESS AND PROCEDURES

Frequent violators in Idaho may take three alternative courses of action upon the State's initiation of a license withdrawal action:

- they may request enrollment in the DICP in order to retain their license
- they may request an administrative hearing on the proposed license withdrawal
- they may accept the license withdrawal.

Most drivers select the first alternative. In this case, a driver must file a written petition to enter the program. He is then scheduled for an interview with a Driver Improvement Counselor who determines whether the driver may enter the program, based on his driving records, driving habits, attitude, etc. If a driver is not accepted into the program, and the counselor recommends that the license be withdrawn, the driver may request an administrative hearing. Drivers are usually given restricted or probationary licenses upon enrollment, violation of which is grounds for license withdrawal. The program costs $25.00 and provides community referral services to drivers as well as driver improvement counseling.

1. Notification

License suspension notices mailed to drivers inform them of the alternative actions cited above and that the suspension will become effective in 30 days. If the driver takes no action, a subsequent notice is mailed after 30 days to finalize the license withdrawal.

Requests for administrative hearings are forwarded to the Legal Division Administrator who schedules the hearing upon selection of an attorney to serve as Presiding Officer. The driver is then notified of the date, time, and place of the hearing, which is usually scheduled within 20 days of the request. The Legal Division prepares a case folder containing the division record, related notices, etc., and forwards it to the Presiding Officer.

3. The Hearing

Hearings follow formal civil procedures with each hearing being given a docket number. Transcripts of the hearings are taken or the driver may, at his own expense, name a qualified court reporter, provided that he requests it at least ten (10) days before the date set for the hearing. All parties have the right to introduce evidence, cross-examine witnesses, make arguments, and generally participate in the conduct of the proceedings.

Practice and appearance before the Agency is limited to Attorneys admitted to practice in the State of Idaho, except that an attorney not admitted in the State of Idaho but admitted to practice before the highest court of any other State or any Federal Court may appear and practice when associated with an attorney admitted to practice in the State of Idaho. Of course, drivers may present their own case before the Presiding Officer without the service of an attorney, however, it was estimated that only about 2% do so.

Interested parties to a hearing may also participate, upon securing an order from the Presiding Officer granting leave to intervene, provided that such party shall not be construed to be aggrieved by any ruling, order or decision of the Agency, for purposes of court review or appeal. All hearings are open to the public.

A Presiding Officer may, upon written notice to all parties, hold a prehearing conference for the purpose of formulating or simplifying the issues, obtaining admissions of fact and of documents which will avoid unnecessary proof, arranging for the exchange of proposed exhibits or prepared expert testimony, limitation of the number of witnesses and consolidation of the examintion of witnesses, procedure at the hearing, and other matters which may expedite orderly conduct and disposition of the proceedings or settlement of the case.

In addition to holding prehearing conferences, the Presiding Officer may call all parties together for a conference prior to the taking of testimony, or may recess the hearing for such conferences, with the view of carrying out this purpose, however, the Presiding Officer must state on the record the results of the conference.

During the hearing, all testimony considered must be sworn testimony. The order of procedure calls for drivers to present their evidence first and then opposing parties can either present conflicting evidence or challenge the evidence presented. The legal division Administrator acts as the prosecutor for the State in presenting the evidence for withdrawal of the driver's license. The Presiding Officer rules on the admissibility of the evidence following Idaho Code Section 67-5210, however, such rulings may be reviewed by the Agency in determining the matter on its merits.

All pleadings before the Agency are styled after those provided in the Idaho Rules of Civil Procedure and are verified. Thus, pleadings or briefs are typewritten or process printed, and follow a particular format as to content and order. If the pleading is found defective or insufficient by the Presiding Officer, on his initiative, or a motion of any party, it may be dismissed or required to be amended. After a hearing, an aggrieved party may petition for a rehearing, setting forth the ground or grounds upon which the order, decision, rule, directive, or regulation is thought to be unreasonable, unlawful, erroneous or not in conformity with the law and setting forth the nature and quantity of evidence the petitioner will offer if a rehearing is granted. Such petitions may be filed with the Presiding Officer within twenty (20) days after the service of the order.

The Presiding Officer makes his determination following the hearing and forwards it to the Legal Division Administrator. Presiding Officers may, at their discretion, defer the decision to the Department and thus leave it in the hands of the Legal Division Administrator.

Final decisions or orders are either mailed to the parties by the Agency or delivered personally to the parties and all decisions and orders are open to public inspection.

4. REVIEW PROCESS AND APPEAL

Upon receiving the decision or order, the driver may, within twenty (20) days, apply for a rehearing. Rehearings are conducted in accordance with the procedure at regular hearings. The filing of a petiton for a rehearing does not excuse compliance with the order nor suspend the effectiveness of such order unless it is otherwise stayed by the Department. Within ten (10) days after a petition for a rehearing is filed, any party to the proceeding may file an answer in support of or in opposition to the petition. Following the order or decision issued by the Department or presented by the Presiding Officer at the conclusion of the rehearing, there is no appeal available to the courts. The decision following the rehearing is final.

LOUISIANA

Driver licenses are administered in Louisiana by the Department of Public Safety, which also has responsibility for administering several other licensing programs. A Legal Services Administration was established in October, 1975, within the Department to handle all hearings related to license administration, and particularly driver license hearings. These hearings afford a driver the opportunity to exercise his rights prior to a potential suspension of his license. Emphasis is placed on legal due process rather than driver counseling.

I. ORGANIZATION

The Office of Motor Vehicles, which is one of six offices in the Department of Public Safety, issues driver licenses, maintains driver records, and identifies problem drivers for possible license action. The Driver Improvement Bureau of this office has a staff of Driver Control Officers who conduct interviews with problem drivers; they can place a driver on probation or recommend a driver be suspended, but they cannot hold license suspension hearings.

The hearings are all conducted by the Legal Services Administration, which is directed by the General Counsel for the Department who reports directly to the Secretary of Public Safety. There are presently eight Hearing Officers in Legal Services, reporting to a Chief Hearing Officer. This staff of Hearing Officers is provided legal advice by two counsels under the General Counsel, who represent the Department in appeals to the courts.

II. PROCESS AND PROCEDURES

In general, the Driver Improvement Bureau identifies drivers whose licenses should be suspended and notifies the driver of the proposed withdrawal action. The driver must request a hearing in writing to the Bureau, which then prepares a case folder on the driver and forwards it to Legal Services. The hearing is scheduled and conducted by Legal Services. After the hearing, a written summary of the proceeding and decision is incorporated into the case folder and sent back to Driver Improvement, which must notify the driver of the Department's decision.

1. Notification

Drivers may have their licenses suspended in Louisiana for three basic reasons: frequent violations, financial responsibility, or refusal to submit to an alcohol test. In all cases, the initial decision to take withdrawal action is made by the Driver Improvement Bureau, based on:

- frequent violations -- convictions of any moving violation while a driver is on probation

- financial responsibility -- involvement in an accident by an uninsured driver who may possibly have been at fault

- alcohol test refusal -- receipt of the refusal report from the police.

The Bureau of Driver Improvement notifies the driver of the proposed license suspension to become effective 30 days after the notice. This notice advises the driver of his right to request, in writing to the Bureau, a hearing on the suspension and that the suspension will be stayed pending the outcome of that hearing. In addition, those notified under the financial responsibility statutes are advised of the amount of security they must post to avoid license suspension.

If a driver requests a hearing, the Bureau acknowledges the request in writing to the driver, and forwards the case folder to Legal Services. A subsequent notice is then mailed by Legal Services, advising the driver of the date and place of the hearing. This notice advises him of his right to present evidence or witnesses, and (except for frequent violations) that he can request the State to subpoena witnesses upon payment of a witness fee. The notice also warns the driver that failure to appear will result in suspension of his license.

2. Scheduling

The Legal Services Administration does all of its own scheduling of the hearings. Each of the eight Hearing Officers is generally responsible for a separate geographic area within the State, so the cases are assigned according to the Hearing Officer covering the driver's parish (county). Unless otherwise requested, the hearing is scheduled in the parish seat nearest the driver's residence. Presently, hearings are scheduled 4-6 weeks in advance. Four hearings are scheduled per day with 1 1/2 hours allowed for each hearing.

For financial responsibility hearings, any other drivers involved in the accident are also notified of the scheduled hearing. This is done to allow them to testify as to the accident and thus "protect their interests," if they so desire.

3. The Hearing

The conduct and tone of the hearings is relatively formal and legalistic. The hearings are taped, and the initial step is to introduce all present into the record and swear in the driver (witnesses are sworn in as each is about to testify). The driver's case folder is sealed in an envelope which is opened at this time. (The only information on the outside of the envelope is the names of the drivers, lawyer, and witnesses, and the type of case.) The Hearing Officer then turns off the tape to review the case folder with the driver and to answer any questions the driver might have about his record.

When the hearing is resumed on the record, the Hearing Officer enters the appropriate documents as evidence into the record. The driver may contest these if there is questions of fact. At this point, the driver or his lawyer is allowed to present his case, examine witnesses, or present additional evidence. The Hearing Officer may also examine the witnesses and the driver; this is done more frequently if a lawyer is not present, in order to bring out all facts which are relevant to the case. Once all testimony is completed, the hearing is closed and the tape turned off. Some driver counseling may take place at this time.

The driver is not advised of the decision at the time of the hearing, but in writing a couple of weeks later. The Hearing Officer writes up the decision, including the relevant facts and reasoning behind the decision in a formal memorandum; this document is actually signed by the Hearing Officer and accompanies the official departmental notice of the decision when it is mailed to the driver.

Facts considered in the hearing vary according to the type of hearing, as follows:

- frequent violations -- The driver's record, attitude, and use of the license are primarily relevant, with little consideration as to his need for the license. The driver is reminded that he has had an interview and is on probation. The State must show a history of frequent and serious violations, by the documents in the case folder.

- financial responsibility -- The accident report is relied on, together with testimony, to show how the accident occurred. Responsibility for proof is on the driver to demonstrate that he was insured at the time of the accident or that there is no possibility of a judgement being placed against him.

- alcohol test refusal -- The State must prove that each part of the implied consent regulation is met. If the driver did not subpoena the police officer, the refusal report and alcohol influence report are entered into record and may be sufficient to prove the case.

The burden to provide sufficient State's evidence is placed on the Bureau of Driver Improvement: if necessary documents were not included in the case folder, they will not be entered as evidence or considered in the decision, even if the Hearing Officer knows they should exist.

The discretion of the Hearing Officer is normally limited to whether to affirm or deny the Department's proposed suspension. However, for frequent violators, the Hearing Officer may extend a probation period if the suspension is not upheld.

4. Review Process and Appeals

If a driver has new evidence or suspects malice in the Hearing Officer's decision, he can request the Department to have the case reheard by another Hearing Officer. This is very rarely done, because most cases in question are appealed directly to the courts. Appeals may go to the courts de novo or on the record, at the discretion of either party. In most courts, if no other request is made, the appeals are being heard on the record.

Within the Department, there are two case review points. The Chief Hearing Officer reviews every decision to assure they are handled properly; he will not reverse decisions, but will advise Hearing Officers of how to better apply the law. In addition, the Bureau of Driver Improvement may also review decisions to assure they have properly prepared the cases and that a reasonable number of their recommendations are upheld.

III. HEARING OFFICERS

The Hearing Officers and Chief Hearing Officer were all formerly Driver Control Officers in the Driver Improvement Bureau, prior to the recent creation of the Legal Services Administration. Most of them had also been driver examiners before becoming Control Officers and have been with the Department on the average of 7-10 years. A college degree is not required for the Hearing Officer position, and few, if any, of the present staff are college graduates. However, new position descriptions are presently under development which would retitle these positions to Administrative Judge, increase the salaries, and require at least a college degree or two years of college with appropriate experience.

The State has conducted formal driver license hearings only for the past few years, since the State statutes were amended to bring the Department under the requirements of the Administrative Procedures Act. At that time, the hearing officers all attended a one-time, two-week course in how to conduct a hearing and relevant case law. This course was developed and taught by the Dean of the Law School, Louisiana State University. Legal Services has a program of continued training whereby once a month all hearing officers meet in Baton Rouge for two days to discuss recent court rulings, Departmental policy changes, or other issues related to their jobs. Prior to each session, the hearing officers are provided with sample cases to review and make decisions on, which then become part of the meeting discussions.

NEW YORK

The Department of Motor Vehicles administers the driver licensing laws in New York. The Deputy Commissioner/Chief Counsel has responsibility for conducting all hearings for the Department and his staff acts as a service organization in this regard, with their first obligation being to handle the caseload. Although the hearings are all conducted by lawyers under the Chief Counsel and there is a high degree of attention paid to the legal ramifications of the hearings, there is also a large emphasis placed on driver safety counseling during the hearings. According to one Hearing Officer interviewed, the purpose of the hearing is threefold: to determine if the license should be suspended, to have the driver review his own driver record, and to remind the driver of the responsibilities of driving.

I. ORGANIZATION

The hearings are all conducted by the Division of Hearing and Adjudication under the Deputy Commissioner/Chief Counsel. This Division includes both Safety Referees who conduct the licensing hearings and Adjudication Referees who adjudicate minor traffic offenses in three jurisdictions (New York City, Buffalo, and Rochester). The Adjudication Referees may also conduct license hearings following a guilty verdict, and they have the the power to suspend a driver's license. The Division is split geographically between two Supervisory Referees, each of whom have a Senior Safety Referee under them to supervise the Safety Referees and coordinate their activities with the Division and other Divisions in the Department.

The Legal Division is the other division under the Chief Counsel, and its lawyers advise the Referees on legal matters. They also assist the Attorney General's Office in preparing for cases that are appealed to the courts. Prior to appealing a case to the courts, however, the case must be reviewed by the Department's Administrative Appeals Board, which is an independent body established by statute.

The Department also has a Division of Driver Safety which initiates actions against drivers that result in suspensions and/or hearings. Driver Safety administers the point system and determines what types of violations or what number of points require driver license sanctions.

The Motor Vehicle Division has responsibility for administering the financial responsibility laws. In New York, automobile insurance is mandatory, and residents' driver licenses are automatically revoked if they are involved in an accident and have no insurance. However, they may request a hearing which is then conducted by the Financial Responsibility Section, but these are very rare. In addition, Financial Responsibility requires uninsured out-of-state drivers to post security for accidents in New York and may have to conduct hearings for these cases, but these are usually processed by the filing of affadavits and only about two hearings a year are actually held.

II. PROCESS AND PROCEDURES

All hearings conducted by the Safety Referees are done so at the request of the Division of Driver Safety. At the time of our visit, this included hearings for:

- persistent violators -- accumulation of 11 or more points
- excessive speed violations -- more than 30 miles over the limit (these were soon to be eliminated)
- junior violations -- any violation by a driver under 21
- fatal accidents
- physical disabilities
- chemical test refusals,

each of which required a mandatory hearing with the driver. To reduce the number of hearings, Driver Safety instituted a system of offering waivers to persistent violators who might be suspended for the first time. Under the waiver system, if the driver accepts a shorter suspension period, the Department will waive the mandatory hearing. Otherwise, all cases must be scheduled for a hearing, and Driver Safety prepares a case folder, including a computer-generated hearing notice and the driver's record, and forwards it to the Division of Adjudication and Hearing.

1. Scheduling and Notifications

Hearings are actually scheduled by the Division of Hearing and Adjudication, which then mails the notice to the driver along with a copy of his driver record. The hearing is assigned geographically to the Safety Referee responsible for the driver's county. The time allowed for a hearing is usually one hour, with additional time provided for each expected witness.

The notice of scheduled hearing and a copy of the driver's record are mailed to the driver; notice of the hearing may also be mailed to involved witnesses. The notice informs the driver of the reason for the hearing, that he may be represented by counsel, that he should bring evidence or witnesses on his behalf, that he must bring his driver's license, and that failure to appear for the hearing may result in the suspension or revocation of the license.

2. The Hearing

The hearing is opened by introducing the driver and witnesses, and swearing in the driver. The Safety Referee then leads the conduct of the hearing, although if an attorney is present he may allow the attorney to take the lead in introducing the evidence and questioning

the driver or witnesses. Documents, such as the hearing notice and driver's record, are reviewed and formally entered as evidence into the record.

Facts covered in the hearing will vary by type of case, as follows:

- persistent violator -- The driver's record is reviewed in detail, including any attendance at group sessions or driver schools, giving the driver the opportunity to explain the circumstances concerning each violation. At the end of the hearing, the driver may explain his need for the license.

- fatal accident -- Testimony is limited to the circumstances surrounding the accident.

- chemical test refusal -- The Officer is asked to present the case in detail. The hearing is limited to considering six points:

  - reasonable suspicion of DWI
  - placed under arrest
  - charged with DWI
  - asked to take test
  - advised of rights and consequences
  - refused the test.

Once all evidence is entered into the record, the Safety Referee turns off the tape which has been recording the hearing. He then reviews the purpose of the hearing and the decisions he can make. Particularly for persistent violation cases, the driver has further opportunity to explain his need to drive and his attitude towards driving. The Safety Referee then determines the appropriate sanction, informs the driver of such, and advises the driver of his right to appeal. The driver still has further opportunity for questions. Usually either just before or after the decision, the Safety Referee will counsel the driver at length on the importance of safe driving. Although hearings began with emphasis on the legal aspects, they end with an emphasis on counseling.

The Safety Referee has considerable latitude in deciding the disposition of all cases except for chemical test refusals, where he can only uphold or deny the suspension. In making the decision, the Referee considers the driver's attitude, whether he has attended a driver safety clinic (conducted by the Department), and how much the driver needs the license for employment. The Referee then has the options of:

- no action
- attendance at a driver safety clinic
- restricted licenses
- suspension of the license from 10 days to a year or more
- suspension of the license plus some contingency for reinstatement
- revocation of the license.

In each case, the decision is actually made by the Safety Referee, and the driver is normally informed of the decision at the end of the hearing. In addition, a Notice of Suspension is subsequently mailed to the driver, and this must be completed by the Safety Referee. The Referee also must prepare a brief on the case, stating the evidence considered, legal basis, and disposition of the case.

3. Review Process and Appeal

The Senior Referees and Supervising Referees do not, on a regular basis, review individual case dispositions although they do maintain statistics on decisions to monitor the Referees. They do, of course, review cases which are appealed.

Appeals of any Referee's decision must be made to the Administrative Appeals Board. The Board reviews cases on the record; no hearings are held before the Appeals Board, although drivers may submit affidavits to become part of the case record. Subsequent appeals, which would then be to the courts, are few in number because the case record is so extensive following review by the Appeals Board.

III. HEARING OFFICERS

There are 14 Safety Referees located throughout New York, and an additional 30 Adjudication Referees in New York City, Buffalo, and Rochester. All Safety Referees are attorneys, and the State has used only attorneys as Hearing Officers for at least the last eight years, even before administrative adjudication was adopted. In addition to holding driver license hearings, the Referees must conduct hearings on inspection station licenses, dealer licenses, and any other licenses issued by the Department.

The Safety Referee position is an entrance level position, and few Safety Referees had any State service prior to their current positions. The typical Safety Referee now has over 7 years with the Department and is over 50 years of age. There is very little turnover since most of the Referees are happy with their jobs, and some have even turned down promotional opportunities which would have removed them from their daily work with the public.

When a Safety Referee is hired, he spends 2-3 weeks in training before conducting any hearings. This training includes a guided reading program on the statutes, driver regulations, and precedent cases, as well as time observing the conduct of hearings. When he begins holding his own hearings, he is supervised closely by a Senior Referee.

On-going training used to consist of semi-annual conferences to review relevant issues. However due to budgetary constraints, this has been replaced by a more regular distribution of appeal decisions and rulings by the Legal Division. The Senior and Supervisory Referees in Albany are constantly in touch, on an individual basis, with all of the Safety Referees to discuss policy and legal matters and in this way keep everyone up-to-date and maintain a consistency of case dispositions.

SOUTH CAROLINA

Driver license hearings are conducted by each organization which has any type of responsibility for administering or enforcing the driver license laws. Each organization has generally established its own policy and procedures for when, how, and by whom these hearings are conducted. Hearings are only conducted upon requests from drivers and only for cases where there are discretionary decisions. Administrative hearings are not provided for mandatory suspensions, mandatory revocations, or for habitual offenders, because these cases are decided by the courts and the driver was afforded an opportunity to be heard when his case was tried.

I. ORGANIZATION

Administrative hearings are conducted by both the Motor Vehicle Division and the Law Enforcement Division (Highway Patrol) of the State Highway Department. The Motor Vehicle Division administers the motor vehicle and driver license laws and conducts hearings as necessary for each aspect of the statutes. The Highway Patrol has responsibility for conducting implied consent hearings.

The Motor Vehicle Division is comprised of eight sections, four of which may conduct hearings with three of these hearings concerning the suspension of driver licenses. (The other type of hearing is on vehicle inspections.) The three organizations and the hearings they may conduct are:

- Financial Responsibility Section -- The Financial Responsibility Supervisor or Assistant Supervisor conducts all hearings for drivers who may be suspended after their involvement in an accident while they were uninsured and who have failed to post the required security. A compulsory insurance law went into effect on July 1, 1975, which had no provisions for withdrawal actions until an unsatisfied judgement was obtained, but it was expected that a provision for suspensions and hearings would be added in the next legislative session.

- Driver Examining Section -- Hearings for drivers suspended for point accumulation are conducted by the Lieutenant or Sergeant in charge of one of the seven driver license examining districts. The section headquarters (Columbia) also conducts hearings, reviews all hearing recommendations, and issues the decision notice.

- Driver Licensing Section -- This section maintains all driver records and identifies problem drivers via a point system. In addition, a new State law requires the Motor Vehicle Division to suspend a driver's license for anyone who has failed to pay the personal property tax on their

automobile, and the Driver Licensing Supervisor will hold any hearings resulting from these cases. None of these types of hearings had yet been held.

The Law Enforcement Division has responsibility for conducting all implied consent hearings. These are delegated to the Captain and his Lieutenants in each of the seven Highway Patrol District Headquarters. As in the Motor Vehicle Division, these people conduct the hearings as part of their other duties; there is no staff of Hearing Officers in the State whose primary responsibilty would be the driver license hearings. The scheduling and conduct of these hearings is handled entirely by each District Headquarters; Central Patrol Headquarters is not involved at all with the implied consent hearings.

II. PROCESS AND PROCEDURES

Each of the above organizations has developed their own procedures for scheduling and holding the hearings; thus, the descriptions below will generally be divided by organizations.

1. Notification

The Driver License Section generates the initial notice of suspension and mails it to the driver for implied consent and point system suspensions. If a driver does not request a hearing, these suspensions normally take effect within a day or so of the notice. However, the suspension orders are different in what they tell the driver, as follows:

- Implied Consent -- The notice states the reason for suspension and date of violation. It warns that the suspension will begin "unless a hearing is requested," but it does not tell how to request a hearing. In addition, it summarizes what issues may be considered at the hearing.

- Point System -- The notice states the reason for suspension and lists the violations and their assigned points. There is presently no statement that the driver may request a hearing, although the addition of such a statement is under consideration. However, the Driver's Handbook does advise drivers that they should contact the Department for a review upon receiving a suspension notice.

The Financial Responsibility Section reviews all accidents where drivers were not insured and notifies the uninsured that they must comply with the financial responsibility laws or their license may be suspended. The driver is advised to request a hearing if he can show there is not possibility of judgement for damages being rendered against him. If the driver fails to request a hearing, or following a hearing where the driver failed to demonstrate that he was free from fault, an Order of Suspension will be mailed to the driver. This Order

states that the driver can still prove coverage by insurance, release from damage suits, or can post security, but does not indicate any opportunity for further hearing.

2. Scheduling

Each Section does their own scheduling of the hearings:

(1) Driver Examining Section

Drivers often call or write the Driver Licensing Section when they receive an Order of Suspension. They are then advised that they must request a hearing; if the suspension had already taken effect, it would be not stayed pending the hearing. When the driver requests a hearing, the Driver Licensing Section so notifies the Driver Examining Section and forwards a printout of the driver's record.

The central office of Driver Examining schedules all hearings throughout the State and mails the notice containing the time and place of the hearing to the driver. The driver's record is then forwarded to the Lieutenant in the appropriate District. Hearings are scheduled in the County Seat of the driver's residence and usually take place about 10 days after Driver Examining receives the request for a hearing. Hearings are only held if scheduled in the Districts; however, because the Columbia office has on-line access to driver records, drivers can walk in and request a hearing while they wait.

(2) Highway Patrol

Upon receipt of a request for an implied consent hearing, the Driver Licensing Section sends a letter to the driver acknowledging the request, rescinding the suspension pending the hearing, and indicating which District Captain will handle the case. In addition, this letter indicates that the hearing will be limited to considering:

- Were you placed under arrest?
- Were you informed that you did not have to take the test, but that your driving privilege would be suspended or denied if you refused to take the test?
- Did you refuse to take the test upon request of the Officer.

A copy of this notice and of the alcohol test refusal form are then forwarded directly to the District Captain. The District Captain will usually assign the case to an available Lieutenant who will notify the driver of when the hearing is scheduled. The hearing is conducted in the driver's county.

(3) Financial Responsibility Section

The Financial Responsibility Section performs its own scheduling, and upon receipt of a request for a hearing, notifies the driver of the time and place for the hearing in the driver's county. The notice also advises the driver to bring evidence or witnesses which would support his claim of no liability.

3. The Hearing

The conduct of the hearings vary from informal for point system suspensions to formal for financial responsibility suspensions. During the visit, we were able to witness only point system hearings; therefore, much of the descriptions which follow are based on the statements made by those who conduct the hearings.

(1) Point System - Driver Examining Section

The hearing is conducted by a uniformed Lieutenant or Sergeant in their own office or similar room. The hearings last for 15 minutes on the average, and they are not recorded, nor are witnesses sworn in. Drivers may bring counsel or witnesses in their behalf.

The hearing is begun by reviewing the driver's record, discussing each violation and asking the driver to explain the circumstances of the violation. The driver is then asked why he needs the license and given the opportunity to show his attitude towards driving. The driver is then counseled on the importance of safe driving and the risks of losing his license.

If the hearing is anywhere other than Columbia, the driver is told he will be notified, in writing, at a later date of the result of the hearing. If the hearing is in Columbia, the driver is normally advised immediately of the decision. The hearing officer must complete an Administrative Hearing Report to make his recommendation with respect to withdrawing the driver's license. The Report also has space for the driver's signature, to certify attendance at the hearing, and for the final recommendations of Headquarters (Columbia). The driver is officially notified of the decision resulting from the hearing via a form completed and mailed by Headquarters, with a copy forwarded to the Driver Licensing Section.

Point system hearings are often the first opportunity of direct contact between the driver and the State. Consequently, as many as 90% of the first-time point system defenders have their licenses reinstated, and may be placed on probation or sent to driver schools.

(2) Highway Patrol - Implied Consent

These hearings are usually conducted by a Highway Patrol Lieutenant in his own office at District Headquarters or a similar office in the county. All witnesses are sworn in, although no recording of the hearing is made. Normally, the arresting officer will testify first, followed by the officer who operated the breathalizer. The driver or his attorney may question the officers following their testimony. Although the hearing may consider only the three points listed previously, the Hearing Officer will allow the driver to explain the circumstances or otherwise testify in his behalf.

A Hearing Officer's Report is used to document the results of the hearing. The Hearing Officer outlines the testimony and indicates whether the suspension should be rescinded or sustained. This report is notarized and then forwarded to the Driver Licensing Section which notifies the driver of the decision. Since there is no review point in between, the Lieutenant's recommendation is, in effect, a decision.

(3) Financial Responsibility

The Financial Responsibility Supervisor or Assistant Supervisor conducts the hearing in their offices or the offices of the driver examiners in the counties. The hearings are recorded on tape and all witnesses are sworn in. The former and current Supervisors jointly developed a formal, written procedure to be followed during the hearing, and much of the hearing is conducted by reading from his procedure. The procedure provides for:

- identification of the hearing officer, petitioner, and counsel
- statement of the purpose of the hearing and of the procedures to be followed
- entering of information from the accident report into the record
- statement that the petitioner was notified of the financial responsibility requirements and requested a hearing
- swearing-in of the petitioner and witnesses exclusion of witnesses from hearing each other's testimony
- opportunity for petitioner to present his case and cross-examine witnesses
- instructions to hearing officer to question witnesses to clarify any obscurities in the testimony
- further instructions to be given to the driver at the conclusion of the hearing, including:

- the driver will be notified by mail of the decision
- in the event of the suspension being upheld, the driver will have an additional 20 days to comply with the financial responsibility statutes
- instructions as to how to appeal the Department's decision.

Following the hearing, the Hearing Officer determines the disposition of the case and uses a form letter to notify the driver of the decision. If the driver must comply with the financial responsibility statutes and fails to do so within the 20 days, an official Order of Suspension is mailed out, with a certification on it that the driver was afforded a hearing.

4. Review Process and Appeals

There is no administrative review process for the recommendations (decision) of the hearing officers conducting either implied consent or financial responsibility hearings. Both of these types must be appealed directly to the courts.

For point system hearings, all recommendations by hearing officers outside of Columbia are reviewed by Headquarters before they become final decisions. Few recommendations are reversed, unless subsequent evidence is submitted such as further convictions of traffic violations. Procedurally, there is a further avenue of administrative review to the Director, Motor Vehicle Division, but no one remembers this ever being used. Otherwise, the decision must be appealed directly to the courts.

III. HEARING OFFICERS

All hearings in the State are conducted by personnel as part of their other duties in their respective positions. No special provisions are made in their job descriptions or qualifications for skills related to conducting hearings. Few, if any, of the positions required college degrees.

The general backgrounds of the individuals interviewed were as follows:

- Driver Examining -- The Lieutenants and Sergeants usually had over 15 years with the Department, the last several of which were in driver examining. Some had previously transferred from the Highway Patrol while others were hired from outside the Department.
- Highway Patrol -- Each District has four or five Lieutenants having many years on the force, whose primary responsibility is supervision of the Patrol.

Financial Responsibility -- The Financial Responsibility Supervisor has spent his entire career of 16 years with the Department of Financial Responsibility and was recently promoted to Supervisor.

UTAH

The Driver License Division of the Department of Public Safety administers driving licensing laws in Utah. Driver licenses may be withdrawn as a result of refusal to take a test of sobriety or as a result of point system accumulation. Departmental policy with respect to frequent violators is "to identify promptly and rehabilitate unsafe drivers" and to this end the Department utilizes warning letters, interviews, group sessions, a defensive driving course and, only as a last result, license suspensions and revocations. The conviction of specific serious violations does result in mandatory revocation of the license, with no opportunity for attendance at defensive driver school.

I. ORGANIZATION

The Driver License Division is divided into four Sections: Data Creation, Manual Records, Driver Improvement, and Field Operations. The Driver Improvement Section has overall responsibility for conducting driver license withdrawal hearings; it is directed by a uniformed Lieutenant with the assistance of a Sergeant. A driver improvement analyst in this section provides coordination and direction over the driver improvement programs and the placement of frequent violators in those programs. The Driver Improvement Section has Hearing Officers who conduct many of the hearings. Additionally, 19 examinors in the Field Operations Section, who are located throughout the State, conduct many of the hearings in rural sections of the State.

II. PROCESS AND PROCEDURES

1. Notification

A point system is used in Utah to identify unsafe drivers, and warning letters are sent to a driver upon accumulation of a certain number of points, suggesting that he enroll in a defensive driver course. Completion of this course results in a subtraction of points from his record. Drivers accumulating additional points are requested to appear for interviews; these may result in a recommendation either for the driver to enroll in another defensive driving course or for suspension of the driver license. Failure of the driver to appear for a scheduled interview is also grounds for suspension of the driver license. Drivers are then mailed an order of suspension and may request an administrative hearing.

Drivers who refuse to take a test for sobriety are notified by the Department that they are entitled to an administrative hearing, as scheduled. This notice is mailed upon the Department's receiving from enforcement officials the notices of arrest and refusal. The notice to the driver informs him of the date, time, and place of the

hearing and that failure to attend the hearing will result in revocation of the driver's license.

2. The Hearing

All hearings are scheduled by Headquarters, whether they are conducted there or out in the field. There are 49 locations throughout the State where hearings may be held, so hearings may be scheduled in close proximity to the driver's residence.

Hearing Officers wear uniforms similar to those of the Highway Patrol. They generally attempt to set the tone of the hearing as one oriented to discussing the driver's problems rather than one of enforcement or deterrence. In all hearings, drivers are allowed to be represented by legal counsel and to submit any evidence in their behalf. Only hearings related to implied consent are tape recorded; additionally, for these hearings, the Hearing Officer must complete a checkoff form indicating the basis for his decision.

Drivers and witnesses at the hearing are sworn in before being allowed to testify. Although evidence can be submitted and the Hearing Officer does have the right to determine whether it is relevant and admissible, evidence is not submitted formally into a record as would be done in a court of law. Generally, in frequent violator hearings, the discussion is oriented to the driver's record and driving habits in an attempt to find out why the driver is continuing to accumulate points. This is consistent with the Department's attempts to help and rehabilitate unsafe drivers. Hearing Officers usually inform the driver at the conclusion of the hearing of their decision; however, technically, the Hearing Officer's determination is only a recommendation to the Division Director. He makes the final decision, which is subsequently mailed to the driver.

3. Review and Appeal Process

Recommendations of Hearing Officers are forwarded to either the Director of the Driver License Division or the driver improvement analyst at Headquarters. Drivers may appeal the Hearing Officer's recommendation to either of these officials either in writing, personal appearance, or by a telephone. Once the driver has been notified of the Department's final decision, he may appeal it to a court of law. This appeal would be de novo and would not stay the license withdrawal, unless a court injunction is obtained.

III. HEARING OFFICERS

The Driver Improvement Section has six full-time personnel who may conduct license withdrawal hearings. This staff consists of 4 Hearing Officers and a Chief Hearing Officer, all of whom report to the Driver Improvement Analyst. In addition, 19 of the examiners in the Field Operations Section conduct hearings in rural portions of the State when necessary. None of these are attorneys. The Department

relies primarily on on-the-job training for both hearing officers and examiners, under the direction of their supervisors. There appear to be no formal training programs either in driver improvement or hearing procedures.

WASHINGTON

The Department of Motor Vehicles administers the State's driver control program with a great deal of emphasis on driver improvement. The suspension of a license is regarded as a necessary driver control measure, but one to be used almost as a last resort. Drivers are enrolled in group sessions and interviewed individually several times before they are considered for license withdrawal action and given the opportunity for an administrative interview, followed if necessary, by a formal hearing, to consider whether the suspension should take effect. The process of having both administrative interviews and formal hearings for frequent violators has only been in effect for about a year, although the Department has conducted hearings for implied consent, financial responsibility, and other cases for several years before that.

I. ORGANIZATION

The Driver Control Division of the Office of Driver Services has responsibility for all driver improvement and control programs in the Department. The Division is divided into three groups, having the following functions:

- Driver Improvement -- conducts group sessions, interviews, and hearings for all cases except financial responsibility.
- Financial Responsibility -- administers the financial responsibility law and conducts interviews and hearings for drivers who may be suspended under that law.
- Services -- maintains and reviews driver records, identifies problem drivers, and issues suspension notices as appropriate.

The Driver Improvement Section has nine Driver Improvement Analysts (DIAs) assigned throughout the State to conduct driver improvement interviews, implied consent hearings, and reinstatement hearings (for drivers who have had their licenses revoked by the courts under the habitual offender statute). These DIAs report to a senior DIA (an Assistant Director of the section) in Olympia who supervises the field force, is responsible for training all DIAs, and conducts the formal hearings for frequent violator suspensions. In addition, a Hearing Examiner, who is a lawyer, is assigned to the Seattle area primarily to conduct implied consent hearings.

The Financial Responsibility Section has five Financial Responsibility Analysts who review cases and conduct driver interviews. Washington statutes require a driver involved in an accident who was not insured and who is unable to prove he was not at fault, to post security or have his license suspended. After the interview, a driver may request a formal hearing which is conducted by the Financial Responsibility Hearing Officer, the single lawyer in the Section.

II. PROCESS AND PROCEDURES

The Driver Control Division conducts administrative interviews and hearings upon requests by drivers. This is usually as a result of a suspension notice having been mailed to a driver; for habitual offender reinstatement hearings, an individual may initiate the request two years after the revocation. For frequent violators, suspension notices are not issued until after the driver has attended at least a mandatory interview (normally followed by a group session), has been placed on probation, and has been convicted of a subsequent violation.

1. Notification

Suspension notices are mailed to drivers and state the reason for the suspension and the period of suspension. The notice does not tell the driver about his right to a hearing, although it does provide a telephone number to call for information. The back of the notice does, however, inform financial responsibility drivers of how to prove insurability, post security, submit proof of release for liability, or request a hearing.

The driver must request, in writing to the Department, that a hearing be scheduled to review his case. The request must be made within 15 days after receipt of the notice. The suspension is then stayed pending the hearings.

2. Scheduling

Upon receipt of a request for a hearing, Driver Control will confirm the request made by the driver, indicating that he will be contacted subsequently. The driver's records are then placed in a case folder by the Driver Control clerical staff and mailed to the Driver Improvement Analyst (or the Hearing Examiner) who has responsibility for the county residence of the driver. The DIA will then schedule the hearing himself, sometimes calling the driver's lawyer first to schedule it conveniently. A formal notice of the scheduled hearing is then mailed to the driver and his counselor, with the hearing being scheduled from two to eight weeks in advance.

For financial responsibility cases, the Financial Responsibility Analyst reviewing the case will generally schedule the interview within three weeks after the request. Although all the Financial Responsibility Analysts' offices are in Olympia, they will still schedule the interview in the driver's county and will travel to it.

3. Interviews

Interviews are conducted by Driver Improvement Analysts for drivers suspended for frequent violations or violation of their probation. This administrative interview is conducted informally, without sworn testimony, and is not recorded. Although the driver's record is usually reviewed, the scope of the hearing is dependent upon

the driver who must show cause why his license should not be suspended. This can be done by proving that violations have been placed erroneously in his record, or by explaining the circumstances of the violations in order to demonstrate that he has not been a safety risk. However, the DIA is not to consider the driver's need or dependency upon the license.

At the end of the interview, the DIA summarizes his findings to the driver; these are forwarded to Olympia as a recommendation as to whether to withdraw the driver's license. About 70% of the cases result in recommendations for suspension. Other options are: to change the length of the suspension period, schedule the driver for a group session or special counseling, put the driver on probation, require a re-examination, or rescind the order. The driver is advised of his right to appeal through a formal hearing with the Senior DIA.

Financial responsibility interviews are also conducted in an informal manner; there is no record or sworn testimony. As above, lawyers may or may not be present, although the drivers are often advised not to bring them. The interviews are primarily explanatory in nature and often serve to inform the driver of his responsibilities. As a result of the interview, the Financial Responsibility Analyst may reduce or eliminate the required security, but unless it is entirely dropped, the driver's license may still be suspended. The driver is advised at the end of the interview of his right to request a formal hearing before the Hearing Officer.

4. Hearings

The Driver Improvement Analysts in the field conduct two types of formal hearings: implied consent and habitual offender reinstatement. Both of these are recorded on tape and require sworn testimony.

In habitual offender reinstatement hearings, the onus is on the driver to demonstrate a change in lifestyle, behavioral pattern, and attitude that shows he is qualified to drive again. This is done formally with the submission of evidence or testimony. the DIA determines whether the driver is eligible for reinstatement and if he should be allowed to take the driver's examination. The decision of the DIA is final, in that, although it may be reviewed by the Senior DIA, there is no avenue of appeal to the courts.

Implied consent hearings are formal because they are limited to the consideration of five primary points:

- was there an arrest
- was there reasonable grounds for the arrest
- was the driver advised of his rights, including the right for a second test of his choosing

- was the driver advised of consequences
- did the person refuse?

A form is provided by the DIA to check off whether each of these was true and to document the arguments made by the driver, the DIA's findings, and his decision. The police officer must be present and must testify to each of the above points in order to make the case against the driver. The DIA, driver, and/or driver's counsel may cross-examine the police officer; the same applies to any testimony by the driver. The DIA can only decide whether to uphold or deny the suspension and has no discretionary powers over the length of the suspension.

Formal hearings are also conducted for frequent violators who have appealed the DIA's finding after the administrative interview. These hearings are conducted by the Senior DIA in the driver's county of residence. They are conducted on the record with sworn testimony. The hearing is begun by stating its purpose and entering into the record the driver's history and prior interviews with the department. Usually, the DIA who conducted the administrative interview will testify about that interview and of his decision. The driver or his counsel are asked to submit any new evidence or testimony as to why he should continue driving. The principal purpose of this hearing is to review the Department's prior decision, and no attempt to counsel the driver is made during the hearing. The Senior DIA must then determine whether to uphold or deny the prior decision; approximately 90% of these hearings result in a confirmation of the prior decisions.

Formal financial responsibility hearings are similarly conducted to review the prior recommendations of the Financial Responsibility Analyst following the interview. These hearings are conducted by the Hearing Officer in the driver's county. They are on the record with sworn testimony and cross-examination. However, they are even more formal in that, because the State is using the hearing to establish a record for use if an appeal is made, the State's case is presented by a lawyer from the Attorney General's Office. In effect, the Attorney General is representing the other driver's security interests in these cases. The State must establish the record and prove reasonable possibility of judgement, although it is still up to the driver to demonstrate that there is no possibility of judgement. Accident records and police reports cannot be used by the State to prove its case; the State will frequently notify other drivers involved in the accident of the scheduled hearing, and their testimony will be used to establish the case. However, the State does not subpoena these witnesses, and the majority of decisions in favor of the driver are due to the witnesses not showing up. After the hearing, the Hearing Officer documents his findings and decision in a formal, written brief.

5. Review Process and Appeals

The review and appeal process differs by type of case and depends on whether an interview or hearing has been conducted. For implied consent and financial responsibility hearings, appeals must be made directly to the courts. Implied consent appeals are de novo while financial responsibility cases must be on the record and must be appealed on a "show cause" basis. Appeals from the formal hearings for frequent violators are also directed to the courts and are de novo. In all of these cases, the Attorney General's Office is responsible for representing the State before the court.

Each DIA's finding from an administrative interview of a frequent violator is reviewed by the Senior DIA before the finding becomes a Departmental decision. These reviews serve as a quality control over the DIAs and if problems arise in the decisions, the Senior DIA will advise the particular DIA or monitor some of his hearings. Few of the findings are actually changed, and almost all of them become Departmental decisions signed by the Assistant Director for Driver Services.

There is no formal process for reviewing recommendations of Financial Responsibility Analysts after the interviews, other than that one analyst is senior to the others and probably discusses different types of cases with them. The Hearing Officer provides legal advice to the Analysts but does not review individual cases because this would jeopardize the impartiality of any subsequent appeals for a formal hearing.

III. HEARING OFFICERS

The staff of Driver Improvement Analysts represents a cross-section of backgrounds, including former driver examiners (some of whom were formerly policemen) and driver education instructors. In addition, the Hearing Examiner is a lawyer. Almost all have college degrees, and the position requires a degree or experience in driver education or examining. Three succeeding levels of the DIA position are defined, plus the Senior DIA, and each position is sought after by others in the Department.

The Senior DIA acts as supervisor and trainer for the rest of the staff. Initial training consists of 2-4 weeks of reading and observing of hearings. Continuing assistance and training is also provided by the Senior DIA who monitors decisions and the actual conduct of hearings. In addition, special seminars are occasionally held on such topics as techniques in conducting hearings.

The Financial Responsibility Analysts were all hired from outside the Department, as was the Hearing Officer. Their training has been on-the-job with the assistance of the Hearing Officer and the Attorney General's Office. The Analyst position requires a college degree in a related field, while the Hearing Officer must have earned a law degree, although he need not have passed the bar.

WISCONSIN

In Wisconsin, implied consent hearings are conducted by the courts, while other driver license withdrawal hearings are conducted by the Division of Motor Vehicles within the Department of Transportation. The hearings conducted by the Division of Motor Vehicles include hearings on safety responsibility (financial responsibility), and on frequent violators as a result of point accumulation or violation of a license restriction. In 1975, the courts held 116 implied consent hearings, of 237 implied consents suspensions, while the Division of Motor Vehicles held 136 safety responsibility hearings (out of about 2,000 suspensions) and 530 hearings for frequent violators (as a result of over 16,300 revocations and suspensions).

I. ORGANIZATION

The Division of Motor Vehicles is organized into four Bureaus: (1) Bureau of Administrative Services; (2) Bureau of Driver Control; (3) Bureau of Enforcement; and (4) Bureau of Vehicle Registration and Licensing. The Bureau of Driver Control has responsibility for conducting all driver license hearings. It has approximately 19 License Examiners located throughout the State who also serve as hearing officers in driver license withdrawal cases. Additionally, a full-time Hearing Officer is on the staff to handle safety responsibility hearings.

II. PROCESS AND PROCEDURES

Wisconsin uses a point system to identify frequent violators and also has a system of placing newly licensed drivers on probation for a period of two years. Drivers accumulting a certain number of points, or violating their probation criteria, are subject to suspension. Additionally, drivers may be given restricted licenses and may later be suspended for violation of those restrictions; they may also be suspended for failure to submit to a medical examination when requested. Drivers subject to the safety responsibility statute are identified through a screening process in which police reports and accident reports are reviewed for uninsured drivers who may be found liable as a result of automobile accidents.

The conviction of certain serious traffic violations requires mandatory withdrawal of the driver's license. There is no administrative procedure by which the driver can request a hearing on this type of license withdrawal. He can only appeal to the courts to reverse the conviction of the traffic violation.

1. Notification

When the Department initiates a license withdrawal action, the driver is notified by written notice via first class mail. The driver may then petition the Department for an administrative hearing within

10 to 20 days; he may also request a hearing any time after the suspension has taken effect. The notices inform the driver of the reasons for suspension and when it will take effect; however, they do not mention the right or opportunity for a hearing if the suspension is for an accumulation of points or for violation of restriction.

Once a driver has petitioned for a hearing, the Department generally schedules it within 20 days if the request is granted. State statutes allow the Department to determine whether a hearing is warranted, particularly for frequent violator cases; if upon review of the records, the Department determines that no hearing is warranted, then it does not have to grant the hearing. However, most petitions for hearings are granted.

2. The Hearing

Hearings are held in the county seat, town, or State Police post nearest to the driver's residence. Schedules for safety responsibility hearings are prepared at Department Headquarters, while the District Supervisors have responsibility for scheduling hearings conducted by their license examiners. In all hearings, drivers are entitled to be represented by counsel, but the number that do varies considerably depending upon the type of case. The hearings are all tape recorded.

Hearings on safety responsibility cases are concerned with two issues. First is whether the driver may potentially be liable for damages as a result of the accident. Most of the time, however, is spent on the second issue: determining the amount of potential liability and whether the driver is financially able to cover those costs. This results in the establishment of an amount of security the driver must deposit with the Department, or else have his license suspended.

For frequent violator hearings, once the basis for the suspension or revocation is established, the driver may testify as to the hardship that the license withdrawal would cause him. The examiner has the discretion to reduce the period of the proposed suspension, if he determines that the hardship warrants it.

3. Review and Appeal Process

Based on the recommendation of the hearing officer, the final decision and order is issued by the Administrator of the Division of Motor Vehicles. While drivers may request a reconsideration of this decision, there is no internal departmental appeal process. All appeals must be made to a court, on the record. The suspension or revocation remains in effect while the appeal to the court is being made, unless an injunction is obtained.

III. HEARING OFFICERS

There is only one full-time Hearing Officer in Wisconsin and he generally holds only safety responsibility hearings. His office is located in the State Capitol. The license examiners throughout the State are responsible for conducting other hearings on a part-time basis, under the direction of District Supervisors. None of these personnel are attorneys. They received a limited amount of training in hearings procedures as part of the Departmental training program.

PROCEDURAL DUE PROCESS REQUIREMENTS IN ADMINISTRATIVE SUSPENSION AND REVOCATION OF DRIVER'S LICENSES

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INTRODUCTION*

This paper will examine the applicability and requirements of the "Due Process" clause of the Fourteenth Amendment to driver license suspension and revocation proceedings.[1] Since it is awkward to continuously use the words "suspension" and "revocation", the term "suspension" will be used in this paper as including both "suspension" and "revocation". The paper is organized as follows:

I. Bell v. Burson: Narrow or Broad Application?
II. The Hearing Requirement
III. The Notice Requirement
IV. Hearing Procedures
V. Impartial and Competent Tribunal
VI. Judicial Review

In a sense the Bill of Rights in the United States Constitution may be characterized as a "code of criminal procedure" which compels the states to adhere to certain procedures in criminal prosecutions.[2] The Bill of Rights, however, does not explicitly address the subject driver license suspension

and revocation, nor does the constitutional "code of criminal procedure" apply to suspension and revocation proceedings since they are not "criminal proceedings." [3]

Judicial decisions, particularly, decisions of the United States Supreme Court determine whether or not the "Due Process" clause is applicable to a particular type of license suspension or revocation proceeding. If due process is applicable, decisional law will determine which procedures must be employed so as to satisfy due process.

It would be a simple task to discuss due process standards if there were a host of Supreme Court cases dealing with driver license suspensions. Unfortunately there are few such cases. With regard to certain matters discussed, many state and lower federal court cases can be found which deal with procedural requirements of license suspension. Often, however, these decisions implicate state statutory requirements and do not purport to be based on constitutional considerations. Thus, they cannot be used as direct authority for articulating "due process" requirements which is the subject of this paper. Notwithstanding the lack of voluminious Supreme Court precedents it is possible in some respects to say that due process requires this or due process prohibits that. In some other respects, reasoning by analogy, it is possible to project a range of alternatives in which some leeway is permitted in delimiting procadures. Finally, there are some areas which must be regarded as open questions; in other words it is not possible from the jurisprudence to determine whether or not a particular procedure is constitutionally required or constitutionally permissible.

I. Bell v. Burson[4]: Narrow or Broad Application

Prior to a discussion of specific due process requirements, it is essential to consider the general notion of administrative due process. The term administrative due process as used here refers to nothing more than the constitutional requirements and limitations imposed on the administrative decision making process to insure fairness and minimize arbitrariness. As a starting point, it is not necessary to go far back in history. The 1971 Supreme Court decision in Bell v. Burson[5] is the single most significant decision regarding due process and driver license suspension. Bell v. Burson is not only the leading case but one of the very few cases on point.[6] It is critical then to determine not only what Bell v. Burson decided, but what the case stands for. If we read Bell v. Burson narrowly and restrict its application to its facts, the case will be of only limited utility in searching for due process standards. On the other hand, if Bell v. Burson is given a broad application beyond its narrow holding, the case is then most instructive in formulating the due process requirements.

Bell v. Burson arose under the Georgia Safety Responsibility Act. The statute required a suspension of driver's license, registration certificate, and registration plates where an uninsured driver had been involved in an accident unless the driver posted security sufficient to satisfy a possible judgment for damages or injuries sustained in the accident and unless the driver gave financial responsibility for the future. Petitioner had requested an administrative hearing to show that he was not at fault in an accident in which he had been involved. Petitioner was uninsured and was unable to post security. He contended that he was not at fault in the accident and that no judgment could be entered against him; if no

judgment could be entered against him there was no reason for him to post security. Therefore, he argued, his inability to post security should not under these circumstances result in the suspension of his license. The contention was rejected at the administrative level and in the Georgia Court of Appeals which excluded consideration of the driver's fault or potential liability for the accident in pre-suspension administrative hearings.

The Supreme Court of the United States reversed and stated:

> We hold then, that under Georgia's present statutory scheme, before the State may deprive petitioner of his driver's license and vehicle registration it must provide a forum for the determination of the question whether there is a reasonable possibility of a judgment being rendered against him as a result of the accident.[7]

As a prelude to its holding the Court reached the following conclusions:

1. ... [L]ooking to the operation of the State's statutory scheme, it is clear that liability, in the sense of an ultimate judicial determination of responsibility, plays a crucial role in the Safety Responsibility Act.[8]

2. Since the statutory scheme makes liability an important factor in the State's determination to deprive an individual of his license, the State may not, consistently with due process, eliminate consideration of that factor in its prior hearing.[9]

3. ... [I]t is fundamental that except in emergency situations (and this is not one) due process requires that when a state seeks to terminate an interest such as that here involved, it must afford 'notice and opportunity for hearing appropriate to the nature of the case' before the termination becomes effective.[10]

4. ... [P]rocedural due process will be satisfied by an inquiry limited to the determination whether there is a reasonable possibility of judgments in the amounts claimed being rendered against the licensee.[11]

Bell v. Burson involved a license suspension predicated on a financial responsibility scheme which made the determination of possible liability critical. Sus-

pensions or revocations are authorized also under implied consent statutes[12], statutes prescribing mandatory revocation for commission of specified offenses[13], statutes defining persistent violators or habitual offenders - whether under point schemes or not, etc.[14] None of these have any relationship with financial responsibility regulations. Even financial responsibility laws differ, for example, under some statutes fault or liability is not a factor.[15]

Should Bell v. Burson be read broadly and applied generally to driver's license suspension and revocation proceedings, or should it be given a more restrictive application? The United States Supreme Court has not expressly resolved this question and the lower courts have taken both approaches. In many states, Bell v. Burson has been relied on to establish rules generally applicable in driver's license suspension and revocation proceedings. In these cases, Bell is seen, in the context of all driver's license proceedings, as embodying the requirements of prior notice and hearing - a basic tenet of due process.[16]

Other courts, however, have interpreted Bell v. Burson in more narrow terms[17] and have restricted its application to proceedings brought under statutes similar to the Georgia Safety Responsibility Act. These courts either have found Bell to be inapplicable or have refused to find Bell controlling in all respects where the suspension is based on an implied consent statute[18] or a persistent violator statute[19], or even under a financial responsibility statute which is distinguishable from the statute in the Bell case.[20] Another basis for limiting the application of Bell is by determining that suspensions, e.g., under implied consent or persistent violator statutes involve "emergencies" and, as such, are exceptions to the rule articulated in Bell.

Whether or not the Supreme Court itself will apply Bell v. Burson as a general rule in license suspension and revocation cases or whether the Court will accept

the narrower view which distinguishes and limits Bell cannot be predicted with assurance. There does appear, however, a stronger basis for believing that Bell v. Burson will be applied generally in such cases.

The language used by the Supreme Court in Bell and the cases cited by the Court in reaching its decision belie a narrow view of procedural due process:

> Once licenses are issued, as in petitioner's case, their continued possession may become essential in the pursuit of a livelihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases, the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment. Sniadach v. Family Finance Corp., 395 U.S. 337 (1969); Goldberg v. Kelly, 397 U.S. 254 (1970). This is but an application of the general proposition that relevant constitutional restraints limit state power to terminate an entitlement whether the entitlement is denominated a "right" or a "privilege." Sherbert v. Verner, 374 U.S. 398 (1963) (disqualification for unemployment compensation); Slochower v. Board of Education, 350 U.S. 551 (1956) (discharge from public employment); Speiser v. Randall, 357 U.S. 513 (1956) (denial of a tax exemption); Goldberg v. Kelly, supra (withdrawal of welfare benefits). See also Londoner v. Denver, 210 U.S. 373, 385-386 (1908); Goldsmith v. Board of Tax Appeals, 270 U.S. 117 (1926); Opp Cotton Mills v. Administrator, 312 U.S. 126 (1941).[21]

Not only is the above language broad enough to include all driver's license suspension proceedings but it could apply to a state attempt to terminate any license. The cases relied on by the Court are not "driver's license" termination cases but rather are regarded as the leading cases in the noncriminal procedural due process area. The Court cited as authority for its decision cases involving welfare benefits, employment, tax exemptions, etc. Bell v. Burson is not the culmination of a narrow line of cases involving driver license suspension under financial responsibility laws.

Furthermore, an examination of cases[22] in which the Supreme Court has cited Bell v. Burson reaffirms the view that Bell is a case of doctrinal significance,

i.e., it is one of the important cases in a line of authority which has overruled the "right-privilege" distinction and has extended procedural due process on a much braoder scale in civil and administrative proceedings.[23] The Supreme Court has overruled the distinction articulated in prior cases which had made available the procedural protections of due process where a state threatened to impringe upon a "right" but not in situations where mere "privileges" might be adversely affected. As part of the case law overruling the "right-privilege" distinction the impact of Bell is unequivocal: Since a driver's license, even though we may characterize it as a mere "privilege", represents an important interest to the licensee, a state may not take it away without affording procedural due process.

Even where the Court has found procedural due process to be inapplicable (principally in government employment situations) Bell has been cited with approval. The important interest in a driver's license has been distinguished from lesser interests found unworthy of constitutional procedural protection.

In Board of Regents v. Roth[24] the Court held that an untenured state employee whose contract had not been renewed has no right to a hearing to determine why his contract was not renewed. In determining that due process was not applicable the Court stated:

> The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property. When protected interests are implicated, the right to some kind of prior hearing is paramount. (Citing and quoting from Bell v. Burson at note 7).[25]
>
> * * *
>
> 'Liberty' and 'property' are broad majectic terms. They are among the [g]reat [constitutional] concepts ... purposely left to gather meaning from experience ... . [T]hey relate to the

whole domain of social and economic fact, and the statesmen who founded this Nation knew too well that only a stagnant society remains unchanged.' (Citation omitted). For that reason the Court has fully and finally rejected the wooden distinction between 'rights' and 'privileges' that once seemed to govern the applicability of procedural due process rights. (Citing Bell v. Burson at note 9). The Court has also made clear that the property interests protected by procedural due process extend well beyond actual ownership of real estate, chattels or money. (Citing Bell v. Burson at note 11).[26]

* * *

The Fourteenth Amendment's procedural protection of property is a safeguard of the security of interests that a person has already acquired in specific benefits.[27]

* * *

To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it. It is a purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined. It is a purpose of the Constitutional right to a hearing to provide an opportunity for a person to vindicate those claims.

Property interests, of course, are not created by the Constitution. Rather, they are created and their dimensions are defined by ensuing rules or understandings that stem from an independent source of state law - rules or understandings that secure certain benefits and that support claims of entitlement to those benefits. Thus, the welfare recipients in Goldberg v. Kelly ..., had a claim of entitlement to welfare payments that was grounded in the statute defining eligibility for them. The recipients had not yet shown that they were, in fact, within the statutory terms of eligibility. But we held that they had a right to a hearing at which they might attempt to do so.[28]

It is suggested that some of the employment termination cases represent exceptions to the due process rule founded on the policy that "the ultimate control of state personnel relationships is and will remain with the States; they may grant or withhold tenure at their unfettered discretion."[29] Even in public

employment termination cases, the Court has held on some occasions that due process is applicable and that due process has been satisfied notwithstanding the failure to make available certain specific procedures. In Arnett v. Kennedy, another case involving public employment, the Court in rejecting the claim for an evidentiary pre-termination hearing distinguished Bell v. Burson and other cases commonly cited as requiring pre-termination hearings in civil and administrative proceedings.[30] The same result has been reached in cases involving termination of social security disability benefits.[31]

In view of the fact (1) that the United States Supreme Court has viewed Bell v. Burson broadly as one of a series of cases which generally establish a right to procedural due process in civil and administrative proceedings, (2) that the Supreme Court has cited Bell in a host of cases in which it recognized or extended due process rights, (3) that the Court has cited Bell in cases which do not involve license suspensions or revocations, it would appear that a lower court would be hard pressed to rationalize a decision to read Bell narrowly. Except in limited instances (discussed in the immediately following paragraphs) it is difficult to understand how lower courts could refuse to apply Bell in driver license suspension or revocation proceedings. If the Supreme Court has used Bell in a broad manner to the extent of applying and relying on it in non-license situations it would appear that a lower court decision to restrict Bell to its facts and not apply it in other driver license suspension and revocation cases would be inconsistent with the view of the case maintained by the United States Supreme Court.

The Court in Bell recognized that certain due process rights may not be required in exceptional circumstances which have been characterized as "emergency

situations".[32] License suspensions under financial responsibility statutes do not represent emergencies. Some courts have blunted the impact of Bell by finding that suspensions based on grounds other than inability to post financial security after an accident involve emergencies and, as such, are exceptions to Bell. There are decisions involving implied consent[33] and persistent violator[34] suspensions which have held that these are emergency situations because drunken drivers and unsafe drivers must be taken off the road as quickly as possible. Thus, the "prior hearing" requirements of Bell has been found to be non-applicable.

This technique for limiting the scope of Bell by an expansive interpretation of "emergency situations" is questionable. Undoubtedly, if it is determined that a particular licensee lacks either the physical or mental abilities to drive safely - he is in fact a present danger to the public - and this would clearly be an "emergency situation". A narrow exception to the requirements of Bell would be necessary where danger to the public is both apparent and present. There have, however, been cases involving alcoholics and mental incompetents which have held unconstitutional statutory ex parte suspension proceedings.[35] The cases cited by the Supreme Court as support for an "emergency" exception involved highly regulated fields such as pure foods and drugs and banking, and the possibility of direct and immediate harm to the public.[36]

Justice Brennan, concurring in Laing v. United States, a case which dealt with seizures pursuant to jeopardy assessments has stated:

> Government seizures without a prior hearing have been sustained where (1) the seizure is necessary to protect an important governmental interest, (2) there is a 'special need for very prompt action,' and (3) 'the standards of a narrowly drawn statute' require that an official determine that the particular seizure is both necessary and justified.[37]

How can a suspension for failure to submit to a chemical analysis under an implied consent statute qualify as an "emergency situation"? Refusal to submit is not evidence of intoxication. Suspension under these statutes commonly can be imposed whether or not the licensee is convicted. Even if it is assumed that the licensee was under the influence at the time of the refusal to submit, it does not follow that he may be presumed to be an alcoholic or habitual drunkard. To suspend a license as punishment for driving while intoxicated is permissible. To suspend a license for interfering with the administration of the D.W.I. laws by refusing to submit to a chemical test is permissible. Suspension in the latter case, however, is not imposed to rid the road of a menace to public safety but to promote the efficient operation of D.W.I. laws. It would appear that the only "emergency situations" fairly intended in Bell would be those where a delay caused by compliance with the prior hearing requirement of Bell creates a realistic possibility of a threat to public safety. The persistent offender, perhaps, offers a stronger case for the "emergency situation". Yet even here where a possible inference of risk or threat may be drawn it is difficult to see the "emergency" - the need for acting immediately and without regard to the Bell requirements.

II. The Hearing[38] Requirement

As a general proposition "notice" and "hearing" are essential components of procedural due process[39]. It is axiomatic to state that notice of a hearing must precede the hearing. However, whether or not notice of hearing must be given depends on whether there is a requirement for a hearing. In a sense the notice requirement is derivative. If there is no right to a hearing there will

be no right to notice, because there is nothing of which to give notice. Therefore, from the point of view of clarity and logic it is preferable to discuss "hearing" prior to the consideration of "notice".

The discussion of hearing is divided into four sections: (A) Definition of hearing; (B) Is a licensee entitled to a hearing?; (C) Pre or post-suspension hearing; (D) Hearing and other administrative practices.

A. Definition of Hearing

The term "hearing" is broad and susceptible of different meanings depending on the context in which it is used. Administrative agencies employ different techniques to effect their objectives, including investigation (such as by interview, inspection, examination), negotiation, arbitration, adjudication, etc. These techniques culminate in decisions which may not adversely affect the interests of particular persons, and may result in nothing more than counselling or warnings. However, agencies often formulate decisions which adversely affect individuals. When an agency is required under due process to provide for a "hearing" it means that the person who might be adversely affected by an agency decision must be given an opportunity to be heard by the decisionmaker or some specially designated hearing officer. Even the expression "opportunity to be heard", while more accurate is not specific enough.

Professor Davis, a leading scholar in administrative law, has defined "hearing" as follows:

> A "hearing" is any oral proceeding before a tribunal. Hearings are of two principal kinds - trials and arguments. A trial is a process by which parties present evidence, subject to cross-examination and rebuttal, and the tribunal makes a determination on the record. The key to a trial is opportunity of each party to know and to meet the evidence

> and the argument on the other side; this is what is meant by the determination "on the record." The opportunity to meet the opposing evidence and argument includes opportunity to present evidence, to present written or oral argument or both, and to cross-examine opposing witnesses.[40]

The "argument" type of hearing may be used where there are no disputed facts to adjudicate and where the matters to be decided are issues of law or policy. Appellate Courts use the "argument" process as do administrative agencies when they are engaged in formulating rules of general application - the so-called rulemaking function.[41] "Trial type hearings" are used when an agency performs its adjudication function. The Revised Model State Administrative Procedure Act (hereinafter Model State A.P.A.) confirms the Davis approach. Reference here to the Model State A.P.A. is only for the purpose of developing a definition of the word "hearing" as it is used in this paper. Any relationship between that Act and suspension proceedings is discussed later. The Act provides for a hearing in all "contested cases".[42] Contested cases are proceedings including " ... licensing, in which legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for a hearing."[43] The term "licensing" in the Act embraces suspensions and revocations.[44] The "hearing" contemplated by the Act affords parties an opportunity to respond, present evidence, and cross-examine witnesses.[45] The Uniform Vehicle Code as amended also provides for a hearing in suspension and revocation matters.[46] The Code,however, does not specify the form of the hearing. Under former subsection 6-206(c) of the U.V.C. the agency was authorized to administer oaths and subpoena witnesses and documents, thus implying a "trial type hearing".[47] The new Section 6-206.1 has no comparable provision. However, in providing for judicial review after a suspension hearing, Section 6-212 states that review should

be comparable to §15 of the Model State A.P.A.[48] Section 15 of the Model State A.P.A.[49] deals with judicial review of "contested cases" discussed above, which requires "trial type hearings". The Uniform Vehicle Code thus, at least by implication, appears to adopt the "trial type hearing" approach.

The foregoing discussion does not mean that all states provide administrative "trial type hearings" for all or most suspensions and revocations. Some do and some don't. The object of the previous discussion was to develop the definition of "hearing". The term as used in this paper refers to the "trial type hearing" described by Professor Davis and provided in the Model State A.P.A. Another disclaimer should be made at this point. The term "trial type hearing" is a term which imparts some flexibility of procedures. Many people associate the term "trial" with the procedures used in a criminal trial. The term "trial type hearing" as used in this paper does not embrace a proceeding which follows all of the procedures used in criminal trials. The "trial type hearing" as suggested by Professor Davis requires that a party be made aware of and have an opportunity to meet the evidence against him.[50] Trial procedures are varied and complex but identical procedures are not required for all hearings. If due process requires a hearing characterized by certain procedures in a criminal case, the application of due process to another type of proceeding, e.g., driver license suspension, does not necessarily compel the same procedures to be used in the suspension proceeding. The Supreme Court itself has observed:

> Once it is determined that due process applies, the question remains what process is due. It has been said so often by this Court ... that due process is flexible and calls for such procedural protections as the particular situation demands. "[C]onsiderations of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function

involved as well as of the private interest that has been affected by government action."[51]

The Supreme Court has expressly rejected the suggestion that criminal trial procedures are required under due process when it is applied to non-criminal proceedings.[52] Even in the area of criminal procedure there are substantial variations depending on the seriousness of the potential consequences. For example, the constitutional right to a jury trial, which is incorporated within due process is required only in cases where the defendant may be imprisoned for more than six months; jury trials are not constitutionally required for petty offenses.[53] In criminal cases due process casts upon the prosecutor the burden to establish guilt beyond a reasonable doubt.[54] That severe burden is not imposed on the state in non-criminal proceedings.[55]

The essence of the hearing is the right to present and challenge evidence. How this right must be implemented and what other procedures may be required by due process as applied to driver license suspension and revocations proceedings will be considered later.

B. Is a Licensee Entitled to a Hearing?

The following discussion addresses the question, is a licensee entitled to a suspension hearing under the Due Process Clause of the Constitution. Earlier references were made to the Model State A.P.A. Many states have enacted comparable legislation. These Administrative Procedure Acts set out hearing procedures, inter alia, and while they indicate when an administrative hearing might be appropriate they are not self-executing. In other words, these acts do not create the right to a hearing.[56] The right to a hearing, if there is to be one, is contained in other state statutes, such as the vehicle code in

the case of license suspensions. Most states either through specific legislation, such as within the vehicle code,[57] or as a result of judicial decision[58] provide for some type of hearing either administrative or judicial in suspension cases. Often, the very provisions which authorize suspension or revocation create a right to a hearing.[59] This statutory right to a hearing, while it may satisfy due process requirements, may in addition impose requirements which go beyond the demands of due process. A state is always permitted to implement its own notion of fairness and efficiency by making available to a licensee more procedural safeguards than are required to satisfy due process. Due process procedural requirements should be viewed as that which is minimally acceptable and not as a ceiling.

To begin with Bell v. Burson must be considered. Possibly, one could read Bell so broadly as to require a hearing whenever an administrative agency suspends or revokes a driver's license.[60] Conversely one might conclude that since the Constitution is silent on the subject of driver's licenses and since suspension proceedings are not criminal proceedings, a hearing is required under Bell only in financial responsibility suspensions where fault is made an essential factor under the applicable state law.[61] True, under Bell, and because of a lack of other precedent, one can speak with authority only in the financial responsibility - fault suspensions. Nevertheless, an analysis of Bell, the response of many lower courts to the Bell decision, and the trend of cases decided by the United States Supreme Court in the area of procedural due process indicate that neither of the extreme views is correct.[62]

It is the conclusion of this paper that due process requires a state to provide a licensee with an opportunity to be heard as part of its suspension and revocation procedures. As will be seen in the following section, the state is

usually required to provide a licensee with an opportunity to be heard prior to the effective date of the suspension. Due process,however, does not require that this opportunity to be heard manifest itself always in an administrative "trial type hearing". First, some courts have held that the availability of judicial review in the form of a de novo proceeding which stays the implementation of the suspension order satisfies due process.[63] In other words, the opportunity to be heard may be satisfied by either an administrative or a judicial proceeding.

Secondly, even in the absence of de novo judical review, due process does not require a "trial type hearing" by an administrative agency in all suspension cases; it does require an administrative hearing in certain cases. The line between whether or not an administrative hearing is required is developed as follows. The crucial decision is to suspend or not. The crucial question, then is what is the agency's role in making that decision? If the relevant statute requires or permits an agency to suspend a license if and only if it finds certain "essential" facts then under Bell v. Burson or by analogy to it, " ... the State may not consistently with due process, eliminate considerations of [those factors] in its prior hearing."[64] On the other hand, when the agency acts not as a fact-finder or decisionmaker but in a purely ministerial fashion, as a record keeper for example, a hearing by the agency should not be required under due process.[65]

The point of departure seems obvious. The purpose of the hearing requirement is to give to the licensee, the party whose interests may be adversely affected, an opportunity to present his version of the facts and to challenge the evidence against him. Where the legislature has conditioned the power of an agency to act (suspend or revoke) on the existence of certain essential facts then the finding of these facts are prerequisite to agency action. Generally, a "trial

type hearing" is required by due process where the agency must resolve these disputed adjudicative facts. The term "essential facts"[66] as used in this paper is roughly the equivalent to the term, disputed adjudicative facts, used in administrative law. Where the agency has the responsibility to find those facts, fairness, the basic notion of due process, allows the person who may be adversely affected to play a role in the adduction of facts before the agency. Where, however, the essential facts have already been found, e.g., by a court in a traffic violation proceeding, and the agency is required to accept these facts and act on them, it is unnecessary for the agency to hold an additional hearing before it acts. In this latter instance, due process is not violated because the person affected invariably has had an opportunity for his "hearing" in the prior judicial proceeding.

License suspension or revocation in the context of the preceding discussion presents two troublesome areas.

(1) Assume, for example, the statute under which the agency is authorized to act provides that the agency may suspend a license where the licensee has been convicted of three traffic violations within a specified period of time. Suppose further that Mr. Smith has been convicted of three violations within that period. Is Mr. Smith entitled to an administrative hearing? Under the foregoing discussion if the agency were required to suspend the license upon receiving official notification of Mr. Smith's third conviction, there would appear to be no due process right to an administrative hearing. The essential facts - violation or not - have been found by the Court and Mr. Smith presumably had his day in court on each violation.[67]

The statute in question, however, permits but does not require the agency

to suspend. Nevertheless, it could be suggested that the essential facts still have been found by the Court. All that is left for the agency is the exercise of its discretion, which it may be argued, can follow from a proper investigation or other administrative technique. Under such an analysis no hearing would be required. Where agency discretion can be exercised on the basis of known facts (e.g., facts which have been determined in judicial proceedings), or where the relevant facts are not substantially in dispute, the need for a hearing is questionable. Discretion, however, is not and should not be exercised in a vacuum.[68] For agency discretion to be exercised in a principled fashion, it should be predicated on pre-determined criteria. Typically, the exercise of discretion in suspension matters is predicated on subjective criteria which are not articulated in statute or regulation. These criteria must be applied to the facts of each case. Yet even when an agency must develop additional facts essential to the exercise of discretion it would appear that the agency is not required to use a "trial type hearing" to develop those facts because, as will be seen, those facts typically are not disputed adjudicative facts. To say that a "trial type hearing" is not required is not the end of the matter. Where it is necessary to develop additional facts in order to exercise discretion, and where the licensee who may be adversely affected can play a crucial or unique role in the development of those facts, it would seem unfair to deny him an opportunity to present his version of the facts. This "opportunity to be heard" would comply with due process yet would not be a "hearing" of the "trial"[69] type as that term is used in this paper. In other words, the agency may be given some flexibility in selecting the method of acquiring the needed additional information and need not use the formal "trial" type process.

Driver license suspension or revocation is broadly concerned with traffic

safety - getting the unsafe driver off of the street. Yet, in the practice the factors considered in the exercise of discretion include - (1) extenuating circumstances which cast violations in a different light (a recognition of the "pay the $2.00" practice irrespective of guilt or innocence); (2) driver attitudes towards his driving and traffic safety; (3) driver's need for his license, etc.[70] All of these are dependent to some degree on information which must be gleaned from the licensee himself. In this context, then, due process as well as practicality would appear to require that the licensee have an opportunity to play a role in the adduction of facts which form a basis for the exercise of agency discretion. While it is true that the essential facts, in terms of statutory requirements have been found by the courts thus empowering the agency to act, other important fact-finding is necessary to enable the agency as a practical matter and as a matter of law to exercise its discretion in a principled manner.

This conclusion may be analyzed in two ways. First, it may be said that in discretionary suspensions no administrative hearing is required. The term hearing is used in this context as the equivalent of a "trial type hearing". While in these circumstances the licensee should be afforded an opportunity to be heard,other administrative practices such as interviews may be appropriate as well as fair. In the alternative, it may be suggested that whenever a licensee has been afforded an "opportunity to be heard", such as by discussing the matter with the agency and presenting his view of the relevant facts, he has had his "hearing", notwithstanding the informality of the proceeding, and notwithstanding the lack of procedural safeguards which characterize the "trial type hearing". The facts which must be found by the agency typically in these situations are not subject to dispute. They are invariably supplied by the driver himself, thus, it is unnecessary to utilize a

"trial" type process which is used in cases where it is more likely that there will be factual disputes. Regardless of which analysis is preferred, where the opportunity to be heard is not provided in a "trial type hearing", certain procedural requirements (e.g., notice, impartial decisionmaker, etc.) still may be applicable.

A simple summary of the above discussion shows:

> Mandatory suspension or revocation - Essential facts found by court - no administrative hearing required.
>
> Mandatory suspension or revocation - Essential facts found by agency - administrative hearing required ("trial type").
>
> Discretionary suspension or revocation - Essential facts found by court and facts relating to exercise of discretion found by agency - "trial type hearing" not required but "opportunity to be heard" is required.

(2) The mandatory suspension presents the second problem. Even though it has been stated that no administrative hearing must be held as a condition to suspension, a qualification to that statement must be made to provide for the possibility of "mistake". Assume an extreme situation. Mr. Smith is in the hospital. A thief breaks into his home, steals his possessions including his driver's license. Thereafter, the thief is arrested for driving under the influence of liquor and with use of the license poses as Mr. Smith. The thief is prosecuted and convicted under the name of Mr. Smith, and following the mandate of law, Mr. Smith's license is "suspended". Mr. Smith returns home to find a notice that his license has been suspended.[71]

It is too obvious to belabor that a person can have his license suspended or revoked only for his own misconduct. Therefore, he must have the right to contest any suspension even in a mandatory situation following a criminal conviction where he claims he was not the person convicted. If an administrative hearing is

provided the issue may be raised at that time. If no administrative hearing is provided the issue may be raised in judicial proceedings. Due process is satisfied so long as the licensee has an opportunity to raise the mistaken identity issue in some forum.[72] Thus, the unavailability of an administrative hearing, even under these circumstances, would not render the suspension scheme unconstitutional. In the example posed, Mr. Smith's recourse would be to the court which entered the conviction. The proper solution is for the convicting court to amend its judgment to reflect the true name of the defendant, or at least to change the conviction from "Smith" to "John Doe". Upon doing so, there would be no basis on which to suspend Smith's license and the court could order the agency to vacate its order. Mr. Smith's right to a hearing would be satisfied by his right to challenge the suspension in a judicial proceeding. The same approach could be used in any mistake situation. The state is obligated to provide a hearing, either administrative or judicial for the licensee to present his disputed adjudicative facts. The licensee might be able to establish an improper attribution of a violation on his record, or he might be able to demonstrate an incorrect calculation of points, etc.[73] For these purposes he must be given a hearing. However, where there is no contention of mistake there would be no need for a separate suspension hearing. The generalization can be made that mandatory suspensions where the essential facts have been found by the court do not require a subsequent separate "trial" type hearing on the matter of suspension, except that a licensee must be afforded a hearing if he contends that a mistake has been made and the suspension is therefore improper.

There are numerous judicial decisions[74] which broadly apply Bell v. Burson to virtually all driver's license suspensions and seem to make a "trial type

hearing an indispensable element in all suspensions. These decisions upon casual examination appear to contradict the proposition asserted above that where essential facts are found by the court and the agency performs only a ministerial function, no "trial type hearing" is necessary. But, those cases which impose a hearing requirement even in cases of mandatory suspensions following conviction of a specified offense do so only to eliminate the possibility of mistake.

An application of the conclusions contained in the preceding pages yield the following results in answering the question: Is the licensee entitled to a hearing?

A suspension where essential facts are found by the court may be mandated where the licensee has been found guilty of specified offenses, such as homicide by vehicle, driving while under the influence of alcohol or drugs, etc., or under habitual violator statutes. In such situations, the administrative activity is ministerial, the agency could be likened to performing a mere record keeping function for the court. It is the judicial decision which, in effect, results in the suspension or revocation.[75]

Financial responsibility proceedings usually involve fact finding on the issue of fault or potential liability and under Bell v. Burson a hearing is required.[76] Some lower courts have applied the notice and hearing requirements to all financial responsibility hearing whether or not fault is required under the law, and while the issue of fault would not be considered, the amount of the security would be, as would any contentions of mistake.[77]

Implied consent statutes usually mandate suspension or revocation where certain facts are demonstrated, e.g., arrest, refusal to take chemical test, etc. Under the approach developed above a hearing would be required,[78] however, some courts have found Bell v. Burson distinguishable.[79]

The persistent offender situation was discussed earlier and it was concluded

that an opportunity to be heard, although not necessarily a "trial type hearing" should be provided under due process where suspension is discretionary.[80] If suspension is mandatory generally no hearing would be required except the licensee would be entitled to a hearing on the issue of mistake.[81]

A question might be raised in suspensions under a point system as to whether different procedures must be followed depending on whether the legislature or the agency formulated the requisite number of points for suspension. The rationality of the point system could be questioned regardless which entity formulated it. The delegation of authority to an agency to formulate the scheme could likewise be questioned. These challenges raise issues of substantive due process and state constitutional law, not questions of procedural due process. If it is determined that:

1. A point system is a rational method of identifying drivers who are extreme traffic risks and removing them from the highways and;

2. It cannot be demonstrated that this specific point system will not achieve that objective and;

3. Under the law of the particular state, the legislature may and in this case properly has delegated to an administrative agency the responsibility for devising the details of the point system and;

4. The agency has acted within the terms of the statute -

Then the procedure established for the agency to suspend licenses without a hearing (except in cases of alleged mistake) need not vary from the procedures which would be established where the legislature itself has prescribed the details of the point system. The power of an agency to promulgate and administer a point system, and the legality of that system represent one set of issues; the procedures to be followed in suspending a license under a valid point system poses a different set of issues unrelated to the first set.

C. Pre or Post-Suspension (Revocation) Hearings

Often the "hearing" issue is not whether a licensee is entitled to a hearing but the point in time at which he must be given his opportunity to be

heard - before or after his license is suspended or revoked.

In Bell v. Burson, the issue was whether or not a licensee was entitled to a pre-suspension hearing on the issue of fault. The Court in Bell was quite clear:

> While '[m]any controversies have raged about ... the Due Process Clause,' ..., it is fundamental that except in emergency situations (and this is not one) due process requires that when a State seeks to terminate an interest such as that here involved, it must afford 'notice and opportunity for hearing appropriate to the nature of the case' before the termination becomes effective.[82]

The Court in Bell and numerous other cases has put to rest the so-called 'right-privilege' distinction.[83] In Bell, the Court said that a driver's license was an important interest which when the state seeks to take it away must do so by procedures which comply with due process. The statute as interpreted by the Court in that case did not require the automatic suspension of the license of everyone involved in an accident. Suspension followed only upon a finding that defendant was possibly at fault, might be liable for damages, and was unable to post adequate security. The factual determination - including fault - was a prerequisite to suspension. Consequently due process required a hearing to determine the facts (including fault). In the absence of extraordinary circumstances ("emergency situations") due process required the hearing to be held prior to the suspension.

There is nothing in the opinion which indicates that the "prior hearing" requirement is not applicable in all comparable suspensions and revocations. Comparable situations would not appear to be limited to financial responsibility statutes with a fault requirement. Rather, "comparable" includes situations where the state authorizes suspension only upon the finding of essential facts by the agency. If an agency can suspend and has been given the responsibility for finding essential

facts (as discussed above) Bell v. Burson is persuasive authority that a hearing prior to suspension or revocation must be held. Many cases, although not all, have regarded Bell as applicable in implied consent proceedings, etc.[84] However, when an agency has no role to play in finding essential facts and its actions are of a ministerial nature which invariably follow a judicial proceeding ("the hearing") no subsequent administrative hearing before or after suspension is necessary.[85] Due process is satisfied by the prior judicial opportunity to be heard on the violation. Again an exception to this general statement must be made with regard to the issue of mistake. Some courts have ruled that if the facts which have been provided to the agency or which have been collected by the agency are challenged as incorrect, the licensee is entitled to a hearing on the mistake issue prior to suspension.[86] This appears to represent the dominant view. There are a few cases which hold that a prompt post suspension hearing (especially if it stays the suspension order) on the mistake issue is satisfactory.[87]

Substance and not form controls the requirement for hearing. To satisfy the "prior hearing" requirement, it is necessary for the licensee to have his opportunity to be heard before he is effectively deprived of his right to drive. Thus, if a license is "suspended" but the suspension does not go into effect for X days during which the licensee may have his hearing, or where a suspension is stayed by a request for a hearing, or where the licensee can go directly to court which acts as a stay on the suspension order, the spirit of the due process "prior hearing" requirement appears to be satisfied. If the licensee had an opportunity to present his case and refute the evidence against him before losing his driving privileges he has been given a prior hearing within the meaning of the due process.[88] The provision for trial de novo, however, will not necessarily rectify a scheme which provides for constitutionally defective hearings. In one case, the hearing

scheme was defective because, inter alia, it failed to apprise the licensee of the evidence against him, refused to allow him to cross-examine witnesses, in some instances it refused to allow licensee to be present in the room when adverse witnesses testified. Earlier in the proceeding, the court withheld final decision to give the Department of Transportation an opportunity to establish proper hearing procedures. The Department failed to do so. The Department took the position that its procedures complied with due process by allowing for the opportunity for de novo judicial review coupled with procedures which were included within a stipulation entered into in a prior case. These procedures provided: (although there was evidence of nonpliance) that no suspension until 35 days from the giving of notice, prominent notice that licensee had 30 days to appeal suspension, when appeal filed Department would treat as a supersedeas and not suspend. The Court rejected the position taken by the Department and while the case may be appealed, the present holding states:

> ... The record in this case together with the holdings of the United States Supreme Court in recent years shows that an appeal to the common pleas court with a de novo trial is not a satisfactory method of according operators due process of law.
>
> As previously stated in the preliminary opinion in this case: 'The brute fact is that suspensions under Section 1404 are determined administratively: of approximately 56,000 Section 1404 proceedings in an eight month period, 179 persons petitioned for trial de novo in court.' We have no indication that defendants intend to dismantle the administrative machinery for handling Section 1404 suspensions. In paragraph 20 of the stipulation it was agreed that 1.5 percent of the total of license suspensions were appealed to the common pleas court for de novo hearings.
>
> It was admitted during the argument of this case that the filing fees for filing a de novo appeal are $20.50 which is not returned and it was of course admitted that the petitioner must get counsel to file the appeal and proceed with the hearing or else proceed pro se. In Bell v. Burson, supra, at 402 U.S. 542 and 543, 91 S.Ct. 1586, it was held that a state must provide a forum for the determination of the question whether there is a reasonable possibility of a judgment being rendered against him

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> as a result of the accident. We hold that at the present time Pennsylvania does not do so. The Supreme Court further described various alternative methods of compliance that might be adopted including complete abandonment of the state's present scheme and transferring all such proceedings to a de novo hearing in the court of record. As this court stated at the argument we are not informed as to what impact of the transfer of all these 56,000 license suspensions to the common pleas court for determination would have upon the state judiciary.
>
> For our present purposes it is sufficient to say that Pennsylvania at the present time has adopted no statute or rules and regulations to comply with Bell v. Burson. It relies almost entirely upon administrative procedures which are inadequate and the right of trial de novo when as a practical matter, most of these decisions are made at the administrative level. This is not a satisfactory procedure for affording due process.[89]

Even if there is no provision for an administrative hearing a licensee who faces suspension or whose license is suspended, in the absence of an express statutory provision to the contrary, would have a right to redress in the courts upon a claim of unlawful or arbitrary agency action. Many states by statute, which contain provisions such as §15 of the Model State A.P.A., provide that persons aggrieved by agency action may seek judicial review.

D. Hearing and Other Administrative Practices

It is difficult to determine sometimes in what fashion an agency is proceeding. On occasion the problem is semantic. For example, in Louisiana discretionary suspensions follow "investigations" while implied consent suspensions follow "hearings". These two terms are used in the respective statutes. However, one Louisiana Court has said the two terms are used interchangeably.[90] Therefore an "investigation" preceding a discretionary suspension in reality is a hearing; it is not the label which is controlling, but rather affording the licensee an opportunity to present his case and refute the evidence against him. Regardless what the state calls the proceeding if it satisfies the hearing criteria it

satisfies the due process requirement. Substance not labels is controlling.

In the State of Washington, the use of "interviews"[91] can raise due process "hearing" issues. An interview involves merely summoning the licensee to the office of the department to discuss with him his driving record or some specific driving offense. A proceeding may be designated as an "interview" and have no relationship to suspension or revocation. It is merely a means whereby the agency keeps itself informed. As such, none of the due process rights required in adversary proceedings are available, unless specifically required by law. The interview may be informal and off the record. It may be with or without notice, such as where the licensee comes to the department on his own.

The "interview" may serve as a pre-hearing stage. For example, the interview may be a device to gather facts for the hearing. As such, it would seem that the licensee about to be subjected to license suspension or revocation might in fairness be told of that and that he may be represented by retained counsel; however, no such requirement exists. The interview may be to determine whether or not a hearing should be held or whether some other approach, e.g., counselling or a warning should be used. Again, while it may seem that in fairness the licensee should be told of the purpose of the interview and that he may be accompanied by retained counsel, by analogy to criminal law it does not appear that such is required by due process.[92] Also the interview may incorporate some of the elements previously discussed but it may also result in a negotiated decision, e.g., probation, suspension for a reduced period, etc. The interview in this sense assumes dispositional proportions. It would appear that a licensee has a strong case for being advised as to the nature of the proceeding. Furthermore, to the extent that the licensee acquiesces in the regime placed upon him, the consequences of those measures should be explained to him, including the fact

that he is giving up his right to a "trial type hearing" if that is the case. There does not appear to be any requirement that he be advised that he might be represented by retained counsel.

Finally, the "interview" may in reality be a hearing in that it may culminate in a decision to suspend or revoke. The interview may commence as a fact finding mission or an exploration of the licensee's driving attitude or amenability to counselling or improvement. The interviewer, at some point may decide to suspend or revoke the license. This decision is one which is controlled by the "hearing" principles previously discussed. If the suspension decision can be made only pursuant to a "trial type hearing" which complies with the procedural requirements of due process, then the interview must be regarded as a hearing and must conform to these requirements. Yet even where the "interview" is a legitimate investigatory device on which the exercise of agency discretion may be based certain procedural rights would seem to be required - notice of the proceeding and its potential consequences. There does not appear to be a requirement of notice of the right to be accompanied by retained counsel.

The discussion of the hearing requirement has been in the context of the constitutional due process requirements. Most states under their own constitutions[93] or statutes[94] require suspension and revocation hearings under certain circumstances. These matters of local law are beyond the scope of this paper.

III. The Notice Requirement

Notice may be relevant at various stages of the suspension process.

A. Notice of Hearing.

B. Notice of Suspension or Revocation.

C. Notice of Right to Appeal.

A. Notice of Hearing

Like the requirement of a hearing, the requirement of notice is basic to procedural due process and one of its most important attributes.[95] If the notice requirement is to some degree an outgrowth of the hearing requirement (no need to give notice if there is no right to hearing), the opportunity to be heard is equally dependent on the giving of notice. How does a person know that he has a right to a hearing, or what that hearing will consist of unless he is previously so informed? As used in this paper, the term "notice" refers to the "right" to notice or its corollary the "requirement" of notice and not to the pieces of paper which are denominated "notice". In practice, several pieces of paper, each one denominated "notice", sent to a licensee at various times may collectively satisfy the notice requirement. No differentiation is made in this discussion between informing a licensee that he may request a hearing and, after he has made such a request, informing him when and where the hearing will be held. Both of these "notices" are subsumed under the discussion of "Notice of Hearing."

Notice of hearing represents the major issue in the consideration of the right to notice. As a general proposition if due process affords a licensee a right to a hearing he is entitled to notice of that hearing.[96] Furthermore, even where due process does not require a hearing, if the state by statute either requires or provides an opportunity for a hearing, fairness would require that notice also be given. Notice then depends on the "right" to a hearing. If that right (hearing) exists then the right to notice correspondingly exists.

Bell v. Burson established, at least in financial responsibility cases involving fault, that due process requires " 'notice and opportunity for hearing ... .' "[97] (emphasis added). Giving Bell an expansive application, the "notice" of hearing requirement would seem to apply whenever a hearing is provided, such as in implied

consent and habitual offender suspensions.[98] Where no hearing is required under law, e.g., mandatory suspensions, no notice is required.[99]

Just as most states statutorily have provided for hearings, there are similar statutory provisions for notice.[100] Even where notice has not been covered by statute a number of courts have recognized such a right under due process in a variety of suspension and revocation cases.[101]

A few courts[102] have held that particular state's A.P.A. controls proceedings involving driver license suspension and revocations and so impliedly a notice requirement patterned after §9(a) of the Model State A.P.A. will control in that state. The Model State A.P.A. does not define "notice" but in §9(b) states that it should include:

> "(1) a statement of the time, place and nature of the hearing;
> (2) a statement of the legal authority and jurisdiction under which the hearing is to be held;
> (3) a reference to the particular sections of the statutes and rules involved;
> (4) a short and plain statement of the matters asserted ... ."[103]

Many states do not rely on their administrative procedure acts but have inserted the requirement of notice into their motor vehicle codes.[104]

By statute then, notice of the proposed suspension or revocation must be given to the licensee before any action may be taken by the appropriate administrative agency. Case law has upheld such a requirement. In one New York case, for example,[105] the defendant was charged with operation of a motor vehicle while his license was suspended. The court specifically held unconstitutional that part of the Vehicle and Traffic Law which authorized a temporary suspension without prior notice or hearing. Precisely because the defendant had not been given such prior notice the court found the defendant not guilty of the criminal charge involved. The court rested its decision not only on Bell v. Burson but on the idea that pos-

session of a driver's license, viewed as a vested property right and thus mandating due process safeguards overrides any police power that the legislature may exercise in its regulation of the highways. However, the principle articulated in this case was rejected by the Court of Appeals when it upheld the practice of temporary suspensions under the "emergency" doctrine.[106]

A few cases, however, have held that due process has not been denied though there was a lack of prior notice. In one case, the motorist[107] had his license suspended without notice and opportunity to be heard based upon his accumulation of a certain number of points under the Florida point system. The Court of Appeals citing the Florida Supreme Court as its authority, held that this was not a denial of procedural due process. The supreme court[108] of another state held that revocation of a driver's license under the implied consent law prior to notice and a hearing did not deny due process. The court rested its decision on the "emergency situation" exception in Bell v. Burson as well as on the fact that the statute required that revocation be based on sworn evidence and that notice for a hearing must be given once a hearing was requested. A third example[109] occurred where the licensee was notified of his driver's license suspension after the fact by the department of public safety. The agency had ordered such a suspension because the driver had incurred twelve moving traffic violations within a two year period. The appellate court upheld the agency by reasoning that the statute did not require the department to give notice of anything except the act of suspension of the license. Furthermore, the court held that the state Administrative Procedure Act did not apply to the case at bar. Thus, the state could give notice of the suspension after the fact and no prior hearing on the matter was required by law.

These cases, however, do not go to the issue of notice alone. Their basic holdings relate to the hearing requirement - i.e., whether such a requirement exists

or in some cases whether a pre-suspension hearing is required. Where the courts have found no requirement for a hearing, they have found no requirement for notice. Where they have found only a right to a post-revocation hearing, they have similarly allowed post-revocation notice of that hearing. Finally where a pre-suspension hearing is a matter of right, pre-suspension notice is a comparable right.

The notice requirement means that the licensee is entitled to be told that a hearing has been scheduled where there is a mandatory hearing requirement, but also he should be told that he may request a hearing when one is not automatically scheduled. In other words, it is permissible to satisfy the hearing requirement by providing for a hearing upon request, so long as the licensee is informed of his right to make such a request.

1. Manner of giving notice.

The question next arises as to what kind of notice must be given. Some courts require nothing less than in hand notice while in other states notice by other means such as by mail is sufficient. One court in discussing notice has stated:

> The Supreme Court has often expressed the general policy that, where valuable interests are to be affected, at a hearing, the method of apprising the parties of such hearing must be that which is reasonably calculated to insure actual notice ... . For this reason where other and superior means of notification are reasonably practicable under the circumstances, notice by publication has been held to be inadequate.[110] [emphasis added]

The court went on to direct that the defendants give such notice either by first class mail, postcard or bulk mail. The controlling criterion appears to be that the method used must be such that is "reasonably calculated" to provide actual notice to those involved. Similarily, another court in reviewing a proposed suspension of a motorist's license under the Ohio Implied Consent law, stated that:

> To notify means to give actual notice. The licensee must receive the information. Actual notice is a condition precedent to the suspension taking effect. If the registrar chooses to

> mail the notice of the proposed suspension there must be an effective mailing and mail notice is not effective until received. When a statute requires notice of a proceeding but is silent concerning its form or manner of service, actual service alone will satisfy such requirement ... .[111]

In the case at bar, the notice which had been sent out by the state agency was delayed in the mails in being delivered. The court held that under such circumstances, the licensee should not be held liable to the consequences of a later delivery and thus should be allowed to file for a hearing even though the twenty day statutory period allowed for filing had expired. The court, though, did qualify such a right by stating that if the licensee did not receive notice because the letter was sent to the incorrect address because he failed to provide his correct address, he will not be allowed to complain that he never received the notice.

A third case[112] involved the giving of actual notice but in an unusual form. The defendant had been given a citation for speeding. The back of the citation explained what he had to do. The defendant failed to comply with the instructions and he did not appear in court as required. As a result, his license was suspended. The court upheld the suspension reasoning that the instructions on the back of the citation were adequate notice. Such a holding furthermore is sound since it is notice which can be reasonably calculated to actually reach the defendant.

Other jurisdictions have deemed notice by mail to be sufficient. The South Carolina Motor Vehicle Code provides that notice is to be given by mail.[113] The section goes on to state that "The giving of notice by mail is complete upon the expiration of ten days after such deposit of such notice."[114] A presumption is is also set up in this section that once the notice has been sent, the requirements of giving notice have been met, "regardless of the fact that the notice might not actually have been received by the addressee."[115] A pre-Bell Attorney

General's opinion stated that such constructive notice is sufficient.[116]

Even if constructive notice is constitutionally permissible it is only because it satisfies the requirement that it be "reasonably calculated to insure actual notice." It would appear that a description of hearing rights and procedures published in a driver's license manual distributed to all licensees at the time licenses are issued would not in a practical sense be "reasonably calculated to insure actual notice." Furthermore, readily available other expedients, such as personal service or mail are neither burdensome nor expensive.

It also appears that a statutory description of hearing rights and procedures would not in itself satisfy the notice requirement. The rule that all persons are presumed to know the law does not apply to intricate procedural rules. Instead, the presumption is used to prohibit a person from claiming ignorance of substantive restrictions on his behavior. While a person may not claim under due process that he did not know he was not allowed to drive while intoxicated, if a hearing is provided for, he must be given notice that he has a right to an administrative hearing on suspension, just as he has a right to notice of the judicial proceeding on guilt or innocence.

2. Content of Notice

In the case of a mandatory hearing, the licensee is entitled to be informed:

(a) that there is to be a hearing which he must attend;
(b) the consequences of non-attendance;
(c) time and place of hearing;
(d) the matter to be determined at the hearing;
(e) the reason for the hearing (factual and legal basis);
(f) the potential consequences of the hearing.[117]

Where a licensee has a right to request a hearing, he must be informed:

(a) that he may request a hearing;
(b) the time period within which the request must be made;

(c) the person or agency or court to which the request must be addressed;
(d) the consequences of failure to request a hearing;
(e) the matter to be determined at the hearing;
(f) the reason for the hearing (factual and legal basis);
(g) the potential consequences of the hearing.[118]

In either of the above situations must a licensee be told that he has a right to present evidence or cross-examine witnesses, etc.? There is no definitive answer but it could be argued that in order for both notice and hearing to be meaningful the licensee should be so informed at some point prior to the hearing. If not, a request for a continuance might be appropriate. There does not seem to be a requirement that a licensee be informed of his right to be represented by appointed counsel.

Finally, must a licensee be given notice of relevant defenses or mitigating factors? Stated another way must he be told the possible criteria on which a decision will be made? At first the question may appear a bit extreme. Yet, if a licensee does not know what are the relevant issues, how can he meaningfully exercise his opportunity to be heard. That right is meaningful only if he knows the potential relevance of the evidence he seeks to offer or the evidence he seeks to discredit such as by cross-examination. While the argument is persuasive in some respects no such requirement appears in the cases. In certain instances possible issues may be readily apparent, i.e., does the licensee have the requisite number of points; did he refuse the chemical test? However, where the decision is based on discretion such as on "driver attitude", the driver may have no idea as to what the critical issue is. This is particularly true since criteria for suspension in cases involving discretion are often subjective and not contained in statute or regulation.[119] In any event, there appears to be no requirement that the licensee be informed of the factors which the decisionmaker will

consider in making his decision. Generally, it will be the responsibility of the decisionmaker to draw out the relevant information. However, as previously stated, in notifying a licensee of the matter to be determined he must be given notice of the basis for the possible suspension or revocation, such as failure to take chemical test,number of violations, number of points, conviction of a particular offense, etc. Such minimal information would seem to be required to make the notice meaningful.[120]

B. Notice of Suspension or Revocation

From a practical view a licensee must be made aware that his license is suspended or revoked. The object of the agency, to remove the driver from the road, will be defeated if he is not informed that he is no linger permitted to drive. Hence, the uniform practice is to provide such notice. The practice is such as to preclude the need for developing due process requirements. It is clear, however, under general procedural due process requirements, under the legality principle and by analogy to ex post facto rules, that notice of suspension or revocation must be given to licensee before such action may be enforced against him.[121]

C. Notice of Right to Appeal

There does not appear to be any substantial authority which requires as a matter of due process that a licensee whose license has been suspended or revoked be advised of his right to further administrative or judicial remedies, if any.

IV. Hearing Procedures

The procedures and due process requirements in criminal cases are complex and demanding. Yet the Supreme Court, as previously noted, has differentiated

between criminal and other proceedings.[122] The question of whether due process applies to a proceeding is different from determining which procedures due process requires once it is found to be applicable. This paper has concluded that the "Due Process" clause imposes procedural requirements on a State where it seeks to suspend or revoke a driver's license. This section of the paper will discuss which procedures are required. Notice and hearing have been discussed generally and their applicability noted. One can generalize further and add to these two facets of due process two other essential components - (1) a decision on the merits and (2) an impartial decisionmaker.[123] The hearing requirement would be meaningless without these two latter elements. These will be discussed in Section V of this paper. If a person is entitled to an opportunity to be heard - the opportunity must be a potentially effective opportunity. It must allow a party to present his version of the facts and to refute the opposing version. It must insure that the decisionmaker is impartial and that he bases his decision on the evidence adduced before him. This then is the nucleus of due process. This section of the paper will analyze a number of specific procedures or requirements in criminal trials and try to evaluate their applicability to license suspension proceedings.

Some of the due process rights available in criminal proceedings such as the right to trial by jury are clearly inapplicable to administrative license suspension and revocation proceedings.[124] Other "rights" such as to be formally charged by indictment or information while they are not applicable *per se* have their counterpart in the notice requirement

The right to a "speedy trial" also is probably not applicable *per se*.[125] However, there are indications that an unreasonable delay which results in prejudice to a party, *e.g.*, loss of evidence or death of witnesses, may be considered so

fundamentally unfair as to render an ensuing suspension or revocation violative of due process.[126]

There is no authoritative decision in the license suspension area which details all of the procedural rights required under due process. The closest analogy is Morrissey v. Brewer,[127] which involved a parole revocation proceeding. The Court first found that due process applied to such proceedings. It also stated "that the revocation of parole is not part of a criminal prosecution and thus the full panoply of rights due a defendant in such a proceeding does not apply to parole revocations."[128]

In addressing the specific procedural requirements of the hearing, the Court said:

> We cannot write a code of procedure; that is the responsibility of each State. Most States have done so by legislation, others by judicial decision usually on due process grounds. Our task is limited to deciding the minimum requirements of due process. They include (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a "neutral and detached" hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole. We emphasize that there is no thought to equate this second state of parole revocation to a criminal prosecution in any sense. It is a narrow inquiry; the process should be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary criminal trial.[129]

Admittedly, parole revocation differs from license revocation. It may be argued the individual interest in parole revocation (freedom from incarceration) is greater than the individual interest in a driver's license revocation (at most a necessary adjunct to a livelihood). However, the demands of Morrissey v. Brewer

are not severe and an agency which followed the Morrissey procedures in driver's license suspensions apparently would be on safe ground. The Supreme Court has not said that the "minimum requirements of due process" articulated in Morrissey v. Brewer are not applicable to other administrative proceedings in which individuals "may be condemned to suffer grievous loss",[130] nor has it yet made Morrissey the generally applicable standard of administrative due process.

A. The Right to be Informed of the Charges Against Him has been discussed in Section III, "The Notice Requirement"

B. Counsel

In Gagnon v. Scarpelli,[131] the Supreme Court held that persons subject to probation or parole revocation did not ordinarily have the right to appointed counsel except under certain extreme circumstances. The Court observed that the factual issues involved in probation and parole revocation decisions were usually simple and straightforward. The alleged violator should be capable of stating his own position and asking questions of those who appear on his behalf or against him. If counsel is not required where liberty is in jeopardy, it is doubtful that it would be required in license suspensions where property interests are at stake. This conclusion is supported under the Argersinger[132] rationale which even in criminal cases requires appointment of counsel only where defendant is to be punished by incarceration.

Generally, a right to appointed counsel has not been recognized in civil and administrative proceedings.[133] The cases which have considered the question of appointed counsel in driver's license suspension proceedings have held that there is no such right.[134] The courts have also held that uncounselled, misdemeanor or traffic convictions may be the basis for administrative suspension.[135]

The right to appointed counsel in administrative proceedings has been rejected even under circumstances where a person was in fact incarcerated. For example,

in one case, defendant was prosecuted for driving with a suspended license. His argument that his license was suspended in a proceeding in which he was not given appointed counsel was held not to bar his conviction and incarceration for driving with a suspended license.[136]

There are two situations in which a right to counsel may apply. The first involves retained counsel. There is virtually no case law on the issue, probably because the states routinely permit retained attorneys to accompany and represent their clients in suspension hearings.[137] It would seem that this policy represents good constitutional law as there are cases involving administrative hearings (not suspension cases) in which the right to the assistance of retained counsel was upheld even though there was no right to appointed counsel in those circumstances.[138]

The second possibility relates to exceptional circumstances. In Gagnon,[139] the Court in rejecting the right to appointed counsel realized that there might be exceptional circumstances such as where the complexity of the matter and the personal limitations of the parolee or probationer would make it manifestly unfair to deny appointed counsel. Usually, license suspension and revocation proceedings are simple and straightforward. However, if a state as a prerequisite to invoking its hearing process, imposed complex requirements on the licensee which an ordinary lay person would be unable to cope with, it would appear that either those requirements would be struck down as violative of due process or else the state would be required to provide counsel under those circumstances.[140]

As to the future, it should be observed that the trend in this country has been toward expanding the right to counsel. At one time, even in criminal cases, appointed counsel was available under the "Due Process" clause only in capital cases involving exceptional circumstances. Eventually, the right to appointed counsel evolved to the point where now it is available in all criminal cases where a

person is sentenced to imprisonment.

C. Right to Present Evidence

It is generally conceded that the right to a hearing includes the right to present evidence on one's behalf.[141] The evidence may be presented in the form of testimony by the licensee, or his witnesses or documentary evidence which he offers. Furthermore, to the extent that evidentiary rules are relaxed the licensee is not bound by strict rules of evidence. In Jennings v. Mahoney,[142] the Supreme Court did not have to reach a due process challenge to a procedure in which driver's licenses were suspended under a Financial Responsibility Statute solely upon review of accident reports filed by the parties and the police. The Court, though did express some serious question as to the adequacy of this procedure.

The only serious question in this area is whether or not a licensee is entitled to compulsory process in order to secure the presence of witnesses. The Supreme Court has not spoken to the issue in the context of state administrative proceedings, although such a right is constitutionally required in criminal cases.[143] Since it has been held to be a denial of due process to refuse to allow a licensee to present witnesses on his behalf,[144] it may be contended that he is entitled to the benefit of testimony of reluctant as well as willing witnesses. A witness to an accident, or to an arrest may be the only impartial witness. Yet recognizing that many people are reluctant to willingly testify on behalf of a stranger the licensee and the agency may be deprived of valuable testimony if the witness is not subpoenaed. The issue of compulsory process[145] is even more relevant to the subjects of confrontation and cross-examination and will be pursued further at that point.

D. Right to be Informed of Evidence Against Him - Admissibility of Evidence - Confrontation and Cross-Examination

It was said earlier that an important characteristic of the "trial type

hearing was the opportunity to refute the evidence against oneself. One cannot refute that which one doesn't know. Therefore one has a right under due process to be informed of the evidence against him.[146] Numerous cases[147] involving license suspension and revocation hearings have so stated.

A more difficult and complex problem relates to the rules for the admissibility of evidence at administrative hearings, especially as they effect confrontation and cross-examination of witnesses. The "trial type hearing" is usually an adversary process in which the facts are developed by each side presenting its case and by cross-examining witnesses presented by their opponent. In criminal cases the right to confront adverse witnesses and to cross-examine them is protected under both the Constitution[148] and the rules of evidence.[149]

Generally, in adjudicatory proceedings before administrative agencies the common law exclusionary rules are not followed.[150] This means that evidence which would not be admissible in a criminal trial or even a civil proceeding is often admissible before an administrative agency. Hearsay evidence in the form of written reports orletters, opinion evidence, etc., are commonly admissible in administrative hearings.[151] The exclusionary rules are designed primarily for jury proceedings and have been relaxed in cases presided over by judges alone. The rules are very technical and do not lend themselves to administrative procedures. It should be observed however, notwithstanding a relaxation of evidentiary rules, that for purposes of appellate review there must be some factual basis in the record to support the agency's decision.[152] Thus, a mere relaxation of the exclusionary rules of evidence in administrative proceedings has not been found to be a violation of due process.[153] As a matter of fact since there is no requirement for counsel and since administrative hearing officers are often non-lawyers, it would be nearly impossible to apply the technical exclusionary rules. In referring to parole revocation, the Court in Morrissey said " ... the process should be flexible enough to

consider evidence including letters, affidavits and other material that would not be admissible in an adversary criminal trial.[154]

The issue of confrontation and cross-examination is easier to resolve where the witnesses against the licensee appear in person at the hearing and testify. From a practical view, there is probably no reason to prohibit the licensee from asking questions of these witnesses (cross-examination). Most courts, although there are some decisions to the contrary, which have spoken to the issue have so held, and Morrissey upheld "the right to confront and cross-examine adverse witnesses ... ."[155] However, Morrissey recognized that the right was not absolute and that the hearing officer might find "good cause for not allowing confrontation."[156] That qualification was in the context of the prison institution in which the safety of adverse witnesses was an important and realistic consideration. Similar considerations do not apply to license suspensions. Even considerations of efficiency and economy would not seem to prevail here.

Suppose, however, under the relaxed rules of evidence a witness does not appear in person but rather a report made by the person, such as a police officer, is offered in evidence.[157] Of course, the licensee can introduce evidence contradicting the report. Can he insist that the officer be called so that he may be confronted and cross-examined? This situation truly raises the confrontation and cross-examination issue as well as the compulsory process issue. While there are lower court cases which "acknowledge" a right to confront and cross-examine, these typically are statements of dicta and do not arise in a context in which the critical issue involved the denial of compulsory process.[158] Recently, there is a clear holding by the District of Columbia Court of Appeals that the licensee has no right to compulsory process and that refusal to allow him compulsory process

does not violate his right to a fair hearing.[159] This case, however, interprets Bell v. Burson narrowly as calling only for an opportunity for the licensee to tell his side of the story.

The question whether or not under due process a defendant has a right to the presence of witnesses against him through subpoena or otherwise in license suspension or revocation proceedings, cannot be answered authoritatively. It is possible that the right will be recognized but with qualifications. It may be that the licensee will have to make some showing as to why a witness should be produced for confrontation and cross-examination. Perhaps a situation where there is a clear and material factual dispute is an example of where the licensee would be able to insist on cross-examination and confrontation. This might occur, for example, where a licensee claims that his vehicle was traveling West on Main Street and the Officer in his report has the licensee traveling South on the intersecting street, or where the licensee disputes that he was advised of the consequences of the refusal to take a chemical test, etc. Conversely, where the hearing is to evaluate driver attitude, need for license or extenuating circumstances, etc., or where there is no substantial factual dispute, or where the issue to suspend or revoke will depend on discretion and judgment of the hearing officer, it would seem no real purpose would be served by allowing a licensee to insist on the presence of a witness for potential cross-examination.

E. Privilege Against Self-Incrimination

A licensee may not refuse to answer questions either prior to or at a suspension hearing simply on the ground that his answer might tend to establish a basis for suspension or revocation. The privilege against self-incrimination protects a person only from disclosing information which could be used against him in a criminal prosecution. As has been observed administrative suspension and revo-

cation proceedings are not criminal proceedings.[160]

Assume, however, a licensee is present at a suspension hearing, and his presence is compelled because it is a mandatory hearing. Assume further that the same incident which generated the suspension hearing has resulted in criminal charges against the licensee which have not yet been disposed of. Must the licensee be advised at the administrative hearing that anything he says may be used in the subsequent criminal prosecution assuming such statements would be admissible under state law? There is no definitive answer and what little analogous authority exists would appear to be that there is no requirement to give such warning.[161] It might seem the fairer thing to give such warning which would not appear, in any significant way, to impair the administrative hearing process, but there is no such requirement under due process.

If a licensee is required to attend a mandatory hearing and if there are outstanding criminal charges based on the event which gave rise to the hearing, the licensee can refuse to answer questions or give testimony at the hearing on the ground that his answer might be used in the criminal proceedings.[162] If his answers could not be used in the criminal proceeding and if evidence for use in the criminal trial could not be drived from his answers,no privilege exists.

F. Admissibility of Illegally Obtained Evidence

In concluding that the evidentiary exclusionary rules are not generally applicable in administrative hearings should a distinction be made between those rules which have a constitutional basis and those which are mere rules of evidence? Strong arguments can be offered to support either admission or exclusion.[163] One may contend that since the emphasis in administrative suspension is protection of the public[164] this consideration overrides the interest of a licensee in excluding evidence obtained in violation of his constitutional rights. While it may seem

unconscionable to gather evidence by violating a person's constitutional rights and use that evidence to convict him of a crime, it is not improper to use that eivdence in an administrative hearing to protect the public from future injury to their persons or property.[165] On the other hand, it may be said that the interest of the public in safety on the highways must be weighed against the interest of the public in being secure in their constitutional liberties - and that the interest in seeing that governmental officials obey the Constitution is supreme. Furthermore, even though administrative suspension is imposed for regulatory and nonpenal purposes, from the licensee's point of view the difference is merely semantic. A person whose license is revoked administratively based upon past driving incidents "feels just as punished" as the person whose license is suspended as part of the sentence imposed by a court based upon a violation of law which grew out of a driving incident.

There is no authoritative decision by the United States Supreme Court, as to whether evidence obtained in violation of constitutional rights is admissible in administrative proceedings. There is not even an appropriate decision involving a civil proceeding which can be used by way of analogy. Recently, the Supreme Court has said that it has not held that evidence unlawfully obtained is inadmissible in civil proceedings.[166] Under the unusual facts of that case (not in any way relevant to license suspension) the Court held that the evidence was admissible. It distinguished previous cases where evidence had been excluded by designating those proceedings (e.g., forfeitures) as "quasi-criminal". It also emphasized under the facts of the case that the "deterrent" objective of the exclusionary rule would not be served by excluding the evidence. The decision leaves open the question as to whether illegally obtained evidence is generally admissible or excludable. It suggests that perhaps, characterization of the proceedings as "quasi-

criminal" might be a factor in applying the rule and also an evaluation of whether the deterrent objective would be served. However, evidentiary practices in administrative proceedings are usually less strict than even civil proceedings and coupled with the public interest in safety might result in a ruling in favor of admissibility.

Lower court decisions in civil cases, particularly the more recent ones, and the law review literature, favor exclusion of illegally obtained evidence.[167] There is virtually no case law on the subject in the context of suspension of driver's licenses. There are some cases in the area of implied consent suspensions but they can be explained more easily as resting on statutory construction rather than the exclusionary rule.[168] Thus, some state courts have held that a refusal to submit to a chemical test following an unlawful arrest cannot be used as a basis for suspension or revocation.[169] The statutes in question, however, required a person "under arrest" to submit, and the courts have reasoned that a person unlawfully arrested is not "under arrest" as required by the statute.[170] The Pennsylvania courts have held to the contrary - stating that an arrest is an arrest whether lawful or unlawful.[171] However, the Pennsylvania cases pointed out that the defects in the arrests in question were not of constitutional dimension (there was probable cause) but merely technical violations of state statutory law.[172]

G. Burden of Proof

There are only a few cases dealing with the due process aspect of burden of proof in license suspension cases. Usually, the burden of proving that a proper basis exists for suspension is placed on the state either directly or indirectly, as a result of a specific provision in the state's motor vehicle law.[173] This comports with the general rule of both administrative law and the common law that the moving party has the burden of proof at an administrative hearing.[174] This

means that the proponent of the action has the burden of going forward as well as the burden of persuasion. In licensing a person seeking a license has the burden of demonstrating his eligibility before the agency. Conversely, once the license has been granted, the agency has the burden if it seeks to take it away by suspension or revocation. Since this represents the general[175] view it is not surprising that there are only a few cases which raise due process issues. Furthermore, since suspension and revocation proceedings are not criminal prosecutions the burden on the state usually is to prove the basis for revocation by a "preponderance of evidence" - the standard of proof usually applicable in civil proceedings.[176]

Would it be a denial of due process of law for a state to place the burden on the licensee to show why his license should not be revoked? One might argue that it would. To reverse the rule on burden of proof would require the use of statutory presumptions. This would mean, for example, that the statute on implied consent suspensions would have to be amended to include a provision to the effect:

> "The arrest of a person on a charge of driving under the influence shall be proof that the arrestee was
>
> (1) Properly arrested;
>
> (2) On probable cause of being intoxicated;
>
> (3) Advised of his obligation to take the test;
>
> (4) Refused to take the test; etc.; unless the person so charged shall come forward with evidence showing that one of the above four factors was absent.

The statute on financial responsibility would include a presumption that anyone involved in an accident was at fault unless that person could prove the contrary. Due process permits the use of presumptions but only where "the presumed fact is more likely than not to flow from the proved fact on which it is made to depend."[177] The presumptions illustrated above probably do not satisfy the constitutional

criterion.

There are several cases which have sustained placing the burden of proof on the licensee.[178] One involved a statutory presumption that a person with a prescribed traffic violation record was to be considered, prima facie, a negligent operator. The California Court of Appeals using the then applicable constitutional criterion found that the presumption did not violate due process. The Court found a "rational connection" between the licensee's driving record which showed repeated violations and accidents due to his own fault, and the conclusion that the defendant was a negligent driver. Under these circumstances, it was held proper to impose the burden on the licensee to overcome the presumption at the administrative hearing to suspend the license.

Another[179] case also decided by the California Court of Appeals involved a presumption that "... a licensee who has acquired the negligent violation point count set forth" in the statute "is presumed prima facie to be a negligent driver."[180] Recognizing that the presumption shifted the burden of proof to the licensee in a suspension hearing and that this was an exception to the rule, the court found no violation of due process, especially in light of the judicial review which had been specifically provided.

In yet another case[181] certain provisions of the Colorado Motor Vehicle responsibility Act were in question. The Act required that in a license suspension hearing, the uninsured motorist had to show he was free from any fault in an accident in order to retain his license. Suit was brought in Federal Court and a number of questions were certified to the Colorado Supreme Court. That Court stated that the placing of the burden of proof on the uninsured motorist was not unconstitutional under Bell v. Burson and the Federal Court agreed. However, some of the impact of the case as decisional law is muted by the Federal Court's state-

ment, "It is doubtful that the burden of proof question is included in the issues raised by plaintiffs' complaint."[182]

Generally, however, the states do not place the burden of proof on the licensee in the administrative hearing as the examples in the accompanying footnote indicate.[183]

It is interesting to note though that when the administrative license-suspension order is under judicial review, the burden of proof may or may not remain with the state agency depending upon the particular state. For example, South Carolina provides, by statute, that the burden of proof in any judicial review hearing involving the denial, cancellation, suspension, or revocation of a driver's license by the department is on the department.[184] According to case law in Pennsylvania, the burden to prove a prima facie case also remains upon the Commonwealth when the order of suspension or revocation is appealed by the motorist for purposes of judicial review.[185] In Arizona, the burden of proof remains on the state when the order of suspension or revocation is heard on appeal.[186] But, according to the case law[187] in several other states the burden of proof will shift to the motorist on appeal since he is the moving party or the one who is seeking judicial review of his license suspension.

H. Right to Written Decision with a Statement of Reasons

There is very little case law on whether a person after a hearing is entitled to a written decision with, at least, a brief statement of reasons for the agency action. The more recent cases support the existence of such a right, and as a practical matter, a licensee is usually advised in writing after the hearing of the decision to suspend or revoke.[188] However, the degree to which this is supplemented by a statement of reasons varies from state to state. There is no authoritative Supreme Court decision in a license suspension or revocation case.

The Supreme Court in other cases involving procedural due process requirements, such as in probation and parole revocation,[189] termination of welfare benefits,[190] has indicated that such a requirement is a basic ingredient of due process. The Supreme Court, obviously does not mean that the decisionmaker must reveal his innermost thoughts as to how and why he found certain facts. Rather a simple statement of the factual basis for suspending or revoking will probably suffice.

One important reason for this requirement is that most administrative decisions are subject to judicial review. It is thought that if the person whose interests are affected by agency action understands the basis for that action, he may accept the decision without taking an appeal. Furthermore, in the event of an appeal, the court can better evaluate the legality of the agency's decision if it understands the factual basis on which the decision was made.

I. Right to be Informed of Opportunity to Appeal

The issue of whether a licensee whose license has been revoked is entitled to notice that he has a right to appeal is discussed in Section III, "The Notice Requirement."

J. Impartial and Competent Tribunal

The right of a licensee to have a hearing before an impartial and competent hearing officer is discussed in Section V.

V. Impartial and Competent Tribunal

Due process requires an impartial decisionmaker.[191] The administrative officer or agent who determines whether or not to suspend a driver's license must make an impartial decision. Clearly, he can have no personal or pecuniary stake in the outcome or the proceedings. Administrative hearing officers are not compensated on a per suspension basis, and suspension proceedings typically are characterized

neither by personal nor pecuniary interest in the outcome.[192]

There are, however, questions of possible professional or functional bias which may arise because the agency is not merely an adjudicator but an investigator as well. Also hearing officers are not mere umpires but usually have substantial responsibility for developing all of the pertinent facts.

The starting point for a due process evaluation of agency action where the agency exercises multiple functions is Withrow v. Larkin.[193] That case involved procedures used by a medical examining board which had the responsibility for investigating alleged improper medical practices and imposing sanctions including suspension of license where appropriate. The lower court held that the combination of investigative and adjudicative powers in the same agency was violative of due process since the board could not be "an independent decisionmaker."[194] The Supreme Court reversed and stated that:

> The contention that the combination of investigative and adjudicative functions necessarily creates an unconstitutional risk of bias in administrative adjudication has a much more difficult burden of persuasion to carry. It must overcome a presumption of honesty and integrity in those serving as adjudicators; and it must convince that, under a realistic appraisal of psychological tendencies and human weaknesses, conferring investigative and adjudicative powers on the same individuals poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented.[195]
>
> * * *
>
> It is not surprising therefore, to find that '[t]he case law, both federal and state, generally rejects the idea that the combination of [of] judging [and] investigating functions is a denial of due process ... .' 2 K. Davis, Administrative Law Treatise, §13.02 (1958); at 175. Similarly, our cases, although they reflect the substance of the problem, offer no support for the bold proposition applied in this case by the District Court that agency members who participate in an investigation are disqualified from adjudicating. The incredible variety of administrative mechanisms in this country will not yield to any single organizing principle.[196]

In the context of license suspension, the motor vehicle department (or whichever agency has the power to suspend) usually acts in a responsive manner rather than as an initiator. The agency does not ordinarily go about sending investigators into the field to determine whether or not a license should be suspended. Usually the agency will receive notice that a particular licensee has been convicted of a particular offense, or that a licensee refused to take a chemical test, or that he was involved in an accident. In this context, a decision is made within the agency that a case appears appropriate for suspension.[197] If this preliminary decision by the agency - that suspension is warranted - may be regarded as "investigation" or even "prosecution", can the agency also make the ultimate decision to suspend? The general view, although there are few cases (not driver license cases) which by analogy are contrary,[198] is that the combination of functions in an administrative agency is not per se violative of due process.[199] As a practical matter, there is no issue of functional bias in a mandatory suspension where the agency must suspend after judicial conviction, nor is there a problem where the court finds the "essential" facts and the agency exercises its discretion to suspend or not. The question as to functional partiality would appear relevant only where the agency has the responsibility for providing a "trial" type hearing from which it must find "essential" facts. The fear is that the preliminary decision to suspend will color the fact-finding process so as to improperly result in an ultimate decision to suspend. While there are virtually no cases on this point, by analogy, it would appear that due process is not violated.[200]

Separation within the agency of the initial function of determining whether to invoke the suspension process from the subsequent function of receiving evidence and determining factually whether suspension is justified under the statutes would appear to satisfy due process.[201] This can be done by having distinct subdivisions

of the agency exercise the respective functions, or even by having different individuals perform the various functions.

Most motor vehicle agencies practice the separation of function approach, at least to the extent whereby the person who receives the preliminary information does not ultimately act as the hearing officer.[202] The separation of function device is ordinarily sufficient to withstand claims of bias.

Suppose, however, the person who makes the decision to proceed with the suspension is also charged with the responsibility for hearing evidence and determining whether or not to suspend. While the cases indicate that this is a closer issue[203] the language of Withrow v. Larkin indicates that before impartiality may be inferred from a combination of "investigative and adjudicative powers in the same individual" it must pose ... a risk of actual bias or prejudgment ... ."[204] This is to be determined through "a realistic appraisal of psychological tendencies and human weakness ... ."[205] It should be observed, however, that in most of the cases which have sustained the concurrent exercise of investigative and adjudicative powers, the powers were exercised by members of a board or agency and not by an employee such as a hearing officer.[206] Where the decision to proceed as well as the decision to adjudicate are concentrated in the same person a stronger argument can be made for lack of partiality. The Supreme Court has said that:

> [a]llowing a decisionmaker to review and evaluate his own prior decisions raises problems that are not present 'where the bias issue rests exclusively on familiarity with the facts of a case. ... Apart from considerations of financial interest or personal hostility, the Court has found that officials 'directly involved in making recommendations cannot always have complete objectivity in evaluating them.'[207]

The argument is simply that if I decide to prosecute you (i.e.,I decide that the record indicates that your license should be suspended) there is a good chance if I

am also the ultimate decisionmaker, that I will be predisposed to find you guilty notwithstanding the evidence. There is a serious question of partiality where an individual (not the agency itself) purports to exercise both powers in the same case. In creating guidelines in parole revocation cases, the Supreme Court has said that the determination of whether there is probable cause to believe that a parole violation has occurred should be "made by someone such as a parole officer other than the one who has made the report of parole violations or recommended revocation."[208] A similar decision was made in the case of termination of welfare benefits; i.e., the hearing should be conducted by someone other than the person initially dealing with the case.[209] While these cases are distinguishable from license suspension, they point to what may be regarded as the preferable practice.

A second problem stems from the role of the hearing officer at the hearing. Since it is not uncommon for a licensee to be unrepresented by counsel, and for the department to be similarly unrepresented, a peculiar responsibility is imposed on the hearing officer. He cannot sit back and umpire the actions of two antagonists. The hearing officer often has the responsibility for developing all of the facts through the introduction of documentary evidence, interrogation of witnesses, etc. In reality, licence suspension hearings are more inquisitorial (investigatory) in approach than adversary.[210] While it might seem incongruous for the decisionmaker to be responsible for getting the facts, it is not unusual in administrative proceedings nor does it materially differ from the role many judges play in disposing of minor offenses and traffic violations where neither the state nor the defendant is represented by counsel.[211] Requiring the decisionmaker to develop the relevant facts is not inconsistent with the requirement that he decide the issues on the facts fairly and impartially.

There does not appear to be a significant due process problem in the fact that

hearing officers, even when they are the decisionmakers, are employees of the department.[212]

Is it possible, however, that the decisionmaker may generally perform a function within the agency which creates such an unfair predisposition that as a practical matter the risk of "actual bias or prejudgment" is overwhelming. The mere fact that a hearing officer may perform other functions within the agency does not in and of itself disqualify him as a decisionmaker.[213] The mere fact that the decisionmaker informally through the investigative process has acquired some information about the licensee and his driving behavior prior to the hearing does not automatically disqualify him as a potentially impartial tribunal.[214] For example, the Supreme Court has said that it is appropriate for a parole officer to make the initial probable cause determination, so long as he is not the same person who inititated proceedings in the particular case.[215]

There may, however, be circumstances where the decisionmaker because his primary function is inherently in conflict with his role as hearing officer, or because of the method of his selection, or because of prior contact with the particular case which create a strong inference of potential bias. For example, where a senior law enforcement officer is designated as a hearing officer in implied consent proceedings, it may be contended that this represents an impermissible combination of the enforcement-prosecution function with the adjudication function. It is not merely that the officer may be resolving factual disputes between "his men" and the arrestee. Reviewing action or decisions of subordinates occurs frequently in the administrative adjudication process. The problem in this situation is that the law enforcement function is oriented towards arrest and prosecution and not to impartial adjudication. That is why we interpose judges to determine guilt or innocence.[216]

A second example might involve the situation where hearing officers are not members of the agency, but are lawyers in private practice who are hired by the department to act as independent hearing officers. This practice in and of itself, is certainly permissible. Some question is raised, however, when the person who selects the lawyers also represents the department more or less as a prosecutor in hearings before the lawyer.

One of the most pertinent issues is whether driver improvement officers may also function as hearing officers in certain cases. On the surface, there would seem to be no reason why they should not. There might be two situations where this practice might be inappropriate. First, where the particular driver improvement officer because of past contact has decided that the next time he "sees" this particular driver, he will suspend his license regardless of the facts. That officer cannot make an impartial determination under those circumstances. This bias would be difficult to demonstrate unless the officer had told the licensee: "If I ever see you again you are going to lose your license regardless of the circumstances." We should distinguish, however, between the arbitrary decision to suspend or revoke in the situation just mentioned, and suspension based on violation of conditions of probation. If the hearing officer has previously put the licensee on probation conditioned upon no future traffic violations within a proscribed period, it is not impermissible for that officer to suspend the license if the licensee subsequently is convicted of a traffic violation.

The second situation would be even more difficult to demonstrate. This would involve showing that the objectives of the driver improvement function are totally inconsistent with a fair decision on the facts. In other words, one would have to demonstrate that the driver improvement officer is so committed to traffic safety that he would conclude that in all or most cases in which suspension hearings

were held the licensee was a traffic menace, that he was not amenable to change in habits, and his license should be suspended. This bias would appear to be difficult if not impossible to show. Generally, there is no rule which precludes an agency employee from performing more than one function. So long as he is not asked to perform inconsistent functions in the same case, it is difficult to articulate any due process objection. Even under the Federal Administrative Procedure Act which may be more restrictive than due process requirements, an employee who performs an investigative or prosecutional role is precluded from participating in the decisionmaking process only in that or a "factually related" case.[217]

The final problem relates to intra-agency consultation. For example, can a hearing officer discuss a pending case with a driver improvement officer? Again, decisional law is meager. There are a number of cases which hold that the mere fact that the decisionmaker has some information prior to the hearing, or some familiarity with the case does not render him a partial or biased tribunal.[218] On the other hand, the hearing requirement could become a mere formality if decisions were routinely arrived at through intra-agency consultation.

In a situation where there are no factual disputes or where the facts have been found by the hearing officer there would appear to be no due process violation by some limited subsequent consultation which assists him in deciding how to exercise his discretion. This presumes the licensee has had an opportunity to appear before him with a view to influencing the exercise of discretion.[219] On the other hand, consultation which resulted in new or different "essential" facts being placed before the hearing officer without giving the licensee an opportunity to refute or explain those facts would seem to violate the hearing requirement.[220] Thus, consultation which is relevant not to "essential" fact finding but to the exercise of discretion would appear to be permissible.

Not only must the decisionmaker be capable of making an impartial decision he should be competent to decide the matter before him. In this respect, suspension decisions involve two possible problems. The first is whether the hearing officer or decisionmaker must be a lawyer or trained in the law. It could be argued that in applying financial responsibility laws in which fault is a factor an understanding of tort law is required - what is negligence, proximate cause, etc. In implied consent cases, an issue may be raised as to whether the licensee was lawfully arrested. Where the licensee is not represented by counsel and the hearing officer is not law trained, legally relevant factors may not be developed at the hearing.

There are some lower court cases[221] which have held in recent years that a person untrained in law cannot preside over criminal prosecutions in which the defendant might receive a prison sentence. There are, however, no comparable administrative decisions, and it is unlikely that there would be. Administrative decisionmaking has not traditionally required lawyer - judges. Furthermore, the United States Supreme Court has upheld the Kentucky judicial system whereby minor criminal offenses are tried by non-lawyer judges who have no special training in law.[222] In the Kentucky scheme, a dissatisfied defendant can appeal to a higher court presided over by a lawyer-judge and the matter is retried de novo. This was held to meet due process requirements.

In license suspensions the issues more often are factual rather than legal, or call for the exercise of discretion which might involve the assessment of traffic safety considerations. Also since most states provide for some form of judicial review on matters of law,[223] the licensee ultimately can have legal issues resolved by a regular court.

The second question relates to the decisionmaking process itself. Where the

hearing officer makes the decision based on the evidence before him there is no problem. Suppose the hearing examiner makes a recommendation, or merely forwards the record to a superior who then makes the actual decision. These practices do not violate administrative due process.[224] Whether or not the director of the department may delegate his power to suspend or revoke is a question of local law. But it is clear that he can take the facts (the record) developed by his subordinates and make a decision on the record. He need not have heard any of the witnesses.[225]

VI Judicial Review

Once a license has been suspended or revoked by administrative decision, due process does not require further administrative review. Of course, a state may provide for an administrative appeal if it deems it useful.

It is extremely difficult to make definitive statements with regard to the due process right to judicial review of administrative decisions. There are many cases which recognize "a right"[226] to judicial review, as well as numerous cases which involve appeals challenging administrative suspension orders.[227] However, judicial review in many of these cases has been predicated on grounds other than a general due process right to judicial review of administrative action. Most states by statute provide for judicial review of suspension or revocation decisions.[228] In some cases, "judicial review" was extended in order to satisfy the hearing requirement of Bell v. Burson.[229] For example, where an agency suspended a license without a hearing and the licensee sought a judicial order setting aside the agency's decision, the court treated the matter as a de novo proceeding thereby providing licensee with his constitutionally required opportunity to be heard. Such cases and the cases decided under appeal statutes do not go to the central question as to whether or when due process requires judicial review.

Some guarded generalizations may be made. First, judicial review will be available to consider Constitutional objections to agency action.[230] If the licensee contends that the statute under which the agency acted is unconstitutional, or that the agency denied him procedural due process, etc., he may attack the suspension by seeking judicial review. Furthermore, other questions of law such as issues of statutory interpretation are ultimately issues to be decided by a court.[231] A licensee whose license has been suspended may judicially challenge the administrative decision on the ground that the agency has misconstrued or misapplied a particular statute.

A more difficult question concerns possible judicial review of factual findings or the exercise of agency discretion. This generally is an area of some doubt in administrative law. Many states by statute provide for some judicial review, but the practice varies. For example, Sub-Sections 15(f)(g) of the Model State A.P.A. provide:

> (f) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.
>
> (g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
>
> (1) in violation of constitutional or statutory provisions;
> (2) in excess of the statutory authority of the agency;
> (3) made upon unlawful procedure;
> (4) affected by other error of law;
> (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Some of the leading administrative law scholars seem not to be in complete agreement on the issue of whether a legislature can attach finality to administrative decisions.[232] Perhaps, their views can be reconciled by concluding that there is a constitutional right to judicial review of factual determinations and the exercise of discretion in a limited number of situations. It may be that due process requires that agency decisions have support in fact and in law and that the exercise of agency discretion not be arbitrary. In other words, the Revised Model State A.P.A.[233] in that it authorizes judicial review of arbitrary or capricious exercise of discretion, and further authorizes a review of agency action where there is an allegation that the decision is clearly erroneous in light of this evidence, may have distilled out the constitutional standard for judicial review. Under such a standard judicial review is constitutionally required only where it is alleged that agency discretion is being exercised in an arbitrary or capricious fashion, or where it is alleged that there is no factual support in the record for the agency's decision.

The foregoing discussion of judicial review in the context of due process requirements does not exhaust all possible issues. No opinion was expressed as to whether judicial review must be de novo or whether review on the record will suffice. Generally, review on the record will satisfy the demands of due process. Local law, however, may require a de novo proceeding.[234] Furthermore, the legal sufficiency of review on the record depends on the existence of an adequate record. Possibly there is no constitutional requirement for making a record of administrative suspension or revocation proceedings. However, where no record is made judicial review would have to take the form of a de novo proceeding because there is no record on which to base the review. The completeness of the record would be another factor in determining which form of review was satisfactory.

Another issue which was not discussed previously was whether witnesses at the hearing must be sworn. For review purposes, a court which is accustomed to dealing only with sworn testimony would probably be more inclined to provide review on the record when it is composed of sworn testimony. Administrative proceedings are often characterized by informality and a relaxation of the rules of evidence and as was discussed earlier, unsworn testimony may be admissible.[235] Note, however, the admission of such testimony may raise problems of cross-examination and confrontation, as well as creating a question as to whether there is an adequate basis to support the decision.[236] The problem arises most often when documentary evidence is offered. In the case of witnesses, most states provide by statute[237] the authority for the hearing officers to administer oaths and these witnesses usually testify under oath.[238]

FOOTNOTES

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1. For general background see, J. Reese, The Legal Nature of a Driver's License (1965); A. Antony, Suspension and Revocation of Drivers' Licenses (1966); J. Reese, Power, Policy, People: A Study of Driver Licensing Administration (1971); Annot. Necessity of Notice and Hearing before Revocation or Suspension of Motor Vehicle Driver's License, 60 A.L.R.3d 361-418 (1974); Annot. Sufficiency of Notice and Hearing before Revocation or Suspension of Motor Vehicle Driver's License, 60 A.L.R.3d 427-468 (1974).

2. Friendly, The Bill of Rights as a Code of Criminal Procedure, 53 Calif. L. Rev. 929-956 (1965).

3. The Fifth and Sixth Amendments by express terms specifically limit their applicability to criminal prosecutions. Morrissey v. Brewer, 408 U.S. 471, 480 (1972) " ... revocation of parole is not part of a criminal prosecution and thus the full panoply of rights due a defendant in such a proceeding does not apply to parole revocations." Sixth Amendment right to counsel not applicable in license suspension and revocation proceedings. Infra note 134. Also see,Force, Administrative Adjudication of Traffic Violations Confronts the Doctrine of Separation of Powers, 49 Tulane L. Rev. at 110-113 (1974).

4. 402 U.S. 535 (1971). For an analysis of the law prior to Bell v. Burson, see, Note, 1971 U. of Ill. L. Forum 719; Comment, 46 Iowa L. Rev. 862 (1960-61); Note, 7 Utah L. Rev. 546 (1960-61).

5. Id.

6. E.g., Dept. Motor Vehicles of California v. Rios, 410 U.S. 425 (1973); Jennings v. Mahoney, 404 U.S. 25 (1971) both of which were decided on narrow legal grounds, although some courts have used Jennings as authority, e.g., Brown v. Superior Court, infra note 147; Rios v. Cozens, infra note 88.

7. Bell v. Burson, supra note 4 at 542.

8. Id. at 541.

9. Id.

10. Id. at 542.

11. Id. at 540.

12. Uniform Vehicle Code §6-205.1 (Supp 11. 1976).

13. Id. at §6-205.

14. Id. at §6-206.

15. Financial Security Laws, which require all vehicles to be insured, such as 6 Ann. Code Md., Art. 66 1/2 §7-101 (Supp. 1975); McKinney's Cons. Laws N.Y., Vehicle and Traffic Law §318 (1970, as amended, Supp. 1975).

16. E.g., Reese v. Kassab, 334 F.Supp. 744 (W.D. Pa. 1971) (Mandatory suspension under point system - notice and hearing necessary at least to rectify possible mistake); Warner v. Trombetta, 348 F.Supp. 1068 (M.D. Pa. 1972), affirmed, 410 U.S. 919 (1973) (Mandatory suspension for leaving scene of accident - same reasoning as Reese v. Kassab, supra; Nusberger v. Wisconsin Division of Motor Vehicles, 352 F.Supp. 515 (W.D. Wisc. 1973) (Statute which purported to impose mandatory suspension upon conviction of certain offenses interpreted as involving discretion and subject to requirements of Bell v. Burson; Holland v. Parker, 354 F.Supp. 196 (D.S. Dak. 1973) (Suspension under implied consent statute); Jones v. Penny, 387 F.Supp. 383 (M.D.N.C. 1974) (Suspension based on involuntary commitment for alcoholism); Chavez v. Campbell, 397 F. Supp. 1285 (D. Ariz. 1973) (Suspension under implied consent statute); Slone v. Kentucky Dept. of Transportation, 379 F.Supp. 652 (E.D. Ky. 1974), (aff'd 513 F.2d 1189 (6th Cir. 1975) (Suspension under implied consent statute where the court said "Courts applying Bell v. Burson, supra, have required the erection of prior hearing procedures in statutes governing license revocation."); Cicchetti v. Lucey, 377 F.Supp. 215 (D. Mass. 1974) (Failure to appear in Court); also see, Parsons v. Kentucky Dept. of Transportation, ____ F.Supp. ____ (1976) reported in AAMVA Bulletin April 1976, p. 8-9; Harrison v. State, Dept. of Public Safety, Driv. Lic. Div., 298 So.2d 312 (La. App. 1974) Writ denied 300 So.2d 840 (La. 1974); Ames v. Motor Vehicles Div., Dept. of Transportation, 517 P.2d 1216 (Ore. App. 1974); Cogdill v. Dept. of Public Safety, 217 S.E. 2d 502 (Ga. App. 1975) (Suspension under implied consent statute); Howlett v. Love, ____ F.Supp. ____ (N.D. ILL. 1976), Review granted 45 L.W. 3222) (Suspension based on number of traffic convictions without preliminary hearing); People v. Emanuel, 368 N.Y.S.2d 773 (Crim. Ct. N.Y.C. 1975), striking down a New York statute which authorized temporary suspension without notice); Contra: People v. La Gana, 381 N.Y.S.2d 742 (Justice Court, Scarsdale 1976); and see, Horodner v. Fisher, 382 N.Y.S.2d 28 (N.Y. 1976), U.S. Appeal dsmd. 45 L.W. 3225 (10-5-76).

17. Broughton v. Warren, 281 A.2d 625 (Del. Ch. 1971) (Suspension for commission of offense under a mandatory suspension provision prior to conviction and prior to hearing sustained as an emergency situation - Bell v. Burson distinguished); Carter v. Department of Public Safety, 290 A.2d 652 (Del. Super. Ct. 1972) (Same as Broughton v. Warren); Popp v. Motor Vehicle Department, 508 P.2d 991 (Kan. 1973) (Prior hearing not required in implied consent suspension); State v. Scheffel, 514 P.2d 1052 (Wash. 1973), appeal dsmd. 416 U.S. 964 (1974) (Habitual offender prior hearing restricted to correction of mistakes in records, e.g., identity, number of violations, etc.); Stauffer v. Weedlun, 195 N.W.2d 218 (Neb. 1972), appeal dsmd. 409 U.S. 972 (1972), criticized in Note, 52 Neb. L. Rev. 412 (1972-73) (Suspension based on accumulation of points for serious traffic violations - appeal - stay procedure available to correct errors in

record or fraud); State Department of Motor Vehicles v. Lessert, 196 N.W. 2d 166 (Neb. 1972); (same as Stauffer v. Weedlun); State v. Hanson, 493 S.W. 2d 8,13 (Mo. App. 1973) (Rationale for suspension under points system is "markedly different" from Bell v. Burson financial responsibility suspension); Daneault v. Clarke, 309 A.2d 884 (N.H. 1973) (Prehearing implied consent suspension based on sworn statement by officer is not invalid); Almeida v. Lucey, 372 F.Supp. 109 (D. Mass. 1974), aff'd, 419 U.S. 806, 95 S.Ct. 22 (1974) (Suspension after judicial finding of D.W.I. dispels need for administrative hearing - state may opt for judicial or administrative pre-suspension hearing to satisfy due process); Souter v. Department of Highway Safety and Motor Vehicles, 310 So.2d 314 (Fla. App. 1975) (Suspension under Habitual Offender statute - due process satisfied by either pre or post-suspension hearing) Dept. of Highway Safety and Motor Vehicles v. Argeros, 313 So.2d 55 (Fla. App. 1975) (Suspension under point system - due process satisfied by either pre or post-suspension hearing); Cameron v. Secretary of State, 235 N.W.2d 38, (Mich. App. 1975) (Temporary ex parte suspension of driver's license of hospitalized mental patient upon doctor's certification is not unconstitutional) cf., Gargagliano v. Secretary, 233 N.W.2d 159 (Mich. App. 1975); Risner v. State, 340 N.E.2d 433 (Ohio App. 1975) (No right to a hearing where suspension mandatory upon conviction of specified offense); Price v. State Dept. of Public Safety, Lic. Con. & D.I. Div., 325 So.2d 759 (La. App. (1976) (Due process satisfied by judicial review of suspension order entered without administrative hearing); Horodner v. Fisher, supra note 16; (Mandatory suspension upon three violations within 18 months period does not require pre-suspension hearing under "emergency" doctrine - due process satisfied by opportunity for judicial review in which issues of mistake may be raised).

18. E.g., Popp v. Motor Vehicle Dept., supra note 17.

19. E.g., Stauffer v. Weedlun, supra note 17.

20. Thus, while the notice and hearing requirements of Bell may be applicable, a licensee may not be entitled to a hearing on the issue of "fault" if fault is not a factor under the pertinent legislative scheme. State v. Harm, 200 N.W.2d 387 (N.D. 1972); Boykin v. Ott, 498 P.2d 815 (Ore. App. 1972) appeal dsmd. 411 U.S. 912 (1973); Wright v. Malloy, 373 F.Supp. 1011 (D.Vt. 1974) hearing on amount of security only.

21. Bell v. Burson, supra note 539.

22. Stanley v. Illinois, 405 U.S. 645 (1972) (determining fitness of father for custody purposes); Vlandis v. Kline, 412 U.S. 441 (1973) (determining out of state residence); Cleveland Board of Education v. LaFleur, 414 U.S. 632 (1974) (Mandatory termination of pregnant teachers); Wolff v. McDonnell, 418 U.S. 539 (1974) (prison disciplinary proceedings); Fuentes v. Shevin, 407 U.S. 67 (1972) seizure of property under replevin laws);

23. In addition to the cases cited in note 22 supra, also see, Goldberg v. Kelly, 397 U.S. 254 (1970); Sugarman v. Dougall, 413 U.S. 634 (1973); Morrissey v. Brewer, supra note 3; Gagnon v. Scarpelli, 411 U.S. 778 (1973).

24. 408 U.S. 564 (1972).

25. Id. at 569-70.

26. Id. at 571.

27. Id. at 576.

28. Id. at 577.

29. 416 U.S. 134 (1973).

30. Bishop v. Wood, 96 S.Ct. 2074, 2080 n. 14 (1976).

31. Also in Mathews v. Eldridge, 96 S.Ct. 893, 901 (1976) in which the Court held that due process was not violated by a termination of social security disability benefits, the Court reiterated "that the interest of an individual in continued receipt of these benefits is a statutorily created 'property' interest protected by "the" Due Process Clause. The Court cited Bell v. Burson.

32. "While '[m]any controversies have raged about ... the Due Process Clause,' ..., it is fundamental that except in emergency situations (and this is not one) due process requires that when a State seeks to terminate an interest such as that here involved, it must afford 'notice and opportunity for hearing appropriate to the nature of the case' before the termination becomes effective." Bell v. Burson, supra note 4 at 542. While the older cases referred to emergencies, the more recent cases use a balancing approach in determining whether certain procedures are required. See, Mathews v. Eldridge, supra note 31. This paper retains the emergency terminology because it seems particularly suited to the driver license - public safety considerations.

33. E.g., Daneault v. Clarke, supra note 17. Use of the "emergency" doctrine in implied consent situations is criticized in Comment, 10 Tulsa L.J. 398, 407-8 (1974-75).

34. E.g., State v. Sinner, 207 N.W.2d 495 (N.Dak. 1973); Stauffer v. Weedlun, supra note 17, criticized in Note, 52 Neb. L. Rev. 412 at 417 n. 34 (1972-73).

35. In Jones v. Penny, 387 F.Supp. 383 (M.D.N.C. 1974) the court struck down a North Carolina procedure whereby a determination that an involuntarily committed alcoholic was unfit to drive could result in suspension without a hearing. Relying on Boddie v. Connecticut, 401 U.S. 371, 379-380 (1971) where the Supreme Court stated that "an individual [must] be given an opportunity for a hearing before he is deprived of any significant property interest", the court found no "substantial countervailing governmental interest." It was contended that ex parte suspension was required in the interests of safety because "involuntary admission demonstrates at least a suspicion of immediate danger to public safety." The court without deciding whether that

factor alone could outweigh licensee's due process rights, found that the seven month delay between licensee's discharge and the revocation order was inconsistent with the existence of "emergency where summary action might indeed be justifiable, the temporary deprivation attending such a pre-hearing revocation can at least be mitigated by prompt post revocation proceedings", which, in fact, were not available under the North Carolina procedures. In Gargagliano v. Secretary of State, supra note 17, two members of the three judge panel found unconstitutional Michigan's ex parte suspension procedure in the case of persons committed to a hospital for mental illness. One judge found that the statute satisfied neither the 'emergency' exception in Bell v. Burson, nor the balancing test of Mitchell v. W. T. Grant Co., 416 U.S. 600 (1974). Another judge concurred in the result, but stated he would allow ex parte suspensions but only if there were an opportunity for having the license restored within a reasonable time; such opportunity was not available under the state statute. Cf., Cameron v. Secretary of State, 235 N.W.2d 38 (Mich. App. 1975); Gleason v. Wisconsin Department of Trans., 213 N.W.2d 74 (1973).

36. Ewing v. Mytinger & Casselberry, 339 U.S. 594 (1950) "One of the oldest examples is the summary destruction of property without prior notice or hearing for the protection of public health." The Court concluded "that public damage may result even from harmless articles if they are allowed to be sold as panaceas for man's wills." This case arose under the Federal Food, Drug and Cosmetic Act. Also see, Fahey v. Mallonee, 332 U.S. 245 (1947) which involved the seizure of bank assets by a conservator appointed by the Federal Home Loan and Bank Administrator.

37. 96 S.Ct. 473, 486-487 (1976). Justice Brennan earlier had said:

> The 'root requirement' of the Due Process Clause is 'that an individual be given an opportunity for a hearing before he is deprived of a significant property interest, except for extraordinary situations where some valid government interest is at stake that justifies postponing the hearing until after the event.' (Citations omitted). The precise timing and attributes of the due process requirement, however, depend upon accommodating the competing interests involved.

38. Four terms are used in this paper which should be briefly defined so as to avoid any confusion.

1. "Opportunity to be heard" - a general due process requirement which gives a person who might be adversely affected by agency action the occasion to communicate information, argument, or his point of view to the agency. Depending on the circumstances, the communication may be oral or written; it may occur in either a formal or informal atmosphere. Where the agency action is predicated on charges or an accusation against a person the opportunity to be heard includes the occasion to rebut or otherwise challenge the charges.

2. "Interview" - a technique whereby an agency gathers information during a face to face confrontation with a person. The interview may be unstructured,

such as in a conversation or discussion. It may be structured, such as in an interrogation. The interview is commonly regarded as an informal method of collecting information. It is not necessarily conducted with a view to reaching an imminent decision.

3. "Hearing" - "any oral proceeding before a tribunal." Infra p. 12. 1 K.Davis, infra note 40. In contrast to an interview, the hearing is regarded as a formal proceeding which is conducted according to procedural rules. The hearing is usually conducted to provide a basis for agency decision-making which is imminent. A hearing is held because of legal requirements, and provides interested parties an opportunity to express their views.

4. "Trial type hearing" - an oral proceeding in which evidence is presented subject to cross-examination and a decision is made on the record. "The key to a trial is the opportunity of each party to know and to meet the evidence and argument of the other side." Infra p. 12, 1 K. Davis, Administrative Law Treatise, infra note 40.

39. Goldberg v. Kelly, supra note 23 at 267-8.

40. 1 K. Davis, Administrative Law Treatise 407-8 (1958).

41. Id. at §§2.01 and 7.07.

42. Revised Model State Administrative Procedure Act §9.

43. Id. at §1(2).

44. Id. at §1(4).

45. Supra note 42.

46. Uniform Vehicle Code 6-206.1 (Supp. 1976).

47. Uniform Vehicle Code 6-206 - deleted 1975.

48. Uniform Vehicle Code 6-212 (Supp. 1976).

49. Supra note 42 at §15. This section provides for judicial review on the record of the administrative hearing.

50. Supra note 40.

51. Morrissey v. Brewer, supra note 3 at 481.

52. Id. at 480.

53. Duncan v. Louisiana, 391 U.S. 145 (1968), reh. denied 392 U.S. 947 (1968); Frank v. United States, 395 U.S. 147 (1969), reh. denied 396 U.S. 869 (1969).

54. In re Winship, 397 U.S. 358 (1970).

55. E.g., State, Department of Highways v. Halvorson, 181 N.W.2d 473 (Minn. 1970) (preponderance of evidence); State v. Hurbean, 261 N.E.2d 290 (Ohio App. 1970); Commonwealth, Dept. of Transportation, etc. v. Groat, 350 A.2d 431 (Pa. Cmnwlth. Ct. 1976) (Preponderance of evidence). Also see, McKinney's Cons. Laws of N.Y., Veh. & Traf. Law §227(1) (Supp. 1975-76) (Clear and convincing evidence).

56. Under §9 of the Model State A.P.A. hearings are required in contested cases, but under §1 of that Act a contested case is one "required by law to be determined by an agency after an opportunity for a hearing." (emphasis added).

57. F.S.A. §322.271(1)(a) (Fla. 1975); Idaho Code §49-330 (1974); L.S.A., R.S. 32:414(E) (La. 1974); McKinney's Con. Laws of N.Y., Veh. & Traf. Law §510 (1975); RCWA 46.20.328-329 (Wash. 1972).

58. E.g., Grindlinger v. Com., Dept. of Transp., B. of T.S., 300 A.2d 95 (Pa. Cmwlth. Ct. 1973); Commonwealth, Dept. of Transp.,B. of T.S. v. Cannillo, 303 A.2d 580 (Pa. Cmwlth. Ct. 1973).

59. Supra note 57.

60. Supra note 16.

61. Supra note 17.

62. Supra pp. 3-19.

63. Jennings v. Mahoney, supra note 6; McNulty v. Curry, 328 N.E.2d 798 (Ohio 1975); Stauffer v. Weedlum, supra note 17; Griesheimer v. Curry, 325 N.E. 2d 263 (Ohio App. 1975). Also see cases cited in note 58 supra. Cf., note 89 infra.

64. Supra note 4 at 541. Generally see, 2 Cooper, infra note 117 at 500-502.

65. Broughton v. Warren, supra note 17; Stauffer v. Weedlun, supra note 17; Kosmatka v. Safety Responsibility Division of N. Dak. State Hwy. Dept., 196 N.W.2d 402 (N. Dak. 1972); Smiley v. Waguespack, 314 So.2d 492 (La. App. 1975); Horodner v. Fisher, supra note 16; Risner v. State, 340 N.E.2d 433 (Ohio App. 1975); Almeida v. Lucey, supra note 17.

66. Stauffer v. Weedlun, supra note 17; 1 K. Davis, supra note 40 at §§7.02 & 7.04.

67. Souter v.Dept. of Highway Safety and Motor Vehicles, supra note 17.

68. Ledgering v. State, 385 P.2d 522 (Wash. 1963); J. Reese, supra note 1 at 107-112 (1971); Comment, Discretionary Revocation of a South Dakota Driver's License, 13 S. Dak. L. Rev. 344, 350-352 (1966-68).

69. The "Supreme Court while it has articulated a "notice and hearing" requirement under the facts of Bell v. Burson, also has upheld the need for flexibility in implementing procedural due process. The social security cases and the government employment cases (Supra pp. 7-9 and accompanying notes), illustrate that procedural requirements under due process need not be applied in a wooden fashion. Accommodation between the individual's rights and the government's needs permits variations in procedures according to the circumstances. The critical question in evaluating the particular process is: Is it a fair procedure? That question can be answered only by focusing on the purpose for the hearing: On what basis will the agency arrive at a decision? As Judge Friendly has stated: "There is a need for experimentation, particularly for the use of the investigative model, for empirical studies, and for avoiding absolutes." Friendly, "Some Kind of Hearing," 123 U. of Pa. L. Rev. 1267, 1316 (1974-75) Compare Goldberg v. Kelly, supra note 23, with Wolff v. McDonnell, 418 U.S. 539 (1974), where the Court said: "The Court has consistently held that some kind of hearing is required at some time before a a person is finally deprived of his property interests." at pp. 557-558. (emphasis added).

In trying to distinguish the kinds of "facts" which are relevant to agency decisionmaking in suspension cases and to fashion procedural requirements accordingly a statement by Professor Davis is helpful:

> Facts pertaining to the parties and their businesses and activities, that is, adjudicative facts, are intrinsically the kind of facts that ordinarily ought not to be determined without giving the parties a chance to know and meet any evidence that may be unfavorable to them, that is, without providing the parties an opportunity for trial. (emphasis added). 1 K. Davis, supra note 40 at 413.

As has been previously stated the "trial type hearing" in administrative procedure is used to resolve disputed adjudicative facts. It is not the only process used by administrative agencies to find facts. License suspension often involves fact-finding but not in context of resolving disputed facts. The "facts" sought by the agency may be rooted only in the driver's explanation of extenuating circumstances, or may involve an assessment as to the driver's need for his license, or may consist of an evaluation of the driver's attitude. Finding these "facts" is a very different task from determining whether or not a driver drove his vehicle in a negligent manner and thereby caused the accident in question. To determine whether a driver was negligent often will involve examination of accident reports which may contain information "unfavorable" to the licensee. But consideration of a driver's need for his license or his attitude on traffic safety is not a situation which involves "unfavorable" evidence.

70. See pp. III-17 to III-21 of this report.

71. Souter v. Department of Highway Safety & Motor Vehicles, supra note 17.

72. Reese v. Kassab, supra note 16 especially concurring opinion at 748; Nusberger v. Wisconsin Division of Motor Vehicles, supra note 16; Stauffer v. Weedlum, supra note 17; Almeida v. Lucey, supra note 17; Price v. State Dept. of Pub. Saf., Lic. Con. & D.I. Div., supra note 17; Horodner v. Fisher, supra note 16.

73. Id.

74. Supra note 16.

75. Supra note 65.

76. Supra note 4.

77. Pollion v. Lewis, 322 F.Supp. 777 (N.D. Ill. 1971) on remand from 403 U.S. 902 (1971); Boykin v. Ott, supra note 20; Veach v. State, 491 S.W.2d 81 (Tenn. 1973); Wright v. Malloy, supra note 20; Beazley v. Commissioner, F.Supp. (M.D. Tenn. March 17, 1976).

78. E.g., Holland v. Parker, supra note 16.

79. E.g., Popp v. Motor Vehicle Department, supra note 17.

80. Supra pp. 18-22.

81. Supra note 72. Cf., Price v. State Dept. of Pub. Saf., Lic. Con. and D.I. Div., supra note 17.

82. Supra note 4 at 542.

83. Supra pp. 7-8 and accompanying notes.

84. E.g., Holland v. Parker and other implied consent cases cited in note 16 supra; also see, Howlett v. Lowe, supra note 16.

85. Westenburg v. Weedlun, 193 N.W.2d 566 (Neb. 1972); Michels v. Motor Veh. Div. of Dept. of Rev., 506 P.2d 1243 (Colo. App. 1973); supra note 65.

86. E.g., Reese v. Kassab, supra note 16.

87. E.g., Souter v. Department of Highway Safety & Motor Veh., supra note 17.

88. Jennings v. Mahoney, supra note 6; Rios v. Cozens, 327 F.Supp. 867 (N.D. Calif. 1971), vacated 409 U.S. 55 (1972), on remand 499 P.2d 979 (Cal. 1972), vacated 410 U.S. 425 (1973), on remand 509 P.2d 696 (Cal. 1973); Grindlinger v. Com., Dept. of Transp., supra note 58; Commonwealth, Dept. of Transp., etc. v. Cannillo, supra note 58; Dablemont v. State Department of Public Safety, 534 P.2d 563 (Okla. 1975); Ellis v. New York State Commissioner of Motor Vehicles, 372 N.Y.S.2d 134 (N.Y. Super. Ct. 1975); Wiethe v. Curry, 325 N.E.2d 561 (Ohio App. 1975) Appeal dsmd., 96 S.Ct. 350 (1975), reh. denied, 96 S.Ct.

869 (1976); Abraham v. Florida, 301 So.2d 11 (1974), Appeal dsmd. 95 S.Ct. 1319 (1975); The procedure of issuing a stay order pending judical review is not uncommon, Bush v. Fisher, 366 N.Y.S.2d 751 (N.Y. App. Div. 1975).

89. Kilfoyle v. Heyison, 417 F.Supp. 239, 247-248 (W.D. Pa. 1976).

90. Areaux v. Dept. of Public Safety, 297 So.2d 684 (La. App. 1974).

91. See pp. B-27, 28 of this report.

92. It is extremely difficult to find cases which present this precise issue. A case decided by the Nova Scotia Supreme Court, Appeal Division, is exactly on point. A case decided under the law of another country is usually of little weight in resolving issues arising under the Constitution and statutes of the United States. However, there is strong reason to believe that an American court would reach the same result. The case, Re Cluney and Registrar Motor Vehicles, N.S., 53 D.L.R. (3d) 468 (1975) involved a suspension of a driver's license on the ground that the licensee was an "habitual negligent driver." By statute licensee was entitled to a hearing before the Registrar. Licensee met with Inspector Nicholson, a driver improvement officer. The Inspector refused to discuss licensee's various accidents. Instead, he indicated his view that licensee was not a fit driver and suspended the license, which could not be reinstated until licensee completed a defensive driving course. The licensee complained he had not received a proper hearing. The court agreed and although the hearing in question need not follow court procedure the tribunal must " 'act in good faith and fairly listen to both sides ... .' " (at p. 474).

The Court stated at p. 474:

> Adherence to the principles of natural justice here required that the appellant be given the opportunity of presenting evidence as to whether or not he was a habitually negligent driver. It is stated in the affidavit of the appellant that he attempted to explain the facts behind the entries on his driving record and to support his denial of liability in those cases where he believed he was "not responsible for the negligent operation of a motor vehicle" but that he was repeatedly informed by Inspector Nicholson that a driver with a record like his should not be on the highway or words to that effect. The appellant contended that he was not given an adequate opportunity to present his evidence and advance his argument with respect to the suspension of his driving privileges.
>
> In my opinion, the appellant's position is supported by the report of what took place before Inspector Nicholson as evidenced by the document to which I have referred, headed "Driver Improvement -- Report of Interview, Re-examination -- Hearing". The whole proceeding before the

inspector appears not to have taken the course of a quasi-judicial inquiry but rather that of an interview to determine what must be done by the appellant to improve his driving habits before he would be permitted again to operate a motor vehicle on the highway.

93. E.g., S.C. Const., Art. 1 §22 (1971).

94. Utah Code Ann., 41-2-18 (C) (1973); See statutes cited in note 57 supra. Also see, Model State A.P.A. supra note 42 at §§1(2)-(4), 9. 14.

95. Goldberg v. Kelly, supra note 23; Boddie v. Connecticut, supra note 35; Morrissey v. Brewer, supra note 3; Friendly, supra note 69 at 1280-1281.

96. Schroeder v. City of New York, 371 U.S. 208 (1962); Bell v. Burson, supra note 4.

97. Bell v. Burson, supra note 4 at 542.

98. Slone v. Kentucky Dept. of Transportation, supra note 16 (implied consent); Reese v. Kassab, supra note 16 (point system or persistent violator).

99. Price v. State Dept. of Pub. Saf., Lic. Con. & D.I. Div., supra note 17.

100. F.S.A. §322.251 (Fla. 1975); Idaho Code §49-330d (Supp. 1975); L.S.A., R.S. 32:414(E) (La. Supp. 1975); McKinney's Con. Laws of N.Y., Veh. & Traffic L. §510(7) (Supp. 1975); South Carolina Code §46-182 (1962); Utah Code Ann. §41-2-19 (1953); RCWA §46.20.322 (Wash. Supp. 1976), RCWA §46.20.323 (Wash. 1970).

101. Warner v. Trombetta, supra note 16; Chavez v. Campbell, supra note 16; People v. Walsh, supra note 121.

102. Agnew v. Hjelle, 216 N.W.2d 291 (N.Dak. 1974); Quick v. Dept. of Motor Vehicles, 331 A.2d 319 (D.C. App. 1975).

103. Supra note 42 at §9(a).

104. Supra note 100.

105. People v. Emanuel, 368 N.Y.S.2d 773 (Crim. Ct. N.Y.C. 1975); Also see, State v. Atwood, 225 S.E.2d 543 (N.C. 1976); Contra: People v. La Gana, supra note 16; Horodner v. Fisher, supra note 16.

106. Horodner v. Fisher, supra note 16.

107. Department of Highway Safety and Motor Vehicles v. Argeros, supra note 17.

108. Daneault v. Clarke, supra note 17.

109. Price v. State Dept. of Pub. Saf., Lic. Con. & D.I. Div., supra note 17.

110. Weaver v. O'Grady, 350 F.Supp. 403, 411 (S.D. Ohio 1972).

111. Fell v. Bureau of Motor Vehicles, 283 N.E.2d 825, 832 (Ohio App. 1972), U.S. cert. denied, 419 U.S. 1010 (1974), 95 S.Ct. 330; Williams v. Austin, 198 N.W.2d 770 (Mich. App. 1972); People v. Yount, 484 P.2d 1203 (Colo. 1971).

112. State v. Cesaro, 494 P.2d 255 (Ore. App. 1972).

113. South Carolina Code §46-183 (1962).

114. Id.

115. Id.

116. Op. Atty. Gen. No. 2873, p. 110 (S.C. 1969-1970).

117. > ... The type of notice and the method of notice vary with the quality of the proceeding and the results which can obtain after hearing. Notice must serve the purpose of informing the parties of the nature and time of the proceedings, the purpose of the hearing - i.e., the possible consequences or the manner in which interests may be affected-, and the method of presenting objections to the administrative action. The United States Supreme Court put it in these terms: "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections ... .' [cite omitted]

Tafaro's Invest. Co. v. Division of Housing Improve., 259 So.2d 57, 61 (La. 1972). Also see, Schroeder v. City of New York, supra note 96; Wagner v. Little Rock School District, 373 F.Supp. 876, 882-3 (E.D. Ark. 1973); State v. Van Natta, 322 N.E.2d 400 (1974); State v. Hammond, 281 A.2d 819 (N.J. County 1971); 1 F. Cooper, State Administrative Law, 273-286 (1965); 1 Davis, supra note 40 §8.05 (1958 and 1970 Supp.

118. Id. Also see, Weaver v. O'Grady, supra note 110.

119. Supra note 67. A similar issue in regard to the denial of the issuance of a license is discussed in Raper v. Lucey, 488 F.2d 748 (1st Cir. 1973).

120. Supra note 117

121. Com. v. Crosscup, 339 N.E.2d 731 (Mass. 1975); State v. Atwood, supra note 105 (N.C. 1976); People v. Walsh, 367 N.Y.S.2d 168 (N.Y.D.C. 1975); Price v. State, Dept. of Pub. Saf., Lic. Con. & D.I. Div., supra note 17 (La. App. 1976).

122. Morrissey v. Brewer, supra note 3; Wolff v. McDonnell, supra note 69. See note 69 generally.

123. Tumey v. Ohio, 273 U.S. 510 (1927); Ward v. Village of Monroeville, 409 U.S. 57 (1972); Force, supra note 3 at p. 90 n. 9; Friendly, supra note 69 at 1279-1280.

124. 1 Davis, supra note 40 at §8.16 and 1970 Supp.

125. In the Matter of Emberton, 262 A.2d 899 (N.J. Super. 1970).

126. In one case in which a driver refused to submit to a breath test, 2 years and 8 months elapsed between his arrest and the suspension of his license. The New Jersey Supreme Court held that this was untimely and violated due process. In the Matter of Arndt, 341 A.2d 596 (N.J. 1975).

127. Supra note 3; also see note 169 infra.

128. Id. at 480.

129. Id. at 488-489.

130. Id. at 481.

131. Supra note 23.

132. Argersinger v. Hamlin, 407 U.S. 25 (1972).

133. Goldberg v. Kelly, supra note 23; Gagnon v. Scarpelli, supra note 23; Wolff v. McDonnell, supra note 69; Friendly, supra note 69; 1 Davis, supra note 40 at §8.10 and 1970 Supp.; also see Davis, Administrative Law 318-321 (5th ed. (1973).

134. Robertson v. State ex rel. Lester, 501 P.2d 1099 (Okla. 1972); Swenumson v. Iowa Dept. of Public Safety, 210 N.W.2d 660 (Iowa 1973); Ferguson v. Gathright, 485 F.2d 504 (4th Cir. 1973), cert. denied 415 U.S. 933 (1974).

135. Linkous v. Jordan, 401 F.Supp. 1175 (W.D. Va. 1975); Whorley v. Com., 214 S.E.2d 447 (Va. 1975), U.S. cert. denied, 96 S.Ct. 356 (1975); State v. Francis, 540 P.2d 421 (Wash. 1975); State v. Love, 312 So.2d 675 (La. App. 1975) writ denied 317 So.2d 627 (La. 1975); May v. Harris, 523 F.2d 1258 (4th Cir. 1975).

136. Ferguson v. Gathright, supra note 134.

137. E.g., Ann. Code of Md., Art.66 1/2 Sec. 6-205.1(4)(d) (Supp. 1971); 1 Davis supra note 133 at §8.10; See p. III-12 of this report.

138. In Goldberg v. Kelly, supra note 23 at 270 (1969), a case involving termination of welfare benefits, the Court said:

> 'The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel' [citation omitted] ... we do not say that counsel must be provided at the pre-termination hearing but only that the recipient must be allowed to retain an attorney if he so desires. Cf., Friendly, supra note 69 at 1287-1291.

139. Gagnon v. Scarpelli, supra note 23.

140. Butzner, J. dissenting in Ferguson v. Gathright, supra note 134 at 509.

141. Goldberg v. Kelly, supra note 23; Morrissey v. Brewer, supra note 3.

142. Supra note 6. Also see, Flory v. Dept. of Motor Veh., P.2d 1318 (Wash. 1974); Souter v. Dept. of Highway Safety & Motor Vehicles, supra note 17, and cases and materials discussed in note 157 infra.

143. Washington v. Texas, 388 U.S. 14 (1967).

144. Supra note 141.

145. In many states the subpoena power is expressly conferred. Smith-Hurd Ill. Ann. Stat., Art. 95 1/2 §2-118(c) (1973); Ann. Code Md. Art. 66 1/2 §2-319(e) (1976); Vernon's Ann. Mo. Stat. §536.077 (1957); McKinney's Con. Laws of N.Y. Veh. & Traf. Law §410(7) (1975). Some states which allow compulsory process do so at the cost of the party who asks for the subpoena. Vernon's Ann. Mo. Stat. supra note 136. This would not appear to violate due process so long as the charges are not unreasonable and are not used to deny process to indigents. Similar "costs" have been upheld in criminal proceedings, La. Code Crim. Pro. Art 738 Comment (a) (1967); McKinney's, N.Y. Code of Crim. Pro. §610.50(2) (1971). Cost may not be imposed on indigents, La. Code Crim. Pro. Art. 739 (1967); Fed. R. Crim. Pro. 17(b) (18USCA-1975); F.S.A. §929.07, 914.11 (Fla. Supp. 1976). A limitation may be placed on the number of subpoenas and witnesses to prevent introduction of cumulative or irrelevant testimony. Greenwell v. United States, 336 F.2d 962 (D.C. Cir. 1964), cert denied 380 U.S. 923 (1965); United States v. Sellers, 520 F.2d 1281 - vacated 96 S.Ct. 1453 (1976) [Case remanded for reconsideration in light of United States v. Gladdis, 96 S.Ct. 1023 (1976)]; United States v. Stoker, 522 F.2d 576 (10th Cir. 1975).

146. Goldberg v. Kelly, supra note 23; Morrissey v. Brewer, supra note 3; Gagnon v. Scarpelli, supra note 23.

147. Brockway v. Tofany, 319 F.Supp 811 (S.D.N.Y. 1970); State v. Hammond, supra note 117; Brown v. Superior Court, 523 P.2d 799 (Ariz. App. 1974); People v. Finley, 315 N.E.2d 229 (Ill. App. 1974); Quick v. Dept. of Motor Vehicles, supra note 102; Souter v. Department of Highway Safety & Motor Vehicles, supra note 17. Cf., Turner v. State D.M.V., 541 P.2d 1005 (Wash. App. 1975).

148. Pointer v. Texas, 380 U.S. 400 (1965) with regard to criminal trials the Supreme Court has said:

> There are few subjects, perhaps, upon which this Court and other Courts have been more nearly unanimous than in their expressions of belief that the right of confrontation and cross-examination is an essential and fundamental requirement for the kind of fair trial which is this country's constitutional goal. Indeed, we have expressly declared that to deprive an accused of the right to cross-examine the witnesses against him is a denial of the Fourteenth Amendment's guarantee of due process of law ... . [citation omitted] at 405.

149. McCormick on Evidence §245 (2d ed. 1972); Weinstein's Evidence pp. 800-1 to 800-26 (1975).

150. Opp Cotton Mills, Inc. v. Administrator, 312 U.S. 126 (1940), modified 312 U.S. 657 (1940); Ingram v. Gardner, 295 F.Supp. 380 (N.D. Miss. 1969); Barkett v. Lester, 490 P.2d 249 (Okla. 1971); State v. Dist. Ct. of Vt., 274 A.2d 685 (Vt. 1971); 1 F. Cooper, supra note 117 at 377-403 (1965); 2 K. Davis, supra note 40 at §§14.07-14.09 (Supp. 1970).

In some states, however, all or some rules of evidence do apply, e.g., Idaho Code §67-5210; Idaho Rules of Practice and Procedure for the Department of Law Enforcement and Agencies included thereunder, Rule 9.10. Cf., In re North Carolina Auto Rate Administration, 180 S.E.2d 155 (N.C. 1971); Application of Milton Hardware Co., 250 N.E.2d 269 (Ohio App. 1969).

151. Barkett v. Lester, supra note 150; State v. Dist. Ct. of Vt., supra note 150.

152. Haynes v. Williams, 522 S.W.2d 623 (Mo. App. 1975); 2 K. Davis, supra note 40, §14.10 et seq.; 1 F. Cooper, supra note 117 at 406-412.

153. Fairbank v. Hardin, 429 F.2d 264 (9th Cir. 1970) U.S. cert. denied 400 U.S. 943 (1970); Rauland Div., Zenith Radio Corp. v. Metropolitan Sanitary District of Greater Chicago, 275 N.E.2d 756 (Ill. App. 1971); Portland Pipeline Corp. v. Environmental Imp. Com'n., 307 A.2d 1 (Me. 1973) appeal dsmd. 414 U.S. 1035 (1973) 94 S.Ct. 532; Hentges v. Bartsch, 533 P.2d 66 (Colo. App. 1975).

154. Morrissey v. Brewer, supra note 3 at 489.

155. Id. at 487; Brown v. Superior Ct., supra note 147 at 801; Joyner v. Garrett, 182 S.E.2d 553 (N.C. 1971) reh. denied 183 S.E.2d 241 (1971). On remand trial court upheld suspension. This was then appealed and in Joyner v. Garrett, 195 S.E.2d 575 (N.C. App. 1973) this suspension order was affirmed by appellate court. Cf., Jennings v. Mahoney, supra note 6.

Pre-Bell v. Burson cases on the right to confrontation and cross-examination are collected in Annot. 60 A.L.R.3d 457-468. Also see, 2 K. Davis, supra note 40 at §14.15; 1 F. Cooper, supra note 117 at 371-379; Friendly, supra note 69 at 1282-87. Both the Federal Administrative Procedure Act (5 U.S.C.A. §566) and the Model State Administrative Procedure Act (§10) provide for the right of cross-examination.

However, in Carroll v. Iowa Dept. of Public Safety, Etc., 231 N.W.2d 19 (Iowa 1975) the Court stated that any error in excluding cross-examination at the hearing was not prejudicial since the record could be supplemented on appeal. Cf., Matthews v. Eldridge, supra note 31.

156. Morrissey v. Brewer, supra note 3 at 487.

157. See pp. III-15, 16 of this report.

In New York and South Carolina a police officer is present to testify at implied consent hearings and in Washington the officer must be present. In Louisiana and Wisconsin records and reports are used. Utah and South Carolina give the licensee the right to subpoena witnesses. Cf., Rios v. Cozens, supra note 88.

In Martz v. Commonwealth Dept. of Transp., Bur. of Traffic Safety, 354 A.2d 266 (Pa. Cmwlth. Ct. 1976) although defendant was not denied an opportunity for a hearing the Court held that a suspension based on a certified copy of a judgment of conviction was valid.

158. Supra note 146.

159. Thomas v. District of Columbia Board of Appeals and Review, 355 A.2d 789 (D.C. Ct. App. 1976). Cf., Quick v. Department of Motor Vehicles, supra note 102, in which the court held the procedures of the A.P.A. applicable to final revocation proceedings.

160. Robertson v. State ex rel. Lester, supra note 134, Swenumson v. Iowa Dept. of Public Safety, supra note 134; Ferguson v. Gathright, supra note 134; Agnew v. Hjelle, supra note 102; McDonnell v. D.M.V., 119 Cal. Rptr. (Cal. App. 1975); McNulty v. Curry, supra note 62; State v. Francis, supra note 135.

In Application of Baggett, 531 P.2d 1011 (Okla. 1974) the Court stated that license proceedings are civil and that the privilege against self-incrimination was inapplicable. Also see, Lowe v. Texas Department of Public Safety, 423 S.W.2d 952 (Tex. Ct. App. 1968). Force, supra note 3.

161. United States v. Mandujano, 96 S.Ct. 1768 (1976); Garner v. United States, 96 S.Ct. 1178 (1976); Cf., Heer v. D.M.V., 450 P.2d 533 (Ore. 1969) Annot. 5 A.L.R.2d 1404, 1419-1424, 1431-1436, 1456-1458 (1949).

162. McCormick on Evidence §135 at p. 288 (2d ed. 1972).

163. Comment, Constitutional Law: The Exclusionary Rule in Administrative Proceedings, 2 Conn. L. Rev. 648, 654 (1970).

164. Quoyeser v. Dept. of Public Safety, 325 So.2d 327 (La. App. 1975); City of Kettering v. Baker, 328 N.E.2d 805 (Ohio 1975); State v. Byerly, 522 S.W. 2d 18 (Mo. App. 1975).

165. Note, Admissibility of Illegally Obtained Evidence in Noncriminal Proceedings, 22 U. of Fla. L. Rev. 38, 49-50 (1969); also see, Comment, supra note 163 at 654-660.

166. United States v. Janis, 96 S.Ct. 3021 (1976).

167. Comment supra note 163 at 652-654, 660.

168. Carter v. Dept. of Public Safety, 290 A.2d 652 (Del. Super. 1972); Application of Baggett, supra note 160; Application of Hendrix, 539 P.2d 1402 (Okla. App. 1975). See notes 164-167 infra.

169. Holland v. Parker, supra note 16; Irwin v. State Dept. of Motor Vehicles, 517 P.2d 619 (Wash. App. 1974); Application of Hendrix, supra note 167.

170. Application of Hendrix, supra note 167.

171. Com. v. Griffie, 346 A.2d 838 (Pa. Cmwlth. Ct. 1975); Com.,Dept. of Transp., B. of T.S. v. Barrett, 349 A.2d 798 (Pa. Cmwlth. Ct. 1976).

172. Com. v. Griffie, supra note 171.

173. S.C. Code of Laws §46-187 (1962); L.S.A.-R.S. 32:661 (La. Supp. 1975); N.C.G.S. §70-16.2 (Supp. 1975); N.Y. McKinney's Con. Laws of N.Y., Veh. & Traf. Laws §510 (Supp. 1975); F.S.A. §322.27 (Fla. 1975). Also see note 183 infra. In Thomas v. District of Columbia Board of Appeals and Review, supra note 159 the court as a matter of due process imposed the burden of proof on the D.M.V.

174. 1 F. Cooper, supra note 117 at 355; McCormick on Evidence §355 at 853-855 (2d ed. 1972).

175. Id.

176. State v. Hurbean, supra note 55; Bell v. Dept. of Motor Vehicles, 496 P.2d 545 (Wash. App. 1972); Commonwealth, Dept. of Transp., B. of T.S. v. Brunett, 324 A.2d 894 (Pa. Cmwlth. Ct. 1974).

177. Barnes v. United States, 412 U.S. 837 (1973); Turner v. United States, 396 U.S. 398 (1970) reh. denied 397 U.S. 958 (1970); Leary v. United States, 395 U.S. 6 (1969).

178. Beamon v. Dept. of Motor Vehicles, 4 Cal. Rptr. 396 (Cal. App. 1969).

179. Kriesel v. McCarthy, 29 Cal. Rptr. 256 (Cal. App. 1963).

180. Id. at 258.

181. Sandoval v. Heckers, 350 F.Supp. 127 (D. Colo. 1972); The Colorado Supreme Court responded to the certified issues In re United States District Ct. for the District of Colorado, 499 P.2d 1169 (Colo. 1972).

182. Sandoval v. Heckers, supra note 181 at 129 n. 2.

183. The following cases illustrate that the burden of proof in license suspension and revocation proceedings is on the state.

In Neild v. State, Dept. of Public Safety, 301 So.2d 410 (La. App. 1974) the court, in interpreting an implied consent suspension provision statute, held that the state had to prove that the officer had "reasonable grounds to believe" that the motorist was driving while intoxicated. The state in order to suspend a driver's license under the implied consent law, has the burden by virtue of the statutory language. Implied consent laws also provide that the state may suspend or revoke the license of any motorist who is arrested for driving while intoxicated and refuses to submit to a chemical test. In Joyner v. Garrett, supra note 155, the court noted that the only issue before the department was whether the motorist " ... willfully refused to submit to the test" and that the burden of proof rested on the department. Id. at 558, 560. The court remanded the case for rehearing since the trial court had erred by placing this burden expressly on the motorist.

Another area where it can be readily seen that the state is indirectly given the burden of proof is revocation or suspension under the point system. Under some of these schemes, by inference, it is up to the state agency ultimately to show that it correctly has assessed and totalled the points for each violation. Commonwealth, Dept. of Transp., Bur. of T.S. v. Shisslak, 316 A.2d 684 (Pa. Cmwlth. Ct. 1974); Commonwealth v. Romm., 243 A.2d 471 (Super. Ct., Pa. 1968). Once the state has proved that its tabulations are correct, then under the statute, the suspension penalty may be applied. Since it is the state which is the moving party here, it has the burden of going forward as well as the burden of persuasion. See, Schuiling v. Scott, 493 S.W.2d 4 (Mo. App. 1973). If the state has made out its prima facie case for suspension of the motorist's license, under the point system, the motorist may then attempt to rebut the foregoing evidence by showing that the records of the state are incorrect either as to the fact of conviction or computation of points. Commonwealth, Dept. of Transp., Bur. of T.S. v. Schaefer, 304 A.2d 521 (Pa. Cmwlth Ct. 1973); Commonwealth, Dept. of Transp., Bur. of T.S. v. Siedlecki, 300 A.2d 287 (Pa. Cmwlth. Ct. 1973). A similar approach appertains in cases involving mandatory revocations. In the majority of states, the agency will "forthwith revoke the license of any person" who has been convicted of certain enumerated offenses. See, L.S.A.-R.S. 32:414 (La. Supp. 1976); McKinney's Con. Laws of N.Y., Veh. & Traf. Law §510 (Supp. 1975) F.S.A. §322.27 (Fla. Supp. 1975). Thus, if challenged, it is up to the agency to prove that the conviction did in fact occur before a court will affirm the revocation based on such a statute. In Smith v. Dept. of Public Safety, 254 So.2d 515 (La. App. 1971), the agency

sought to forthwith revoke the motorist's license based upon his second conviction for driving while intoxicated. L.S.A.-R.S. 32:414(B)(1) (La. Supp. 1976). The court concluded that the burden of proving that the DWI conviction was in fact a second one, thus justifying revocation under the statute, was on the state. Furthermore, the burden does not shift when the motorist initiates court review of the revocation. Even though the state may revoke a motorist's license under such a statute without a prior hearing, if and when there is a hearing on the issue, the state will bear the burden of proving that it was justified in revoking the license.

In some administrative hearings, the state agency may bear the burden of proof as a result of the normal rules of civil procedure. People v. Finley, 315 N.E.2d 229 (Ill. App. 1974); Campbell v. Superior Ct., 479 P.2d 685 (Arizona 1971).

184. S. C. Code of Laws §46-187 (1962).

185. Commonwealth, Dept. of Transp., etc. v. Cannillo, supra note 58; Commonwealth, Dept. of Transp., Bur. of Traf. Saf. v. Critchfield, 305 A.2d 748 (Pa. Cmwlth. Ct. 1973); Civitello v. Cmwlth., Dept. of Transp., B. of T.S., 315 A.2d 666 (Pa. Cmwlth Ct. 1974).

186. Campbell v. Superior Ct. 479 P.2d 685 (Ariz. 1971).

187. Shellady v. Sellers, 208 N.W.2d 12 (Iowa 1973); Lundquist v. Motor Vehicles Div., Dept. of Transp., 543 P.2d 29 (Ore. App. 1975); Barton v. Dir. of Dept. of Motor Vehicles, 235 N.W.2d 863 (Neb. 1975); Meyer v. State, Dept. of Public Safety Lic. Con., Etc., 312 So.2d 289 (La. 1975).

188. Goldberg v. Kelly, supra note 23; Morrissey v. Brewer, supra note 3; Raper v. Lucey, supra note 119. Findings of fact and conclusions of law may be required by statute, Prigge v. Cohns, 165 N.W.2d 559 (Neb. 1969); McLafferty v. Department of Public Safety, 191 S.E.2d 490 (Ga. App. 1972), revsd. on other grounds 195 S.E.2d 748 (1973). For a description of the usual practices in license revocation and suspension see, p. III-23 of this report.

189. Morrissey v. Brewer, supra note 3.

190. Goldberg v. Kelly, supra note 23.

191. Tumey v. Ohio, supra note 123; Ward v. Village of Monroeville, supra note 123; Morrissey v. Brewer, supra note 3; Withrow v. Larkin, infra note 193; Hortonville J.S.D. No. 1 v. Hortonville Ed., infra note 199. The Supreme Court decisions are discussed in the context of license suspension in Crampton v. Michigan Department of State, infra note 216.

192. See pp. III-26 to III-28 of this report.

193. 95 S.Ct. 1456 (1975).

194. Id. at 1464.

195. Id.

196. Id. at 1467.

197. The role of the agency in making a preliminary determination to suspend or to conduct a suspension hearing differs substantially from other licensing and employment cases where employees of the agency investigate complaints, report to superiors who decide to suspend a license or fire an employee, and then the agency prosecutes the charges. It is doubtful whether the typical agency activity in license suspension fits within the categories of investigation or prosecution.

198. Arizona State Retirement Bd. v. Gibson, 411 P.2d 47 (Ariz. App. 1966); Hoberman v. Lock Haven Hospital, 377 F.Supp. 1178 (MD Pa. 1974); Phillips v. Board of Fire & Police Commissioners of E. St. Louis, 320 N.E.2d 355 (Ill. App. 1974).

199. Hortonville J.S.D. No. 1 v. Hortonville Ed., 96 S.Ct. 2308 (1976); Withrow v. Larkin, supra note 196; Klinge v. Lutheran Charities Ass'n. of St. Louis, 523 F.2d 56 (8th Cir. 1975); United States v. Litton Industries, Inc., 462 F.2d 14 (9th Cir. 1972); Hoke v. Board of Medical Exam. of State of N.C., 395 F.Supp. 357 (W.D.N. Car., 1975); In re Cornelius, 520 P.2d 76 (Alaska 1974); on rehearing, 521 P.2d 497 (Alaska 1974); Loyal Ord. of Moose L. 145 v. Pennsylvania H.R. Com'n, 328 A.2d 180 (Pa. Cmwlth. Ct. 1974); Intercontinental Indus., Inc. v. American Stock Exch., 452 F.2d 935 (5th Cir. 1971); cert. denied 409 U.S. 842 (1972).

In one unreported lower court decision in California, the trial judge held that a hearing "officer who is an employee of the Department seeking to revoke the petitioner's license and who therefore is subject to the executive pressures of being an employee, cannot act free of the influences which is given to administrative officers who are independent of the revoking department." Anderson v. Cozens, (Super. Ct. L.A. Calif. No. AC 18284, 1975). This holding of unconstitutionality was reversed by the California Court of Appeals, which stated:

> [T]he reasonable and compelling purpose of having the hearings under the self-contained umbrella of the DMV-time-wise, cost-wise and otherwise-becomes evident when the death and injury rate resulting from drunk drivers is considered in conjunction with the over 16,000,000 motor vehicles being operated in California highways and compared to the relatively miniscule number of licenses issued by other state agencies which do not involve the operation of instruments of death at high speed on our highways. Anderson v. Cozens, 131 Cal. Rptr. 256 at 264 (Cal. App. 1976).

California has set up a group of independent hearing officers to conduct administrative hearings. License suspensions and revocations are not conducted by these officers, but by employees of the DMV. This practice has

sparked litigation. E.g., Serenko v. Bright, 70 Cal. Rptr. 1 (1968).

200. Id. Cf., Morrissey v. Brewer, supra note 3.

201. E.g., State Dental Council and Examining Bd. v. Pollock, 318 A.2d 910 (Pa. 1974); Farmington Dowel Products Co. v. Forster Mfg. Co., Inc., 421 F.2d 61 (1st Cir. 1970); Farmington Dowel Products Co. v. Forster Mfg. Co., Inc., 436 F.2d 699 (1st Cir. 1970) this is appeal from trial court after remanded from 421 F.2d 61.

202. See pp. II-14 to II-17 of this report.

203. Infra note 207; Wasniewski v. State Civil Service Commission, 299 A.2d 676 (Pa. Cmwlth Ct. 1973) where the Court at 678 said that while the "combination of investigative and judicial functions within an agency does not violate due process ... the coalescing of the prosecutory and the adjudicatory function in one individual fails to 'reasonably safeguard the ... right to a fair and unbiased adjudication.' " Quoting extensively and with approval from various government reports the Court in Wong Yang Sung v. McGrath, 339 33 (1950) at p. 44 stated

> A genuinely impartial hearing, conducted with critical detachment, is psychologically improbable if not impossible, when the presiding officer has at once the responsibility of appraising the strength of the case and of seeking to make it as strong as possible. Nor is complete divorce between investigation and hearing possible so long as the presiding inspector has the duty himself of assembling and presenting the results of the investigation. ...
>
> These types of commingling of functions of investigation or advocacy with the function of deciding are thus plainly undesirable. But they are also avoidable and should be avoided by appropriate internal division of labor. For the disqualifications produced by investigation or advocacy are personal psychological ones which result from engaging in those types of activity; and the problem is simply one of isolating those who engage in the activity. Creation of independent hearing commissioners insulated from all phases of a case other than hearing and deciding will, the Committee believes, go far toward solving this problem at the level of the initial hearing provided safeguards are established to assure the insulation. ...

204. Supra note 194.

205. Id.

206. E.g., Hortonville J.S.D. No. 1 v. Hortonville Ed., supra note 199; Withrow v. Larkin, supra note 193.

207. Morrissey v. Brewer, supra note 3 at 486; also see, Goldberg v. Kelly, supra note 23; Hortonville J.S.D. No. 1 v. Hortonville Ed., supra note 199 at 2317 (dissenting opinion of Stewart J.).

208. Morrissey v. Brewer, supra note 3 at 486.

209. Goldberg v. Kelly, supra note 23.

210. See pp. III-11 to III-17 of this report ; Stream v. Heckers, 519 P.2d 336 (Colo. 1974).

211. Force, supra note 3 at 130.

212. Anderson v. Cozens, supra note 199.

213. Richardson v. Perales, 402 U.S. 389 (1971); Kinsella v. Board of Ed. of Cent. Sch. Dist. No. 7, Erie Cty., 378 F.Supp. 54 (W.D.N.Y. 1974);402 F.Supp. 1155 (W.D.N.Y. 1975).

214. Klinge v. Lutheran Charities Ass'n of St. Louis, supra note 193; Stebbins v. Weaver, 396 F.Supp. 104 (W.D. Wisc. 1975); Robison v. Wichita Falls & North Texas Com. Act. Corp., 507 F.2d 245 (5th Cir. 1975); Hoberman v. Lock Haven Hospital, supra note 192.

215. Morrissey v. Brewer, supra note 3 at 486.

216. In Crampton v. Michigan Department of State, 235 N.W.2d 352 (Mich. 1975), the Supreme Court of Michigan held unconstitutional the state License Appeal Board which conducted hearings in implied consent suspension cases. The Court concluded "that it is impermissible for officials who are entrusted with responsibility for arrest and prosecution of law violators to sit as adjudicators in a law enforcement dispute between a citizen and a police officer. In this situation, ..., the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." (at p. 356.

217. Federal Administrative Procedure Act, 5 U.S.C.A. §554 (1967). However, can the agency decide to suspend all licenses under a delegation of discretion in order to improve traffic safety? See, Hough v. McCarthy, 353 P.2d 276 (Cal. 1960); noted in 48 Calif. L. Rev. 822 (1960).

218. Supra note 214.

219. Federal Administrative Procedure Act supra note 217, which precludes a hearing officer from consulting "... a person or party on any fact in issue, unless upon notice and opportunity for all parties to participate; ... " (emphasis added). The Model State A.P.A. provides in Section 13 that

> Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly, or

indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate. An agency member

(1) may communicate with other members of the agency, and

(2) may have the aid and advice of one or more personal assistants.

220. Id.

221. Gordon v. Justice Court, 525 P.2d 72 (Cal. 1974) cert. denied 420 U.S. 938 (1975); In the Matter of Young, 18 Cr. L. 2260 (Dec. 17, 1975) (Wash. Super. Ct.); Shelmedine v. Jones; however, the Supreme Court of Utah reversed this decision and held non-attorney judges may try criminal cases. The legislature enacted a law which gave defendants the right to insist on an attorney judge. 550 P.2d 207 (Utah 1976).

222. North v. Russell, 96 S.Ct. 2709 (1976); also see, State v. Lindgren, 18 Cr. L. 2309 (Dec. 1975) (Minn.).

223. Infra at notes 229, 230. But see the discussion in Karabian, California's Implied Consent Statute, 1 Loyola U.L.Rev. 23-47 (1968).

224. Van Teslaar v. Bender, 365 F.Supp. 1007 (D. Md. 1973); Teschner v. Weinberger, 389 F.Supp. 1293 (E.D. Wisc. 1975); Browning-Ferris Industries of New Hampshire, Inc. v. State of New Hampshire, 339 A.2d 1 (N.H. 1975) "Due process is not denied when an administrative examiner takes evidence, analyzes it, and makes recommendations on the basis of such evidence, while the actual decisionmaker reviews the evidence and makes a final determination based on the record and recommendations." (at p. 2); Vinal v. Petit, 316 A.2d 497 (R.I. 1974).

225. Id.

226. E.g., see cases cited in note 229 infra.

227. Id.

228. The Uniform Vehicle Code §6-212 (Supp. 1975) provides:

> (a) Any person denied a license or whose license has been canceled or revoked by the department, except where such cancellation or revocation is mandatory under the provisions of this act, and any person whose license has been revoked under §6-205.1 shall have the right to file a petition within 30 days thereafter for a hearing in the matter in (a court of record) in the county wherein such person shall reside, or in the case of a non-

resident's operating privilege in the county in which the main office of the department is located, and such court is hereby vested with jurisdiction and it shall be its duty to set the matter for hearing upon 30 days' written notice to the commissioner, and thereupon to take testimony and examine into the facts of the case and to determine whether the petitioner is entitled to a license or is subject to denial, cancellation or revocation of license under the provisions of this chapter. (REVISED, 1975).

(b) Any person whose license has been suspended is entitled to judicial review under (cite law comparable to §15 of the Model State Administrative Procedure Act). (NEW, 1975.)

F.S.A. §322.31 (Fla. 1975); Idaho Code 49-334 (Supp. 1975); L.S.A. 32:414 (La. Supp. 1976); McKinney's Con. Laws of N.Y., Veh. & Traf. Law §510 (N.Y. Supp. 1975); South Carolina Code of Laws §46-196.10 (1962); Utah Code Ann. 41-2-20 (1970); RCWA §46.20.334 (Wash. Supp. 1976). Generally see, Annot. 97 A.L.R.2d 1367 et seq. (1964).

Also see, Elmore v. Hill, 345 F.Supp. 1098 (W.D. Va. 1972); Barnes v. Armour, 392 F.Supp. 1240 (ED. Tenn. 1974); Guice v. Pope, 189 S.E.2d 424 (Ga. 1972); Price v. State, Dept. of Pub. Saf., Lic. Con. & D.I. Div., supra note 17; Application of Baggett, supra note 160; Lund v. Hjelle, supra note 102.

229. State, Department of Motor Vehicles v. Lessert, supra note 17; cf., Green v. Department of Public Safety, 308 So.2d 863 (La. App. 1975).

230. Miller v. Depuy, 307 F.Supp. 166 (E.D. Pa. 1969); Jones v. Penny, supra note 16; Voyles v. Thorneycroft, 398 F.Supp. 706 (D. Ariz. 1975); Dentamaro v. Motor Vehicles Commissioner, 130 A.2d 568 (Conn. Super. Ct. 1956) (Appeal against arbitrary action and abuse of discretion); Boyle v. Registrar of Motor Vehicles, 331 N.E.2d 52 (Mass. 1975) " ... at a minimum any issue is open [to judicial review] which is essential to a determination that the license revocation is constitutionally valid." (p. 53).

231. Force, supra note 3. Williams v. Austin, 198 N.W.2d 770 (Mich. App. 1972). Case starts on 770.

232. Compare, K. Davis, Administrative Law Text §§28.18-28.20 (1959) (although in Professor Davis most recent edition of his text, third edition 1972, he seems to incline in favor of the right to judicial review) with L. Jaffe, Judicial Control of Administrative Action. 376-389 (Abridged Student Edition 1965).

233. Model State A.P.A. §15(g).

234. Force, supra note 3 at 130.

235. Supra pp. 40-43; Sinclair Oil Corporation v. Smith, 293 F.Supp. 1111 (S.D.N.Y. 1968) citing 1 K. Davis, supra note 40 at 8.02, pp. 519-520 (1968). Cf., Dawson v. Austin, 205 N.W.2d 299 (Mich. App. 1973); Wilcox v. Billings, 428 P.2d 108 (Kan. 1968). The latter two cases held the report of failure to submit to chemical test under applicable statute, must be under oath.

236. Id.

237. F.S.A. §322.271(1)(a) (Fla. 1975); Gen. Laws of Idaho Code Ann. §49-330(d) (Supp. 1975); Utah Code Ann. §41-2-19(b) (1953).

238. See pp. III-11 to III-17 of this report.

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