

With Comments and
Implementation
Guidelines

Model Administrative Rule to Support Uniform Vehicles Code Sections 6-205 and 6-206



U.S. Department of Transportation
**National Highway Traffic Safety
Administration**

Background and Purpose of This Report

For many years 1/ the *Uniform Vehicle Code* provided authority (in states that have adopted the appropriate provisions) for the administrative suspension of the driver licenses of persons that have been charged with driving while under the influence, before their appearance in court. This authority is found in Section 6-206 and is to be implemented against persons charged with offenses that require mandatory revocation upon conviction, as defined in the companion *Code* Section 6-205.

The *Code* requires license revocation upon conviction for driving while under the influence.2/ It also authorizes the department of motor vehicles to suspend the license of a person upon a showing by the department's records or other sufficient evidence that the person committed an offense for which license revocation is required upon conviction.3/ That is, the *Code* allows the department to make its own determination that the person committed the offense of driving while under the influence, and to suspend the license upon the basis of that determination without waiting for the person to be convicted by the court.

Twenty-five states have laws like the *Code* section authorizing suspension when the person has committed a mandatory revocation offense. Only 14 of these states also have laws which make driving while under the influence a mandatory revocation offense. Here are the 14 states with both provisions:

Alabama	Minnesota
Delaware	Mississippi
District of Columbia	New Mexico
Florida	Rhode Island
Illinois	Tennessee
Iowa	Utah
Louisiana (second offense)	West Virginia

The 11 remaining states generally provide for license suspension rather than revocation upon conviction, and the authority to impose pre-conviction administrative suspensions may hinge upon state-by-state interpretations.

The experience of the states in the use of this provision was assessed through a telephone interview of at least one driver licensing official in each of these states. The results of this technique are summarized in Appendix A, *infra*.

One of the objectives of the current effort was to develop an administrative regulation which could be adopted by the department of motor vehicles in each of these 14 states to permit the more effective utilization of their existing laws. This approach would require no legislative action. The regulation was to be based upon the past experience of the 14 states in the use of their current provisions, as revealed in the telephone interviews. The result of this objective is the Model Pre-Conviction Suspension (PCS) Regulation.

A more recent development in withdrawing the drivers licenses of persons who drive while under the influence is the "administrative *per se*" approach, so called because it parallels the "illegal *per se*" approach to the criminal offense. Under the illegal *per se* approach it is a crime to drive with more than a specified alcohol concentration. (Previously, evidence of alcohol concentration only created a presumption that the person was under the influence.) The administrative *per se* approach to license suspension is similar. The license is suspended or revoked on the basis of a department finding that the person drove a motor vehicle while having an alcohol concentration of 0.10 or more. The most important factor in the finding is obviously the chemical test evidence. This concept was first used by the state of Minnesota in a law adopted in 1976.

Subsequently, similar laws were adopted in Iowa and Oklahoma, and a bill was introduced in New York. Delaware and West Virginia have also adopted laws which are comparable in that they provide for a pre-conviction withdrawal, but which are not, strictly speaking, administrative *per se* laws because the action is not based solely on the alcohol concentration level.

A model law based upon the laws and experiences of the above mentioned states now has been developed and is available without charge from:

Office of Alcohol Countermeasures
Administrative Suspension Law
NHTSA—NTS-20
Washington, D.C. 20590

Model Pre-Conviction Suspension (PCS) Regulation

Test Only (With Line Numbers)

A model administrative rule has been developed to assist with the implementation of administrative suspension programs by those states that have adopted *Uniform Vehicle Code* Sections 6-205 and 6-206.

What follows is the text of the rule only, followed by a repeat of the text along with comments and recommended implementation guidelines.

Table of PCS Sections

- Reg. 1—Policy of the department
- Reg. 2—Report by law enforcement officers
- Reg. 3—Action by the department
- Reg. 4—Notice of suspension
- Reg. 5—Effective date and period of suspension
- Reg. 6—Request for a hearing
- Reg. 7—Hearing
- Reg. 8—Effect of disposition of criminal charges

**Model Pre-Conviction Suspension (PCS) Regulation
Text Only (With Line Numbers)**

Explanatory Note

This PCS Regulation is intended as a model for use by motor vehicle departments in formulating their own regulations to implement their relevant statutory laws. It is intended for those states having a statutory provision which authorizes the department to suspend a license when it determines that the person has committed an offense for which revocation is mandatory upon conviction [comparable to UVC § 6-206 (a)1], and a statutory provision which makes license revocation mandatory upon conviction for driving while under the influence of alcohol or drugs [comparable to UVC § 6-205 (2)]. This regulation will enable those states to make pre-conviction suspensions on the basis of their existing laws.

Regulations do not stand alone. They must be based in statutory law. Even a model regulation must have some statutory basis to serve as a point of reference. The Model PCS Regulation uses the *Uniform Vehicle Code* as its base and point of reference. The relevant *Code* driver licensing sections shape the substance of the Model PCS Regulation. Wherever a reference to the statutory law is appropriate, a reference to a *Code* section has been inserted within parentheses. A regulation adopted by a state should conform to its own statutory base, and should include references to the appropriate state code sections in place of the *Uniform Vehicle Code*.

1 **Model Pre-Conviction Suspension (PCS) Regulation**

2 **Reg. § 1—Policy of the department**

3 It is the policy of the department to consider whether a pre-conviction license
4 suspension should be ordered under the authority granted by (UVC § 6-206 (a)1) with
5 respect to any person who is arrested and charged with driving a vehicle while under the
6 influence in violation of (UVC § 11-902) when each of the following circumstances
7 exist:

8 1. The arresting law enforcement officer has requested that the department
9 initiate a suspension action, and has filed the report described in section 2; and

10 2. It appears from information submitted by the law enforcement officer that the
11 criminal charges for violating (UVC § 11-902) will be reduced, dropped, or in some
12 other way avoided, or that the adjudication of those charges will be delayed for more
13 than [30] days beyond the date when the officer's report is received by the depart-
14 ment.

15 **Reg. § 2—Report by law enforcement officers**

16 (a) A law enforcement officer who arrests any person for a violation of (UVC §
17 11-902) may forward to the department a verified report of all information relevant to
18 the enforcement action, including information which adequately identifies the arrested
19 person, a statement of the officer's grounds for belief that the person violated (UVC §
20 11-902), a report of the results of any chemical tests which were conducted, and a copy
21 of the citation and complaint filed with the court. The verified report should be
22 accompanied by a statement of the officer requesting that the department initiate a
23 license suspension, and a statement of the basis for the officer's belief that the criminal
24 charges will be reduced, dropped, avoided, or unreasonably delayed.

25 (b) In preparing the report, officers may utilize copies of documents prepared for
26 other purposes in the law enforcement process, so long as these documents are all
27 incorporated into the verified report or contain their own verification.

28 (c) The report shall be verified by [the officer's signature immediately below a
29 statement that any false statements in the report are punishable as criminal offenses]
30 [OR] (other method of verification, consistent with the law and practice of the adopting
31 state).

32 **Reg. § 3—Action by the department**

33 (a) Upon receipt of the report of a law enforcement officer as described in section 2,
34 the (designate DMV division/office) shall review it to determine whether the circum-
35 stances described in section 1 of this regulation are present. If those circumstances are
36 present, the (division/office) shall determine whether the license shall be suspended.

37 (b) If the officer's report includes chemical test results showing an alcohol concentra-
38 tion of 0.10 or more, or the report includes other evidence clearly establishing that the
39 person committed the offense of driving or being in actual physical control of a motor
40 vehicle while under the influence of alcohol, drugs, or alcohol and drugs, in violation of
41 (UVC § 11-902), an order suspending the license shall be issued, and a notice of
42 suspension shall be served immediately.

43 **Reg. § 4—Notice of suspension**

44 (a) The notice of suspension shall be served by mailing a copy by regular first-class
45 mail, postage prepaid, to the person at the last known address shown on the depart-
46 ment's records, and to the address provided by the enforcement officer's report if that
47 address differs from the address of record. The notice is deemed received three
48 postal-delivery days after mailing, unless it is returned by postal authorities. A copy of
49 the notice will also be forwarded immediately to the arresting officer with a request that
50 the officer attempt to serve it personally upon the person.

51 (b) The notice of suspension shall specify the following:

52 1. That the license is being suspended under authority of (UVC § 6-206 (a)1)
53 based upon the department's determination that the person did commit the offense of
54 driving while under the influence of alcohol or drugs in violation of (UVC § 11-902)
55 at a date, time, and place specified in the notice;

- 56 2. That the license is suspended for [one year], and that the suspension is effective
57 beginning at midnight at the end of a date specified in the notice;
- 58 3. That the person has a right to a hearing before the suspension becomes
59 effective, and that if the person makes a written request for a hearing at any office of
60 the department before noon on a calendar date specified in the notice, the suspension
61 will be delayed until after a hearing is held;
- 62 4. That if the person fails to make the written request for a hearing before that
63 specified deadline, the right to have a hearing before the suspension becomes effective
64 will be waived;
- 65 5. That the person is required by (UVC § 6-210) to immediately return a sus-
66 pended license to the department, and failure to do so is a misdemeanor;
- 67 6. That at the expiration of the [one year] suspension period, the license will be
68 returned to the person unless it is subject to suspension or revocation on other
69 grounds at that time.

70 **Reg. § 5—Effective date and period of suspension**

71 (a) The suspension shall become effective at midnight ending the seventh calendar
72 day following the date of service of notice of the suspension on the subject person. The
73 period of suspension shall be [one year].

74 (b) If a written request for a hearing is received by mail or in person at any office of
75 the department prior to noon on the calendar date specified in the notice of suspension,
76 the person is entitled to a hearing before the suspension becomes effective. In that case,
77 the effective date of the suspension is delayed until a final decision is rendered following
78 the hearing.

79 **Reg. § 6—Request for a hearing**

80 (a) In order to result in a stay of the suspension period pending the hearing, a written
81 request for hearing must be made before noon on the eighth day following the date of
82 service of notice of the suspension on the subject person. In counting this period of
83 days, Saturdays, Sundays, and holidays shall be excluded.

84 (b) If a request for a hearing is made after the deadline described in this section, the
85 person shall be entitled to a hearing, but the suspension shall not be stayed pending the
86 hearing. In all such cases, the department will take all reasonable steps to expedite the
87 hearing. If possible, and if the person will sign a written waiver of the ten-day notice
88 requirement of subsection (d) of this section, the hearing shall be scheduled within 48
89 hours of the hearing request.

90 (c) If the subject person is a resident of this state, the hearing will be held in the
91 county where the subject person resides. If the subject person is a nonresident, the
92 hearing will be held in (designate) County. In either case, if the subject person requests
93 that the hearing be held in another county, the department may agree to the request if
94 (designate DVM official) determines that it will not adversely affect the interests of the
95 department. The department will always agree to conduct the hearing in the county
96 where the arrest occurred.

97 (d) The hearing shall be scheduled to be held within not more than 20 days of the
98 filing of the request for a hearing. The department shall personally serve or mail a
99 written notice of the time and place of the hearing to the subject person at least 10 days
100 prior to the scheduled hearing date. This ten-day period may be waived in writing by
101 the subject person, if the person desires to expedite the hearing.

102 **Reg. § 7—Hearing**

103 (a) The presiding hearing officer shall be (designate). The presiding hearing officer
104 shall have all the powers granted by statute to the commissioner which are necessary to
105 regulate the course and conduct of the hearing. All testimonial and documentary
106 evidence relevant to the issue to be resolved shall be received.

107 (b) The sole issue at the hearing shall be whether by a preponderance of the evidence
108 the person committed the offense of driving while under the influence of alcohol, drugs,
109 or alcohol and drugs, as prohibited by (UVC § 11-902). If the hearing officer deter-
110 mines that the person committed the offense, the order of suspension shall be affirmed.
111 If the hearing officer determines that the person did not commit the offense, the order of
112 suspension shall be rescinded.

113 (c) The hearing shall be recorded. The decision of the presiding hearing officer shall
114 be rendered in writing, and a copy will be provided to the subject person.

115 **Reg. § 8—Effect of disposition of criminal charges**

116 (a) If the criminal charges for violating (UVC § 11-902) which are based upon the
117 same occurrence as the suspension are adjudicated and result in a conviction, the license
118 shall be immediately revoked as provided in (UVC § 6-205 (2)). The revocation auto-
119 matically terminates the suspension under this regulation. In any such case, the period
120 during which the license has actually been suspended under this regulation shall be
121 credited to the period of revocation based upon the conviction.

122 (b) If the adjudication of the criminal charges for violating (UVC § 11-902) results in
123 an acquittal, the suspension under this regulation shall be terminated and the license
124 will be returned to the licensee.

125 (c) If the adjudication of the criminal charges for violating (UVC § 11-902) results in
126 any other disposition, or if no disposition is reached, the suspension under this regula-
127 tion shall continue for the full [one year] period.

Model Pre-Conviction Suspension (PCS) Regulation With Comments and Implementation Guidelines

Table of PCS Sections

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Explanatory Note

This PCS Regulation is intended as a model for use by motor vehicle departments in formulating their own regulations to implement their relevant statutory laws. It is intended for those states having a statutory provision which authorizes the department to suspend a license when it determines that the person has committed an offense for which revocation is mandatory upon conviction [comparable to UVC § 6-206 (a)1], and a statutory provision which makes license revocation mandatory upon conviction for driving while under the influence of alcohol or drugs [comparable to UVC § 6-205 (2)]. This regulation will enable those states to make pre-conviction suspensions on the basis of their existing laws.

Regulations do not stand alone: They must be based in statutory law. Even a model regulation must have some statutory basis to serve as a point of reference. The Model PCS Regulation uses the *Uniform Vehicle Code* as its base and point of reference. The relevant *Code* driver licensing sections shape the substance of the Model PCS Regulation. Wherever a reference to the statutory law is appropriate, a reference to a *Code* section has been inserted within parentheses. A regulation adopted by a state should conform to its own statutory base, and should include references to the appropriate state code sections in place of the *Uniform Vehicle Code* references.

Model Pre-Conviction Suspension (PCS) Regulation

Reg. § 1—Policy of the department

It is the policy of the department to consider whether a pre-conviction license suspension should be ordered under the authority granted by (UVC § 6-206 (a)1) with respect to any person who is arrested and charged with driving a vehicle while under the influence in violation of (UVC § 11-902) when each of the following circumstances exist:

1. The arresting law enforcement officer has requested that the department initiate a suspension action, and has filed the report described in section 2; and
2. It appears from information submitted by the law enforcement officer that the criminal charges for violating (UVC § 11-902) will be reduced, dropped, or in some other way avoided, or that the adjudication of those charges will be delayed for more than [30] days beyond the date when the officer's report is received by the department.

Comments and Implementation Guidelines

General. This section makes it clear that the department will suspend under this Pre-Conviction Suspension (PCS) Regulation only certain defined circumstances.

First, the arresting officer must have requested the action. The department has no way of obtaining information about drunk driving arrests unless the arresting officer cooperates. There is no law requiring the police officer to make a report of the arrest to the department, and a regulation of the department cannot impose that requirement. (Section 2 of the ROAD law would correct that problem, but the purpose of the current model regulation is to explore what can be accomplished under existing law, without any legislative amendments.) Hence, the PCS regulation can operate only with the voluntary cooperation of the arresting officer.

Second, there must be some reason to believe that the adjudication of the criminal charges is being or will be avoided or delayed. If the adjudication of the criminal charges proceeds in a satisfactory manner, and assuming that a strong case of driving while under the influence can be presented, a conviction will be provided in a reasonable amount of time. After a conviction is entered, the PCS approach is not needed; the license can be revoked on the basis of the conviction. Suspending the license under PCS will take a minimum of 15 to 20 days. If it is likely that the conviction will be entered within 20 to 30 days, PCS will not be worth the effort. On the other hand, if the offender is successfully delaying or avoiding the criminal adjudication process, or if there is such a backlog of cases in the criminal court that all drunk driving cases are experiencing lengthy delays, then the PCS approach will be a worthwhile effort.

The department should determine how much delay in the criminal process is tolerable, and how much is not, and should insert an appropriate figure within the brackets in the second subsection; we have suggested 30 days.

Reg. § 2—Report by law enforcement officers

(a) A law enforcement officer who arrests any person for a violation of (UVC § 11-902) may forward to the department a verified report of all information relevant to the enforcement action, including information which adequately identifies the arrested person, a statement of the officer's grounds for belief that the person violated (UVC § 11-902), a report of the results of any chemical tests which were conducted, and a copy of the citation and complaint filed with the court. The verified report should be accompanied by a statement of the officer requesting that the department initiate a license suspension, and a statement of the basis for the officer's belief that the criminal charges will be reduced, dropped, avoided, or unreasonably delayed.

(b) In preparing the report, officers may utilize copies of documents prepared for other purposes in the law enforcement process, so long as these documents are all incorporated into the verified report or contain their own verification.

(c) The report shall be verified by [the officer's signature immediately below a statement that any false statements in the report are punishable as criminal offenses] [OR] (other method of verification, consistent with the law and practice of the adopting state).

Comments and Implementation Guidelines

General. This section invites law enforcement officers to submit reports in cases where they want a suspension action to be initiated. The department should provide forms for such reports, and should advise all law enforcement agencies of the provisions of this regulation so as to encourage its use.

Subsection (a). This section is very similar to section 2 of the ROAD law, except that here it is a voluntary report. The officer is also told to include with the verified report a statement which addresses the two circumstances discussed in section 1 of the regulation.

Subsection (b). Police officers already have too much paperwork. The idea here is to allow copies of arrest reports and other law enforcement forms to be submitted, rather than to require the officer to complete a repetitive form. Hence, the forms which the department provides for use in making this report should provide for easy incorporation by reference of other documents which provide the necessary substantive information.

Subsection (c). This subsection merely recites the method of verification for the report. One method is suggested, but the department should insert a description of the method which is consistent with the law and practice in the state.

Reg. § 3—Action by the department

(a) Upon receipt of the report of a law enforcement officer as described in section 2, the (responsible DMV division/office) shall review it to determine whether the circumstances described in section 1 of this regulation are present. If those circumstances are present, the (division/office) shall determine whether the license shall be suspended.

(b) If the officer's report includes chemical test results showing an alcohol concentration of 0.10 or more, or the report includes other evidence clearly establishing that the person committed the offense of driving or being in actual physical control of a motor vehicle while under the influence of alcohol, drugs, or alcohol and drugs, in violation of (UVC § 11-902), an order suspending the license shall be issued, and a notice of suspension shall be served immediately.

Comments and Implementation Guidelines

General. This section specifies what the department will do when it receives a report submitted by a law enforcement officer. The first step is to determine whether it is the kind of case where use of PCS would be desirable. The second step is to determine whether the evidence supports a finding that the person committed the violation. If it does, the license shall be suspended.

Subsection (a). The department will need to designate the person, office, or division within the department which will be responsible for making each of those decisions. The designation should be indicated within the parentheses of this subsection.

Subsection (b). The criteria for suspension are presented in this subsection. The approach of the regulation is to somewhat close down the department's broad discretionary power to suspend. If the officer's report shows chemical test results of 0.10 or more, or if it includes other evidence clearly establishing the violation, the department is required by its own regulation to suspend the license.

Reg. § 4—Notice of suspension

(a) The notice of suspension shall be served by mailing a copy, postage prepaid, by regular first-class mail, to the person at the last known address shown on the department's records, and to the address provided by the enforcement officer's report if that address differs from the address of record. The notice is deemed received three postal-delivery days after mailing, unless it is returned by postal authorities. A copy of the notice will also be forwarded immediately to the arresting officer with a request that the officer attempt to serve it personally upon the person.

(b) The notice of suspension shall specify the following:

1. That the license is being suspended under authority of (UVC § 6-206 (a)1) based upon the department's determination that the person did commit the offense of driving while under the influence of alcohol or drugs in violation of (UVC § 11-902) at a date, time, and place specified in the notice;

2. That the license is suspended for [one year], and that the suspension is effective beginning at midnight at the end of a date specified in the notice;

3. That the person has a right to a hearing before the suspension becomes effective, and that if the person makes a written request for a hearing at any office of the department before noon on a calendar date specified in the notice, the suspension will be delayed until after a hearing is held;

4. That if the person fails to make the written request for a hearing before that specified deadline, the right to have a hearing before the suspension becomes effective will be waived;

5. That the person is required by (UVC § 6-210) to immediately return a suspended license to the department, and failure to do so is a misdemeanor;

6. That at the expiration of the [one year] suspension period, the license will be returned to the person unless it is subject to suspension or revocation on other grounds at that time.

Comments and Implementation Guidelines

General. This section specifies the content and method of service of the notice of suspension. There is nothing especially unique about this provision. It is appropriate for PCS actions, but it is also generally appropriate for any suspensions.

Unlike the ROAD law, the PCS regulation does not provide for the arresting police officer to serve the notice of suspension and to take possession of the drivers license at the time of arrest. The reason is the absence of any statutory authority for that action. Suspension under UVC § 6-206 is discretionary, not mandatory. Hence some exercise of discretion by the department seems necessary (or at least desirable) before a notice of suspension is issued, and there is simply no justification for the officer to take possession of the drivers license without having statutory authority to do so.

Subsection (a). In addition to mail service, the PCS regulation provides that the department will send a copy to the arresting officer for personal service. The officer who has requested the suspension action and who has invested the time to submit a voluntary report should be willing to find the time to personally serve the notice.

The provisions of this section relating to the giving of notice should be revised to reflect law and practice in the state.

Subsection (b). The subsection specifies the content of the notice of suspension. The effective date of the suspension and the deadline for requesting a hearing with a stay of the suspension should be expressed as calendar dates determined by the department employee who fills in the form.

Reg. § 5—Effective date and period of suspension

(a) The suspension shall become effective at midnight ending the seventh calendar day following the date of service of notice of the suspension on the subject person. The period of suspension shall be [one year].

(b) If a written request for a hearing is received by mail or in person at any office of the department prior to noon on the calendar date specified in the notice of suspension, the person is entitled to a hearing before the suspension becomes effective. In that case, the effective date of the suspension is delayed until a final decision is rendered following the hearing.

Comments and Implementation Guidelines

General. This section specifies the effective date and the period of the suspension. It needs to be modi-

fied as necessary to conform with the law of the state.

Subsection (a). The *Uniform Vehicle Code* does not specify an effective date for suspensions under section 6-206. Yet some effective date must be specified. We have suggested seven days after service of the notice because this provides an adequate but minimum amount of time for the person to request a hearing and get the action stayed, if that is desired. The basic approach of PCS is to suspend as quickly as possible.

Under UVC §§ 6-206 and 6-209, the period of suspension is discretionary with the department, up to a period of one-year. The period of suspension we have inserted in the regulation for purposes of PCS is one year. We do not recommend that period of suspension, however. It is probably too long. What we recommend is that the period of suspension should be exactly as long as the period of suspension or revocation prescribed upon conviction for the same offense. Since the PCS suspension stands temporarily in the place of the conviction suspension or revocation, it should be the same length. That way, regardless of whether a conviction is finally entered, the person will suffer the same period of license deprivation. The period of mandatory revocation following a conviction for driving while under the influence is one year under UVC §§ 6-205 and 6-208; that is why we have used a one-year period in the PCS regulation.

Subsection (b). This subsection specifies that a timely request for a hearing stays the suspension pending outcome of the hearing. The *opportunity* for a hearing prior to the suspension's effective date is required by UVC § 6-206.1.

Reg. § 6—Request for a hearing

(a) In order to result in a stay of the suspension period pending the hearing, a written request for hearing must be made before noon on the eighth day following the date of service of notice of the suspension on the subject person. In counting this period of days, Saturdays, Sundays, and holidays shall be excluded.

(b) If a request for a hearing is made after the deadline described in this section, the person shall be entitled to a hearing, but the suspension shall not be stayed pending the hearing. In all such cases, the department will take all reasonable steps to expedite the hearing. If possible, and if the person will sign a written waiver of the ten-day notice requirement of subsection (d) of this section, the hearing shall be scheduled within 48 hours of the hearing request.

(c) If the subject person is a resident of this state, the hearing will be held in the county where the subject person resides. If the subject person is a nonresident, the hearing will be held in (designate) County. In either case, if the subject person requests that the hearing be held in another county, the department may agree to the request if (designate DMV official) determines that it will not adversely affect the interests of the department. The department will always agree to conduct the hearing in the county

where the arrest occurred.

(d) The hearing shall be scheduled to be held within not more than 20 days of the filing of the request for a hearing. The department shall personally serve or mail a written notice of the time and place of the hearing to the subject person at least 10 days prior to the scheduled hearing date. This ten-day period may be waived in writing by the subject person, if the person desires to expedite the hearing.

Comments and Implementation Guidelines

General. This section specifies procedural and substantive requirements relating to the hearing request and the scheduling of the hearing.

Subsection (a). The UVC does not specify any time period within which the hearing must be requested. While a hearing might reasonably be held at any time during the period of suspension, there must be some restriction on the right to have the suspension stayed while that hearing is pending. The approach of the PCS regulation is that a hearing may be requested at any time during the suspension period, but if the licensee desires to have the suspension stayed until after the hearing, the request must be made prior to noon on the eighth day following service of the notice of suspension. This time period gives the offender adequate time to request a hearing with a stay of the suspension pending the hearing.

Subsection (b). Even if the request is late, the person is entitled to a hearing. Without explicit statutory authority, it would not be reasonable to deny a hearing on the basis of an administratively established deadline. But it is reasonable to require the person to meet a deadline in order to have a hearing before the suspension is effective.

Where the person requests a hearing after the suspension is already effective and a stay is not possible, the department should take all reasonable steps to expedite the hearing. If possible, it should be scheduled within 48 hours of the request.

Subsection (c). This section specifies the location of the hearing. A hearing in the county where the arrest occurred would be much more convenient for most of the witnesses, but this section reflects the requirements of UVC § 6-206.1 (b).

The law provides that the parties can agree on a different location for the hearing. The department should designate an official to make such agreements.

Subsection (d). The requirement that the hearing be held within 20 days of request is from UVC § 6-206.1. The notice provisions are not in the UVC, but they are necessary to a fair procedure. Any waiver of the ten-day notice requirement should be in writing.

Reg. § 7—Hearing

(a) The presiding hearing officer shall be (designate). The presiding hearing officer shall have all the powers

granted by statute to the commissioner which are necessary to regulate the course and conduct of the hearing. All testimonial and documentary evidence relevant to the issue to be resolved shall be received.

(b) The sole issue at the hearing shall be whether by a preponderance of the evidence the person committed the offense of driving while under the influence of alcohol, drugs, or alcohol and drugs, as prohibited by (UVC § 11-902). If the hearing officer determines that the person committed the offense, the order of suspension shall be affirmed. If the hearing officer determines that the person did not commit the offense, the order of suspension shall be rescinded.

(c) The hearing shall be recorded. The decision of the presiding hearing officer shall be rendered in writing, and a copy will be provided to the subject person.

Comments and Implementation Guidelines

General. This section describes the hearing.

Subsection (a). The persons who will serve as hearing officers for the department should be identified here by job title. The subsection delegates necessary powers from the commissioner to these hearing officers. It also specifies that all relevant evidence shall be received.

Subsection (b). This subsection identifies the issue for hearing in the PCS suspensions. The hearing officer must determine whether the evidence supports a finding that the person committed the offense. If it does, the license must be suspended. As in section 3, the approach here is to limit the discretionary aspect of this suspension. Based on facts determined by the hearing officer, the action to be taken is mandatory.

Subsection (c). Note that as under the ROAD law, the hearing officer is the one who makes the final decision. It is not left to the commissioner (unless the commissioner is serving as the hearing officer). It is not necessary for the commissioner to act. The discretion of the department under UVC § 6-206 has been exercised in the adoption of these regulations. What remains to be done is a determination of facts and the application of these rules to those facts.

Reg. § 8—Effect of disposition of criminal charges

(a) If the criminal charges for violating (UVC § 11-902) which are based upon the same occurrence as the suspension are adjudicated and result in a conviction, the license shall be immediately revoked as provided in (UVC § 6-205 (2)). The revocation automatically terminates the suspension under this regulation. In any such case, the period during which the license has actually been suspended under this regulation shall be credited to the period of the revocation based upon the conviction.

(b) If the adjudication of the criminal charges for violating (UVC § 11-902) result in an acquittal, the suspension under this regulation shall be terminated and the license will be returned to the licensee.

(c) If the adjudication of the criminal charges for violating (UVC § 11-902) results in any other disposition, or if no disposition is reached, the suspension under this regulation shall continue for the full [one year] period.

Comments and Implementation Guidelines

General. This section makes it clear that the purpose of the PCS suspension is to serve as a temporary remedy pending the resolution of the criminal charges. Without more explicit statutory authority (such as the ROAD law), a suspension under this regulation probably could not be sustained in the face of an acquittal on the charges in the criminal court.

Subsection (a). If the criminal charges result in a conviction, UVC § 6-205 requires license revocation. Since that terminates the license, it automatically terminates any suspension of the license. Fairness demands that the time during which the license has been suspended should be credited to the revocation; the subsection provides for this.

Subsection (b). If the person is acquitted—that is, the person is found by the court to be not guilty—the suspension will be terminated and the license returned.

Subsection (c). If the disposition is something other than a conviction or an acquittal, however, or if no disposition is ever reached, then the suspension remains in effect for the full period. This would cover situations where the charges are reduced or dropped without any adjudication that the person is not guilty. If there is doubt as to what should be done following a particular disposition, the department could hold another hearing on the matter. This is the approach used in the District of Columbia.

Appendix A—Summary of Responses to Telephone Inquiry

The *Uniform Vehicle Code* has a section which authorizes the department to suspend a license based upon a showing that the licensee has committed a mandatory revocation offense. This suspension authority is separate from the requirement that the department revoke the license upon *conviction* for such offenses. For purposes of the suspension authority, no conviction is needed. The section provides as follows:

§ 6-206—Authority of department to suspend or revoke license

(a) The department is hereby authorized to suspend the license of a driver upon a showing by its records or other sufficient evidence that the licensee:

1. Has committed an offense for which mandatory revocation of license is required upon conviction;¹

Another section of the UVC lists the offenses for which license revocation is required upon conviction.² The offense of driving while under the influence of alcohol or drug is one of the listed mandatory revocation offenses.

The 13 jurisdictions studied for this part of the project were identified as having laws comparable to both of these UVC sections. That is, each of these jurisdictions has a law which authorizes the department to suspend a license if the licensee has committed the offense of driving while under the influence, and the action can be taken without waiting for a conviction on the criminal charges.

We spoke by telephone with an official or officials in the appropriate agency in each of these jurisdictions to determine the extent to which these laws were utilized, and what problems might have been encountered in their use. A summary of the results is included in the Appendix B pages which follow.

Summary of Responses to Telephone Inquiry Regarding Use of Laws Like UVC 6-206 (a)1

State: ALABAMA

Is the law now used? No, not at all.

Why is the law not used?

- Would be a duplication of effort and waste of time.
- Would be too costly to implement due to hearings.
- We don't know about arrests until they are convictions.

Was the law ever used? Yes, but our experience with it was not good, and about 1976 we discontinued using it.

What was reason for termination of its use? See comments.

Could it be used generally without a statutory change? No.

Specifically, if administrative regulations set up proce-

dures to implement it, including provision for reporting of arrests and chemical test results, could it be used in driving while under the influence cases? No. The critical issue is that they can get the suspension stayed pending the hearing and the court review.

In your interpretation, does this law provide for a temporary suspension pending and finally determined by the criminal adjudication, or is it an independent process not affected by the criminal case disposition? It's just temporary, pending the adjudication.

Comments: Here are the problems we had with it: First, we have no procedure for getting reports of arrests. We are set up to get conviction reports only. Second, we need to grant a hearing, and the suspension is stayed pending the hearing. We found we were just chasing our tails and creating a lot of extra paperwork. By the time we could schedule and hold a hearing, the court had already adjudicated the criminal case. Then we could revoke on the basis of the conviction. If we ever did get one suspended, the person would just appeal to the courts and get a stay there. The lawyers had a field day with it. The only time we could work it successfully was with a poor and uneducated person who couldn't get a lawyer to help him and didn't know enough about his rights to protect himself. It was very unfair, and we don't believe in doing things that way.

State: DELAWARE

Is the law now used? No, not at all.

Why is the law not generally used? We are concerned that it may not be constitutionally valid.

Was the law ever used? Yes. At one time, during the initial phase of our ASAP program, we used this law to suspend persons arrested for driving while under the influence. They were suspended on the basis of the arrest, without waiting for a conviction. There was an extra copy in the uniform citation forms we were using, and the officer would send that copy to the department in cases of DUI charges. This was part of the ASAP procedure. We would suspend immediately on the basis of the arrest, and no hearing was provided. We used the law in this way for about three or four years.

What was reason for termination of its use? We were advised by the department's legal advisor to discontinue the practice. It was never tested in court, but we were getting a lot of heat from attorneys about it. Courts in other states were ruling that a hearing had to be provided prior to a license suspension. Our legal advisor wanted us to wait for the outcome of the trial before we suspended the license.

In your interpretation, does this law provide for a temporary suspension pending and finally determined by the criminal adjudication, or is it an independent process not affected by the criminal case disposition? It's just to get

¹ UVC § 6-206 (a)1 (1968, Supp. 1979).

² UVC § 6-205 (Supp. 1979).

the person off the road quickly. If the person is acquitted, we would terminate the suspension and return the license.

Comments: The law has not been repealed, and we could still use it in a flagrant case where someone is avoiding a conviction by delaying the judicial process.

State: DISTRICT OF COLUMBIA

Is the law now used? Yes, regularly.

Describe the kind of situations in which it is used: Primarily for the offense of driving while under the influence, but it is used for other offenses also.

In your interpretation, does this law provide for a temporary suspension pending and finally determined by the criminal adjudication, or is it an independent process not affected by the criminal case disposition? Generally, it is independent. Where a charge is dismissed for some reason other than a finding of "not guilty," we will hold a second hearing and determine whether the suspension or revocation should be continued. If the person is found "not guilty," however, we return the license.

Comments: The District has used this provision successfully for many years.

State: FLORIDA

Is the law now used? Yes, but only rarely in special cases.

Describe the kind of situations in which it is used: It might be used where there is a serious accident resulting in deaths, and the person is charged with manslaughter. In these cases, the public wants to see the license suspended immediately.

Why is the law not generally used?

- Don't see any need for it.
- Prior experience using this law was not good.
- Don't like the concept.
- Would give the appearance of unfairness.

Was the law ever used? Yes. Several years ago it was used quite extensively.

What was reason for termination of its use? It caused too much pressure on courts in the urban areas where there was already a backlog of traffic cases. Defendants didn't mind the backlog on driving while under the influence cases while they still had their licenses, but if we took their license under this section, then they wanted the criminal case resolved immediately. This was no problem in rural areas, but it overloaded the courts in high-population areas, and they were not able to provide timely relief.

Are you in favor of using it? We're always willing to look at new concepts, but we generally don't like the idea

of taking a license away before the person has his or her day in court.

In your interpretation, does this law provide for a temporary suspension pending and finally determined by the criminal adjudication, or is it an independent process not affected by the criminal case disposition? It is a temporary suspension. If the person is acquitted, we would terminate the suspension.

Comments: Our state is in a good position to be able to use this law because the department has responsibility for the uniform traffic ticket. We provide the forms for all the police agencies, and we get back the control copy. Thus, we receive notice of every ticket written.

We don't see any particular need to use this law extensively today. We have excellent courts. There is no longer a backlog of traffic cases. We would rather give the person his or her day in court and then take license action based on the conviction.

State: ILLINOIS

Is the law now used? Yes, but only rarely in special cases.

Describe the kind of situations in which it is used: It is used only under special circumstances which are very rare.

Why is the law not generally used?

- We don't know about arrests until they are convictions.

Was the law ever used? Formerly, it was used more extensively due to a particular need—the law did not authorize revocation for a conviction under a municipal ordinance. Thus if someone was convicted of driving while under the influence in violation of an ordinance, we would use this law to suspend them.

What was reason for termination of its use? Its use in that manner was terminated because the revocation law was changed to cover the ordinance convictions.

Could it be used generally without a statutory change? It's very doubtful that it could be extensively used.

In your interpretation, does this law provide for a temporary suspension pending and finally determined by the criminal adjudication, or is it an independent process not affected by the criminal case disposition? If the person is acquitted, we would have to terminate the suspension and return the license.

Comments: The major problem is that there is no mechanism set up to get the information to us. The courts are required to report convictions. There is no way for us to know about arrests until they become convictions. What kind of other sources could we use? What is a "record" as the law specifies? If we read about an accident in the newspaper and suspend the driver on the basis of the article, we would probably have trouble over it.

State: IOWA

Is the law now used? No, not at all.

Why is the law not generally used?

- Prior experience with the law was not good.
- Except under our new law, there is no mechanism to learn about arrests.
- No real need to use it.

Was the law ever used? Yes, back around 1960s it was used quite extensively.

What was reason for termination of its use? It was unwieldy. We had no way to learn who was charged with the mandatory revocation offenses except to send state troopers to the courts every morning to see who was there on preliminary hearings.

Comments: The law just didn't work very well. It required lots of hearings, too. Our new law meets the purpose much more effectively.

State: LOUISIANA

Is the law now used? No, not at all.

Was the law every used? Not to my knowledge.

Comments: Our only bases for suspensions are convictions and implied consent refusals.

State: MINNESOTA

Is the law now used? Sometimes.

Describe the kind of situations in which it is used: The law has been used for many years in cases (especially in driving while under the influence cases) where the person charged was successful in getting the criminal case adjudication repeatedly postponed, avoiding the conviction indefinitely. In such cases, the arresting officer would send a copy of the ticket, and we would suspend under this law. Our new law providing for revocation on the basis of the chemical test results has taken care of the bulk of this problem now. Even under the new law, however, we have still used the pre-conviction suspension law. Prior to the 1982 amendments of the new law, we were experiencing a significant backlog of hearings, and the revocation was stayed pending the hearing. Where a person had two or more of those hearings pending, we would suspend under the pre-conviction suspension law.

Why is the law not generally used?

- There is no need.
- We are somewhat concerned about the constitutionality of it.

Was the law ever used? Yes, as described above. Because we were somewhat concerned about the constitutionality of it, we used it very carefully, only in flagrant cases.

What was reason for termination of its use? It could still be used today, but the new law has largely obviated the need.

In your interpretation, does this law provide for a temporary suspension pending and finally determined by the criminal adjudication, or is it an independent process not affected by the criminal case disposition? Unlike our new revocation law, this suspension provision probably should be considered a temporary action. If the person gets acquitted of the criminal charges, the suspension should be terminated.

Comments: We used the law for years without problems in flagrant cases where people were avoiding the sanctions connected with a conviction.

State: MISSISSIPPI

Comments: [We did not contact anyone in this state because we already had a copy of a "Memorandum Opinion" from the departments legal advisor on the question. It expresses the opinion that under the laws of this state, the department cannot suspend a drivers license prior to a conviction for driving while under the influence, even if a hearing is provided prior to the suspension.]

State: NEW MEXICO

Is the law now used? No, not at all.

Was the law ever used? No.

Comments: Most of our suspensions are based upon convictions.

State: RHODE ISLAND

Is the law now used? Yes, but only rarely in special cases.

Describe the kind of situations in which it is used: Only where there is an accident resulting in a fatality, and the driver is charged with homicide by vehicle.

Why is the law not generally used?

- Generally, we only get information about the homicide by vehicle offenses prior to conviction.

In your interpretation, does this law provide for a temporary suspension pending and finally determined by the criminal adjudication, or is it an independent process not affected by the criminal case disposition? It is temporary. If the person is convicted, then we enter a revocation based on the conviction. If the person is acquitted, we return the license.

Comments: Under our law, the person is entitled to a

hearing prior to the suspension. When a hearing is requested, that stays the suspension.

State: TENNESSEE

Is the law now used? Yes, but only rarely in special cases.

Describe the kind of situations in which it is used: In cases where a minor alters a license to change his or her age so as to purchase alcohol; this is a mandatory revocation offense, but generally it is not prosecuted. We will use the law to suspend in a case such as this.

Why is the law not generally used?

- Would be a duplication of effort and waste of time.
- Would give appearance of unfairness.
- Would be too costly to implement due to hearings.

Was the law ever used? Not regularly. We tried to get it repealed in about 1973-74.

In your interpretation, does this law provide for a temporary suspension pending and finally determined by the criminal adjudication, or is it an independent process not affected by the criminal case disposition? Where there is a criminal prosecution, suspension under this law would be temporary. If the person is acquitted, they would get their license back. I have never considered the other possibility. I suppose it could be done independently, but it strikes me as being fundamentally unfair.

Comments: We have two major problems with this law: First, its use would be a waste of effort. Our law was revised in about 1973-74 to require that we give a hearing before suspending. That takes a lot of effort, and about 30 days time. By that time, the criminal charges have been adjudicated and we can revoke on the basis of the conviction, if there is a conviction. Second, we don't have enough hearing officers to handle the hearing load which would be created by general use of this law. Our 14 officers are already overloaded. We would need many more to do this. Generally, the only suspensions we order which are not based upon convictions are for implied consent refusals.

State: UTAH

Is the law now used? Yes, but only rarely in special cases.

Describe the kind of situations in which it is used: Where the person is evading a conviction. Under our law, a license is revoked for one year on a first conviction for driving while under the influence. Many people think this is too harsh. Formerly, we had judges who were avoiding convictions in various ways. In those cases, we sometimes suspended the license under this law. This particular problem with the courts has now been cleared up to some extent.

Why is the law not generally used?

- Would be too costly to implement due to hearings.
- We don't know about arrests till they are convictions.

Comments: We would like to use this more, but we would need a procedure to get the arrest reports. It is doubtful that this could be accomplished without amending the statutes. Also, more hearings would be held, and that would require more hearing officers. We would also need additional driver improvement records personnel. We would have to go to the legislature for more money even if we could do the substantive provisions in regulations.

State: WEST VIRGINIA

Is the law now used? No, not at all.

Why is the law not generally used?

- Would be a duplication of effort and waste of time.
- There are no standards for determining when to suspend.
- Would be too costly to implement due to hearings.

Was the law ever used? No, not to my knowledge.

Comments: We are aware of this section, but have never used it. It authorizes a suspension but doesn't require it. There are no standards to tell us when we are supposed to suspend and when not. It would require a hearing, and that could double our work load without any significant benefit. You get the conviction record in a few weeks anyway. If the person is not convicted, it would certainly be hard to sustain the suspension.

Appendix B—Relevant Uniform Vehicle Code Sections

The provisions in this Appendix are excerpted from the *Uniform Vehicle Code* (1968, Supp. 1979), published by the National Committee on Uniform Traffic Laws and Ordinances, 555 Clark Street, P.O. Box 1409, Evanston, IL 60204. The provisions are included here because they form the legal base for the Model Pre-Conviction Suspension Regulation.

§ 6-206—Authority of department to suspend or revoke license

(a) The department is hereby authorized to suspend the license of a driver upon a showing by its records or other sufficient evidence that the licensee:

1. Has committed an offense for which mandatory revocation of license is required upon conviction;

§ 6-205—Mandatory revocation of license by department

The department shall forthwith revoke the license of any driver upon receiving a record of such driver's conviction of any of the following offenses:

2. Driving or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug as prohibited by § 11-902;

§ 6-206.1—Opportunity for hearing required

(a) A suspension or revocation of a license under section 6-206 . . . shall not become effective until the person is notified in writing and given an opportunity for a hearing.

(b) The hearing shall be held within 20 days after receipt of a request for a hearing in the county where the licensee resides unless the department and the licensee agree to a hearing in some other county. All hearings requested by nonresidents shall be held in . . . County unless the nonresident and the department agree to a hearing in some other county. A record of all hearings shall be made.

(c) Upon such hearing, the department shall rescind its order of revocation or suspension or, good cause appearing therefor, may modify or reaffirm its order.

§ 6-209—Period of suspension

(a) The department shall not suspend a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than one year, except as permitted under § 6-303.

(b) At the end of the period of suspension a license

surrendered to the department under § 6-210 shall be returned to the licensee.

§ 6-210—Surrender and return of license

(a) The department upon canceling, suspending or revoking a license shall require that such license shall be surrendered to and be retained by the department.

(b) Any person whose license has been canceled, suspended or revoked shall immediately return his license to the department.

§ 2-305—Powers and duties of commissioner

(a) The commissioner is hereby vested with the power and is charged with the duty of administering the provisions of this act and of all laws the administration of which is now or hereafter vested in the department.

(b) The commissioner is hereby authorized to adopt such rules and regulations as may be necessary to carry out the provisions of this act and any other laws the administration of which is vested in the department.

§ 1-101—Definition of words and phrases

The following words and phrases when used in this act shall, for the purposes of this act, have the meanings respectively ascribed to them in this chapter, except when the context otherwise requires.

§ 1-109—Commissioner.—The commissioner of motor vehicles of this State.

§ 1-113—Department.—The department of motor vehicles of this State.

§ 1-114.1—Driver's license.—Any license to operate a motor vehicle issued under the laws of this State.

§ 1-128—License or license to operate a motor vehicle.—Any driver's license or any other license or permit to operate a motor vehicle issued under, or granted by, the laws of this State including:

1. Any temporary license or instruction permit;
2. The privilege of any person to drive a motor vehicle whether or not such person holds a valid license;
3. Any nonresident's operating privilege as defined herein.

§ 1-155—Revocation of driver's license.—The termination by formal action of the department of a person's license or privilege to operate a motor vehicle on the highways, which terminated license or privilege shall not be subject to renewal or restoration except that an application for a new license may be presented and acted upon by the department after the expiration of the applicable period of time prescribed in this act.

§ 1-174—Suspension of driver's license.—The temporary withdrawal by formal action of the department of a person's license or privilege to operate a motor vehicle on the public highways, which temporary withdrawal shall be for a period specifically designated by the department.

See also the following sections:

- § 11-902—Driving while under influence of alcohol or drugs
- § 11-902.1—Chemical and other tests
- § 11-902.2—Post conviction examination and remedies
- § 6-212—Right of appeal to court
- § 2-307—Commissioner to prescribe forms
- § 2-308—Authority to administer oaths and certify copies of records
- § 2-313—Department may summon witnesses and take testimony
- § 2-314—Giving of notice

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