



# Judicial Impact Statement

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March 2019

## Review and Modernization of License Suspensions and Reinstatement Fees

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### Background

Ohio's judges see first-hand that the state's existing policies on driver's license suspensions, and the reinstatement process, is not working and in many instances does more harm than good. License suspensions used as a punitive tool for offenses or infractions that have nothing to do with the operation or ownership of a motor vehicle are ineffective. People will continue to drive, often out of necessity, and when caught for doing so, find themselves in a cycle that can be inescapable due to exorbitant reinstatement fees and requirements. Ohio's judges would like to see this complicated and ineffective system simplified so that it ensures fairness and equity, yet still promotes public safety and holds accountable those who violate Ohio's laws.

### Judicial Impact and Recommendations

The following goals and ideals form the basis for our proposals:

1. To ensure that every Ohio driver is properly licensed and is financially responsible (insured), and to ensure that state law and policies do not make this more difficult for Ohioans.
2. To restrict or suspend a person from driving as a penalty or consequence for failing to follow certain rules *when appropriate*.
3. To evaluate existing license suspensions and determine whether they effectively promote public safety and compliance with the law, or whether they end up doing more harm than good.
4. To ensure that every otherwise qualified, properly insured driver may drive to and from gainful employment even if his/her license has been suspended, particularly if the suspension was for reasons unrelated to his/her ability to drive.
5. To provide an appropriate (that is, reasonable and meaningful) consequence for persons not in compliance with the law regarding the licensing of motorists.

The Ohio Judicial Conference suggests these goals can be achieved through the following proposals:

**I. Reduce the number of offenses for which someone can lose their license**

Under current law, there are over forty different ways in which a person’s driver’s license can be suspended. A number of these suspensions are associated with activities involving the operation of a motor vehicle, and are appropriate sanctions that keep our roads and public safe from people who have demonstrated that they pose a risk to others. Others, however, have little or nothing to do with the operation of a motor vehicle, and a suspension of the offender’s license may not be the most effective means of punishment. Judges see every day the detrimental impact many of these suspensions have on Ohioans who need reliable transportation in order to maintain employment, and believe strongly that suspensions should only be used to keep certain higher-risk drivers off the road, rather than as a punitive tool for unrelated offenses.

**II. Re-categorize and consolidate Driving-Under-Suspension (“DUS”) offenses and penalties**

Current Ohio law contains roughly a dozen different offenses prohibiting the same general conduct: operating a motor vehicle when not authorized to do so, either because the driver does not have a valid driver’s license, or the driver’s license had been suspended. These offenses include, but are not limited to: Driving under suspension or in violation of license restriction (4510.11); Driving under suspension for failing to appear or pay fine or for default in child support payment (4510.111); Operating a motor vehicle without a valid license (4510.12); Driving under OVI suspension (4510.14); Driving under financial responsibility law suspension (4510.16); driving under a nonpayment of judgment suspension (4510.16); Driving under a specified lifetime suspension (4510.17); Failure to reinstate (4510.21).

All of these DUS offenses carry different sanctions. The Ohio Judicial Conference recognizes that all of these offenses essentially prohibit the same basic conduct: driving when not permitted to do so. As a result of this lengthy list of similar offenses, many law enforcement officers do not accurately list the code section that reflects the alleged DUS violation. Additionally, many persons who have a suspension, or multiple suspensions, are without a single source or location to resolve the suspension(s).

The Conference recommends consolidating the existing DUS offenses into three simple categories:

- Driving without a valid operator’s license
- Driving under an administrative suspension
- Driving under a court-ordered suspension

The Conference further suggests eliminating all sanctions for a DUS offense which are either not being used or appear ineffective, including additional license suspensions, vehicle immobilization and vehicle forfeiture. These sanctions seem to have had little or no impact on curbing driving under suspension and it may be time to remove these sanctions as they appear to serve little or no useful purpose.

**III. Revise and streamline BMV reinstatement fees**

- *Reinstatement fee parity.* When a person seeks to reinstate a suspended driver’s license, he or she must pay a reinstatement fee. The amount of this fee varies depending on the reason for the suspension, from as little as \$15 (warrant-block suspension) to \$650 (third non-compliance offense within five years). It makes little sense that the fee to reinstate a license can vary so greatly, because the type of suspension does not result in additional work or costs for the Bureau of Motor Vehicles to reinstate the license. If the underlying behavior warrants stiffer penalties, then the fine for the offense should indeed be higher. But the fee to *reinstate* a license, once all punitive sanctions have been satisfied, should be the same, regardless of the reason for the

underlying suspension. The Judicial Conference would suggest a uniform reinstatement fee regardless of the offense that resulted in the suspension.

- *Eliminate progressive and oppressive reinstatement fees.* When indigent drivers cannot afford to pay these steep fees, they continue to drive, often resulting in additional suspensions and the stacking-up of more exorbitant reinstatement fees, effectively preventing them from ever being able to become current on the obligations that are keeping them from driving legally. A person should be given 60 days to pay the reinstatement fee after proof that the suspension has been cleared. Non-payment of the reinstatement fee should not prevent the person from driving and should not be an offense. The consequence should instead be an impediment to renewing a driver's license or registering a vehicle in the person's name. The Judicial Conference would further recommend that the fee may be waived by the BMV upon a finding by the Registrar or a designee of the Registrar that it would be a hardship on the person to pay the reinstatement fee. The progressive reinstatement fees have caused nothing but hardship on those persons who are least likely able to pay the fees. They are tantamount to a tax on the poor. Should the legislature adopt a uniform reinstatement fee, as proposed above, all outstanding fees in excess of that amount should be readjusted to the new amount.

#### **IV. Expand access to limited driving privileges/eliminate sanctions when driving to and from employment**

It should be a priority of the General Assembly to make it easier, not harder, for people to get to and from employment. Judges every day see that people who are caught driving under suspension are usually doing so because it is the only way they can get to and from work. Judges should be given great discretion to grant limited driving privileges for all license suspensions. In the alternative, the legislature can create an affirmative defense to a driving-under-suspension charge if the person can prove that the vehicle is insured and that travel is to and from employment at a fixed location.

#### **V. Ease sanctions for driving under 12-point suspension**

When a person is caught driving under a 12-point suspension (R.C. 4510.037), courts are required to impose an additional six points against the driver's license, as well as a mandatory 3-day jail sentence. As judges observe daily, people are often driving under suspension out of necessity. It is very common for a driver to obtain twelve points in a two-year period, especially if driving under suspension. A 12-point suspension really is an administrative suspension that results in an additional suspension with reinstatement requirements. A person is already punished for the offenses that resulted in the 12-point suspension, so adding reinstatement requirements and adding six points is quite onerous. The Conference would recommend eliminating the points in total for this offense, or at least reducing them to two points and treating them like other DUS offenses as outlined at R.C. 4510.036(C)(14), or eliminating the offense entirely and thus the reinstatement and point requirements. Similarly, the mandatory jail time is disproportional because much more egregious conduct like drag racing, leaving the scene of an accident, or willfully fleeing or eluding an officer does not have a mandatory jail sentence. We would suggest eliminating the mandatory jail time and making the offense an unclassified misdemeanor, or just eliminating the offense altogether.

#### **VI. Six-month insurance for FRA suspensions**

The Conference suggests requiring persons who are subject to financial responsibility ("FRA") suspension to post insurance for a minimum of 6 months and require minimum 6-month policies during the duration of the FRA requirement. The present system of monthly insurance payments does not work. Insurance companies immediately suspend licenses when a monthly payment is missed. People have been conditioned to reinstate lapsed insurance for a single month to receive a reduction or dismissal of a DUS charge. It seems like the judge is doing the defendant a

favor, but over time, the practice has inadvertently created a subculture of persons who do not pay their monthly insurance premiums. This is probably the most common type of driving under an FRA suspension that judges see.

The law should require that the issuing insurance company provide a minimum policy of six months. The insurance company may still pursue the person for non-payment of monthly premiums, but these licenses should not be suspended for missing a monthly payment. It would then be up to the insurance companies to decide whether they want to do business with any individual. The present system is not working. People pay a single month and then are back to driving without insurance.

**VII. Provide Notice and an Opportunity for a person to cure prior to suspending a person's privileges**

One of the most common complaints judges hear from persons charged with offenses of driving under suspension is that they did not know the license was suspended. There are many reasons for this including (a) inconsistency in notifying persons of suspensions, and (b) transient persons who constantly change addresses. And of course, there are people who claim ignorance, yet really do know. To help those who genuinely are not aware of the suspension, we suggest the following:

1. Require that both courts and the BMV give persons an e-mail (or text messaging) option to be notified. Many younger people do not communicate by the U.S. mail. Their primary means of communication is by e-mail, social media, and/or text messaging. It is time that the law recognizes this. This is an appropriate opportunity for courts and the BMV to join the 21<sup>st</sup> century. When a person obtains an operator's license or has any other communication with the BMV or when a person has a case in court, the BMV and court should give the person the option to be notified by e-mail.
2. If any statutes do not currently require notice to the person for a license suspension based on failure to take certain action, the statutes should be updated and clarified to provide appropriate notice.