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SUPREME COURT
STATE OF WASHINGTON
Mar 08, 2013, 4:10 pm
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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, vs. STEPHEN C. JOHNSON, Petitioner,	No. 86885-9 RESPONDENT'S STATEMENT OF ADDITIONAL AUTHORITIES

Pursuant to RAP 10.8, the State of Washington respectfully cites the following additional authority.

On the issue of changes made to House Bill 1854 (2005) as the Legislature responded to *Redmond v. Moore*:

Hama Hama Co. v. Shorelines Hearings Bd., 85 Wn.2d 441, 450-51, 536 P.2d 157 (1975) (cautioning that sequential drafts of a bill are not necessarily good evidence of legislative intent);

House Comm. on the Judiciary, House Comm. on Appropriations, House Bill Report, HB 1854, 59th Legislature (2005) at 1 (recognizing that "some of the more common reasons" for license suspension are "failure to pay civil traffic infractions" and "failure to comply with or pay criminal traffic citations");

Id. at 2 (noting that DOL must suspend a driver upon notice from a court that s/he has failed to pay an infraction, and that DWLS 3 prosecutions occur based on such suspensions);

ORIGINAL

Id. at 4 (comparing the original HB 1854 and the substitute SHB 1854 without noting any intent to remove DOL's authority to suspend based on failure to pay);

Id. at 4 (summarizing testimony in favor of the bill that recognizes that most failure to pay cases are hardship cases);

Id. at 5-6 (summarizing testimony in favor of the bill that "if there is no licensing-based incentive to pay traffic fines, over time, people will stop paying traffic fines" and suggesting that the bill restores DOL's ability to make such suspensions);

House Bill Report as Passed by Legislature, SHB 1854, 59th Legislature (2005) (paralleling the above-cited Committee report on HB 1854);

Senate Comm. on Transportation, Senate Bill Report, SHB 1854, 59th Legislature (2005) at 1 (recognizing that one "of the more common reasons" for license suspension is "failure to pay traffic infractions");

Id. at 2 (noting that if a person fails to comply with a payment plan or fails to pay a monetary obligation in full, DOL must suspend the person's driver's license);

Id. at 3 (summarizing testimony in favor of the bill that it "gives local jurisdictions the ability to separate out those who cannot pay from those who will not pay" by requiring payment plans for the former).

Copies of the above referenced bill reports are attached.

Respectfully submitted this 8th day of March, 2013.

JONATHAN L. MEYER
Lewis County Prosecuting Attorney

SHANE O'ROURKE, WSBA #39927
Deputy Prosecuting Attorney
Attorney for the Respondent

BILL REPORTS

HOUSE BILL REPORT
HB 1854

As Reported by House Committee On:
Judiciary
Appropriations

Title: An act relating to withholding of the driving privilege.

Brief Description: Changing procedures on the withholding of the driving privilege.

Sponsors: Representatives Lantz, Priest, Haler, Walsh and Williams.

Brief History:
Committee Activity:
Judiciary: 2/23/05, 3/2/05 [DPS];
Appropriations: 3/5/05 [DPS(JUDI)].

Brief Summary of Substitute Bill

- Establishes an administrative review procedure by the Department of Licensing when the agency is required by statute to suspend or revoke a person's driving privilege.
- Requires courts to enter into payment plans with persons who are unable to immediately pay their civil fines for traffic infractions.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Lantz, Chair; Williams, Vice Chair; Priest, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Campbell, Kirby, Serben, Springer and Wood.

Staff: Trudes Tango Hutcheson (786-7384).

Background:

There are numerous circumstances, both criminal and noncriminal, under which the Department of Licensing (DOL) is required by statute to suspend or revoke a person's driver's license. Some of the more common reasons are: (a) conviction of driving under the influence of alcohol or drugs; (b) failure to pay civil traffic infractions or appear at a requested hearing for an infraction; and (c) failure to comply with or pay criminal traffic citations.

Whenever a person is convicted of a criminal traffic offense requiring the withholding of the person's driving privilege, the court must immediately take possession of the person's driver's license and forward it to the DOL.

A person who receives a traffic infraction must respond within 15 days by: (a) paying the monetary penalty; (b) requesting a hearing to explain mitigating circumstances; or (c) requesting a hearing to contest the infraction. If the person fails to pay the infraction or fails to appear at the requested hearing, the court must notify the DOL. If the person appears at the hearing and the court assesses a monetary penalty for the traffic infraction, the monetary penalty is payable immediately. If the person is unable to pay at the time, the court may grant an extension. Courts may also enter payment plans with the person. If the penalty is not paid within the granted time, the court must notify the DOL of the failure to pay.

When the DOL receives the information from the court, the DOL sends a notice to the driver that his or her license will be suspended or revoked 30 days after the mailing of the notice. The suspension or revocation remains in effect until the DOL receives notice from the court that the case has been adjudicated. The statutes do not provide for an administrative review of the DOL's action.

Recently, the Washington State Supreme Court ruled that the statutes requiring the DOL to suspend a person's license for failing to appear, respond, or comply with the terms of a notice of traffic infraction or traffic citation violated constitutional due process requirements, *City of Redmond v. Moore*, 151 Wn.2d 664 (2004) (*Redmond*).

In that case, the defendants were arrested for driving with license suspended in the third degree (DWLS 3). Their licenses were suspended based on the failure to appear, pay, or comply with traffic infractions. The defendants argued that the statutes violate due process requirements because there is no opportunity for a hearing with the DOL either before or after the suspension to correct possible ministerial errors, such as misidentification, that might occur when DOL processes information obtained from the courts. A driver's recourse, under the statutes, is to seek a court hearing. However, the Court in *Redmond* noted that such a judicial hearing to correct a clerical error would be burdensome, and the statutes do not guarantee that such a hearing would take place promptly.

In determining whether the statutes provided adequate due process, the Court weighed the state's interests and the burden on the state in providing procedures against the private interest affected, the risk of erroneous deprivation of that interest, and the probable value of procedural safeguards. The Court concluded that the benefit of ensuring against wrongly depriving a person of his or her driving privileges outweighed the burden on the state to provide for administrative reviews. Therefore, the Court held that the statutes violated a person's right to due process and are unconstitutional.

Because the defendants' licenses should not have been suspended due to the unconstitutionality of the statutes, the defendants' criminal charges for DWLS 3 were dismissed. As a result of *Redmond*, law enforcement agencies are no longer citing drivers for the misdemeanor crime of DWLS 3.

Summary of Substitute Bill:

Administrative review procedures are established that apply to license suspensions and revocations for infractions and offenses committed on or after the effective date of the act. Payment plans for persons who are unable to pay civil fines for traffic infractions are made mandatory.

Administrative Review

Whenever the DOL is required by statute to withhold a person's driving privilege, the DOL shall either mail or personally serve written notice to the person. The notice must be sent at least 45 days before the date the suspension or revocation takes place. Within 15 days of the notice, the person may request in writing an administrative review. Failure to timely request a review forfeits the person's right to review, unless the DOL finds good cause.

The administrative review consists solely of the DOL reviewing the documents available to it. If the person requests an interview with the DOL, the DOL may conduct the review by telephone or other electronic means. The only issues the DOL will address are: (a) whether the records relied upon by the DOL identify the correct person; and (b) whether the information transmitted from the court or other agency regarding the person accurately describes the action taken by the court or agency.

The person whose driving privileges are to be withheld has the burden to show by a preponderance of the evidence that he or she is not subject to the suspension or revocation. During the administrative review process, the suspension or revocation is stayed.

The person may appeal the DOL's decision to superior court. The appeal is limited to a review of the record of the administrative review. During the appeal, the suspension or revocation is not stayed unless the court finds that the person is likely to prevail and the person will suffer irreparable injury without a stay.

The DOL may adopt rules that are necessary or convenient for implementing the procedures, including rules for expedited orders and expedited notice procedures.

Mandatory Payment Plans

Whenever a monetary penalty, fee, cost, assessment, or other monetary obligation for a civil traffic infraction is imposed and the court determines that the person is unable to immediately pay the amount in full, the court must enter into a payment plan with the person. However, if a person already has a payment plan for that same obligation or the person has been subject to another payment plan and has failed to make payments, the court may, but need not, implement another payment plan. A plan must be entered into within the later of one year after the effective date of the act or one year after the monetary obligation initially became due.

If the court has notified the DOL of the person's failure to pay and the person has subsequently entered into a payment plan and makes an initial payment, the court must notify the DOL that the infraction has been adjudicated. The DOL must rescind any suspension or revocation.

The court may allow conversion of all or part of the monetary obligation if a community restitution program is available in the jurisdiction.

If payment is delinquent or the person fails to complete a community restitution program on or before the time established, the court must notify the DOL of the noncompliance, unless the court determines good cause and adjusts the plan. The DOL must suspend the person's driver's license until all monetary obligations are paid or until the DOL receives notice that the person has entered into a new plan.

If the court administers the payment plan, the court may charge a reasonable administrative fee to be retained by the city or county, not to exceed $10 per infraction or $25 per plan, whichever is less. The court may contract with outside entities to administer its plan. In those cases, the court may charge a fee, which may be calculated on a periodic, percentage, or other basis.

Substitute Bill Compared to Original Bill:

The substitute bill removes the intent section, adds the mandatory payment plan provisions, and allows a person to get an administrative hearing even if the person failed to request one within the 15 days, if the DOL finds good cause.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect on July 1, 2005.

Testimony For: (Proposed substitute bill) This bill is in response to the *Redmond* case. The DOL is no longer suspending licenses for people who fail to appear or respond to traffic infractions. That means there are no longer impoundments, no tickets being issued, and no reissue fees coming to the DOL. The Legislature has the responsibility to make sure people are given their due process rights. The DOL does not plan to suspend licenses retroactively. Cities need this bill because currently, due to the court case, local law enforcement cannot enforce their traffic infractions. This is a public safety issue. The bill provides due process rights, lengthens the amount of time a person has before the suspension takes effect, and establishes payment plans.

(With concerns on proposed substitute bill) The most important thing is to make sure the bill is prospective only. Most of the failure to pay cases are hardship cases. If someone cannot afford to pay the first ticket he or she won't be able to pay all the escalating fees and costs that result from the first nonpayment. There is a domino effect that needs to be fixed. This is a low

wage worker issue. Once a person loses his or her license, it's difficult for him or her to continue going to school or find and keep employment, which makes it difficult for the person to pay the fines. A simple traffic ticket can turn into a $1,000 obligation. People just want to go to work without having to violate the law because they are driving on a suspended license. The debts are court-owned and fees for collection agencies should not be in the bill.

Testimony Against: None.

Persons Testifying: (In support of proposed substitute bill) Representative Lantz, prime sponsor; Aaron Walls, City of Federal Way; Fred Stephens, Director of the Department of Licensing; Tammy Fellin, Association of Washington Cities; Jeff DeVere, Washington State Patrol; and Tony Orange, Central Area Motivation Program.

(With concerns on proposed substitute bill) Bruce Neas, Columbia Legal Services; Kevin Underwood, Washington Collectors' Association; Mary Wolney, Washington Association of Criminal Defense Lawyers and Washington Defenders' Association; and Lynn Domingo, Barbara Dorris, Eleanor Reynolds, and Ken Evans, Northwest Labor and Employment Law Office.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Judiciary be substituted therefor and the substitute bill do pass. Signed by 28 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Alexander, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Armstrong, Bailey, Buri, Clements, Cody, Conway, Darneille, Dunshee, Grant, Haigh, Hinkle, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, Miloscia, Pearson, Priest, Schual-Berke, Talcott and Walsh.

Staff: Bernard Dean (786-7130).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Judiciary:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect July 1, 2005.

Testimony For: The *Redmond v. Moore* decision made it impossible for the Department of Licensing (DOL) to suspend licenses for people who essentially ignore traffic citations. If there is no licensing-based incentive to pay traffic fines, over time, people will stop paying traffic fines. That will erode local and Public Safety and Education Account revenues beyond

what the fiscal note reflects. The bill balances the restoration of the DOL's ability to suspend licenses by providing the due process that court found absent in the *Redmond v. Moore* case.

Testimony Against: None.

Persons Testifying: Dick Van Wagenen, Governor's Policy Office.

Persons Signed In To Testify But Not Testifying: None.

HOUSE BILL REPORT
SHB 1854

As Passed Legislature

Title: An act relating to withholding of the driving privilege.

Brief Description: Changing procedures on the withholding of the driving privilege.

Sponsors: By House Committee on Judiciary (originally sponsored by Representatives Lantz, Priest, Haler, Walsh and Williams).

Brief History:
Committee Activity:
Judiciary: 2/23/05, 3/2/05 [DPS];
Appropriations: 3/5/05 [DPS(JUDI)].
Floor Activity:
Passed House: 3/11/05, 93-0.
Passed Senate: 4/11/05, 48-0.
Passed Legislature.

Brief Summary of Substitute Bill

- Establishes an administrative review procedure by the Department of Licensing when the agency is required by statute to suspend or revoke a person's driving privilege.
- Requires courts to enter into payment plans with persons who are unable to immediately pay their civil fines for traffic infractions.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Lantz, Chair; Williams, Vice Chair; Priest, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Campbell, Kirby, Serben, Springer and Wood.

Staff: Trudes Tango Hutcheson (786-7384).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Judiciary be substituted therefor and the substitute bill do pass. Signed by 28 members: Representatives Sommers, Chair;

Fromhold, Vice Chair; Alexander, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Armstrong, Bailey, Buri, Clements, Cody, Conway, Darneille, Dunshee, Grant, Haigh, Hinkle, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, Miloscia, Pearson, Priest, Schual-Berke, Talcott and Walsh.

Staff: Bernard Dean (786-7130).

Background:

There are numerous circumstances, both criminal and noncriminal, under which the Department of Licensing (DOL) is required by statute to suspend or revoke a person's driver's license. Some of the more common reasons are: (a) conviction of driving under the influence of alcohol or drugs; (b) failure to pay civil traffic infractions or appear at a requested hearing for an infraction; and (c) failure to comply with or pay criminal traffic citations.

Whenever a person is convicted of a criminal traffic offense requiring the withholding of the person's driving privilege, the court must immediately take possession of the person's driver's license and forward it to the DOL.

A person who receives a civil traffic infraction must respond within 15 days by: (a) paying the monetary penalty; (b) requesting a hearing to explain mitigating circumstances; or (c) requesting a hearing to contest the infraction. If the person fails to pay the infraction or fails to appear at the requested hearing, the court must notify the DOL. If the person appears at the hearing and the court assesses a monetary penalty for the traffic infraction, the monetary penalty is payable immediately. If the person is unable to pay at the time, the court may grant an extension. Courts may also enter payment plans with the person. If the penalty is not paid within the granted time, the court must notify the DOL of the failure to pay.

When the DOL receives the information from the court, the DOL sends a notice to the driver that his or her license will be suspended or revoked 30 days after the mailing of the notice. The suspension or revocation remains in effect until the DOL receives notice from the court that the case has been adjudicated. The statutes do not provide for an administrative review of the DOL's action.

Recently, the Washington State Supreme Court ruled that the statutes requiring the DOL to suspend a person's license for failing to appear, respond, or comply with the terms of a notice of traffic infraction or traffic citation violated constitutional due process requirements, *City of Redmond v. Moore*, 151 Wn.2d 664 (2004) (*Redmond*).

In that case, the defendants were arrested for driving with license suspended in the third degree (DWLS 3). Their licenses were suspended based on the failure to appear, pay, or comply with traffic infractions. The defendants argued that the statutes violate due process requirements because there is no opportunity for a hearing with the DOL either before or after the suspension to correct possible ministerial errors, such as misidentification, that might occur when DOL processes information obtained from the courts.

In determining whether the statutes provided adequate due process, the Court weighed the state's interests and the burden on the state in providing procedures against the private interest affected, the risk of erroneous deprivation of that interest, and the probable value of procedural safeguards. The Court concluded that the benefit of ensuring against wrongly depriving a person of his or her driving privileges outweighed the burden on the state to provide for administrative reviews. Therefore, the Court held that the statutes violated a person's right to due process and are unconstitutional.

Because the defendants' licenses should not have been suspended due to the unconstitutionality of the statutes, the defendants' criminal charges for DWLS 3 were dismissed. As a result of *Redmond*, law enforcement agencies are no longer citing drivers for the misdemeanor crime of DWLS 3.

Summary of Substitute Bill:

Administrative review procedures are established that apply to license suspensions and revocations for infractions and offenses committed on or after the effective date of the act. Payment plans for persons who are unable to pay civil fines for traffic infractions are made mandatory.

Administrative Review

Whenever the DOL is required by statute to withhold a person's driving privilege, the DOL shall either mail or personally serve written notice to the person. The notice must be sent at least 45 days before the date the suspension or revocation takes place. Within 15 days of the notice, the person may request in writing an administrative review. Failure to timely request a review forfeits the person's right to review, unless the DOL finds good cause.

The administrative review consists solely of the DOL reviewing the documents available to it. If the person requests an interview with the DOL, the DOL may conduct the review by telephone or other electronic means. The only issues the DOL will address are: (a) whether the records relied upon by the DOL identify the correct person; and (b) whether the information transmitted from the court or other agency regarding the person accurately describes the action taken by the court or agency.

The person whose driving privileges are to be withheld has the burden to show by a preponderance of the evidence that he or she is not subject to the suspension or revocation. During the administrative review process, the suspension or revocation is stayed.

The person may appeal the DOL's decision to superior court. The appeal is limited to a review of the record of the administrative review. During the appeal, the suspension or revocation is not stayed unless the court finds that the person is likely to prevail and the person will suffer irreparable injury without a stay.

The DOL may adopt rules that are necessary or convenient for implementing the procedures, including rules for expedited orders and expedited notice procedures.

Mandatory Payment Plans

Whenever a monetary penalty, fee, cost, assessment, or other monetary obligation for a civil traffic infraction is imposed and the court determines that the person is unable to immediately pay the amount in full, the court must enter into a payment plan with the person. However, if a person already has a payment plan for that same obligation or the person has been subject to another payment plan and has failed to make payments, the court may, but need not, implement another payment plan. A plan must be entered into within the later of one year after the effective date of the act or one year after the monetary obligation initially became due.

If the court has notified the DOL of the person's failure to pay and the person has subsequently entered into a payment plan and makes an initial payment, the court must notify the DOL that the infraction has been adjudicated. The DOL must rescind any suspension or revocation.

The court may allow conversion of all or part of the monetary obligation if a community restitution program is available in the jurisdiction.

If payment is delinquent or the person fails to complete a community restitution program on or before the time established, the court must notify the DOL of the noncompliance, unless the court determines good cause and adjusts the plan. The DOL must suspend the person's driver's license until all monetary obligations are paid or until the DOL receives notice that the person has entered into a new plan.

If the court administers the payment plan, the court may charge a reasonable administrative fee to be retained by the city or county, not to exceed $10 per infraction or $25 per plan, whichever is less. The court may contract with outside entities to administer its plan. In those cases, the court may charge a fee, which may be calculated on a periodic, percentage, or other basis.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect July 1, 2005.

Testimony For: (Judiciary) (Proposed substitute bill) This bill is in response to the *Redmond* case. The DOL is no longer suspending licenses for people who fail to appear or respond to traffic infractions. That means there are no longer impoundments, no tickets being issued, and no reissue fees coming to the DOL. The Legislature has the responsibility to make sure people are given their due process rights. The DOL does not plan to suspend licenses retroactively. Cities need this bill because currently, due to the court case, local law enforcement cannot enforce their traffic infractions. This is a public safety issue. The bill provides due process rights, lengthens the amount of time a person has before the suspension takes effect, and establishes payment plans.

(With concerns on proposed substitute bill) The most important thing is to make sure the bill is prospective only. Most of the failure to pay cases are hardship cases. If someone cannot afford to pay the first ticket he or she won't be able to pay all the escalating fees and costs that

result from the first nonpayment. There is a domino effect that needs to be fixed. This is a low wage worker issue. Once a person loses his or her license, it's difficult for him or her to continue going to school or find and keep employment, which makes it difficult for the person to pay the fines. A simple traffic ticket can turn into a $1,000 obligation. People just want to go to work without having to violate the law because they are driving on a suspended license. The debts are court-owned and fees for collection agencies should not be in the bill.

Testimony For: (Appropriations) The *Redmond v. Moore* decision made it impossible for the Department of Licensing (DOL) to suspend licenses for people who essentially ignore traffic citations. If there is no licensing-based incentive to pay traffic fines, over time, people will stop paying traffic fines. That will erode local and Public Safety and Education Account revenues beyond what the fiscal note reflects. The bill balances the restoration of the DOL's ability to suspend licenses by providing the due process that court found absent in the *Redmond v. Moore* case.

Testimony Against: (Judiciary) None.

Testimony Against: (Appropriations) None.

Persons Testifying: (Judiciary) (In support of proposed substitute bill) Representative Lantz, prime sponsor; Aaron Walls, City of Federal Way; Fred Stephens, Director of the Department of Licensing; Tammy Fellin, Association of Washington Cities; Jeff DeVere, Washington State Patrol; and Tony Orange, Central Area Motivation Program.

(With concerns on proposed substitute bill) Bruce Neas, Columbia Legal Services; Kevin Underwood, Washington Collectors' Association; Mary Wolney, Washington Association of Criminal Defense Lawyers and Washington Defenders' Association; and Lynn Domingo, Barbara Dorris, Eleanor Reynolds, and Ken Evans, Northwest Labor and Employment Law Office.

Persons Testifying: (Appropriations) Dick Van Wagenen, Governor's Policy Office.

Persons Signed In To Testify But Not Testifying: (Judiciary) None.

Persons Signed In To Testify But Not Testifying: (Appropriations) None.

SENATE BILL REPORT
SHB 1854

As Reported By Senate Committee On:
Transportation, March 30, 2005

Title: An act relating to withholding of the driving privilege.

Brief Description: Changing provisions relating to withholding of driving privileges.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Lantz, Priest, Haler, Walsh and Williams).

Brief History: Passed House: 3/11/05, 93-0.
Committee Activity: Transportation: 3/29/05, 3/30/05 [DP].

SENATE COMMITTEE ON TRANSPORTATION

Majority Report: Do pass.
Signed by Senators Haugen, Chair; Jacobsen, Vice Chair; Poulsen, Vice Chair; Swecker, Ranking Minority Member; Benson, Eide, Esser, Mulliken, Oke, Spanel and Weinstein.

Staff: Kimberly Johnson (786-7346)

Background: There are numerous circumstances, both criminal and noncriminal, under which the Department of Licensing (DOL) is required by statute to suspend or revoke a person's driver's license. Two of the more common reasons are: (1) conviction of driving under the influence of alcohol or drugs; and (2) failure to pay traffic infractions or appear at a hearing for an infraction.

In cases where the person has failed to respond or appear at a hearing for a traffic infraction, the court sends a notice to the DOL. When the DOL receives the information from the court, the DOL sends a notice to the driver that his or her license will be suspended or revoked 30 days after the mailing of the notice. The suspension or revocation remains in effect until the DOL receives notice from the court that the case has been adjudicated. Some courts offer payment plans for offenders who are unable to pay fines in full at the time they are due. These plans allow an offender to pay the fines off in installments over time, and allow the offender to retain their driving privilege when it would have otherwise been suspended.

Recently, in *City of Redmond v. Moore*, 151 Wn.2d 664 (2004) the Washington State Supreme Court ruled that the statutes requiring the DOL to suspend a person's license for failing to appear, respond, or comply with the terms of a notice of traffic infraction or citation violated constitutional due process requirements.

Summary of Bill: Procedures are established for an administrative review when the DOL is required by statute to withhold a person's driving privileges. Whenever the DOL is required by statute to withhold a person's driving privilege, the DOL must either mail or personally serve written notice to the person. The notice must be sent at least 45 days before the date the

suspension or revocation takes place. Within 15 days after notice is given, the person may request in writing an administrative review. Failure to request a review within that time forfeits the person's right to review.

If the person requests an interview with the DOL, the DOL may conduct the review by telephone or other electronic means. The only issues the DOL will address in the review are: (1) whether the records relied upon by the DOL identify the correct person; and (2) whether the information transmitted from the court or other agency regarding the person accurately describes the action taken by the court or agency.

The person whose driving privileges are to be withheld has the burden to show by a preponderance of the evidence that he or she is not subject to the suspension or revocation. During the administrative review process, the suspension or revocation is stayed. The administrative review procedures do not apply where there is an opportunity for informal settlement, driver improvement interview, or formal hearing.

The person may appeal the DOL's decision to superior court. The appeal is limited to a review of the record of the administrative review. During the appeal, the suspension or revocation is not stayed unless the court finds that the person is likely to prevail in the appeal and that without a stay the person will suffer irreparable injury.

The DOL may adopt rules that are necessary or convenient for implementing the procedures, including rules for expedited orders and expedited notice procedures.

A court must enter into a payment plan with a person, if the court finds that the person is unable to pay a monetary penalty in full, and not more than one year has passed since the later of the effective date of this act, or the date the monetary obligation initially became due. If a person has previously been granted a payment plan in the past and has failed to comply with the plan, the court may, in its discretion, implement a payment plan.

A court that has notified the DOL that a person has failed to pay or comply and the person has subsequently entered into a payment plan and made an initial payment, the court must notify the DOL that the infraction has been adjudicated and the DOL must rescind any suspension of the person's driver's license based on failure to respond.

If a person fails to comply with the terms of a payment plan or complete community restitution, the court must notify the DOL and the DOL must suspend the person's driver's license until all monetary obligations have been paid, or community restitution has been completed.

A court must notify the DOL of persons who do not enter into a payment plan and who fail to pay a monetary obligation in full, and the DOL must suspend the person's driver's license until all monetary obligations have been paid.

Courts administering the payment plans may charge a reasonable administrative fee of not more than ten dollars per infraction or twenty-five dollars per payment plan, whichever is less. A court may contract with outside entities to administer its payment plan system. A fee may be assessed by the court for such administrative services.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2005.

Testimony For: This has a widespread impact to public safety and local governments. This bill gives local jurisdictions the ability to separate out those who cannot pay from those who will not pay. A driver's license is a much needed tool for persons trying to support a family or receive medical treatment, and the option for a payment plan enables persons to retain the ability to support their family while at the same time meet their court ordered financial obligations.

Testimony Against: None.

Who Testified: PRO: Denise Movius, DOL; Tammy Fellin, Association of Washington Cities; Lynn Domingo, NW Labor and Employer Law Office; Kevin Underwood, Washington Collectors Association.

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, vs. STEPHEN CHRISS JOHNSON, Appellant.	))))))))	NO. 86885-9 DECLARATION OF EMAILING

Ms. Teri Bryant, paralegal for Shane O'Rourke, Deputy Prosecuting Attorney, declares under penalty of perjury under the laws of the State of Washington that the following is true and correct: On March 8, 2013, the appellant was served with a copy of the **Respondent's Statement of Additional Authorities** by emailing same to counsel for the appellant at:

kevinhochhalter@cushmanlaw.com; & kkuchno@cushmanlaw.com

And to Sarah A. Dunne and Nancy L. Talner of ACLU of Washington Foundation; Christine Hawkins of Davis Wright Tremaine and Aileen Tsao at: talner@aclu-wa.org.

DATED this 8th day of March, 2013, at Chehalis, Washington.

Teri Bryant

Teri Bryant, Paralegal
Lewis County Prosecuting Attorney Office

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent vs. STEPHEN CHRISS JOHNSON, Petitioner.	NO. 86885-9 DECLARATION OF MAILING

Ms. Teri Bryant, paralegal for Shane O'Rourke, Deputy Prosecuting Attorney, declares under penalty of perjury under the laws of the State of Washington that the following is true and correct: On March 11, 2013, a copy of the **Respondent's Statement of Additional Authorities** was served on all parties or their counsel of record as follows:

US Mail Postage Prepaid to:

Travis Stearns
Washington Defendant Assoc.
110 Prefontaine Pl. S., Ste. 610
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DATED this 8th day of March, 2013, at Chehalis, Washington.

Teri Bryant

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Rec'd 3-8-13

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Attached for filing in the above referenced case please find the Respondent's Statement of Additional Authorities.

Thanks,

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