

Meeting Notes from  
ACJC Barriers to Reentry

**Subgroup on Title 28**

Friday, November 13, 10:00 AM-12:00 PM

Brady Building, 1034 W. 4th Avenue, 5th floor conference room (AG's conference room)

**Present:** Alex Bryner, Lauren Edades, Kirsten Jedlicka, Jayson Whiteside, Audrey O'Brien, Jordan Shilling, Matt Widmer, Giulia Kaufman, Brian Brossmer, Ralph Andrews, Amy Erickson, Nicole Tham, Doreen Schenkenberger, Fred Slone, Seneca Theno, Susanne DiPietro, Mary Geddes.

**Next Meeting:** Friday, December 11, 10:00 AM – 12:00 PM, Attorney General's Office, 1031 W. 4th Ave., Anchorage, 2nd floor conference room

Dual License Revocation Authority

Prior to this meeting, Mary Geddes had circulated data and a short paper. The subgroup discussed the reasons for dual administrative and judicial revocation authority.

- It was noted that DMV currently lacks statutory authority to revoke DLs or the privilege to drive when the DUI is not per se (.08 BA), also when the DUI involves a watercraft or an off-road vehicle.
- The time frame for getting a court trial date is about 7 weeks out. In contrast DMV currently provides an unrepresented driver with an administrative hearing in about 30 days, and a represented driver with a hearing in about 45 days. Attorneys typically seek more discovery, hence the delay.
- There is no mechanism by which the court and the DMV can communicate directly about the status of the other's revocation action.
  - However, the prosecutor who has access to APSIN can see the DMV record. If a driver has requested an administrative hearing (thus delaying an administrative revocation) then the notation will be "hearing pending" and a temporary license will have been issued. Once the hearing is held, the license status is changed to reflect the outcome of the hearing.
- The DMV administrative hearing does not resolve evidentiary issues. Thus a 'bad stop' or a lack of PC is not going to result in the dismissal of the administrative case. The only and very rare exception is if the license action is the result of outrageous police misconduct.

Matt Widmer noted that the advantage of administrative revocation process is the immediacy of license action. But DMV administrative hearing officers can't hold jury trials, and due process needs to be provided. Fred Slone reiterated that the courts can revoke licenses in more circumstances than DMV can. This raised the question of whether other states allows DMVs to revoke for non-per se-related and drug-related DUIs. (To be researched). Alex raised the logistics of dealing with drug DUIs in an administrative context. Alex also noted that, while DMV can act more expeditiously on a DL revocation, the courts can take immediate measures in a criminal case for the purposes of setting bail.

Jayson stated that the DMV is trying to avoid inconsistent results and is trying to keep court judgments contemporaneous with DMV revocation periods. He also pointed the group to SB91 which if passed would require DMV to dismiss an administrative revocation if a DUI charge results in either an acquittal or a dismissal with prejudice. He thought that statutory 'cut-outs' of DMV authority in cases in which there is a court proceeding would be more confusing than the current system. Seneca agreed. Jayson referenced NHTSA's recommendation that states have dual revocation processes. DPS has to have a certain number of measures in place in order for the state to qualify for federal highway funding.

Seneca proposed that a more effective reform might involve license plate action.

Fred said that we presently lack consensus on whether we should have a singular system for DL revocation. He has clients who are administratively revoked even though they were not criminally convicted. He thinks that the only real value in

DMV action is its immediate first response, but there are still considerable delays for anyone who wants to contest that action.

Seneca stated that if we want to recommend that Alaska have a singular system then: if its administrative, DMV authority will need to expand to other categories of conduct, and; if its judicial, then the courts/law enforcement will need to have some greater legal capacity for immediate action. Perhaps license plate action would figure in here. Matt agreed that some form of immediate action is needed for problem drivers. His preference would be for the courts, but an immediate response capability is required, regardless.

Susanne suggested that if the revocation authority was vested exclusively with the courts, thereby delaying action on the DL, mandatory bail conditions (like an IID LL) could be one legislative response. Law (Kaci Schroeder) might have some ideas if we were to go in this direction. Seneca said that we should look at the current bail schedules for driving without a license. Susanne acknowledged that there is the rare case in which officers do cite and release on DUIs. Also a statutory change would have to address the problem of getting any bail paperwork over the DMV, otherwise there could be a 5 day delay, according to Susanne.

In response to Susanne's suggestion, Lauren Edades noted that DMV cannot put an IID requirement onto a DL without a conviction. Fred agreed and said this is a problem for those with staggered administrative and judicial revocations because it effectively lengthens revocation periods. Susanne agreed that this an example of the type of new statutory authority which could be requested of the Legislature.

#### Barriers to License Reinstatement

Mary asked if the subgroup could turn its attention to a different question, i.e. whether 'enough' revoked drivers are reinstating their licenses. If they are not, then maybe some of the bases for revocation or the qualifications for reinstatement are too harsh. The discussion began with references to revocations stemming from the failure to carry mandatory insurance. Mary noted that the failure to have insurance in effect on the day a driver is stopped is not remediable by getting insurance the next day. License revocation is mandatory, as is the requirement that the driver thereafter carry SR-22 insurance for the next three years.

DMV staff wondered if the group fully understood the SR-22 requirement. It does involve additional cost but the cost is relatively minimal. This cost is additional because the insurer is required to communicate with DMV if the driver stops insurance payments. However, it was noted that not all insurers provide SR-22, and that drivers may be denied the coverage, and thus may prove a significant barrier to reinstatement.

Seneca asked if there were other ways of making sure that drivers were insured, for example by linking that some car titles or registration with insurance requirements. Jayson didn't think that was workable and noted drivers show proof of insurance but then subsequently cancel it to save money.

In contrast to the jailable offense of driving without mandatory insurance, driving without proof of insurance is worth 6 points. Seneca noted that many police officers do not cite for this if they can ascertain the driver has valid insurance by making a quick phone call at the time of the stop. Seneca wonders at the value of maintaining this offense on the books. However, not having mandatory insurance in effect (whether or not there was an accident) led to 1009 criminal charges in Anchorage during the first part of this year (2015) according to Seneca.

Our meeting time ended. At our next meeting, we agreed to discuss the following additional topics: whether there should be mandatory jail for first-time DUI offenders, ideas and directions for Brian's IID research, and other non-driving related reasons for license suspension.