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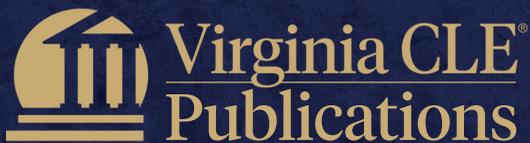
Defense of Serious Traffic Cases in Virginia

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VIRGINIA LAWYERS PRACTICE HANDBOOK

DEFENSE OF SERIOUS
TRAFFIC CASES IN VIRGINIA

Ninth Edition

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Publications



Defense of Serious Traffic Cases in Virginia

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The DMV is not permitted to issue a driver's license to any person whose license has been suspended while the period of suspension remains in effect. Section 46.2-313 likewise prevents the issuance of a license to any person whose privilege to drive has been revoked "or should have been revoked" under the provisions of title 46.2 until the expiration of one year after the license was revoked, unless otherwise permitted by law.

8.602 When the Revocation Period Begins. Any period of administrative suspension or revocation of a driver's license begins on the date the conviction becomes final or after the order issued from an administrative hearing at the DMV becomes final.¹⁹⁷

8.7 RAPID POINT ACCUMULATORS

8.701 The Uniform Demerit Point System. Section 46.2-492 of the Virginia Code describes the uniform demerit point system. The Commissioner of the DMV assigns point values to convictions (or to findings of not innocent when the driver is a juvenile) based on the reports of conviction filed by the courts. Points can also be given to a driver for offenses committed under equivalent local ordinances in Virginia or for those reported by other states, the federal courts, or Canadian authorities. The Commissioner assigns points to these offenses based on the conviction a driver would have received in Virginia for similar conduct.¹⁹⁸ Demerit points are only assigned for moving violations.¹⁹⁹

Point values are assigned based upon the seriousness of the offense.²⁰⁰ When more than one conviction results from the same set of facts, only the point value of the most serious offense is assessed.²⁰¹ However, the statute provides that no points should accrue for any conviction resulting from a charge when the vehicle has been parked or stopped on a portion of a highway that is not normally used by traffic in order for the driver to rest, as long as the court makes this finding part of the record of conviction transmitted to the DMV.²⁰²

¹⁹⁷ Va. Code § 46.2-414.

¹⁹⁸ Va. Code § 46.2-492(B).

¹⁹⁹ Form DMV 115, "Moving Violations & Point Assessment," a complete list of the offenses and the point values assigned, is available at www.dmv.virginia.gov/sites/default/files/forms/dmv115.pdf.

²⁰⁰ Examples of these offenses are given in section 46.2-492(D) of the Virginia Code.

²⁰¹ Va. Code § 46.2-492(E).

²⁰² Va. Code § 46.2-492(C).

8.702 Driver Improvement Clinics. The DMV develops the uniform standards for a statewide program of driver improvement clinics.²⁰³ The clinics are designed to instruct those identified by the courts or the DMV as problem drivers and to achieve a lasting corrective influence on their driving performance. The programs include instruction on issues such as alcohol and drug abuse, aggressive driving, and distracted driving.

8.703 Adult Drivers. The first contact the DMV will have with a driver who has accumulated a high number of demerit points is an advisory or warning letter. A driver who has received eight points or more for offenses committed during a 12-month period or 12 points or more for offenses committed during a 24-month period will be advised of remedial actions that can be taken. These letters are sent by regular mail to the driver's last address of record and have no legal effect on the DMV's future actions, regardless of whether the driver actually receives the letter or even if the letters are never sent.²⁰⁴ An adult driver who has accumulated twelve demerit points based on convictions for traffic offenses committed within a period of 12 consecutive months or has eighteen demerit points based on convictions for traffic offenses committed within a period of 24 consecutive months will be directed by the DMV to attend a driver improvement clinic.²⁰⁵

Attendance at the driver improvement clinic provides a driver five safe driving points that cancel out five of the accumulated demerit points.²⁰⁶ After one year has passed from the date of satisfactory completion of the first clinic, the driver is eligible to voluntarily attend a second driver improvement clinic to receive a reduction in insurance premium charges.²⁰⁷ No safe driver points are awarded if the court sends the client to a driver improvement clinic, unless the court notifies the DMV that safe driving points should be awarded.²⁰⁸

As a result of the accumulation of demerit points, the driver will also be placed on probation for a period of six months. At the end of that probationary period, a driver-control period of 18 months begins. If the driver commits any violations for which points are assessed during the 18-month period, the driver will immediately revert to probationary status for six more months followed by

²⁰³ Va. Code § 46.2-490(A).

²⁰⁴ Va. Code § 46.2-495.

²⁰⁵ Va. Code § 46.2-498(A).

²⁰⁶ Va. Code § 46.2-498(C).

²⁰⁷ *Id.*

²⁰⁸ Va. Code § 46.2-505(A).

another driver-control period of 18 additional months after the new probationary period.²⁰⁹ Whenever any person who has been placed on probation is convicted of a demerit-point violation committed during the probation period, the DMV is required to suspend the person's license for a period of 90 days when six points are assigned, 60 days when four points are assigned, and 45 days when three points are assigned.²¹⁰

Upon request, the Commissioner must grant a restricted license during the first period of suspension imposed under section 46.2-499(A). During the second or subsequent period of suspension, the person is eligible to receive a restricted driver's license only if the violation occurred within a probationary period that was immediately preceded by a control period.²¹¹ A restricted license may be issued for any of the purposes listed in section 18.2-271.1(E).

8.704 Juvenile Drivers. Whether the juvenile driver has a license or just a learner's permit, section 46.2-334.01(A) of the Virginia Code controls the DMV's imposition of administrative sanctions for traffic violations. The DMV will direct the juvenile to go to a driver improvement clinic when the record shows that the juvenile has a conviction for any offense committed while under the age of 18 for which demerit points were or could have been assessed.²¹² This section also applies when a juvenile has committed one of various seatbelt violations listed in the statute, even though seatbelt violations are not moving violations and carry no points.²¹³ No safe driving points can be awarded to a juvenile who is directed to attend a driver improvement clinic by the DMV Commissioner or the court.²¹⁴ Safe driving points may be awarded to a juvenile driver who voluntarily attends and successfully completes a driver improvement clinic as long as the juvenile was not directed to do so by the DMV Commissioner or the court.²¹⁵

For a second conviction of one of the enumerated charges, the DMV must suspend the juvenile's driver's license or driving privilege for 90 days, and this suspension runs consecutively with any other loss or denial of

²⁰⁹ Va. Code § 46.2-500.

²¹⁰ Va. Code § 46.2-499.

²¹¹ *Id.*

²¹² Va. Code § 46.2-334.01(A)(1).

²¹³ Va. Code § 46.2-334.01(A)(2).

²¹⁴ Va. Code § 46.2-334.01(A)(1).

²¹⁵ *Id.*

license.²¹⁶ The juvenile may petition the juvenile and domestic relations district court where he or she resides for a restricted privilege during the period of this administrative suspension. The scope of the restricted license is limited to travel between the juvenile's home and place of employment or the institution of higher learning where the juvenile is enrolled.²¹⁷ However, the restricted license provisions only apply where the juvenile has no other means of transportation to work or the institution of higher learning.²¹⁸

If the juvenile driver is convicted a third time of one of the offenses listed in section 46.2-334.01, the DMV will revoke the offender's driver's license or driving privilege for one year or until the juvenile reaches the age of 18, whichever period is longer.²¹⁹ This revocation runs consecutively to any other suspension, revocation, or denial of driving privileges. The statute provides, however, that multiple convictions arising out of the same set of facts cannot be used to enhance the level of suspension.²²⁰ This prevents juveniles who are found not innocent of two offenses that occurred as part of the same event from having those offenses treated as prior offenses, which would trigger the section 46.2-334.01(A) sanctions.

8.705 DMV Intervention. When the DMV receives notice from a court that a second conviction has been entered against a driver for driving when his or her license was suspended or revoked for any of the alcohol-related offenses listed in section 46.2-301, it will direct the individual to report to a VASAP for an interview within 60 days of the notice. This notice is sent to the last address of record by certified mail, return receipt requested. VASAP then reports to the DMV on the person's compliance. An offender who fails to attend VASAP as directed will have his or her license suspended by the DMV until compliance is obtained.²²¹

The VASAP interview is conducted by a representative of the program who is to review all the laws that apply to the driver's situation, provide guidance about budgeting to pay costs and fines, discuss the consequences of further offenses, and, if appropriate, refer the driver to a driver improvement clinic.

²¹⁶ Va. Code § 46.2-334.01(A)(2).

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ Va. Code § 46.2-334.01(A)(3).

²²⁰ Va. Code § 46.2-334.01(A)(4).

²²¹ Va. Code § 46.2-389.