

H. 571: SUMMARY OF SENATE JUDICIARY STRIKE-ALL

A. ROADMAP

The Senate Judiciary Committee's strike-all amendment to H.571 addresses a number of topics:

- 1) Driver's license suspensions, DLS, and points - Secs. 1–23**
- 2) Immunity for forcible entry of a motor vehicle - Sec. 24**
- 3) Fair and impartial policing - Secs. 25–26**
- 4) Training for law enforcement; impaired driving - Sec. 27**
- 5) Motor vehicle insurance underwriting and credit history - Sec. 28**
- 6) Effective dates - Sec. 29**

B. SECTION BY SECTION SUMMARY

Sec. 1

- Directs the Commissioner of Motor Vehicles to terminate suspensions imposed because of a person's failure to appear on a criminal traffic offense charged before July 1, 1990, where the charge arose from conduct that is a civil traffic violation under current Vermont law.
- The Commissioner is directed to terminate these suspensions "as soon as possible" after the bill takes effect.

Sec. 2

- Subsec. (a) creates a Driver Restoration Program (Program) to be carried out by the Department of Motor Vehicles and the Judicial Bureau from September 1, 2016 – November 30, 2016. The Program is only targeted at driver's license suspensions arising from nonpayment of a traffic violation judgment.
- Subsec. (b) provides that under the Program, a person who has not paid in full the amount due on a traffic violation judgment¹ entered prior to July 1, 2006 may apply to the Judicial Bureau to have the amount due reduced to \$30.
- Subsec. (c) allows a person with outstanding traffic violation judgments to pay off the judgments under a payment plan that requires payment of no more than \$100 per month, regardless of when the judgments were entered.
- Subsec. (d) addresses restoration of driving privileges.
→ Subdiv. (d)(1) directs the Judicial Bureau to notify DMV of compliance if a person has paid all traffic violation judgments reduced to \$30 under the Program and is on a payment plan for any other judgment.

¹ Judgments for commercial motor vehicle violations are not eligible for reduction under the Program.

→ Subdiv. (d)(2)(A) directs the Commissioner of DMV, upon receipt of this notification, to terminate the person's pending suspensions arising from nonpayment of traffic violation judgments, without requiring the person to apply or pay a reinstatement fee.

→ Subdiv. (d)(2)(B) also directs the Commissioner during the Program time period to terminate suspensions related to nonpayment of traffic violation judgments without requiring a reinstatement fee, in the case of individuals who have paid all outstanding traffic violation judgments in full or are in compliance with a payment plan prior to Dec. 1, 2016.

- Subsec. (e) directs the Agency of Transportation to conduct a public awareness campaign about the Program.
- Subsec. (f) provides for monies collected on traffic violation judgments reduced to \$30 to be allocated in accordance with a Process Review of the Court Administrator's Office.

Sec. 3

- Directs the Commissioner of DMV to terminate driver's license suspensions pending on the effective date of the bill that were imposed pursuant to five (5) laws that authorize driver's license suspensions as a penalty for nondriving conduct, but that will no longer authorize license suspensions as a penalty after the bill takes effect.²
- The Commissioner is directed to terminate these suspensions without requiring an application or payment of a fee.

Sec. 4

- Repeals 23 V.S.A. § 305a, a law that directs the Commissioner of DMV not to renew a person's motor vehicle registration if the person is the sole registrant after the Commissioner receives notice from the Judicial Bureau that the person has not paid a traffic violation judgment.
- Repeals 23 V.S.A. § 2307, a law that addresses remedies the State may pursue if a person has not paid a traffic violation judgment.³ *Much of the substance this law is reenacted (with amendments) in Sec. 5 of the bill.*

Sec. 5

- Reenacts **as amended** the provisions of 23 V.S.A. § 2307, which is one of the laws repealed in Sec. 4 of the bill.
 - Under the reenacted language, and consistent with current law, the Judicial Bureau will notify DMV if a person fails to pay a traffic violation judgment within 30 days. After another 20 days, DMV is directed to suspend the person's license for a 30-day period or until the amount due is satisfied, whichever is earlier. *Under current law, the suspension period is 120 days.*

² Secs. 6, 10, 11, 13, and 16 of the bill amend these laws to eliminate driver's license suspensions as a penalty.

³ Under this law, a person against whom a traffic violation judgment is entered has 30 days to pay the judgment (unless this 30-day period has been extended by a judicial officer). If the judgment is not paid within the 30 days, the Judicial Bureau sends electronic notice to DMV. DMV then suspends the person's license after another 20 days, unless the person pays the judgment or becomes current under a payment plan within the 20 days. The suspension is for a 120-day period or until the judgment is satisfied, whichever is shorter. Even if a person who is suspended under this provision pays the judgment in full, the person must apply to DMV to terminate the suspension and pay a reinstatement fee (currently \$71).

- Directs the Judicial Bureau, at a minimum, to offer a payment plan option that allows a person to avoid suspension of his or her license by paying no more than \$30 per traffic violation judgment per month, not to exceed \$100 per month regardless of the number of outstanding judgments.
- Eliminates license suspensions as a contempt tool that the Judicial Bureau may use to enforce its judgments. *See* subdvs. (c)(3)(C) and (c)(5)(B)(iii).

Sec. 6

- Raises from \$600 to \$1,200 the maximum civil penalty for a person who fails to complete a Court Diversion program for a second or subsequent underage alcohol violation.
→ Under current law, the maximum penalty for a second offense is \$600, and third or subsequent offenses are treated as criminal offenses. In Sec. 7 of the bill, the criminal offense is repealed. As a result, the Committee voted to raise the maximum civil penalty in this section so that the Judicial Bureau has the authority to impose graduated civil penalties for third and subsequent offenders.
- Repeals a provision that directs the Commissioner of DMV to suspend the license or privilege to operate a motor vehicle of an underage alcohol offender who fails to pay a civil penalty.

Secs. 7–9

- **Sec. 7** repeals a law that criminalizes third or subsequent underage alcohol-related offenses.
- **Secs. 8–9** are conforming changes related to the repeal in Sec. 7 of the bill.

Sec. 10

- Repeals a provision that directs the Commissioner of DMV to suspend the license or privilege to operate a motor vehicle of a person who fails to pay a fine in connection with an underage tobacco offense.

Sec. 11

- Repeals a provision that directs the Commissioner of DMV to suspend the license or privilege to operate a motor vehicle of a person under 18 years of age (or enrolled in school) who is convicted of a false public alarm offense.

Sec. 12

- Amends the penalty for a person 21 years of age or older who commits a third or subsequent civil marijuana possession offense to provide for a civil penalty of \$500 (instead of a penalty of “not more than \$500.00”) and for suspension of the person’s operator’s license and privilege to operate a motor vehicle for a period of 30 days.

Sec. 13

- Raises from \$600 to \$1,200 the maximum civil penalty for a person who fails to complete a Court Diversion program for a second or subsequent underage marijuana possession violation.
→ Under current law, the maximum penalty for a second offense is \$600, and third or subsequent offenses are treated as criminal offenses. In Sec. 14 of the bill, the

criminal offense is repealed. As a result, the Committee voted to raise the maximum civil penalty in this section so that the Judicial Bureau has the authority to impose graduated civil penalties for third and subsequent offenders.

- Repeals a provision that directs the Commissioner of DMV to suspend the license or privilege to operate a motor vehicle of an underage marijuana offender who fails to pay a civil penalty.

Secs. 14–15

- **Sec. 14** repeals a law that criminalizes a third or subsequent offense by a person under 21 years of age for possession of one ounce or less of marijuana or five grams or less of hashish.
- **Sec. 15** is a conforming change related to the repeal in Sec. 14 of the bill.

Sec. 16

- Repeals language that directs the Commissioner of DMV to suspend a person's privilege to operate a motor vehicle as a result of nonpayment of the motor vehicle purchase and use tax.

Sec. 17

- Criminalizes a 3rd civil offense for driving with a license suspended (DLS) when the two prior offenses have occurred within two years of the 3d offense and after December 1, 2016 (i.e. after the end of the Driver Restoration Program).
 - Under existing law, a 6th civil DLS suspension is subject to criminal sanctions; however, the prior civil DLS offenses never “roll off” a person's record. This section provides for a 3d civil DLS offense to be subject to criminal sanction, but the prior offenses roll off a person's record after 2 years.
 - The rationale for resetting the clock on the prior civil DLS offenses to December 1, 2016, is that many civil DLS offenses relate to suspensions for nonpayment of traffic violation judgments. One of the goals of this bill is to enable people to clear their records related to unpaid traffic violation judgments.
- Repeals a provision that requires civil DLS offenses arising from suspensions for unpaid traffic violation judgments that have since been paid to not count as prior offenses. The Committee heard testimony that this provision is administratively unenforceable.

Sec. 18

- Creates a new crime for operating without a driver's license a 2d time within a two-year period. The crime is punishable by up to 60 days' imprisonment and a fine of not more than \$5,000.
 - Under the DLS law as amended in Sec. 17 of the bill, a 3d offense within 2 years for operating a motor vehicle after a license is suspended or revoked is a criminal offense punishable by up to 2 years' imprisonment and a fine of not more than \$5,000.
 - This section eliminates an anomaly in current Vermont law that driving without a license is not subject to criminal sanction for repeat offenders, whereas repeat civil offenses for driving with a suspended license is subject to criminal sanction.

Secs. 19–21

- Secs. 19–20 provide that a person convicted of violating the motorcycle helmet law shall not have points assessed against his or her driving record.
- Secs. 20–21 change the terminology of the motorcycle “face” protection law to refer to motorcycle “eye” protection.

More information if needed: A person convicted of violating the motorcycle eye protection law still be subject to having points assessed against his or her driving record. The rationale for eliminating points for a helmet violation while keeping points for an eye protection violation is that a helmet violation endangers only the person violating the law, whereas an eye protection violation may cause a distraction to the motorcycle operator that results in the endangerment of other highway users.

Sec. 22

- Requires a Judicial Bureau hearing officer to consider evidence of ability to pay if offered by a defendant during a hearing on a matter under the Judicial Bureau’s jurisdiction, if the hearing officer finds that the defendant committed a violation.

Sec. 23

- Subsec. (a) encourages the Criminal Justice Training Council to train enforcement officers about the existence of payment plan options for traffic violation judgments and encourages enforcement officers to mention these options to motorists when issuing a ticket.
- Subsec. (b) encourages the Judicial Bureau to update the standard materials that enforcement officers provide to motorists who have been ticketed to notify them of payment plan options and of the right to request a hearing on ability to pay.
- Subsec. (c) encourages the Judicial Bureau to prominently display this information on its website.
- Subsec. (d) directs the Agency of Transportation to carry out a campaign to raise awareness of traffic violation judgment payment plan options and of a person’s right to request a hearing on ability to pay.

Sec. 24

- Limits the liability of a person who forcibly enters a motor vehicle to remove a child or animal if the person reasonably and in good faith believes that the child or animal is in imminent danger of harm and if certain other conditions are satisfied.

Sec. 25

- Requires that the Criminal Justice Training Council’s minimum training standards for law enforcement officers include training on the fair and impartial policing policy of the enforcement agency that employs the officer.
- Requires that all law enforcement officers receive initial training on the fair and impartial policing policy on or before 12/31/18 and that enforcement officers receive refresher training during every odd-numbered year.

Sec. 26

- Provides that if a law enforcement agency or constable required to adopt a fair and impartial policing policy before July 1, 2016 fails to do so, the agency or constable will be deemed to have adopted and must enforce the model policy issued by the Criminal Justice Training Council (Council).
- Requires law enforcement agencies to work with the Council and a vendor chosen by the Council to collect uniform roadside stop data and adopt uniform storage methods and periods for such data.
- Requires that on or before Sept. 1, 2016 and annually thereafter, law enforcement agencies provide the roadside stop data to the vendor chose by the Council, and that such data be posted on the receiving agency's website in a manner that is capable of being accessed and analyzed by the public.

Sec. 27

Directs the Secretary of Transportation and the Commissioner of Public Safety to work collaboratively to:

- ensure that funding is available, either through the Governor's Highway Safety Program's administration of National Highway Traffic Safety Administration funds or other State funding sources, for training the number of officers necessary to provide sufficient statewide coverage for the enforcement of impaired driving laws through Advanced Roadside Impaired Driving Enforcement (ARIDE) and Drug Recognition Expert (DRE) programs; and
- collect data regarding the number and distribution of enforcement officers who receive ARIDE and DRE training.

Sec. 28

- Prohibits an insurer from considering an insured's credit history when underwriting motor vehicle insurance.

Sec. 29

Establishes effective dates of:

- "on passage" for the sections of the bill related to license suspensions and decriminalizing third and subsequent underage alcohol and marijuana violations;
- "on passage" for the fair and impartial policing provisions, except that the provision requiring refresher courses for fair and impartial police training will take effect on January 1, 2019; and
- July 1, 2016 for the remaining sections.