

The Mandatory Reporting of Impaired Driver Arrests to the Bureau of Motor Vehicles

The Bureau of Motor Vehicles administrative suspension process is an excellent tool that can help get dangerous drivers off the road quickly. However, it works best when everyone does their part. This brief article identifies some weakness in the process and suggests how we might be able to do it better.

Background

Keeping Maine's highways safe from impaired drivers is a multi-faceted task involving several processes implemented co-operatively through a number of different agencies. Normally, this process begins with law enforcement officers apprehending suspected impaired drivers. In many cases, these officers collect evidence that needs interpretation by State labs, and prosecutors use the evidence both from the police and the lab to present a competent case for the court system to adjudicate. In most cases while the lengthy court process is underway, an administrative suspension procedure is initiated and finalized with the Maine Secretary of State's Bureau of Motor Vehicles (BMV).

Administrative suspension laws are common throughout the United States. The concept is designed to allow a State to rapidly respond to the problem of having a licensed driver who is suspected of driving while impaired – which for some drivers is not an isolated incident – from holding an active license while waiting for the lengthy court adjudication process. Ideally, a certain, swift, and severe license suspension serves as deterrent – both for the actual suspended driver and others – while simultaneously keeping the highways safer. Maine's administrative suspension laws also have the effect of encouraging the taking of a chemical test by enhancing an OUI conviction's sentence for refusal of a chemical test.

To wit: Title 29-A M.R.S. provides the Secretary of State the authority to “immediately suspend a license of a person determined to have operated a motor vehicle with an excessive alcohol level,” §2453 (1) – (3). This authority also extends to immediately suspending drivers “determined to have operated a motor vehicle under the influence of drugs.” §2453-A (4). Drivers who refuse a chemical test receive 275 days (non-concurrent) for the first refusal and the penalty is increased for subsequent ones. §2521(6).

Issue

The gatekeepers of this administrative process are Maine's law enforcement officers. The BMV *cannot act to suspend a driver on their own*. Therefore, law enforcement must initialize this procedure by sending the BMV a sworn affidavit of probable cause indicating that the driver was suspected of being impaired (or refused a chemical test) AKA the *Blue* or the *Green* form.

Title 29-A M.R.S. says an officer “*shall*” send the BMV a report if he or she has probable cause to believe a person has committed OUI or “has violated the terms of a conditional driver's license, commercial driver's license or provisional license.” §2481 (1). This report must be made under oath, i.e., notarized, and contain information that will identify the person who was charged, (and) the reasons for the officer’s probable cause. This report “*must be submitted*” within 72 hours (excluding weekends and holidays), however even if it is filed later than this, “the BMV shall impose the suspension, unless the delay has prejudiced the person's ability to prepare or participate in the hearing.” §2481 (2).

If the driver is charged with OUI drugs, a drug recognition expert “who has probable cause to believe that a person was operating a motor vehicle under the influence of a specific category of drug, a combination of specific categories of drugs or a combination of alcohol and one or more specific categories of drugs” must submit a report made under oath to the BMV. 29-A M.R.S. §2453-A (2). This report must identify the driver and state the grounds for the drug recognition expert’s probable cause. §2453-A (2) (A)–(B). Further, “[t]he person who analyzed the drug or its metabolite in the blood or urine” of the driver “shall send a copy of a confirmed positive test result certificate to the Secretary of State.” §2453-A (3). “The Secretary of State shall make a determination on the basis of the information required in the report,” which “is final unless a hearing is requested and held.” 29-A M.R.S.A. §2481 (3).

However, despite the clear statutory requirements found in [29-A M.R.S. §2481](#), There appears to be an institutionalized disconnect in this process. A disconnect that occurs likely due to a lack of awareness of what the law actually says. – *hence the purpose of this brief article*. It seems that some law enforcement agencies in Maine are unaware that the reporting of an OUI arrest to the Maine Bureau of Motor Vehicles is *mandatory* and those agencies do not submit their OUI arrest reports to the BMV.

This failure on the part of some law enforcement in Maine is problematic for several reasons: (1) it means the State fails to proactively act on a suspected impaired driver while the court process is in play; action that could result in the saving of lives from the deterrence effect; (2) Law enforcement is ignoring a statutory requirement and thereby perhaps leaving themselves open to the real possibility liability and (3) there are ethical issues with failing to comply with the requirements of an administrative statute that are hard to reconcile.

Solution

Perhaps the easiest remedy is for Maine law enforcement officers to make every effort to educate themselves and their fellow departments on the mandatory requirements of 29-A M.R.S. §2481 and to comply with those requirements. Furthermore, law enforcement should recognize the advantages that complying with this statutory mandate brings:

For example, as discussed in the opening there is obvious deterrent effect on both the suspected impaired driver, and the public at large when suspending the license of those drivers which may have an impaired driving concern. This should be a priority for every law

enforcement officer in Maine as it has the potential to keep Maine's roadways safer and reduce the danger (not to mention the workload) for all.

Additionally, a conviction in BMV provides a license suspension that takes affect before the case is likely to be adjudicated in court. Defendants that are already under suspension are more likely to accept prosecution plea deals when their case adjudication comes up. This helps the system work more effectively. It's also worth noting that refusal suspensions count as convictions for purposes of sentencing. 29-A M.R.S. §2411 (5); §2401(11).

Another benefit to complying with §2481 is that it provides better statistics for the State to track OUI offenses and adjudications. If reports aren't sent in the problem can't be tracked. So while we know this problem exists, we are not precisely sure of its extent.

Lastly, while this is merely anecdotal evidence, I have noted through conversations with Maine law enforcement about this problem, that some don't send in OUI arrest reports to BMV because they claim they do not feel fairly represented in Maine Bureau of Motor Vehicle Hearings because a prosecutor is not present. Likewise, they also argue that defense attorneys are often allowed to question them "beyond the scope" of the issues for hearing.

While these issues are undoubtedly a concern to the extent that they present themselves, they can also be viewed as an opportunity for testimonial practice and discovery. In the post Covid world of the courts, there are not as many situations for less experienced officers to get practice testifying in court. BMV hearings provide such opportunity. And while defense attorneys may indeed be given more freedom within the "scope" of the BMV hearing than law enforcement might think is appropriate (and no doubt some attorneys may be "fishing") that strategy is a double-edged sword. While the defense attorney may be exploring the law enforcement officer's case, this provides and opportunity for the law enforcement officer to discover the strategy of the defense attorney. This may be beneficial when and if the case subsequently goes to trial, especially to the prosecutor.

In closing, the main concern is for the State to be able to utilize the BMV's administrative suspension procedure to get suspected impaired drivers off the road long before their court trial via the license suspension. This works only if all the stakeholders involved do their part. There are many benefits to all when a suspected impaired driver is put through this process.

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