

To: Commission
From: Staff
Re: Title 39 – *State v. Moran* – loss of license for reckless driving
Date: December 6, 2010

REVISED MEMORANDUM

Commissioner Bell expressed concerns about the draft statutory language in the last *State v. Moran* memorandum. The language presently reads as follows:

39A:E-18. Revocation or suspension of license

a. After a hearing before the Chief Administrator or at the time a judge imposes a sentence for a violation of this Title, the Chief Administrator or judge may revoke or suspend the driver's license of a person found guilty of a willful violation of a provision of this Title when revocation or suspension is justified pursuant to subsections b. and c. of this section.

b. The Chief Administrator or judge shall consider the following factors to determine whether to impose a revocation or suspension for a willful violation of a motor vehicle statute and, if so, the appropriate length of the revocation or suspension. The Chief Administrator or judge shall place his or her findings regarding these factors on the record:

1. the seriousness of the underlying offense, including the nature and circumstances of the defendant's conduct and whether that conduct posed a high risk of danger to the public or caused personal injury or property damage;

2. the driving record of the defendant, including: the defendant's age; the defendant's length of time as a licensed driver; the number, seriousness and frequency of prior violations of this Title; the length of time during which the defendant's driving record was free of violations before the violation for which suspension or revocation is considered pursuant to this section; and whether the nature and extent of the defendant's driving record indicates a substantial risk that defendant will commit another violation;

3. the attitude of the defendant and whether it indicates that defendant is likely or unlikely to commit another violation of this Title and whether revocation or suspension is necessary to deter future violations by the defendant;

4. the circumstances surrounding defendant's conduct and whether they are likely or unlikely to recur;

5. the hardship to the defendant or any dependants of the defendant that would result from a license revocation or suspension. Only if the chief administrator or judge first determines that there is not a substantial risk that allowing defendant to continue to drive poses a significant risk of harm to others, may the chief administrator or judge consider whether a license revocation or suspension will cause excessive hardship to the defendant or any dependants.

c. In addition to the factors set forth in subsection b. of this section, the Chief Administrator or a judge may also identify and consider any other relevant factor, including the

penalties imposed in similar cases and, in the case of administrative proceedings, any directives of the Chief Administrator.

As a result of the concerns expressed by Commissioner Bell regarding a lack of uniformity in the license suspensions or revocations that are imposed in similar cases, a concern shared by the New Jersey Supreme Court in *Moran*, Staff has drafted alternative language for consideration by the Commission. Three proposed alternatives appear below:

Alternative A:

5. the hardship to the defendant or any dependants of the defendant that would result from a license revocation or suspension. Only if the chief administrator or judge first determines that there is not a substantial risk that allowing defendant to continue to drive poses a significant risk of harm to others, may the chief administrator or judge consider whether a license revocation or suspension will cause excessive hardship to the defendant or any dependants; and

6. the penalties imposed in similar cases and, in the case of administrative proceedings, any directives of the Chief Administrator.

c. In addition to the factors set forth in subsection b. of this section, the Chief Administrator or a judge may also identify and consider any other relevant factor, ~~including the penalties imposed in similar cases and, in the case of administrative proceedings, any directives of the Chief Administrator.~~

Alternative B:

5. the hardship to the defendant or any dependants of the defendant that would result from a license revocation or suspension. Only if the chief administrator or judge first determines that there is not a substantial risk that allowing defendant to continue to drive poses a significant risk of harm to others, may the chief administrator or judge consider whether a license revocation or suspension will cause excessive hardship to the defendant or any dependants; and

6. the penalties imposed in similar cases and, in the case of administrative proceedings, any directives of the Chief Administrator.

c. When considering the matters set forth in subsection c.(6) of this section, the adjudicator shall disregard penalties that it concludes are inconsistent with governing caselaw or administrative directives. The obligation to consider other penalties does not preclude the adjudicator from determining that penalties imposed in prior cases were inappropriate, so long as the adjudicator sets forth the basis for that determination.

~~e. d.~~ In addition to the factors set forth in subsection b. of this section, the Chief Administrator or a judge may also identify and consider any other relevant factor, ~~including the penalties imposed in similar cases and, in the case of administrative proceedings, any directives of the Chief Administrator.~~

Alternative C:

5. the hardship to the defendant or any dependants of the defendant that would result from a license revocation or suspension. Only if the chief administrator or judge

first determines that there is not a substantial risk that allowing defendant to continue to drive poses a significant risk of harm to others, may the chief administrator or judge consider whether a license revocation or suspension will cause excessive hardship to the defendant or any dependants; and

6. the length of revocations or suspensions authorized for specific offenses in the motor vehicle statutes as a basis for comparison and proportionality.

c. In addition to the factors set forth in subsection b. of this section, the Chief Administrator or a judge may also identify and consider any other relevant factor, including the penalties imposed in similar cases and, in the case of administrative proceedings, any directives of the Chief Administrator.

Staff seeks guidance from the Commission as to whether the statutory language should remain as currently drafted, or whether the Commission wishes to substitute one of the alternatives proposed above.