



D.C. CRIMINAL CODE REFORM COMMISSION

TESTIMONY OF EXECUTIVE DIRECTOR JINWOO PARK ON B25-0421, THE “LICENSE SUSPENSION REFORM AMENDMENT ACT OF 2023” AND B25-0425, THE “STRENGTHENING TRAFFIC ENFORCEMENT, EDUCATION, AND RESPONSIBILITY (“STEER”) AMENDMENT ACT OF 2023”

COMMITTEE ON TRANSPORTATION AND THE ENVIRONMENT HEARING
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DISTRICT OF COLUMBIA CRIMINAL CODE REFORM COMMISSION
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I. Introduction

Good afternoon, Councilmember Allen, and thank you for allowing me to testify today on behalf of the Criminal Code Reform Commission on two bills, the License Suspension Reform Amendment Act of 2023 and the Strengthening Traffic Enforcement, Education, and Responsibility (“STEER”) Amendment Act of 2023. The CCRC takes no position on the merits of these pieces of proposed legislation, but we wanted to highlight potential due process issues that arise from suspending or revoking a person’s driver’s license.

II. License Suspension Reform Amendment Act of 2023

The bill proposes amending the District code and municipal regulations to require suspension of driver’s licenses and vehicle registration for persons charged with, but not yet convicted of, certain specified offenses.¹ The CCRC takes no position on the merits allowing for the suspension of driver’s licenses and vehicle registrations prior to a criminal conviction for these specified offenses. However, the CCRC notes that, as currently drafted, the bill does not appear to contain adequate procedural protections to satisfy constitutional due process. Further, CCRC notes that District law already has provisions that permit administrative suspension of driver’s licenses and vehicle registrations by the Department of Motor Vehicles for the offenses designated in the bill prior to the resolution of a criminal trial. The provisions in current law that allow pre-conviction suspension and revocation appear to contain the procedural safeguards necessary to satisfy due process, allowing for suspension during the pendency of a criminal case.

A. Driver License Suspension Implicates Constitutional Due Process

It is well-established under Supreme Court case law that the government cannot suspend an issued driver’s license without procedural due process required under the Constitution.² As the Supreme Court explained, “the private interest in continued possession and use of a license is ‘a substantial one, for the [government] will not be able to make a driver whole for any personal inconvenience and economic hardship suffered by reason of any delay in redressing an erroneous’

¹ The specified offenses are: negligent homicide; any homicide committed by means of a motor vehicle, leaving the scene of an accident; driving under the influence of drugs or alcohol; operating a motor vehicle under the influence of drugs or alcohol; and operating a vehicle under the age of 21 under the influence of any drugs or alcohol.

² See *Bell v. Burson*, 402 U.S. 535, 539 (1971) (“Once licenses are issued, as in petitioner’s case, their continued possession may become essential in the pursuit of a livelihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment.”); *Dixon v. Love*, 431 U.S. 105, 112 (1977) (“It is clear that the Due Process Clause applies to the deprivation of a driver’s license by the State.”); *Osborne v. District of Columbia*, 169 A.3d 876, 879 (D.C. 2017)(“Generally, ‘due process requires that when a State seeks to terminate an interest ... it must afford ‘notice and opportunity for hearing appropriate to the nature of the case’ before the termination becomes effective.’”) (citations omitted); *Quick v. Dep’t of Motor Vehicles*, 331 A.2d 319, 321 (D.C. 1975) (“Because the privilege of petitioner (a ‘specific party’) to drive was placed in issue by the order to show cause why his license should not be suspended and because procedural due process requires that a hearing be held prior to permanent suspension, see *Bell v. Burson*, 402 U.S. 535, 91 S.Ct. 1586, 29 L.Ed.2d 90 (1971), the revocation proceeding is a ‘contested case’¹¹ and is controlled by the District of Columbia Administrative Procedure Act (DCAPA), D.C.Code 1973, s 1-1501 et seq.”).

deprivation of that benefit.”³ A driver’s license may be administratively suspended without a criminal conviction through procedures that do not amount to a criminal trial.⁴ But the administrative suspension still must comport with procedural due process by providing notice and both a meaningful and timely opportunity to contest the suspension.

To be meaningful, a hearing must provide the license holder with the opportunity to contest the essential elements of the offenses prompting the suspension.⁵ A hearing that conclusively presumes suspension based solely on the fact that a person is alleged to have committed a particular crime rather than consideration of whether there is sufficient evidence that the person committed the crime and poses a threat to traffic safety does not provide a meaningful opportunity to contest the suspension or revocation in accordance with due process.⁶ To be timely, a suspension or revocation must come after a hearing that complies with due process (e.g, a criminal plea or trial or an administrative hearing) or be a temporary suspension that is followed *promptly by a hearing and decision* that complies with due process.⁷ For temporary suspension that remains in effect prior to a hearing, it is unclear how “promptly” an administrative hearing must be held and a decision rendered to comply with due process but, the time period is short in duration and almost certainly days or weeks rather than months or years if a temporary license or stay is not issued pending a hearing and a decision.⁸

³ *Parham v. District of Columbia*, No. CV 22-2481 (CKK), 2022 WL 17961250, at *9 (D.D.C. Dec. 27, 2022) (quoting *Mackey v. Montrym*, 443 U.S. 1, 11 (1979)).

⁴ See *Stowell v. D.C. Dep’t of Transp., Bureau of Motor Vehicle Servs.*, 514 A.2d 438, 442–43 (D.C. 1986) (explaining that administrative suspension is permitted “after notice and an opportunity for hearing . . . upon a showing by sufficient evidence of grounds enumerated in its regulations”). Suspension after a criminal conviction as part of the penalty does not present the same procedural or substantive due process as issues as the person would have been convicted after a trial complying with due process and the state has broad discretion in setting penalty schemes.

⁵ See *Bell v. Burson*, 402 U.S. 535, 541-42 (1971) (“The hearing required by the Due Process Clause must be ‘meaningful,’ and ‘appropriate to the nature of the case.’ It is a proposition which hardly seems to need explication that a hearing which excludes consideration of an element essential to the decision whether licenses of the nature here involved shall be suspended does not meet this standard.”)(internal citations omitted).

⁶ See e.g., *Bell v. Burson*, 402 U.S. 535, 541 (1971) (“Since the statutory scheme makes liability an important factor in the State’s determination to deprive an individual of his licenses, the State may not, consistently with due process, eliminate consideration of that factor in its prior hearing.”); *Nnebe v. Daus*, 931 F.3d 66, 86 (2d Cir. 2019)(holding that “a hearing that in effect conclusively presumes that suspension is appropriate based solely on the abstract relationship of the elements of a charged offense to safe driving provides inadequate process”).

⁷ *Mackey v. Montrym*, 443 U.S. 1, 15, 99 S. Ct. 2612, 2619–20 (1979) (upholding temporary prehearing suspension based on refusal to take a breath test where the license holder was entitled to a “same day” hearing and law “provide[d] an appropriately timely opportunity for the licensee to tell his side of the story to the Registrar, to obtain correction of clerical errors, and to seek prompt resolution of any factual disputes he raises as to the accuracy of the officer’s report of refusal”).

⁸ The Supreme Courts upheld pre-hearing suspension in *Mackey v. Montrym* where there was as same day hearing available. It’s not clear that a same-day hearing is required. But there is little question that a prompt hearing is not one that trails, without consent, a criminal case that lasts longer than the period of revocation upon actual conviction. A District Court in New York recently held that an administrative process that permitted temporary prehearing suspension for 35 days before a decision was rendered violated Due Process. See *Nnebe v. Daus*, 510 F. Supp. 3d 179, 196 (S.D.N.Y. 2020), aff’d, No. 21-170-CV, 2022 WL 1220204 (2d Cir. Apr. 26, 2022) (stating that a process that requires drivers wait more than thirty-five days after their hearing – or more than forty-five days after their suspension – before a final determination is reached is too long to satisfy due process.); *Nnebe v. Daus*, 931 F.3d 66, 84 (2d Cir. 2019) (holding “a lengthy deprivation of property, based on an arrest without a judicial determination of probable

The CCRC cannot describe the *exact* procedures that are required to satisfy due process. The Due Process clause is “flexible and calls for such procedural protections as the particular situation demands[.]”⁹ “A procedural rule that may satisfy due process in one context may not necessarily satisfy procedural due process in every case.”¹⁰ Indeed, disputes over the precise procedures required to satisfy due process in a particular context can result in years of costly litigation. For example, the New York City Taxi and Limousine Commission instituted a rule that taxi-cab drivers’ licenses would be suspended upon being arrested and charged with certain specified offenses. After years of litigation, the United States Court of Appeals for the Second Circuit held that the minimal administrative proceedings in which drivers could appeal their suspensions violated their due process rights.¹¹ This resulted in more negotiation and litigation to create new constitutionally sound administrative procedures. This litigation stretched out more than a decade after the initial legal challenge to the Taxi and Limousine Commission’s license suspension rule.¹²

B. Suspension and Revocation Paths under Current District Law

Under current District law, there are already two paths for suspending or revoking a driver’s license. One path provides for the mandatory revocation of a driver’s license upon criminal conviction or failure to appear for a criminal trial for certain traffic-related offenses. This path clearly complies with due process¹³ because the criminal trial and proceedings provide the person with due process, and the revocation of the person’s license is part of a criminal penalty that may be imposed after conviction. Offenses which result in the mandatory revocation of a driver’s license post-conviction include all of the offenses in the License Suspension Reform Amendment Act of 2023.

The second path for license suspension under current District law is an administrative process where the Director of the Department of Motor Vehicles (DMV) is authorized to suspend or revoke a driver’s license after a hearing for various reasons related to public safety, including for the commission of certain traffic offenses.¹⁴ Unlike in a criminal case, “[t]he purpose of [those]

cause and without a deeper inquiry into whether the deprivation is appropriate, violates the Constitution's guarantee of procedural due process.”); *Id.* (also noting “a licensee erroneously deprived of a license cannot be made whole simply by reinstating the license,” and that “the interim period between erroneous deprivation and reinstatement can be financially devastating to the licensee.”).

⁹ *Morrissey v. Brewer*, 408 U.S. 471, 481, (1974).

¹⁰ *Bell v. Burson*, 402 U.S. 535, 540 (1971).

¹¹ *Nnebe v. Daus*, 931 F.3d 66, 88 (2d Cir. 2019).

¹² *Nnebe v. Daus*, No. 21-170-CV, 2022 WL 1220204, at *1 (2d Cir. Apr. 26, 2022).

¹³ Assuming the conviction itself was obtained in accordance with due process, as is typically the case.

¹⁴ See 18 DCMR § 300.2 (“The Director is authorized, after giving notice and an opportunity for hearing, to suspend or revoke the license of any person upon a showing, by records or other sufficient evidence, of any of the grounds for suspension or revocation set forth in this chapter.”). See *Stowell v. D.C. Dep't of Transp., Bureau of Motor Vehicle Servs.*, 514 A.2d 438, 443 (D.C. 1986) (explaining: “the Director of the Bureau of Motor Vehicle Services also has the authority to revoke or suspend the driving privileges of anyone who has been ‘operating a motor vehicle while under the influence of intoxicating liquor or drug(s)...’ Under this section, the director determines—after notice and hearing—whether the driver was operating while under the influence. As was done in this case, the driver may present

revocation and suspension proceedings is not the punishment of the driver but the protection of the public from those who have demonstrated that their driving presents a hazard to life and property.”¹⁵ An administrative suspension or revocation requires notice and a meaningful chance to contest the suspension but does not require the filing or outcome of a criminal case and can occur even if a criminal case is resolved without a conviction.¹⁶

Pursuant to current municipal regulations, administrative suspension or revocation is permitted for each of the offenses specified in the License Suspension Reform Amendment Act of 2023 upon a showing of sufficient evidence that grounds for suspension or revocation are present.¹⁷ The municipal regulations were also updated in December 2022 to make suspension or revocation *mandatory* for the *commission* of offenses where there is an administrative decision after notice and opportunity for a hearing that the offense was committed. The procedures by which the administrative decision is made under current law include procedural protections that facially appear to comply with due process.¹⁸

Not only is administrative suspension permitted for the offenses enumerated in the License Suspension Reform Amendment Act, the administrative suspension process begins at the time of arrest under current District municipal regulations. Pursuant to 18 DCMR § 308, the arresting officer is required to issue a notice of order of proposed revocation or suspension to a person arrested for specified offenses and to file the notice with the precinct station clerk.¹⁹ Within 24

evidence and argument. Therefore, the District of Columbia has adopted a two-pronged scheme to deal with the community problem of drunk drivers. Those who are convicted of a code violation are subject to possible criminal penalties but mandatory revocation. Drivers who are the subject of administrative findings are liable for no criminal penalty but possible revocation under the discretionary authority of the Director of the Bureau of Motor Vehicle Services.”).

¹⁵ *Bungardeanu v. England*, 219 A.2d 104, 107 (D.C. 1966).

¹⁶ *Id.* (stating “There may be many reasons why a driver cannot or should not be punished criminally for the commission of certain acts. But these same acts may present sufficient evidence for a finding that the protection of the public requires that his driving privileges be taken away from him.”).

¹⁷ See 18 DCMR §§ 302.1, 302.7. (Providing that the commission of negligent homicide or any offense for which mandatory revocation is required under 18 DCMR § 301.1 constitutes grounds for administrative suspension or revocation.); 18 DCMR § 301.1 (“The Director shall revoke the license of any person upon receiving a record of such person's conviction *or administrative action* by the Director resulting from the occurrence” of specified offenses.).

¹⁸ See 18 DCMR §§ 1000 *et seq.*

¹⁹ See 18 D.C.M.R. § 308. Service of Suspension or Revocation Notice Following Arrest.

308.1 Whenever any person has been arrested for a traffic violation or cited for a traffic infraction involving any of the situations listed in § 301 or § 302 of this chapter, the police officer shall make a report to and the arrested or cited person shall be interviewed by a law enforcement agency named in § 3003.1 who shall serve on that person a notice of proposed suspension or revocation on a form provided by the Director suspending or revoking the license of that person.

...

308.3 The police official shall forthwith deliver to a precinct station clerk a copy of the notice of proposed action and the officer's statement of the offense or infraction believed committed.

...

308.6 Within twenty-four (24) hours from the time a copy of the notice of proposed suspension or revocation, or a report showing that the person arrested or cited was incapable of being served with notice, is received by a precinct station clerk, the commanding officer of the precinct shall forward or cause to be forwarded to the Director a copy of the notice or report, whichever is applicable.

hours, the precinct station clerk or the station commander is required to forward the notice of proposed suspension or revocation to the DMV. Because most persons arrested for traffic offenses are granted citation release, this process should occur in most cases *before the person is charged* by the Office of Attorney General in Superior Court.²⁰ The license holder then has 10-15 days to request a hearing. The hearings are governed by the Administrative Procedures Act and Chapter 10 of Title 18 in municipal regulations.²¹ Although the administrative hearing on suspension or revocation is an evidentiary hearing and the person can bring legal counsel, the hearing does not take the form of a full criminal trial and the standard of proof for the government is lower.²²

While this procedure permits administrative suspension well before conviction for all persons charged with offenses listed in the proposed law, many persons charged with those offenses maintain their driving privileges pending the outcome of the criminal case when the government does not pursue suspension or revocation or does not provide sufficient evidence to establish the commission of the specified offense. (E.g., The arresting officer does not file the notice of proposed suspension or does not appear at the scheduled administrative hearing to provide evidence supporting suspension or revocation.)

C. Proposed Bill

The proposed bill would amend the statutes currently providing for revocation upon conviction or failure to appear to also mandate the suspension/revocation of a driver's license and vehicle registrations upon the mere charging of an individual. It would also establish new municipal regulations that mandate suspension based on mere charges. Notably, there is no requirement that a neutral magistrate find probable cause that the person committed the offense and only one of the offenses in the bill requires an indictment or preliminary hearing prior to trial.²³ Under the statutory and regulatory scheme, the person would not appear to be entitled to a hearing on the suspension due to its mandatory nature²⁴ and the bill does not propose amending current

308.8 No person so served shall refuse to allow an official at the time of service of the notice to stamp on his or her license the notation required in § 308.7....

²⁰ Most traffic offenses are prosecuted by the Office of the Attorney General. However, negligent homicide is prosecuted by the U.S. Attorney's Office for the District of Columbia.

²¹ See 18 DCMR §§ 1000 *et seq.*

²² Current law does not clearly specify the evidentiary standard. However, hearings for the adjudication of a traffic infractions under D.C. Code § 50-2302.06 require that "no infraction shall be established except by clear and convincing evidence."

²³ This is especially problematic given that two of the charges in the bill, DUI and leaving after colliding, can be filed by information and proceed with no probable cause determination ever being made by a detached magistrate as there is no right to a preliminary hearing in a misdemeanor case. While the addition of a probable cause requirement would not necessarily be sufficient to cure the constitutional issues, the absence of a probable cause requirement means the government would not be required to show any evidence of an offense prior to the suspension of a license or that the government's factual allegations, even if true, would actually make out the elements of the offense. In other words, the bill would mandate the suspension of a license and registration pretrial based on the fact of allegation even if the specific allegation could not result in a conviction as a matter of law. This type of erroneous suspension is precisely what procedural due process is designed to prevent.

²⁴ See § 18 DCMR 1005.4 ("A person is not entitled to a hearing when the action taken by the Director is made mandatory by law or when the person has previously been afforded an opportunity with appropriate notice for a hearing.").

law to grant the right to a contested hearing. Consequently, it appears there would be no trial or administrative hearing in which the license holder can challenge the factual or procedural basis for suspension.

Under the bill, the *charging decision* itself prompts the suspension. Thus, even if the statute were construed to require a hearing, it would be the choice of a prosecutor to allege an offense by the license holder rather than actual evidence of the commission of an offense by the license holder or evidence that the license holder posed a threat to public safety that would determine the outcome of the hearing. As explained above, the legislature cannot eliminate consideration of whether the person committed an offense when the offense is the basis for the suspension.²⁵ To prevent erroneous deprivation of liberty, the individual must be able to contest the *validity* of the charge and not just *whether* they were charged.

Finally, the duration of the suspension based on the mere fact of charges being filed is not limited in time under the proposed bill and could significantly outlast the period of revocation mandated as an actual penalty for the offense. In fact, the period of suspension based on the charge could be more than double the statutory penalty for conviction even if the person is never convicted of the offense.²⁶ A person charged with an enumerated offense could be required to wait more than a year for a trial, with their license suspended for that entire period, compared to a 6 month revocation period if they are actually convicted of the offense.

Given that Supreme Court case law holds that a license cannot be suspended without notice and opportunity to be heard in a timely and meaningful way, the suspension of a driver's license with no meaningful hearing or a hearing based solely on a charge rather than particularized facts showing the individual poses a threat to public safety, for a potential duration longer than the penalty provided after conviction²⁷ would likely violate constitutional due process. Consequently, if passed, the law would be subject to constitutional challenge both facially and as-applied.²⁸

To comply with due process, CCRC recommends that the Council 1) rely on current administrative procedures requiring a meaningful hearing to address license suspension prior to

²⁵ *Bell v. Burson*, 402 U.S. 535, 541 (1971) (“Since the statutory scheme makes liability an important factor in the State’s determination to deprive an individual of his licenses, the State may not, consistently with due process, eliminate consideration of that factor in its prior hearing.”); *Nnebe v. Daus*, 931 F.3d 66, 86 (2d Cir. 2019)(holding that “a hearing that in effect conclusively presumes that suspension is appropriate based solely on the abstract relationship of the elements of a charged offense to safe driving provides inadequate process”).

²⁶ *Mackey v. Montrym*, 443 U.S. 1, 12 (1979) (“The duration of any potentially wrongful deprivation of a property interest is an important factor in assessing the impact of official action on the private interest involved.”).

²⁷ *See, Barry v. Barchi*, 443 U.S. 55, 66, 99 S. Ct. 2642, 2650, 61 L. Ed. 2d 365 (1979) (stating: “Here, the provision for an administrative hearing, neither on its face nor as applied in this case, assured a prompt proceeding and prompt disposition of the outstanding issues between Barchi and the State. Indeed, insofar as the statutory requirements are concerned, it is as likely as not that Barchi and others subject to relatively brief suspensions would have no opportunity to put the State to its proof until they have suffered the full penalty imposed. Yet, it is possible that Barchi’s horse may not have been drugged and Barchi may not have been at fault at all. Once suspension has been imposed, the trainer’s interest in a speedy resolution of the controversy becomes paramount, it seems to us.”). As was the case in *Barry v. Barchi*, the proposed bill could effectively impose the full penalty or more on a person prior to any meaningful opportunity to be heard.

²⁸ *See e.g., Parham v. District of Columbia*, No. CV 22-2481 (CKK), 2022 WL 17961250, at *1 (D.D.C. Dec. 27, 2022) (enjoining enforcement of the Clean Hands Law).

conviction for traffic offenses or 2) if the Council wishes to suspend licenses through the *criminal* process, to amend the statute to add procedural protections including the opportunity for a meaningful and timely hearing to contest suspension.

D. Other Textual Considerations

The provision in Section 6 changes the term “revoke” in 18 DCMR 301.1 to “permanently suspend”. This change is confusing as the term “suspend” is defined to mean “the temporary withdrawal of a person's license or privilege to operate a motor vehicle in the District” whereas “revocation” means “the termination of a person's license or privilege to operate a motor vehicle in the District which shall not be subject to renewal or restoration except that an application for a new license may be made after the expiration of the period of time of such revocation.”²⁹ The term of a suspension provided for in the municipal regulations also appears limited to 90 days and results in return of the license upon the payment of the reinstatement fee.³⁰ Thus, it seems it is the term “revoke” that operates to “permanently” suspend a license under current regulations.

III. Strengthening Traffic Enforcement, Education, and Responsibility (“STEER”) Amendment Act of 2023

CCRC has not fully reviewed the Strengthening Traffic Enforcement, Education, and Responsibility (“STEER”) Amendment Act of 2023 and can provide relevant analysis to criminal provisions at a later date.³¹ However, CCRC notes that the provision *mandating* that a judge order the suspension of a license pending the outcome of a criminal trial raises related due process concerns because it provides no meaningful opportunity for the person to contest suspension.

The STEER Act requires a judge to order the suspension of a person’s driver’s license or driving privileges if the person is charged with negligent homicide. The requirement that a judge order suspension is mandatory, requires no judicial findings, and provides no opportunity for the person, presumed innocent under the constitution, to contest the suspension.

An analogous provision in the federal bail law mandating the imposition of specified conditions of release on persons charged with child pornography or offenses against a minor has been found by some courts to be unconstitutional due to the fact that the conditions were mandatory rather than discretionary.³² As one court explained: “By imposing home detention and electronic

²⁹ 18 DCMR § 9901.

³⁰ See 19 DCMR § 306.1 (“The suspension period of any resident's or non-resident's driver's license or privilege to operate a motor vehicle in the District shall be from two (2) to ninety (90) days, at the discretion of the Director, based upon the seriousness of the case; except that the period of a license suspension due to point accumulation pursuant to § 303.3 shall be ninety (90) days.”).

³¹ The CCRC notes that it does intend to eventually review and submit recommended revisions to traffic offenses under Title 50, but after a deliberative and iterative process involving research of District case law, law in other jurisdictions, review of relevant legal scholarship, and consideration of input from practitioners, including the Office of the Attorney General. This lengthy process helps ensure the best possible recommendations from the CCRC, consistent with this agency’s approach to recommendations to the broader revised criminal code.

³² See e.g., *United States v. Karper*, 847 F. Supp. 2d 350, 358 (N.D.N.Y. 2011); *United States v. Polouizzi*, 697 F. Supp. 2d 381, 393 (E.D.N.Y. 2010); *United States v. Torres*, 556 F.Supp.2d 591, 598 (W.D.TX 2008).

monitoring without the procedural safeguard of the opportunity to be heard and to present evidence or the exercise of judicial discretion of the discrete facts before it gives rise to a transparent if not a bald risk of an erroneous deprivation of these protected interests . . . The mandatory provisions of the Act, resting solely on the crime charged, effectively curtail any opportunity for an adversarial hearing on the question of a curfew and efficaciously diminish the procedural protections already embodied in the Bail Reform Act, creating an “irrebuttable presumption.”³³ Because the STEER Act proposes a provision that eliminates judicial discretion in deciding whether to deprive a person of a property interest pending trial and provides no opportunity to be heard, it is similar to the federal bail law, which some courts have held unconstitutional. Accordingly, CCRC recommends any provision related to judicial suspension of driving privileges for persons charged, but not convicted, be permissive rather than mandatory.

CCRC would note that judges currently have discretion to impose a variety of conditions on persons charged with traffic offenses. Judges routinely order persons not to operate a vehicle after having consumed any alcohol or drugs in DUI cases and not to operate a vehicle without a valid license. Judges often go further in cases with more egregious facts and order person not to drive at all. Thus, there is little question that judges may be given express discretion to suspend a person’s driving privileges pending trial after having considered the individual facts and giving the person the opportunity to be heard. It is the mandatory suspension of a license belonging to a person still presumed innocent that creates a substantial risk of the erroneous deprivation of a protected property interest and likely violates a defendant’s due process rights.

IV. Coercive Effect of Mandatory Pretrial Suspensions

Irrespective of the constitutionality of the proposed provision, it is also worth noting the possible coercive effect of a mandatory pretrial suspension policy without consideration of guilt or innocence. As noted above, the length of a pretrial suspension can exceed the suspension period provided for upon conviction because the time from charging to disposition in a criminal case can last a year or longer. This is especially true in the case of persons who maintain their innocence and take their cases to trial. A person charged with one of the enumerated offenses could have their license suspended for 12 months (or longer), in order to obtain an acquittal versus a maximum of 6 months if they plead guilty. Many persons unable to secure a trial date within six months may feel compelled to plead guilty in order to have their license restored sooner given the financial burdens and other difficulties imposed by license and registration suspension. As the Supreme Court has stated, a driver’s license can be “essential in the pursuit of a livelihood” and for many persons the loss of a license will result in the loss of employment or cause other economic

³³*Karper*, 847 F. Supp. 2d at 358; *Id.* at 360 (also stating: “[B]y mandating certain pretrial release conditions, [the Amendments] effectively create an irrebuttable presumption that the appearance at trial of arrestees charged with certain crimes, and the safety of the community, cannot be reasonable assured without such conditions.” *United States v. Crowell*, 2006 WL 3541736, at *9. And, in this respect the law is unconstitutional in all of its applications because it universally forfeits an accused’s opportunity to contest whether such conditions are necessary to ensure his return and to ameliorate any danger to the community.”); see also *United States v. Polouizzi*, 697 F. Supp. 2d 381, 393 (E.D.N.Y. 2010) (“As the Torres court aptly put the matter: ‘[T]he Government’s interest [in] the safety of the community, and of children is certainly important. However, it is not clear to the [c]ourt how removing from judicial consideration whether a curfew with electronic monitoring is necessary to secure the safety of the community and of children improves that interest.’”) (quoting *United States v. Torres*, 556 F.Supp.2d 591, 598 (W.D.TX 2008).

hardships that result in irreparable harm.³⁴ Consequently, the incentive to plead guilty and get one's license back sooner in cases where pretrial suspension based on charges is imposed would be very strong and could result in defendants pleading guilty merely to avoid a lengthy period of license suspension.

³⁴ *Bell v. Burson*, 402 U.S. 535, 539 (1971).