

Columbia would continue adjudicating these offenses as it now does. A list of exempted offenses is attached as Attachment B.

Section 202 also exempts each felony and misdemeanor which is not codified in Title 40 of the D.C. Code, Titles 14 and 32 of the D.C. Rules and Regulations and the Highways and Traffic Regulations of the District of Columbia. The purpose of this exemption is to maintain criminal status for misdemeanors and felonies which involve an automobile in an incidental manner.

Section 203 exempts from Title II infractions committed by serious offenders. Moving infractions committed by persons who, during the 18 months preceding the infraction, have been assessed 12 or more traffic violation points are subject to criminal prosecution if the Corporation Counsel asserts jurisdiction. Conviction of an infraction under this section is punishable by a fine up to \$300 and imprisonment up to 10 days.

Under 32 D.C.R.R., sec. 2.305(b), the department assesses traffic violation points for each moving violation. Section 2.305 authorizes the department to revoke the license of a driver who has accumulated 12 points. Thus, section 203 applies only to drivers whose license has been revoked or is subject to revocation. Conviction of a moving infraction under section 203 and conviction of driving after suspension or revocation would subject the violator to the penalties for both offenses.

Section 203 requires the Director of the Department of Transportation to promptly notify the Corporation Counsel of any infraction committed by a person with 12 or more traffic violation points. If the Corporation Counsel asserts jurisdiction within 15 days of notification, the infraction is tried as a criminal offense in the Superior Court of the District of Columbia. If the Corporation Counsel does not assert jurisdiction within 15 days of notification, the infraction is adjudicated civilly in the Department of Transportation.

When the Corporation Counsel asserts jurisdiction as provided by this section, he must notify the respondent by certified mail that the infraction will be prosecuted criminally. An action or statement made by a respondent in

compliance with this act before receipt of this notice is inadmissible in the criminal proceeding. Thus, if a respondent admits the commission of an infraction before receipt of notice, the admission would not be admissible.

Section 204 provides that a notice of infraction serves as a complaint and summons for an infraction subject to Title II. Thus, a notice of infraction initiates an action in the Bureau of Traffic Adjudication and requires a respondent to answer as provided in section 205. Section 204 further provides that the notice of infraction may be the same as the uniform traffic notice. Consequently, the notice of infraction could serve as a ticket which a police officer issues directly to a motorist.

Section 204 requires the Director of the Department of Transportation to develop a form for the notice of infraction and to provide administrative controls for dispersal of the notice of infraction. Section 204 requires the director to include in the notice of infraction the following information: (1) the procedures for filing an answer, (2) the deadline for filing an answer, and (3) the consequences of not answering within the deadline. Finally, section 204 provides for dismissal of any notice of infraction that is defective on its face.

Section 205 limits a respondent to one of three answers:

Admit. A respondent may admit the commission of an infraction. A respondent must pay the appropriate civil fine and penalties at the same time he files an admit answer. If the admission of an infraction results in an accumulation of eight or more traffic violation points, a hearing is required to determine whether the respondent should be suspended or revoked. If the admission of an infraction does not result in an accumulation of eight or more traffic violation points, no hearing is required. When appropriate civil fine and penalties terminates the proceeding and results in an order establishing the commission of an infraction.

Admit with explanation. A respondent may admit the commission of an infraction with an explanation of the circumstances involved in the infraction. An explanation may include any factor tending to excuse the infraction. An admit with explanation answer requires a hearing to

determine appropriate sanctions. A hearing examiner may consider an explanation when determining sanctions.

Deny. A respondent may deny the commission of an infraction. A "deny" answer requires a hearing to determine whether the respondent committed the infraction, and, if he or she did, to determine appropriate sanctions. If a respondent appears and refuses to enter an answer, a "deny" answer will be entered for him or her.

Section 205 authorizes three methods of filing an answer: in person, by mail, and by telephone. The option of answering in person is always available to a respondent. The option of answering by mail is always available except (1) when an admit answer would result in an accumulation of eight or more traffic violation points or (2) where a respondent failed to answer within the prescribed period. If the Director of the Department of Transportation promulgates rules, the option of answering by telephone would be available when the option of answering by mail is available.

Section 205 requires a respondent to answer within 15 days of the issuance of a notice of infraction unless the Director of the Department of Transportation prescribes a greater period by regulation. If a respondent fails to answer within the prescribed period, section 205 requires the Department of Transportation to suspend his license or privilege to drive. The suspension takes effect five days after the respondent has received, either by personal service or by certified mail, notice of the suspension. The suspension remains in effect until the respondent answers the notice of infraction.

Section 206 establishes the rules for hearings. In addition to requirements that apply specifically to this act, section 206 incorporates the provision of Chapter IX of the Motor Vehicles Regulations wherever not inconsistent with this act. Chapter IX currently provides rules for hearings involving suspension and revocation of licenses. A more detailed discussion of the hearing rules provided by section 206 follows.

General. The Assistant Director for Motor Vehicle Services or a hearing examiner designated by the assistant director conduct the hearings required by this act. A hearing examiner who is prejudiced or personally interested

in a proceeding may not conduct the hearing. Hearings may be combined if the same or substantially similar evidence is involved. The Department of Transportation must provide all parties with notice at least 10 days before a hearing.

A hearing examiner may extend any deadline and postpone any scheduled proceeding in matters pending before him. A hearing examiner has discretion to determine who, aside from the parties and their attorneys, may attend a hearing. A hearing examiner may adjourn a hearing to get additional information. A hearing examiner may not communicate with a party without affording all parties notice and an opportunity to participate. A hearing examiner may communicate with the Department of Transportation, but must note the communication on the record.

A respondent may appear in person with or without an attorney. Although the Department of Transportation does not maintain a register of attorneys, representation before the department is limited to attorneys who have been admitted to practice before the for the District of Columbia Court of Appeals or the highest court in another jurisdiction. A respondent may waive the right to appear at a hearing. When a respondent waives the right to appear, the hearing examiner may hold a hearing anyway, if he believes it necessary.

Documents. Documents may be filed in person or by mail. The date of filing is the date the Department of Transportation receives the document. A party may answer any document within seven days of its filing. A party may obtain a copy of any document he submits and a copy of any transcript made of his testimony upon payment of costs.

Generally documents must contain the names of the parties, docket number, and a concise statement of facts and relief sought. A party must sign each document he files. A party must submit all documents in duplicate. Typewritten documents must satisfy specific requirements for size and spacing. If a document is defective, the hearing examiner may dismiss it or may require its amendment.

The Department of Transportation must serve copies of each formal notice, final order, and document filed on each party. The department may serve documents by regular mail, certified mail, registered mail, or personal delivery. Certification by the person mailing or acknowledgment by the

person receiving constitutes proof of service. Except for final orders of suspension or revocation, the date of service is the date of mailing. The department must retain all documents filed.

Motions. An application for any order, except to appeal or obtain discovery, must be made by motion. Any motion allowed in the District of Columbia courts may be made when applicable. During a hearing, a motion may be oral unless the hearing examiner directs otherwise. Before and after a hearing, a motion must be in writing. Written motions must be filed at least 10 days before a hearing unless the hearing examiner finds circumstances which justify a later submission.

An answer to a motion must be filed within seven days unless the hearing examiner provides otherwise. The hearing examiner has discretion to exclude or impose time limits on oral arguments on motions. The exercise of this discretion may not be appealed. A hearing examiner must dispose of a motion promptly. Filing a motion does not automatically extend any deadline.

A motion for leave to file otherwise unauthorized documents must be filed within 10 days of service of the first document related to the proceeding. The opposing party may not file an answer. The decision of the hearing examiner may not be appealed.

A motion to disqualify a hearing examiner must be made at least 10 days before the hearing unless the hearing examiner directs otherwise. The chief hearing examiner must rule on a motion of this type. His decision may not be appealed.

Subpoenas. A hearing examiner may issue subpoenas for witnesses and documents. A motion for a subpoena must be in writing except that a motion made during a hearing may be oral if the hearing examiner consents. A motion filed more than two days before a hearing must be acted upon before the hearing. A motion to quash or modify a subpoena stays the subpoena until the hearing examiner acts on the motion.

Discovery. A party may take a deposition of a witness upon a showing of good cause. Application for an order of discovery must be by petition. A petition must contain the reason for the request, name and residence of the witness,