

## RE-LICENSING PROGRAM - A PROPOSAL

### THE PROBLEM

A person's license is suspended in the third degree (DWLS 3<sup>rd</sup>) when they have failed to respond to a notice of a traffic infraction, failed to appear at a scheduled hearing or failed to pay the fines or fees that were ordered as a result of a moving violation. When a person fails to respond, appear or pay, notice is sent to the Department of Licensing and DOL then suspends the person's driving privilege. This status remains until such time as the problem has been corrected.

In this way, a small mistake - like an unpaid ticket for speeding- can become an enormous problem with consequences that include a jail sentence. A driver does not need to commit an infraction to be stopped by law enforcement for this offense. The police are authorized to run the license plates for all cars. If the computer shows that the registered owner of the vehicle is in suspended status, and the driver of the vehicle resembles the description of the registered owner, the vehicle can be stopped and an investigation can proceed. Cars operated by low income persons are more likely to have small equipment violations (light out over the license plate) further increasing the likelihood that their vehicle will be stopped.

The snowball effect of this can be seen with drivers who do not have the funds to pay the original ticket, leading to a suspended license, leading to an arrest, leading to more fine and fees, etc. A ticket for DWLS 3<sup>rd</sup> requires an appearance in Court, held during business hours. Missed work costs money and further reduces the funds that a driver has available to pay fines. Lawyers and Judges in the local courts have all witnessed drivers with thousands of dollars owing to the Courts who feel hopeless about ever changing their status but continue to drive, to work, to the doctor, to child care, to school and to the grocery store.

DWLS 3<sup>rd</sup> is a misdemeanor and carries a potential punishment of up to 90 days in jail and a \$1,000.00 fine. A criminal conviction can impact employability, eligibility for housing, financial aid and credit as well as have other implications for a person's life.

In 2014 there were **1460** citations issued for Driving While License suspended in the Third Degree. (DWLS 3<sup>rd</sup>). This year, as of November there were **2,713** citations issued in Whatcom County for this offense. According to jail statistics in 2014 DWLS 3 was listed as an offense on 898 bookings. Of those, 98 had more than one booking where DWLS3 was listed as an offense. This would mean that there were 800 unduplicated offenders who were booked on DWLS 3 in 2014. The impact on jail space for those serving commitments on this charge is not known with certainty, but is not believed to be a large number. (Likely less than 100). Also, it is unknown how many persons reporting to jail only for the charge of DWLS 3 were there because they had been arrested on warrants vs those that were freshly arrested on probable cause.

## **LOCAL COLLECTIONS OF FINES AND FEES**

Clerks of the local courts (with the exception of the Whatcom County District Court) have created mechanisms for an outside business (Signal) to collect the fines and fees owed in their jurisdiction. This outsourcing was intended to reduce the work load on their staff. However, the work done by Signal comes at a cost to the offender. There is a \$15.00 charge to set up an account. Each month there is an additional charge of \$4.75 if the individual has only one ticket at Signal. That monthly charge is increased to \$8.25 if the individual has more than one ticket. However, if the individual misses a payment, the monthly service charge for one ticket becomes \$7.75 and \$11.25 for multiple tickets.

If the payment plan becomes delinquent, the tickets are then sent to collections (triggering a DOL suspension). The Collection agency used locally is Alliance One. Alliance One and Signal are both arms of a single entity. Alliance One adds interest and collections costs to the ticket which must be paid before they will send a release notice to DOL. If an individual contacts Alliance One, they will often agree to send the release notice if the person can provide a lump sum payment equal to ½ of the total fines and fees that they are owed.

## **LOCAL SOLUTIONS**

Locally, prosecutors and courts have developed ways to handle these charges that for the most part do not include a jail sentence. The prosecutor who supervises the District Court estimates that 85 percent of these charges are amended at the Defendant's first appearance to an infraction of "No Valid Operator's License". This infraction does not carry with it the potential for a jail sentence. Several of the municipal court prosecutors will similarly reduce this criminal charge to an infraction. This consideration is often shown to first time offenders and to individuals who live outside of Whatcom County. In other cases, Judges will continue cases out for 6 months or longer to give the offender time to get re-licensed. If they return with a license, the Court will then show them consideration for their efforts.

When a case has been sent to Alliance One for collections, our local courts are often willing upon request, to pull the case and waive the interest and collection costs. This action will then allow the individual to make application with DOL to get re-licensed. The circumstances under which a Court is willing to pull a case from collections varies by jurisdiction, the circumstances of the case and the criminal history of the offender.

These solutions are imperfect for a number of reasons:

- 1) A reduction to an infraction does not get the offender re-licensed.
- 2) If an offender fails to pay the fine for an infraction (not a moving violation), the matter will be

referred to a collection agency. The Clerk can also impose a \$52.00 penalty for this failure to pay the infraction.

3) When a case is continued for months at a time there are often multiple appearances required in Court. Each court appearance can require missed work, the need for child care and other burdens that while meant to benefit the offender creates an increased likelihood of a missed a Court appearance. This failure to appear leads to the issuance of a warrant for the person's arrest and incarceration upon service of the warrant. At this point, it is unlikely that the individual will be shown any consideration by the Court.

4) Individuals in this status often have cases in collections in a number of Courts with difficulty in navigating the system, scheduling court hearings and getting all of the judges to agree to pull 'their' case from collections. Multiple payment plans, multiple court appearances, multiple judges, multiple prosecutors create difficulty for the person who is making an effort to get re-licensed.

5) The current system results in unequal protection under the law. Similar defendants receive disparate outcomes depending on the jurisdiction where they have an unpaid fine and whether attempts are made to pull files from collections, and whether those attempts are successful.

### **A PROPOSED SOLUTION**

In communities around Washington, these problems are being addressed with programs that assist the offender in navigating the system, getting their fines out of collections and getting re-licensed. Whatcom County had a program like this until 2004. In 2004 the Washington Supreme Court decided a case called Redmond v Moore. The Court held that the suspension notices from DOL were constitutionally defective and released all of the suspensions that were in then in place related to the improper notices. The problem identified by Redmond v Moore has since been resolved and there is again a need for systemic solution for this problem.

A possible solution would involve a cadre of trained volunteers who would assist offenders in making application to the Courts to pull their tickets from collections, request waiver of collection costs and interest and allow them to set up an affordable payment plan to take care of the original amount owed to the Court. In other communities, similar programs have led to increased collection rates. For instance, in Spokane from 2008 until 2014 the re-licensing program led to the collection of over 5 million dollars. In contrast, only \$623,471.98 was collected from drivers who were assigned to the collection agency.

In Whatcom County, we have an established venue for this program. There is a program called Access ID which is run by LAW Advocates. This program has trained volunteers who help (primarily homeless) individuals to get identification. They are situated at the Bellingham Public Library on Saturday afternoons twice a month with computers, a printer and knowledge of the DOL requirements for the issuance of identification. It is hoped that these individuals could

be cross-trained to help people through this program.

The volunteers could access the DOL website and identify which courts have sent citations to collections that are holding the person's license. They could then help the individual complete a request that the Court remove these tickets from collections and set up an affordable payment plan for them to meet their obligations. The volunteers would then assist the individual in getting this request filed with the Court and having an Order entered which removes their tickets from collections and would then show proof that the individual is re-licensed. It is anticipated that the person would have to show good faith by meeting their financial obligations for at least three months before receiving consideration from the Court. Ideally, the Whatcom County Courts could follow the lead of other licensing programs and dismiss the pending DWLS 3<sup>rd</sup> charge at the conclusion of this process.

### **LIMITATIONS ON THIS SOLUTION**

This proposal will not meet the needs of all persons charged with DWLS 3<sup>rd</sup> as there will be some individuals who are so indigent that a realistic payment plan can not be created. There will also be persons who have tickets that are holding their licenses from outside of Whatcom County. It is not likely to be in the purview of our volunteers to help them to address matters from other jurisdictions. There will also be people who have their licenses suspended for reasons (uninsured accidents, unpaid taxes etc) that can not be addressed by our program. In each of these cases, it is anticipated that the volunteers would send a notice to the Court of the persons ineligibility.

We have met with the Judges and Court personnel from the District, Bellingham Municipal, Sumas, Everson, Lynden and Ferndale Courts. While they have agreed in principal to a program like the one that is described herein, not all of them have committed to a dismissal of a criminal charge at the end of the process. Some of the Courts would like to have more flexibility based upon the person's criminal history and other individual circumstances.

Another potential problem may arise if the Courts continue to use the Signal program to collect on the payment plans. The costs added by Signal may destroy any opportunity for a payment plan to be truly affordable and may destroy the ultimate goal of not only getting a person re-licensed but also keeping them licensed. Some of the Courts have expressed a willingness to review their continued use of Signal and others have expressed a belief that they can find a way to get Signal to be flexible for the clients of this program.

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**DWLS 3rd, Cases Filed 1/1/2014 12:00:00 AM - 12/31/2014 12:00:00 AM**

**WHATCOM COUNTY DISTRICT COURT**

Charge Law Numb	Charge	Cases
46.20.342.1C	DWLS 3RD DEGREE	1117

**SUMAS MUNICIPAL COURT**

Charge Law Numb	Charge	Cases
46.20.342.1C	DWLS 3RD DEGREE	119

**LYNDEN MUNICIPAL COURT**

Charge Law Numb	Charge	Cases
46.20.342.1C	DWLS 3RD DEGREE	233

**FERNDALE MUNICIPAL COURT**

Charge Law Numb	Charge	Cases
46.20.342.1C	DWLS 3RD DEGREE	281

**EVERSON-NOOKSACK MUNICIPAL COURT**

Charge Law Numb	Charge	Cases
46.20.342.1C	DWLS 3RD DEGREE	84

**BLAINE MUNICIPAL COURT**

Charge Law Numb	Charge	Cases
46.20.342.1C	DWLS 3RD DEGREE	364

**BELLINGHAM MUNICIPAL COURT**

Charge Law Numb	Charge	Cases
46.20.342.1C	DWLS 3RD DEGREE	515

DWLS 3rd, Cases Filed 1/1/2015 12:00:00 AM - 12/31/2015 12:00:00 AM

WHATCOM COUNTY DISTRICT COURT

Charge Law Number	Charge	Cases
46.20.342.1C	DWLS 3RD	1159

SUMAS MUNICIPAL COURT

Charge Law Number	Charge	Cases
46.20.342.1C	DWLS 3RD	96

LYNDEN MUNICIPAL COURT

Charge Law Number	Charge	Cases
46.20.342.1C	DWLS 3RD	193

FERNDAL MUNICIPAL COURT

Charge Law Number	Charge	Cases
46.20.342.1C	DWLS 3RD	186

EVERSON-NOOKSACK MUNICIPAL COURT

Charge Law Number	Charge	Cases
46.20.342.1C	DWLS 3RD	70

BLAINE MUNICIPAL COURT

Charge Law Number	Charge	Cases
46.20.342.1C	DWLS 3RD	298

BELLINGHAM MUNICIPAL COURT

Charge Law Number	Charge	Cases
46.20.342.1C	DWLS 3RD	592