

**EXHIBIT PACKET TO**  
**TESTIMONY OF HONRABLE JAD LEMHOUSE**  
**REGARDING HB 3047, MARCH 14, 2013**

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1. Tables of Convictions, Suspensions and Reinstatements.
2. Potential Problems with HB 3047.
3. DMV Memo – NEW CASE LAW
4. Richardson v. ODOT – Court of Appeals Slip Opinion.
5. Richardson v. ODOT – Clackamas County Circuit Court Judgment and Opinion Letter.
6. Relevant Statutes
  - a. ORS 809.210
  - b. ORS 809.220
  - c. ORS 809.415
  - d. ORS 809.416
  - e. ORS 809.440



Year	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Total # of ALL Entered DMV Convictions	572,031	568,471	572,731	564,214	590,796	523,066	506,061	500,927	510,996	492,472	470,025	426,566	430,555	413,569

SUSPENSIONS TYPE	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
23	72,602	74,925	81,388	74,901	78,252	74,991	69,380	69,057	52,750	2	4	1	1	1
834									1,212	6,037	4,830	3,666	3,113	2,664
994									12,858	65,032	55,000	51,300	47,315	46,482
995									4,843					
Various	6,976	4,796	5,001	5,121	4,916	5,094	4,818	5,345	4,843					
Total F/A	79,578	79,721	86,389	80,022	83,168	80,085	74,198	74,402	71,663	71,286	60,787	55,891	51,220	49,785
35	105,122	108,246	112,393	113,254	108,657	109,652	122,979	118,956	90,895	2	6	4	6	1
836									22,976	116,252	133,895	116,944	117,051	109,334
996									113,871	116,719	135,651	118,280	118,534	110,803
Total F/C	105,122	108,246	112,393	113,254	108,657	109,652	122,979	118,956	113,871	116,719	135,651	118,280	118,534	110,803

023 Failure to appear for a court hearing. (5-year suspension; retained 5 years)  
 834 Failure to appear for a court hearing. (10-year suspension; retained 5 years)  
 994 Failure to appear on a traffic crime. (10-year suspension; retained 5 years)  
 995 Failure to appear for a court hearing. (10-year suspension; retained 55 years)

035 Failure to pay a fine or comply with a condition imposed by a court. (5-year suspension; retained 5 years)  
 836 Failure to pay a fine or comply with a condition imposed by a court. (10-year suspension; retained 5 years)  
 996 Failure to pay a fine or comply with a condition imposed by a court. (10-year suspension; retained 55 years)

REINSTATEMENTS TYPE	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
23	25,245	28,433	30,046	29,833	29,956	30,327	32,358	32,747	33,385	25,243	18,759	16,403	13,522	10,858
834									0	0	62	124	122	131
994									0	221	367	552	532	566
995									2	6,595	11,078	12,534	12,638	13,406
Various														
Total F/A	25,245	28,433	30,046	29,833	29,956	30,327	32,358	32,747	33,387	32,059	30,266	29,613	26,814	24,961
35	37,452	42,137	42,635	43,189	43,777	44,143	48,403	50,978	52,455	38,697	27,869	23,518	18,873	15,513
836									0	0	157	234	260	301
996									3	9,962	19,874	26,159	28,730	31,183
Total F/C	37,452	42,137	42,635	43,189	43,777	44,143	48,403	50,978	52,458	48,659	47,900	49,911	47,863	46,997



## POTENTIAL PROBLEMS WITH HB 3047

There are at least 3 potential problems with HB 3047: 1) The expiration of money award enforcement remedies will always be earlier than the end of the maximum suspension period. {The Norby Problem} 2) There exists a large potential for collateral challenges to traffic offense judgments in DMV suspension hearings. {The Collateral Attack Problem} 3) Presently, if a person files a bankruptcy petition after a Failure to Comply suspension takes effect, the Bankruptcy courts in Oregon expect the suspending Oregon trial court to reinstate the person's driver license. Unless the court debt is discharged, often it is not, in the past the convicting court would re-suspend. As DMV's Memo states, that is no longer an option. HB 3047 does not address this common problem. {The Bankruptcy Problem}

1. Enforcement remedies for fines on traffic violations expire 20 years after the entry of judgment. ORS 18.180(4) (circuit courts) and ORS 18.194(3) (justice courts and municipal courts). As a general rule, courts do not enter suspension orders under ORS 809.210 until weeks, months, sometimes years after a fine judgment award is entered. This is a problem that Judge Norby identified and discussed in her decision in *Richardson* in the Clackamas County Circuit Court:

The court concludes that the presumptive ten year duration of a remedial penalty imposed under ORS 809.210, ORS 809.415(4)(a) and ORS 809.416(2) may not exceed the life of the underlying judgment it is invoked to enforce. Further, DMV must not implement a court notice to suspend if it is apparent on the face of the Notice that the presumptive suspension duration will unlawfully extend enforcement action on the underlying judgment beyond twenty years. Pg 8 of letter opinion dated July 6, 2011 (attached).

The Court of Appeals decided the *Richardson* appeal on different grounds, leaving the issue that concerned Judge Norby to be resolved later, should it arise. So long as a suspension for failure to pay a fine can outlast the period of enforceability under ORS 18.180 and 18.194, we have a high likelihood of another *Richardson*-type appeal and decision.

The solution to this problem is to tie the end of the suspension period to the ending date of the enforcement remedies.

2. The Court of Appeals decision in essence invites suspended persons to challenge suspensions and requires DMV to hear any manner of challenge to a suspension entered under ORS 809.210. This essentially opens the door to widespread collateral attack on judgments entered in traffic offense convictions: persons using DMV administrative hearing to attack court judgments. This is not an appropriate use of DMV administrative processes—there are plenty of other avenues available in court to challenge judgments, motions to reconsider/set aside/relief from default, appeal, writs of review to name the most common remedies already available.

Here is what the Court of Appeals said about the problem of collateral attack on administrative review:

In short, the list of defenses in ORS 809.440(2)(b) is not exclusive, and it does not limit the issues that a person may raise on administrative review. Rather, a person who seeks administrative review under ORS 809.440(2) is entitled

to raise any defense to the department's action that is capable of being proved through a "careful review \* \* \* of the documents upon which [that] action is based," ORS 809.440(2)(a), or any other evidence of a type that the pertinent statutes contemplate the department will consider (in the example above, an appropriate notice from the Transportation Security Administration). DMV's contrary argument is unavailing. Slip Opinion at page 14.

DMV review should be limited to what have traditionally been the bases of review: those items listed in ORS 809.440(2)(b). In the opinion of the Court of Appeals,

If the legislature had wanted to forbid the consideration of other possible defenses, it easily could have done so by, for example, enacting a provision stating that it "shall be a defense *only* " if a licensee establishes one of the circumstances described in ORS 809.440(2)(b). As currently written, however, the legislatively enacted text does not expressly prohibit DMV from considering evidence of defenses other than the three listed. Slip Opinion at Page 11.

The solution to this problem is to amend ORS 809.440(2)(c) to include language limiting DMV's administrative review of court suspensions to the 3 grounds listed in ORS 809.440(2)(b).

Norby Problem Fix. In HB 3047 Section 2, line 27, strike "20 years" and insert **the expiration of the judgment from which the suspension arises**

In HB 3047 Section 3 strike lines 38 -42 and insert (B) **The expiration of the judgment from which the suspension arises** [*Ten years from the date the suspension is imposed*] if the suspension is imposed for a reason described in ORS 809.416 (1) or (2) or five years from the date the suspension is imposed if the suspension is imposed for the reason described in ORS 809.416 (3).

Collateral Consequences Fix. Add the following section to HB 3047:

**Section \_\_. ORS 809.440 is amended to read:**

809.440 (1) When other procedures described under this section are not applicable to a suspension or revocation under ORS 809.409 to 809.423, the procedures described in this subsection shall be applicable. All of the following apply to this subsection:

(a) The hearing shall be given before the department imposes the suspension or revocation of driving privileges.

(b) Before the hearing, the department shall notify the person in the manner described in ORS 809.430.

(c) The hearing shall be in the county where the person resides unless the person and the department agree otherwise.

(d) The hearing shall be conducted by an administrative law judge assigned from the Office of Administrative Hearings established under ORS 183.605.

(2) The following apply when administrative review is provided under any statute or rule of the department:

(a) An administrative review shall consist of an informal administrative process to assure prompt and careful review by the department of the documents upon which an action is based.

(b) It shall be a defense to the department's action if a petitioner can establish that:

(A) A conviction on which the department's action is based was for an offense that did not

involve a motor vehicle and the department's action is permitted only if the offense involves a motor vehicle.

(B) An out-of-state conviction on which the department's action is based was for an offense that is not comparable to an offense under Oregon law.

(C) The records relied on by the department identify the wrong person.

(c) A person requesting administrative review has the burden of showing by a preponderance of the evidence that the person is not subject to the action. **Administrative review of a suspension ordered by a court shall be limited to the defenses listed in paragraph (b) of this subsection.**

(d) Actions subject to administrative review shall be exempt from the provisions of ORS chapter 183 applicable to contested cases, and from the provisions of subsection (4) of this section applicable to post-imposition hearings. A suspension, revocation or cancellation shall not be stayed during the administrative review process or by the filing of a petition for judicial review. A court having jurisdiction may order the suspension, revocation or cancellation stayed pending judicial review.

(e) Judicial review of a department order affirming a suspension or revocation after an administrative review shall be available as for review of orders other than contested cases, and the department may not be subject to default for failure to appear in such proceedings. The department shall certify its record to the court within 20 days after service upon the department of the petition for judicial review.

(f) If the suspension or revocation is upheld on review by a court, the suspension or revocation shall be ordered for the length of time appropriate under the appropriate statute except that the time shall be reduced by any time prior to the determination by the court that the suspension or revocation was in effect and was not stayed.

(g) The department shall adopt any rules governing administrative review that are considered necessary or convenient by the department.

(3) When permitted under this section or under any other statute, a hearing may be expedited under procedures adopted by the department by rule. The procedures may include a limited time in which the person may request a hearing, requirements for telephone hearings, expedited procedures for issuing orders and expedited notice procedures.

(4) When permitted under ORS 809.413, 809.417, 809.419 or 809.421, a hearing may be a post-imposition hearing under this subsection. A post-imposition hearing is a hearing that occurs after the department imposes the suspension or revocation of driving privileges. All of the following apply to this subsection:

(a) The department must provide notice in the manner described in ORS 809.430 before the suspension or revocation may take effect.

(b) Except as provided in this subsection, the hearing shall be conducted as a contested case in accordance with ORS chapter 183.

(c) Unless there is an agreement between the person and the department that the hearing be conducted elsewhere, the hearing shall be held either in the county where the person resides or at any place within 100 miles, as established by the department by rule.

(5) The department has complied with a requirement for a hearing or administrative review if the department has provided an opportunity for hearing or review and the person with the right to the hearing or review has not requested it. Any request for hearing or review must be made in writing.

(6) For any hearing described under this section, and for administrative review described

under this section, no further notice need be given by the department if the suspension or revocation is based upon a conviction and the court gives notice, in a form established by the department, of the rights to a hearing or review and of the suspension or revocation.

The Bankruptcy Problem. HB 3047 limits re-suspension specific circumstance: the debtor “ceases making payments before the fine is paid in full.” See, Section 1, page 1, lines 27-30 and page 2, lines 1-2. To avoid the Bankruptcy Problem (and others that might arise), consider omitting that language and add the following:

**Section \_\_. Notwithstanding any other provision of law:**

**(a) A court may order the suspension or re-suspension, without limit, of a driver privilege under ORS 809.210 or 809.220 at any time before the expiration of the judgment in the action from which the suspension arises while the judgment or any part of it remains unpaid.**

**(b) A suspension or re-suspension entered under ORS 809.210 or 809.220 shall remain in effect until ended by the court or upon the expiration of the judgment from which the suspension arises. The court shall notify the department of the expiration date of the judgment from which the suspension arises.**

**(c) As used in this chapter, the term “expiration of judgment” means the expiration of judgment remedies as provided in ORS 18.180 and 18.194.**

**Section \_\_. Section - of this act is made a part of ORS chapter 809.**

This language restores the great flexibility in responding both routine and unusual situations during the continuation of enforcement proceedings that existed before *Richardson*.

The suggestions here are restorative; they return these suspension procedures to the broad understanding shared by trial courts and DMV as to how these statutes were to be implemented for decades; not just a few years, but decades.





# Oregon

John A. Kitzhaber, M.D., Governor

Department of Transportation

DMV Service

1905 Lana Avenue NE

Salem, OR, 97314

FILE CODE:

## NEW CASE LAW

*Richardson v. Oregon Department of Transportation*, 253 Or App 456 (2012)  
Failure to Comply (FTC) Suspensions (ORS 809.210, 809.416)

ORS 809.416 requires DMV to suspend a person's driving privileges (an "FTC" suspension) when DMV receives notice from a court that the person has failed to pay a fine on a traffic offense conviction. ORS 809.416(2) provides the following limitation:

A person who is subject under this subsection remains subject until the person presents the department with notice issued by the court showing that the person *has paid the fine or obeyed the order of the court* or until *10 years have elapsed*, whichever is earlier. (emphasis added).

It has been DMV's practice to suspend whenever it receives a notice from the court under ORS 809.210, even if DMV had previously suspended the person for FTC for the same conviction. This has resulted in some people being suspended for more than the statutory maximum suspension period for one conviction.

The Court of Appeals has affirmed a Circuit Court ruling concluding that the statutory authority of DMV limits an FTC suspension to a maximum of 10 years. Due to this ruling, **DMV will no longer re-suspend for FTC**. DMV is immediately changing its processes to the following:

- DMV will NOT process notices for individuals who have already been suspended for the statutory maximum period (5 or 10 years) for the same conviction.

The ruling stated, "a person's driving privileges remain subject to suspension for failure to pay traffic fines for a maximum of 10 years" (noting that prior to 2007 the maximum period was five years).

- DMV will NOT process notices if DMV processed a court notice of compliance on a previous FTC suspension for the same conviction. **Courts only have one opportunity to suspend.**

When the court sends notice to DMV that the fine has been paid or the person complied with the court order, it fulfills the statutory requirement and the suspension ends. This is consistent with the Court of Appeals analysis wherein the court emphasized the binary nature of the suspension. It ends when the fine is paid or after ten years.

DMV requests that your court **no longer submit notices to suspend for FTC if your court has previously submitted such a notice for the same conviction**. This includes cases where the statutory maximum period (5 or 10 years) has passed and/or cases where the court previously sent DMV a compliance (clearance) notice. **Courts only have one opportunity to suspend for FTC on the same conviction.**

DMV will not be able to conduct a mass cancelling of suspensions impacted by the Richardson ruling. Changes to processes over the years, along with the volume of FTC suspensions processed (approximately 140,000 annually), makes this difficult. Therefore, your court may want to review cases you believe should be complied due to the ruling and submit notices of compliance to DMV. DMV will determine which suspensions can be complied (drivers still need to pay DMV a \$75 reinstatement fee) and which suspensions can be dismissed because the driver was previously suspended for FTC or because DMV previously received a notice of clearance for the same conviction.

For questions regarding DMV processing changes, please call the DMV Driver Suspensions Unit at (503) 945-5037.

For questions regarding the Court of Appeals decision, please call DMV Driver Programs at (503) 945-5090.

Thank you, we appreciate your cooperation.

FILED: November 07, 2012

IN THE COURT OF APPEALS OF THE STATE OF OREGON

TIMOTHY L. RICHARDSON,  
Plaintiff-Respondent,

v.

OREGON DEPARTMENT OF TRANSPORTATION,  
Department of Motor Vehicles,  
Defendant-Appellant.

Clackamas County Circuit Court  
CV10100021

A149361

Susie L. Norby, Judge.

Submitted on July 06, 2012.

John R. Kroger, Attorney General, Anna M. Joyce Solicitor General, and Tiffany Keast, Assistant Attorney General, filed the briefs for appellant.

Timothy L. Richardson filed the briefs *pro se*.

Before Ortega, Presiding Judge, and Sercombe, Judge, and Hadlock, Judge.

HADLOCK, J.

Affirmed.

1 HADLOCK, J.

2 The Driver and Motor Vehicle Services Division (DMV) of the Oregon  
3 Department of Transportation suspended plaintiff's driving privileges in 2010 after  
4 receiving notice from the Central Lane Justice Court that plaintiff had failed to pay 17  
5 traffic fines that he incurred in the 1990s. Plaintiff requested administrative review  
6 before DMV under ORS 809.440(2), and DMV issued three orders upholding the  
7 suspensions.<sup>1</sup> Plaintiff initiated proceedings in circuit court, and that court reviewed the  
8 DMV orders under ORS 183.484, which governs judicial review of orders in other than  
9 contested cases. The circuit court reversed the DMV orders, ruling that the agency had  
10 applied the law incorrectly, and ordered DMV to reinstate plaintiff's driving privileges.  
11 DMV now appeals the circuit court's judgment. As explained below, we conclude (albeit  
12 for reasons other than those on which the circuit court relied) that DMV erroneously  
13 interpreted certain statutory provisions related to suspensions of driving privileges when  
14 it rejected plaintiff's challenge to the suspension orders. We also conclude that, under a  
15 correct understanding of the law, DMV erred when it suspended petitioner's driving  
16 privileges in 2010. Accordingly, we affirm the circuit court's judgment.

17 We begin with a discussion of the statutes that govern suspension of driving  
18 privileges for failure to pay a traffic fine. When a person is convicted of a traffic offense

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<sup>1</sup> The orders are not explicitly titled "orders," but are letters from DMV Operations and Policy Analyst Elizabeth Woods to plaintiff denying his challenge to the 2010 DMV suspensions. DMV has acknowledged that the letters are final orders for purposes of judicial review under ORS 183.484.

1 and fails to pay a judicially imposed fine, ORS 809.210(1)(a) authorizes the court to  
2 "[i]ssue notice to the [DMV] to implement procedures under ORS 809.416." ORS  
3 809.416, in turn, directs that the person is subject to the suspension of driving privileges  
4 under ORS 809.415(4) when DMV receives the ORS 809.210 notice of failure to pay the  
5 fine. The statute also specifies how long the person remains subject to the suspension of  
6 driving privileges:

7 "A person who is subject under this subsection remains subject until  
8 the person presents the department with notice issued by the court showing  
9 that the person has paid the fine or obeyed the order of the court *or until 10*  
10 *years have elapsed, whichever is earlier.* \* \* \* Upon receipt of notice from  
11 a court, the department shall send a letter by first class mail advising the  
12 person that the suspension will commence 60 days from the date of the  
13 letter unless the person presents the department with the notice required by  
14 this subsection."

15 ORS 809.416(2) (emphasis added). ORS 809.415(4) similarly directs that DMV "shall  
16 suspend driving privileges when provided under ORS 809.416." It, too, provides that  
17 suspension of a person's driving privileges under ORS 809.416(2) continues until either  
18 (1) the person "establishes to the satisfaction of the department that the person has  
19 performed all acts necessary under ORS 809.416 to make the person not subject to  
20 suspension" or (2) "[t]en years from the date the suspension is imposed." ORS  
21 809.415(4)(a)(A), (B).<sup>2</sup>

22 A person whose driving privileges are suspended under ORS 809.415(4) is

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<sup>2</sup> When plaintiff first incurred the fines in 1996 and 1997, the maximum suspension period for failure to pay a traffic fine was five years, not 10. ORS 809.290(2) (1997). The legislature subsequently renumbered the pertinent statutory provisions and, in 2007, increased the suspension period to 10 years. Or Laws 2007, ch 127, § 1 (amending ORS 809.415(4)(a)(B)); *id.* § 2 (amending ORS 809.416(2)).

1 entitled to administrative review under ORS 809.440. ORS 809.415(4)(b). That review  
2 "shall consist of an informal administrative process to assure prompt and careful review  
3 by the department of the documents upon which an action is based." ORS  
4 809.440(2)(a).<sup>3</sup> In that review, it "shall be a defense" to any Department of  
5 Transportation action if the person against whom the action is directed can establish that:

6           "(A) A conviction on which the department's action is based was for  
7 an offense that did not involve a motor vehicle and the department's action  
8 is permitted only if the offense involves a motor vehicle.

9           "(B) An out-of-state conviction on which the department's action is  
10 based was for an offense that is not comparable to an offense under Oregon  
11 law.

12           "(C) The records relied on by the department identify the wrong  
13 person."

14 ORS 809.440(2)(b). The person challenging a suspension of driving privileges (or other  
15 department action) has the burden of proving by a preponderance of the evidence that he  
16 or she is not subject to that action. ORS 809.440(2)(c). Judicial review of an  
17 administrative order affirming a suspension is available "as for review of orders other  
18 than contested cases." ORS 809.440(2)(e).

19           The facts relevant to our decision are undisputed. Between June 1996 and  
20 July 1997, the Central Lane Justice Court entered 17 judgments against plaintiff for  
21 motor vehicle violations. Each of those judgments required plaintiff to pay a fine, each  
22 of which plaintiff failed to pay. DMV notified plaintiff that his driving privileges would

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<sup>3</sup> Actions subject to ORS 809.440(2) administrative review are exempt from the provisions of ORS chapter 183 applicable to contested cases. ORS 809.440(2)(d).

1 be suspended if he continued to fail to pay his fines and, on various dates between  
2 February 1997 and February 1998, DMV did suspend plaintiff's driving privileges. Each  
3 of those suspensions corresponded to a particular unpaid fine and, as DMV  
4 acknowledges, each of those suspensions lasted "5 years total," which then was the  
5 maximum statutory suspension period. *See* \_\_\_ Or App at \_\_\_ n 2 (slip op at 2 n 2).

6 Plaintiff first applied to reinstate his driving privileges on October 10,  
7 2006, and he was issued a new license that same day. Plaintiff still has not paid any of  
8 his fines associated with the 1996 and 1997 judgments.

9 For reasons not clear on this record, plaintiff appeared before the justice  
10 court again on March 31, 2010, for proceedings related to his continuing failure to pay  
11 the fines imposed in 1996 and 1997. The justice court issued an order that day allowing  
12 plaintiff seven days to either pay the fines or make arrangements with the court clerk to  
13 do so. The March 31 justice court order, according to the circuit court, "did not impose  
14 license suspensions, but predicted that license suspensions [might] be ordered later if  
15 [plaintiff] failed to act." Plaintiff filed a motion for reconsideration, which the justice  
16 court denied. In the end, plaintiff did not satisfy the judgments and apparently did not  
17 attempt to appeal the justice court's March 31, 2010, order or that court's denial of his  
18 motion for reconsideration.<sup>4</sup>

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<sup>4</sup> Unfortunately, the record before us does not include any of the above-referenced documents from the 2010 justice court proceeding. The exhibit list from the circuit court judicial-review proceeding reveals that the circuit court received, as DMV's exhibits, the March 31, 2010, justice court order, plaintiff's motion for reconsideration of that order, and the justice court's order denying the reconsideration request, but neither party

1                   On May 26, 2010, the justice court sent DMV 17 notices under ORS  
2 809.210, each corresponding to one of the incidents from 1996 or 1997. Each of those  
3 notices included the following statement (originally in all capital letters) from the justice  
4 court judge:

5                   "I certify that the defendant named above was notified to pay a fine on the  
6 stated charge and warned that for failure to pay, his/her license would be  
7 subject to suspension. You are hereby notified that the defendant failed to  
8 pay the above fine."

9                   DMV then aggregated the justice court's notices into three groups and sent  
10 plaintiff three form letters stating that his driving privileges would be suspended in 60  
11 days unless he contacted the court and "complet[ed] all the requirements necessary to  
12 clear this matter." The letters also informed plaintiff of his right to administrative review  
13 and informed plaintiff that, if he wanted administrative review, he should send DMV any  
14 evidence he had "to show [he was] not subject to this suspension." DMV explained that,  
15 in any administrative review, DMV would "look at [its] records and the documents  
16 concerning this matter to determine if [it] took appropriate action."

17                   As noted above, plaintiff did not appeal the justice court's rulings; nor did  
18 he otherwise contact that court again after he received DMV's suspension-notice letters.  
19 However, plaintiff did request administrative review, asserting, among other things, that  
20 his driving privileges already had been ordered suspended in 1996 and 1997 for the then-  
21 applicable five-year statutory period for unpaid traffic fines. Accordingly, he argued, the

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transmitted those documents to us on appeal.



1 period in which DMV could suspend his driving privileges had "expired long ago."  
2 Plaintiff specifically argued to DMV that ORS 809.416(2) and ORS 809.415(4)(a)(B)  
3 "limit the period of time for which [DMV] can suspend a license."

4 DMV conducted an administrative review in response to plaintiff's request.  
5 In the resulting orders, DMV provided only a brief response to plaintiff's contention that  
6 the time during which DMV could suspend his driving privileges for the unpaid fines had  
7 expired; it asserted that the current 10-year period referenced in ORS 809.416(2) "refers  
8 to the notice that DMV receives from a court, not from the citation or conviction date."  
9 DMV also explained that it was affirming the suspensions because, essentially, plaintiff  
10 had not established that any of the three defenses outlined in ORS 809.440(2)(b) applied  
11 to his case and because plaintiff had "submitted no evidence which would invalidate  
12 DMV's action." DMV recommended that plaintiff "contact the court to determine what  
13 [he] must do to clear" the docket numbers relating to his suspensions. Plaintiff  
14 apparently did not follow that recommendation but, instead, initiated proceedings in  
15 circuit court.

16 Although plaintiff filed a complaint for declaratory relief, the circuit court  
17 construed his complaint as a petition for judicial review in other than a contested case  
18 under ORS 183.484, and the matter proceeded on that basis. Before the circuit court,  
19 plaintiff argued, among other things, that DMV lacked authority to suspend his driving  
20 privileges a second time for his failure to pay the fines from 1996 and 1997 because those  
21 privileges already had been suspended for the maximum statutory period beginning in

1 1997. Plaintiff also argued that DMV had erred by not reaching that argument on  
2 administrative review.

3 DMV responded that plaintiff's argument regarding enforceability was  
4 really a challenge to the justice court's March 31, 2010, order (which required plaintiff to  
5 pay the old fines and predicted that his license would be suspended if he did not), not to  
6 DMV's administrative action. Accordingly, DMV argued, plaintiff should have appealed  
7 directly from the justice court's March 2010 order, and he could not collaterally attack the  
8 validity of that order in the DMV proceeding. DMV alternatively argued that it could not  
9 address plaintiff's argument because ORS 809.440(2)(b) limits the scope of DMV's  
10 administrative review to a review for the three defenses listed in ORS 809.440(2)(b).  
11 Because plaintiff did not prove any of those defenses, DMV argued, it acted properly in  
12 affirming his suspensions.<sup>5</sup> The circuit court ruled in plaintiff's favor, and DMV appeals.

13 DMV first reiterates its "improper collateral attack" theory, arguing that the  
14 circuit court should not have reached the merits of plaintiff's challenge to the DMV  
15 suspension orders. Because plaintiff did not appeal directly from the March 31, 2010,  
16 justice court order that preceded the suspensions, DMV reasons, he should not have been  
17 allowed to challenge that order indirectly in a subsequent DMV license-suspension  
18 proceeding.

19 DMV's "collateral attack" theory is premised on its contention that plaintiff

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<sup>5</sup> DMV made additional arguments to the trial court that it does not renew on appeal.

1 could have appealed the March 2010 justice court order and that the circuit court erred  
2 when it concluded otherwise. DMV makes a single argument in support of that  
3 contention: that the order was appealable under ORS 53.010. That statute provides:

4 "Any party to a judgment in a civil action in a justice court, other  
5 than a judgment by confession or for want of an answer, may appeal  
6 therefrom when the sum in controversy is not less than \$30, or when the  
7 action is for the recovery of personal property of the value of not less than  
8 \$30, exclusive of disbursements in either case, also when the action is for  
9 the recovery of the possession of real property under ORS 105.110."

10 We are not persuaded that plaintiff could have appealed the justice court  
11 order under ORS 53.010. That statute, by its terms, authorizes an appeal only from "a  
12 judgment" entered by a justice court. The parties and the circuit court consistently have  
13 referred to the justice court's March 2010 ruling as having taken the form of an order, not  
14 a judgment. Moreover, because DMV has not provided us with the exhibit that  
15 encompasses the justice court's ruling, *see* \_\_\_ Or App at \_\_\_ n 4 (slip op at 4 n 4), we  
16 cannot determine independently whether that ruling might have taken the form of a  
17 judgment, notwithstanding the repeated references to it as an order. Accordingly, DMV  
18 has not established that plaintiff could have appealed the justice court order under ORS  
19 53.010 and, therefore, it has given us no reason to disturb the circuit court's rejection of  
20 its "improper collateral attack" theory.<sup>6</sup>

21 DMV's remaining arguments challenge the merits of the circuit court's  
22 review of DMV's administrative orders under ORS 183.484. We recently described the

---

<sup>6</sup> DMV explicitly disclaims reliance on ORS 19.205(3), which provides that certain post-judgment orders may be appealed.

1 circuit court's task under that statute:

2 "Under ORS 183.484(5)(a), a reviewing court can 'affirm, reverse or remand the  
3 order.' If the court finds that the agency 'erroneously interpreted a provision of  
4 law and that a correct interpretation compels a particular action,' it may '[s]et aside  
5 or modify the order' or remand it 'to the agency for further action under a correct  
6 interpretation of the provision of law.' ORS 183.484(5)(a)(B). Remand is  
7 required if the agency's exercise of discretion is '[o]utside the range of discretion  
8 delegated to the agency by law;' inconsistent with an agency rule, official position,  
9 or practice, 'if the inconsistency is not explained by the agency'; or '[o]therwise in  
10 violation of a constitutional or statutory provision.' ORS 183.484(5)(b). Finally,  
11 the court may set aside or remand the order if it is not supported by substantial  
12 evidence. ORS 183.484(5)(c)."

13  
14 *Ericsson v. DLCD*, 251 Or App 610, 620, 285 P3d 722 (2012) (brackets in *Ericsson*).

15 "On review, this court reviews the circuit court judgment to determine whether it  
16 correctly assessed the agency's decision under those standards. For the most part, that  
17 means that the court directly reviews the agency's order under the standards set out in  
18 ORS 183.484(5)." *Id.* (citations omitted). Both before the circuit court and on appeal,  
19 the parties have disputed only the proper interpretation of the governing statutes; no  
20 agency findings or discretionary actions are at issue.

21 DMV's first argument on the merits relates to the scope of administrative  
22 review that it may conduct when a person challenges a license suspension. ORS 809.440  
23 governs administrative review under those circumstances, providing for "an informal  
24 administrative process" that assures "prompt and careful review by the department of the  
25 documents upon which an action is based." ORS 809.440(2)(a). As noted earlier in this  
26 opinion, the statute further provides:

27 "It shall be a defense to the [suspension] action if a petitioner can  
28 establish that:

1           "(A) A conviction on which the department's action is based was for  
2 an offense that did not involve a motor vehicle and the department's action  
3 is permitted only if the offense involves a motor vehicle.

4           "(B) An out-of-state conviction on which the department's action is  
5 based was for an offense that is not comparable to an offense under Oregon  
6 law.

7           "(C) The records relied on by the department identify the wrong  
8 person."

9 ORS 809.440(2)(b).

10           DMV contends that the list of defenses quoted above is an exclusive list--  
11 that is, DMV argues that it can consider *only* those defenses, and no others, when it  
12 conducts administrative review of a suspension of a person's driving privileges. DMV  
13 challenges the circuit court's contrary determinations that (1) the ORS 809.440 review  
14 provisions give DMV "a heightened responsibility to be circumspect in implementing  
15 notices to suspend" and (2) the agency should "decline[ ] to implement the suspension"  
16 when the notice it receives from a court "is unlawful on its face," whether that  
17 determination is made promptly after DMV receives the notice or during the  
18 administrative-review process.

19           To determine whether ORS 809.440(2)(b) creates an exclusive list of  
20 defenses to DMV actions on administrative review, we engage in our usual mode of  
21 statutory construction, considering the text, context, and useful legislative history of the  
22 disputed statute. *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009). Looking  
23 first to the text, we note that ORS 809.440(2)(b) states that it "*shall be a defense* to the  
24 department's action if a petitioner can establish" one of three listed defenses. (Emphasis

1 added.) That provision does not prohibit DMV from considering additional defenses, but  
2 merely describes three defenses that potentially are available in all cases subject to  
3 administrative review under ORS 809.440. *See Petersen and Petersen*, 132 Or App 190,  
4 194, 888 P2d 23 (1994) (holding that ORS 25.280's provision that "the following criteria  
5 shall be considered" did "not clearly require the court to base a departure from the  
6 [presumptive child support guidelines] only on the criteria enumerated"). As we have  
7 recognized in other cases, the legislature knows how to write an exclusive list. *See, e.g.,*  
8 *Oregonians for Sound Economic Policy v. SAIF*, 187 Or App 621, 630, 69 P3d 742, *rev*  
9 *den*, 336 Or 60 (2003) (explaining that the legislature "certainly knows how" to enact  
10 wording that communicates an intent that a statutory scheme be exclusive); *Langlotz v.*  
11 *Noelle*, 179 Or App 317, 322, 39 P3d 271, *rev den*, 334 Or 260 (2002) ("Had it wanted to  
12 write an exclusive list, the legislature could have done so with any of a variety of  
13 locutions."). If the legislature had wanted to forbid the consideration of other possible  
14 defenses, it easily could have done so by, for example, enacting a provision stating that it  
15 "shall be a defense *only*" if a licensee establishes one of the circumstances described in  
16 ORS 809.440(2)(b). As currently written, however, the legislatively enacted text does  
17 not expressly prohibit DMV from considering evidence of defenses other than the three  
18 listed.

19 Nor does the context of ORS 809.440(2) suggest a different conclusion.  
20 Other statutory provisions require DMV to consider matters beyond the three defenses  
21 listed in ORS 809.440(2)(b) when it reviews an ORS 809.415(4) suspension of driving

1 privileges for failure to pay a traffic fine, including whether it has received notice from  
2 the fining court "showing that the person has paid the fine" and whether "10 years have  
3 elapsed." ORS 809.416(2). Indeed, the administrative-review statute requires DMV to  
4 conduct a "prompt and careful review \* \* \* of the documents upon which an action is  
5 based," ORS 809.440(2)(a), in association with determining whether the person whose  
6 driving privileges may be suspended has met his or her "burden of showing by a  
7 preponderance of the evidence that the person is not subject to [that] action." ORS  
8 809.440(2)(c). Those provisions confirm that DMV's administrative review is not limited  
9 to considering the ORS 809.440(2)(b) defenses.

10           Moreover, many types of Department of Transportation actions may result  
11 in administrative review under ORS 809.440(2), not just suspensions of driving  
12 privileges for failure to pay traffic fines. Considering just one example, ORS 807.173  
13 provides that the department may cancel a commercial driver's license that carries a  
14 hazardous materials endorsement if the licensee does not pass a security threat  
15 assessment, "including receipt by the department of a notice from the federal  
16 Transportation Security Administration showing that the person does not pose a security  
17 threat." ORS 807.173(1)(a). A person whose license is canceled under that statute is  
18 entitled to administrative review under ORS 809.440. ORS 807.173(2). That  
19 administrative-review proceeding would be meaningful, in that context, not necessarily  
20 because any of the three ORS 809.440(2)(b) defenses would be available, but because the  
21 person whose commercial license was canceled would have an opportunity to show that

1 he or she was "not subject to the action" under ORS 809.440(2)(c), perhaps because the  
2 person could provide the department with the Transportation Security Administration  
3 notice showing that he or she was not a security threat.

4 In short, the list of defenses in ORS 809.440(2)(b) is not exclusive, and it  
5 does not limit the issues that a person may raise on administrative review. Rather, a  
6 person who seeks administrative review under ORS 809.440(2) is entitled to raise any  
7 defense to the department's action that is capable of being proved through a "careful  
8 review \* \* \* of the documents upon which [that] action is based," ORS 809.440(2)(a), or  
9 any other evidence of a type that the pertinent statutes contemplate the department will  
10 consider (in the example above, an appropriate notice from the Transportation Security  
11 Administration). DMV's contrary argument is unavailing.

12 DMV argues, finally, that, even if it could have considered matters beyond  
13 the ORS 809.440(2)(b) defenses, it still would have suspended plaintiff's driving  
14 privileges because nothing in the pertinent statutes "prohibits \* \* \* DMV from imposing  
15 a repeat suspension" for a continuing failure to pay a traffic fine. Indeed, DMV asserts,  
16 even after a person's driving privileges have been suspended for the statutory period for  
17 failure to pay a particular traffic fine, DMV may "issue a *second* 10-year suspension" for  
18 the person's ongoing failure to pay that same fine. (Emphasis added.) In that respect,  
19 too, we conclude that DMV has interpreted the law incorrectly.

20 Two statutes provide that a person's driving privileges may be suspended  
21 for 10 years if the person fails to pay a judicially imposed fine for a traffic offense. The



1 first is ORS 809.415(4)(a), which provides:

2 "The department shall suspend driving privileges when provided  
3 under ORS 809.416. The suspension shall continue until the earlier of the  
4 following:

5 "(A) The person establishes to the satisfaction of the department  
6 that the person has performed all acts necessary under ORS 809.416 to  
7 make the person not subject to suspension.

8 "(B) Ten years from the date the suspension is imposed if the  
9 suspension is imposed for a reason described in ORS 809.416 (1) or (2) \* \*  
10 \*."

11 The second statute specifying a 10-year suspension period is ORS 809.416(2), which  
12 provides:

13 "A person is subject to suspension under ORS 809.415(4) if the  
14 department receives notice from a court under ORS 809.210 that a person  
15 has failed to pay a fine or obey an order of the court. A person who is  
16 subject under this subsection remains subject until the person presents the  
17 department with notice issued by the court showing that the person has paid  
18 the fine or obeyed the order of the court or until 10 years have elapsed,  
19 whichever is earlier."

20 According to DMV, those statutes require it to suspend a person's driver's  
21 license for 10 years each time a court notifies it that a person has failed to pay a fine  
22 associated with a particular traffic offense, even when that results in multiple suspensions  
23 for the same unpaid fine. We disagree. Read in context, the two statutes quoted above  
24 contemplate a *maximum* 10-year suspension for failure to pay the fine associated with  
25 any given traffic offense.

26 Both ORS 809.415(4)(a) and ORS 809.416(2) incorporate a binary notion  
27 of when suspension of a person's driving privileges will end: *either* when the person pays  
28 his or her traffic fines (ORS 809.415(4)(a)(A); ORS 809.416(2)) *or* when 10 years have

1 elapsed (ORS 809.415(4)(a)(B); ORS 809.416(2)). Those two circumstances form the  
2 entire universe of possibilities: either the person pays the fines before 10 years have  
3 elapsed, thereby cutting short the possible suspension period, or the suspension lasts for a  
4 maximum of 10 years if the fines remain unpaid. Under DMV's interpretation of the  
5 statutes, however, the suspension of a person's driving privileges would not be limited by  
6 any provision of ORS chapter 809, but could continue indefinitely, as long as the court  
7 kept notifying DMV that the person still had not paid the traffic fines.<sup>7</sup> That  
8 interpretation of the statutes cannot be reconciled with the legislative intent to place a 10-  
9 year cap on the period of time for which a person's driving privileges may be suspended  
10 for failure to pay traffic fines. Cf. ORS 809.380(1) ("The period of suspension shall last  
11 as long as provided for that particular suspension by law."). We will not adopt a  
12 construction of the statutes that renders references to the 10-year suspension period  
13 meaningless. See *State v. Stamper*, 197 Or App 413, 418, 106 P3d 172, *rev den*, 339 Or  
14 230 (2005) ("[W]e assume that the legislature did not intend any portion of its enactments  
15 to be meaningless surplusage.").

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<sup>7</sup> DMV does take the position that the effective duration of a suspension order would be limited by other statutes--the provisions of ORS 18.180 to 18.194 that specify when judgment remedies expire. Indeed, the purported expiration of judgment remedies is the basis on which the circuit court ruled that the 2010 suspension orders in this case were invalid--it determined that the suspensions impermissibly would continue past the expiration date for judgment remedies associated with the underlying traffic convictions. We express no view on that assessment, as we affirm the circuit court's judgment on other grounds. For similar reasons, we do not reach plaintiff's cross-assignment of error, in which he challenges certain aspects of the circuit court's "expiration of judgment remedies" analysis.

1           Indeed, had the legislature intended, as DMV suggests, to allow a person's  
2 driving privileges to be suspended for as long as that person fails to pay his or her traffic  
3 fines, it could have drafted a statute that said so. That is, the legislature could have  
4 enacted a statute that did not reference any period of years, but stated simply that  
5 suspension "shall continue until the person has paid the fine." By enacting a statute  
6 providing, instead, that the suspension of a person's driving privileges ends when "10  
7 years have elapsed," even when the person's fines remain unpaid, the legislature has  
8 indicated its intent that a person's failure to pay a specific fine may result in his or her  
9 driving privileges being suspended for a *maximum* of 10 years. ORS 809.416(2).

10           Given our interpretation of the statutory provisions discussed above, a  
11 person's driving privileges remain subject to suspension for failure to pay traffic fines for  
12 a maximum of 10 years.<sup>8</sup> Consequently, a person can establish that he or she "is not  
13 subject to" a DMV suspension action for failure to pay a particular traffic fine if the  
14 person can show that his or her driving privileges already have been suspended for the  
15 maximum statutory period in association with the failure to pay that same fine. *See* ORS  
16 809.440(2)(c) (the person seeking administrative review of a DMV action "has the  
17 burden of showing by a preponderance of the evidence that the person is not subject to  
18 the action"). DMV erred by not considering plaintiff's argument that he was not subject  
19 to the 2010 suspensions for that reason.

---

<sup>8</sup> As noted, before the legislature amended the pertinent statutes in 2007, the maximum suspension period was only five years. *See* \_\_\_ Or App at \_\_\_ n 2 (slip op at 2 n 2).

1           The only question that remains relates to the appropriate disposition in this  
2 case. On review, we "may affirm, reverse or remand the order." ORS 183.484(5)(a).  
3 Here, because the pertinent facts are undisputed, we see no reason to remand. As noted  
4 above, DMV has acknowledged that in "the 5 years between 1997 and 2003," it  
5 suspended plaintiff's driving privileges for "5 years total" in association with his failure to  
6 pay each of the 1996 and 1997 fines. Plaintiff agrees. Thus, it is undisputed that DMV  
7 already suspended plaintiff's driving privileges for the then-applicable five-year statutory  
8 period starting in the late 1990s. Accordingly, we hold that, as a matter of law, DMV  
9 lacked authority to suspend plaintiff's driving privileges again, in 2010, for his continued  
10 failure to pay the 1996 and 1997 fines. Like the circuit court, we conclude that the  
11 appropriate remedy is reversal of the 2010 suspension orders.

12           Finally, we note that the circuit court also ordered DMV to reinstate  
13 plaintiff's driving privileges. DMV has not argued that, even if the circuit court was  
14 correct in reversing the 2010 suspension orders, it should not have required the agency to  
15 reinstate plaintiff's driving privileges. Accordingly, we do not disturb that aspect of the  
16 circuit court's judgment, either.

17           Affirmed.

2011 AUG -3 AM 10: 04

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF CLACKAMAS ENTERED \_\_\_\_\_ BY \_\_\_\_\_

1  
2  
3  
4 Timothy L. Richardson,

5 Plaintiff,

6 v.

7 State of Oregon Department of Transportation,  
8 Department of Motor Vehicles,

9 Defendants.

Case No. CV10100021

GENERAL JUDGMENT

ENTERED  
AUG 09 2011  
By: KLC

10 This matter came before the Court for trial on June 23, 2011. Plaintiff appeared *pro se*.  
11 Assistant Attorneys General Allison Banwarth and Matthew Donohue appeared as counsel for  
12 Defendants. In accordance with the Court's letter opinion issued July 6, 2011, as attached and  
13 incorporated herein, Judgment is granted in favor of Plaintiff Timothy L. Richardson and against  
14 Defendants. Defendants' August 16, 2010 Final Orders on Case Numbers 207049, 207050, and  
15 207051, are hereby reversed. DMV is ordered to reinstate Plaintiff/Petitioner's  
16 license.

17 DATED this 2<sup>nd</sup> day of August, 2011.

18 *Hon. Susie L. Norby*  
19 HONORABLE SUSIE L. NORBY  
Circuit Court Judge

20 Submitted by: Allison W. Banwarth  
21 Assistant Attorney General  
22 Of Attorneys for State of Oregon  
23  
24  
25  
26



# CIRCUIT COURT OF OREGON

FIFTH JUDICIAL DISTRICT  
CLACKAMAS COUNTY COURTHOUSE  
807 MAIN STREET, ROOM 301  
OREGON CITY, OREGON 97045

July 6, 2011

Susie L. Norby  
Circuit Court Judge

Tim Richardson  
205 W. Heintz Street #722  
Molalla, Oregon 97038

Allison W. Banwarth  
Matthew Donohue  
Assistant Attorneys General  
1162 Court Street NE  
Salem, Oregon 97301-4096

RE: Richardson v. ODOT - DMV  
Case No. CV 10-10-0021

Mr. Richardson, Ms. Banworth & Mr. Donohue:

This letter contains my rulings on the issues presented at trial in this case.

This matter came before the court on June 23, 2011 for trial. Plaintiff/Petitioner was self-represented. Defendant/Respondent was present by and through Elizabeth Woods, and represented by Assistant Attorneys General Allison Banwarth and Matthew Donohue. The court received stipulations of fact, exhibits, and sworn testimony from Mr. Richardson and Ms. Woods. After reviewing the parties' trial memos, the evidence received, and the arguments of each party, the court makes the following findings of fact, conclusions of law, and decision.

### Summary of Issues

Plaintiff/Petitioner Timothy Richardson ("Licensee"), requests judicial review of three Orders issued by Defendant/Respondent Oregon Department of Transportation Division of Motor Vehicles ("DMV") pursuant to ORS 809.440(2)(e) and ORS 183.484.<sup>1</sup> Specifically, Licensee requests that this court set aside, modify, or reverse the DMV Orders on Case Nos. 207049, 207050, and 207051 issued by Policy Analyst Elizabeth Woods on August 16, 2010. (Exhibit 104.) Those Orders concluded that it was proper for DMV to suspend Licensee's Oregon Driver's License based on notices from the Central Lane Justice Court. (Exhibit 101.) DMV requests that this court affirm all three Orders.

<sup>1</sup> The Orders are not titled "Orders" but are letters from DMV Policy Analyst Elizabeth Woods to Licensee denying his challenge to the 2010 DMV suspensions. Such letters are deemed final orders for APA purposes. Rooklidge v. DMV, 217 Or App 172, 177-8 (2007).

CLACKAMAS COUNTY CLERK  
STATE OF OREGON  
2011 JUL 12 PM  
ENTERED BY  
JUL 12 2011  
By: KLC  
(503) 650-8902  
FAX (503) 650-8909

Under ORS 183.484(5) and the pleadings in this case, the court is authorized to set aside, modify or reverse the three Orders only if DMV erroneously interpreted a provision of law in the Orders and the court concludes that a correct interpretation of the law compels a particular action. ORS 183.484(5)(a). No other form of challenge to the three Orders was raised by Licensee. If the court reverses the Orders, the court must make special findings of fact based on the evidence in the record and conclusions of law indicating clearly all aspects in which the DMV Orders are erroneous. ORS 183.484(6).

Licensee argues that DMV erroneously interpreted ORS 809.440(2)(b) & (c) in the Orders, because DMV incorrectly limited its review of the evidence to an assessment of the absolute defenses in ORS 809.440(2)(b), and declined to consider evidence that the suspension notices were void on its face. DMV argues that:

(1) ORS 809.440(2) authorizes only a review of three discrete objectively verifiable facts which are both exclusive and determinative;

(2) DMV must implement court suspension notices and orders whether or not they are void on their face, because of constitutional safeguards of the separation of powers, and because DMV is incapable of detecting whether a court suspension is facially void in an administrative review process; and

(3) If a Justice Court Order is not appealed, DMV is precluded from recognizing the Order as a nullity, and is compelled to presume legality regardless of the context or circumstances discovered during an ORS 809.440(2) review. Otherwise, Judicial Review under the APA would create a jurisdictional conflict.

#### Findings of Fact

1. Licensee was convicted of seventeen motor vehicle violations in 1996 and 1997 in the Central Lane Justice Court. A separate fine was ordered for each conviction.
2. Licensee did not pay his fines. Between November 28, 1996 and November 25, 1997, the Justice Court sent DMV seventeen notices to suspend Licensee's driving privileges under ORS 809.210.
3. After DMV properly informed Licensee of the intent to suspend, DMV did implement several concurrent suspensions of Licensee's driving privileges between February 22, 1997 and February 14, 1998, based on the Justice Court notices.<sup>2</sup>
4. Between February 22, 1997 and October 10, 2006, Licensee did not apply to reinstate his driving privileges. On October 10, 2006, Licensee reinstated his driving privileges and DMV issued him a license on October 10, 2006.
5. Plaintiff still did not pay the fines imposed by the Justice Court in 1996 and 1997.

---

<sup>2</sup> Prior to January 1, 2008, ORS 809.410(24) provided that ORS 809.210 suspensions would continue for five years unless paid. However, from January 1, 2008 to the present day, ORS 809.210 suspensions are statutorily set at ten years unless paid.

6. Licensee appeared before the Central Lane Justice Court on March 31, 2010 in the matters involving outstanding fines. The Justice Court issued an Order allowing Licensee seven days to pay the fines or arrange with the court clerk to do so. (Exhibit 108).
7. The March 31<sup>st</sup> Justice Court Order did not impose license suspensions, but predicted that license suspensions may be ordered later if Licensee failed to act.
8. Licensee's request to reconsider was denied by Justice Court Order on April 12<sup>th</sup>.
9. On May 26, 2010, the Justice Court sent seventeen ORS 809.210 Notifications of Failure to Pay Fine ("Notices") to DMV on Licensee's Judgments. The Notices instructed DMV to again suspend Licensee's driving privileges indefinitely.<sup>3</sup> The Notices listed incident dates between June 12, 1996 and July 16, 1997, which represent the earliest dates Judgments could have existed.
10. DMV sent Licensee letters on June 20, 23 & 24, 2010 to inform him that his license would be suspended on August 19, 22, & 23, 2010 under the Notices.
11. Licensee requested administrative review and DMV affirmed the suspensions in letters dated August 16, 2010. (Exhibit 104.) In these letters, Policy Analyst Elizabeth Woods concluded that it was proper for DMV to implement license suspensions under the Notices.
12. Policy Analyst Elizabeth Woods testified credibly that DMV's policy and practice in implementing court ordered license suspensions is one in which data processors routinely review the dates written on court suspension documents to confirm the lawfulness of the suspensions. If a court ordered suspension is plainly unlawful, DMV declines to implement it, and sends the court a standardized form notification that the suspension is not authorized by law and will not be implemented. (Court Exhibit A.)

### Conclusions of Law

1. Justice Court Orders of March 31, 2010 and April 12, 2010 were not Appealable. The Justice Court Orders dated March 31, 2010 were post-conviction Orders after Judgments on conviction of traffic violations in 1996 and 1997. The underlying action designated in the Docket numbers and Case Captions was criminal under ORS 131.005(6). The Orders are unappealable because they neither precede attachment of jeopardy, nor arrest the judgment.<sup>4</sup> ORS 157.020.

<sup>3</sup> Interestingly, the Notices sent to DMV were not issued under the signature of the Judge who signed the March 31<sup>st</sup> and April 12<sup>th</sup> Orders. The Judge's signature line on each Notice has the stamped signature of a different Judge, who was publicly held out to have been on administrative leave from judicial duties at the time the notices were prepared, and who did not resume duties before leaving judicial office shortly afterward. But this anomaly was not mentioned in the pleadings, evidence or arguments of the parties. It is unknown whether DMV inspects ORS 809.210 Notices before implementation to ensure that they are properly signed by an acting Judge in good standing with the court where the notices originated.

<sup>4</sup> If the underlying action is deemed civil, they are unappealable under ORS 53.010 because although they are orders entered after a general judgment, they do not affect a substantial right. ORS 19.205(3). These



2. The Justice Court Orders were not Ripe for Writ of Review Proceedings.

The Justice Court Order dated March 31, 2010 acted as an Order to deny Licensee's Motion to Clarify<sup>5</sup>, but did not constitute a valid Court Order for suspension, because the possibility of suspension mentioned in the Order was contingent on future events.<sup>6</sup> There was no "decision or determination" regarding license suspension in the Order, only a prediction about what could trigger a future suspension. As such, neither the March 31, 2010 nor the April 12, 2010 Order Denying Reconsideration was ripe for a Writ of Review under ORS 34.010 to 34.100 as to the possibility of license suspensions.

3. The Justice Court Judgments issued in 1996 and 1997 expire in 2016 and 2017.

The Justice Court Judgments entered in 1996 and 1997 were for violations that qualify as criminal actions under ORS 131.005(6), therefore they expire no earlier than June 12, 2016 and no later than July 16, 2017 under ORS 18.194(3) & (9).

4. The Notices Plainly Required DMV to Implement Remedial Ten Year License Suspensions that Exceed the Expiration Date of All Original Judgments.

The Justice Court sent Notices to DMV under ORS 809.210. ORS 809.210(4)(b) requires DMV to act on the suspensions under ORS 809.416. ORS 809.416(2) requires the suspension to be initiated under ORS 809.415(4) upon DMV's receipt of a court notice. Under ORS 809.415(4)(a) the Licensee's suspension is a ten year remedial suspension.

Under ORS 809.416(2), DMV may not implement the court notice of suspension until after giving Licensee a sixty day notice of the intent to suspend. Therefore, if DMV: (a) received the Notices the same day the court issued them, (b) sent Licensee his sixty day notices the same day, and (c) began the suspensions on the sixty-first day, the earliest statutory expiration date for Licensee's suspensions would be July 26, 2020, unless remediated by Licensee's subsequent action.<sup>7</sup>

Therefore, the statutory duration of the suspensions that the Justice Court instructed DMV to implement against Licensee in this case would exceed the expiration date of all Judgments against him, some by more than four years. This mathematical certainty was apparent on the face of the Notices.

---

Orders did not impose a license suspension or any other sanction. The March 31, 2010 Order predicted the possibility that a substantial *privilege* may be affected in the future, contingent on unpredictable subsequent events, but a prediction is indeterminate, and does not create an appealable court Order.

<sup>5</sup> The Justice Court Order does not specifically identify the genesis of the March 31, 2010 hearing. Exhibit 109 indicates that the hearing was initiated by Licensee's filing of a Motion to Clarify the enforcement mechanisms still available under the 1996 and 1997 Judgments. The Justice Court Order denied Licensee's Motion, indicating that the hearing was not originally instigated by the Justice Court.

<sup>6</sup> A Justice of the Peace may not suspend the operation of a judgment by making its operation depend upon some future event. See *Ex parte Matthews*, 109 Or 88, 90 (1923).

<sup>7</sup> In this case, DMV's actual suspensions were to commence on August 19, 22 & 23, 2010, but the earliest possible date is relevant because it is based solely on information on the face of the Notices, and could be calculated by DMV staff instantly upon receiving those documents from the Justice Court.

## 5. Dispositive Questions on Judicial Review

There are two dispositive questions in this Judicial Review:

- 1) If enforcement action is taken while a judgment is still enforceable, can the presumptive duration of the remedial penalty exceed the life of the judgment?
- 2) If "no," then must DMV implement an ORS 809.290 court notice to suspend if it is apparent on its face that the suspension duration is unlawful?

### Court's Analysis

To determine whether DMV erroneously interpreted a provision of law in its Orders, this analysis will address the two dispositive questions identified in Conclusion of Law no. 5 above, and incorporate discussion of DMV's three main trial arguments.

**Question One: If enforcement action is taken while a judgment is still enforceable, can the presumptive duration of the remedial penalty imposed exceed the life of the judgment?**

#### Statutory Limitation on State Enforcement Authority

Oregon Revised Statutes both create governmental authority and limit it. The state is authorized by law to enter judgments in criminal actions, but is limited in its ability to enforce them. They are not enforceable forever. ORS 18.194(3) states that all judgment remedies in a criminal action expire 20 years after entry of judgment. That expiration date is mandatory, not discretionary. Attempts to enforce a judgment after 20 years elapse are not authorized by law. Statutory license suspensions are an optional enforcement remedy under ORS 809.415(4)(a) and ORS 809.416(2). But the ten year duration of a remedial statutory license suspension is also mandatory, not discretionary. DMV is in accord: "By asking DMV to lift the suspension before ten years has passed from the date of the suspension and in the absence of court notice that Plaintiff has satisfied his judgments, Plaintiff asks DMV to act inconsistent to Oregon statute." (Respondent/DMV Memorandum in Support of Summary Judgment, p 5, lines 22-24.)

#### Mathematical Conflict Arises from Re-Use of Suspension Enforcement Mechanism

Never-the-less, DMV argues that this statutory ten year license suspension can be used more than once to enforce a single criminal judgment. This interpretation ignores the conflict inherent in repeating this license suspension of mandatory ten year duration. Under ORS 809.416(2), DMV must give a sixty day notice to a licensee before implementing the remedial ten year suspension as a court ordered enforcement remedy. This means that the process of implementing a remedial suspension under this statutory scheme requires a minimum timeframe of ten years and two months. To use the remedy twice, that timeframe must double to 20 years and four months. Since ORS 18.194(3) limits the state's ability to enforce judgments in criminal actions to only 20 years, re-use of the remedial suspension enforcement mechanism is a mathematical impossibility. The inevitable result would be to over-reach the 20 year restriction on governmental authority in ORS 18.194(3), by triggering a legal mechanism that compels fine enforcement long after the court loses its authority to impose, retract or cancel it.

DMV's emphasis on the fact that the Justice Court judgments had not expired for enforcement purposes at the time the Notices were issued in this case is misplaced. If a notice could be issued at any time during the life of a judgment, then a notice issued on the 364<sup>th</sup> day of the 19<sup>th</sup> year after entry of a judgment could result in a DMV suspension that continues into the thirtieth year after the conviction was entered. This interpretation would render the limitation on enforcement authority in ORS 18.194(3) meaningless.

#### Scope of DMV Administrative Review Under ORS 809.440(2)

DMV also argued that the statutory conflict described above is irrelevant in this case, because the only issue before the court is whether DMV properly conducted its administrative review of the Notices under ORS 809.440(2). DMV urges the court to strictly apply the administrative review statute to limit the scope of analysis to three discrete verifiable facts, and hold them to be both exclusive and determinative:

- (1) Whether the original conviction involved a motor vehicle,
- (2) Whether the original conviction was for an out-of-state offense that does not correlate to an Oregon offense, and
- (3) Whether the department's records identify the wrong person.

This argument runs contrary to common sense and agency policy and practice, however. The evidence clearly shows that DMV is not only capable of screening court requests for license suspensions to confirm legality based on dates and simple math; it routinely does so, even outside the context of statutory APA reviews. DMV data processors engage in simple addition and subtraction based on the dates shown on the face of court ordered suspensions regularly. They do this so often that a standardized form (Court Exhibit A) exists to document the myriad circumstances under which court ordered suspension durations are unauthorized and unimplemented.

ORS 809.440 authorizes licensees to initiate an administrative review process designed to protect against the risk of improper agency action on a suspension. The existence of a special review process indicates legislative recognition that DMV has a heightened responsibility to be circumspect in implementing notices to suspend under ORS 809.415(4)(a) and ORS 809.416(2). It does not suggest that obvious illegalities should be ignored while less obvious ones are scrutinized. Any DMV employee should be able to see from the face of an ORS 809.210 notice whether the suspension sought can be implemented prior to the expiration of the underlying judgment. If not, the notice is unlawful on its face, and no ORS 809.440 review should be necessary before DMV declines to implement the suspension consistent with its established policy and practices. But if this fatal flaw is missed by DMV employee screeners, it should be caught and corrected in the process of administrative review.

**Question Two: Must DMV implement a court notice to suspend if it is apparent on the face of the Notice that the suspension duration is unlawful?**

#### Scope of DMV's Role in Suspension Impelementation

DMV also argued that it must implement court suspension notices and orders whether or not they are void on their face, because of constitutional protections involving the separation of powers, and because DMV is incapable of detecting whether a court

notice to suspend is facially void in an administrative review process. This argument is also not persuasive. The contention runs contrary to DMV's own policy and practices, illustrated by Policy Analyst Elizabeth Woods' testimony and Court Exhibit A. Even DMV data entry processors do simple math to ensure the validity of court suspension requests. An administrative policy analyst conducting an ORS 809.440 review should do no less.

Ultimately, license suspensions are strictly regulated by statute, and the governmental entity most familiar with the statutory authorizations and limitations regarding license suspensions is DMV, not the judicial department. This is apparent from Exhibit 1, a six page document created by DMV that lists the statutory bases and durations for over 100 different license suspensions. This extensive list is evidence of the specialized knowledge necessary to oversee license suspension requests and orders. DMV is authorized by statute and administrative rule to implement suspensions and to review requests and orders for suspension. It provides a crucial check and balance on the government's authority to regulate the privilege of driving. DMV's role in implementing license suspensions complements and supports the court's role in sanctioning unlawful conduct within its authority. DMV review of court ordered license suspensions does not threaten the authority of the judicial branch, but rather confirms and corroborates it.

#### Effect of a Licensee's Failure to Appeal

DMV alternatively argued that, if a Justice Court Order is not appealed, DMV is precluded from disregarding the Order as void, and is compelled to presume legality regardless of the context or circumstances discovered during an ORS 809.440(2) review. DMV suggests that any other practice in a Judicial Review under the APA would create a jurisdictional conflict. This argument also fails, for several reasons. First, no "jurisdictional conflict" generally exists, because ORS 809.210 suspensions like the one in this case are not implemented until after the time to appeal the original judgment, or any post-judgment order, has run. Second, since these suspensions necessarily arise from criminal actions, the Orders regarding the suspensions are unappealable because they neither precede attachment of jeopardy, nor arrest the judgment as described in ORS 157.020. Finally, the Justice Court Order issued in this case did not constitute a valid Court Order to suspend, because the possibility of suspension was made contingent on future events. There was no "decision or determination" regarding license suspension in the Order, only a prediction about what could trigger a future suspension. (i.e. Inaction by the Licensee.) As such, the Order was not ripe for a Writ of Review under ORS 34.010 to 34.100 as to the potential license suspension. There is no risk here that jurisdiction under the APA could overlap, or conflict with, any other remedy.

Perhaps most compelling, the ORS 809.210 suspension scheme does not link the statutory remedial suspension to a court order at all. It links the suspension to a court *Notice* to DMV. Although signed by a judge, the notice document is not directed to a licensee who can appeal it. It is directed to DMV. The notice sent by the court to DMV need not be copied to the licensee, or preceded by a post-judgment court order under the statute. Instead, DMV is statutorily required to generate its own sixty day notice to the licensee after receiving an ORS 809.210 notice, and before imposing the suspension

requested. So, the statutory process is purely administrative, and APA action is the only remedy a licensee has to challenge it. While it may be necessary for court orders and judgments to be declared void or voidable by a court authority before they can be disregarded, an ORS 809.210 notification to DMV does not have the same force and effect as a court order or judgment. A notice document is an administrative tool subject to DMV review under the APA. The fact that it may contain a judge's signature (or in this case the signature stamp of a person presumed to be acting as a judge) does not amplify its legal value to that of a judgment or order.

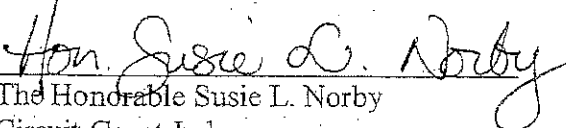
#### Summary of Court's Ruling

The court concludes that the presumptive ten year duration of a remedial penalty imposed under ORS 809.210, ORS 809.415(4)(a) and ORS 809.416(2) may not exceed the life of the underlying judgment it is invoked to enforce. Further, DMV must not implement a court notice to suspend if it is apparent on the face of the Notice that the presumptive suspension duration will unlawfully extend enforcement action on the underlying judgment beyond twenty years.

The court therefore reverses the August 16, 2010 DMV Orders on Case Nos. 207049, 207050, and 207051 issued by Policy Analyst Elizabeth Woods. Those Orders concluded that it was proper for DMV to suspend Licensee's Oregon Driver's License for new ten year terms based on notices from the Central Lane Justice Court issued to DMV in the 13<sup>th</sup> and 14<sup>th</sup> years after entry of the underlying judgments. This was an incorrect interpretation of ORS 809.210, ORS 809.415 and ORS 809.416 in light of ORS 18.194(3), because its practical effect is to extend use of an enforcement mechanism beyond the twenty year lives of the judgments. A correct interpretation of the law in this case compels a particular action, which is the reversal of the license suspensions initiated under the May 26, 2010 Notices from the Central Lane Justice Court. DMV is ordered to reinstate Petitioner's license and give no effect to the unlawful Notices of May 26, 2010.

Ms. Banwarth is directed to prepare a form of Judgment to memorialize this opinion, within two weeks of the date of this letter.

Very truly yours,

  
The Honorable Susie L. Norby  
Circuit Court Judge



**809.210 Suspension or restriction of driving privileges for failure to pay fine or obey court order; exceptions.** (1) A court may do any of the following if the defendant is convicted of any traffic offense and fails or refuses to pay a fine imposed by the judge or to comply with any condition upon which payment of the fine or any part of it was suspended:

(a) Issue notice to the Department of Transportation to implement procedures under ORS 809.416.

(b) Order a defendant's driving privileges restricted.

(2) The authority granted in this section is in addition to or instead of any other method authorized by law for enforcing a court order.

(3) If a court places restrictions on driving privileges under this section:

(a) The judge shall immediately advise the department of the restrictions.

(b) Upon removal of such restriction, the court shall notify the department that the restriction is ended.

(c) The restriction shall remain in effect until ended by the court.

(d) The department shall take action as provided under ORS 807.120 on restrictions imposed under this section.

(e) The restrictions may include any restriction, condition or requirement.

(f) Violation of the restriction is punishable as provided under ORS 807.010.

(4) If a judge issues notice to implement procedures under ORS 809.416 as provided under this section:

(a) The judge shall immediately send to the department notice upon payment of the fine as ordered.

(b) The department shall take action on the suspension as provided under ORS 809.416.

(5) A court shall not issue notice under this section to implement procedures under ORS 809.416 for failure to pay a fine relating to any parking offense, pedestrian offense or bicycling offense.

**809.220 Failure to appear; suspension or other procedures.** This section establishes procedures that are applicable if a person fails to appear on a citation for a traffic offense or for a violation of ORS 471.430. All of the following apply to this section:

(1) If a defendant fails to make any appearance required by the court or by law in a proceeding charging the defendant with a traffic offense or with a violation of ORS 471.430, the court:

(a) Shall issue notice to the Department of Transportation to suspend for failure to appear if the defendant is charged with a traffic crime or with a violation of ORS 471.430. If a court issues notice under this paragraph, the department shall suspend the driving privileges of the person as provided under ORS 809.280.

(b) Shall issue notice to the department to implement procedures under ORS 809.416 if the defendant is charged with a traffic violation. If a court issues notice under this paragraph, the department shall implement procedures under ORS 809.416.

(2) In any notice to the department under this section, a court shall certify that the defendant failed to appear in the proceedings in the manner required by the court or by law.

(3) At any time within 10 years from the date of a notice to suspend for failure to appear given to the department under this section, a court shall give a second notice to the department to reinstate the person's suspended driving privileges resulting from the original notice if any of the following occur:

- (a) The fine for the offense is paid.
- (b) The court finds the defendant not guilty or orders a dismissal of the case.
- (c) The court determines that the person's suspended driving privileges should be reinstated for good cause.
- (4) Notifications by a court to the department under this section shall be in a form prescribed by the department.
- (5) A court shall not notify the department under this section for failure to appear on any parking, pedestrian or bicyclist offense.

**809.415 Suspensions for conduct involving judgments, financial responsibility, dishonesty.**

- (1)(a) The Department of Transportation shall suspend the driving privileges of a person who has a judgment of the type described under ORS 806.040 rendered against the person if the person does not settle the judgment in the manner described under ORS 809.470 within 60 days after its entry.
  - (b) A suspension under this subsection shall continue until the person does one of the following:
    - (A) Settles the judgment in the manner described in ORS 809.470.
    - (B) Has an insurer that has been found by the department to be obligated to pay the judgment, provided that there has been no final adjudication by a court that the insurer has no such obligation.
    - (C) Gives evidence to the department that a period of seven years has elapsed since the entry of the judgment.
    - (D) Receives from the court that rendered the judgment an order permitting the payment of the judgment in installments.
  - (c) A person is entitled to administrative review under ORS 809.440 of a suspension under this subsection.
- (2)(a) The department shall suspend the driving privileges of a person who falsely certifies the existence of a motor vehicle liability insurance policy or the existence of some other means of satisfying financial responsibility requirements or of a person who, after certifying the existence of a motor vehicle liability insurance policy or other means of satisfying the requirements, allows the policy to lapse or be canceled or otherwise fails to remain in compliance with financial responsibility requirements.
  - (b) Notwithstanding paragraph (a) of this subsection, the department may suspend under this subsection only if proof of compliance with financial responsibility requirements as of the date of the letter of verification from the department under ORS 806.150 is not submitted within 30 days after the date of the mailing of the department's demand under ORS 806.160.
  - (c) A suspension under this subsection shall continue until the person complies with future responsibility filings.
- (3)(a) The department shall suspend the driving privileges of a person who fails to comply with future responsibility filings whenever required under the vehicle code or fails to provide new proof for future responsibility filings when requested by the department.
  - (b) A suspension under this subsection shall continue until the person complies with future responsibility filings.
  - (c) A person whose initial obligation to make future responsibility filings is not based upon a conviction or other action by a court is entitled to a hearing under ORS 809.440 prior to a suspension under this subsection. A person whose obligation to make future responsibility filings



is based upon a conviction or other action by a court is entitled to administrative review under ORS 809.440 of a suspension under this subsection. A person whose suspension under this subsection is based on lapses in filing after the initial filing has been made is entitled to administrative review under ORS 809.440.

(4)(a) The department shall suspend driving privileges when provided under ORS 809.416. The suspension shall continue until the earlier of the following:

(A) The person establishes to the satisfaction of the department that the person has performed all acts necessary under ORS 809.416 to make the person not subject to suspension.

(B) Ten years from the date the suspension is imposed if the suspension is imposed for a reason described in ORS 809.416 (1) or (2) or five years from the date the suspension is imposed if the suspension is imposed for the reason described in ORS 809.416 (3).

(b) A person is entitled to administrative review under ORS 809.440 of a suspension under this subsection.

(5) Upon determination by the department that a person has committed an act that constitutes an offense described in ORS 809.310, the department may suspend any driving privileges or any identification card of the person determined to have committed the act. A suspension under this subsection shall continue for a period of one year.

(6) Upon determination by the department that a person has submitted false information to the department for the purpose of establishing or maintaining qualification to operate a commercial motor vehicle or hold a commercial driver license, the department may suspend the commercial driver license or the person's right to apply for a commercial driver license. A suspension under this subsection shall continue for a period of one year. [2003 c.402 §5; 2007 c.127 §1; 2011 c.470 §5]

**809.416 When person subject to suspension under ORS 809.415; duration.** This section establishes circumstances that will make a person subject to suspension under ORS 809.415 (4) and what a person is required to do to make the person no longer subject to suspension. The following apply as described:

(1) A person is subject to suspension under ORS 809.415 (4) if the Department of Transportation receives notice from a court to apply this section under ORS 809.220. A person who is subject under this subsection remains subject until the person presents the department with notice issued by the court showing that the person is no longer subject to this section or until 10 years have elapsed, whichever is earlier. This subsection shall not subject a person to ORS 809.415 (4) for any pedestrian offense, bicycling offense or parking offense. Upon receipt of notice from a court, the department shall send a letter by first class mail advising the person that the suspension will commence 60 days from the date of the letter unless the person presents the department with the notice required by this subsection.

(2) A person is subject to suspension under ORS 809.415 (4) if the department receives notice from a court under ORS 809.210 that a person has failed to pay a fine or obey an order of the court. A person who is subject under this subsection remains subject until the person presents the department with notice issued by the court showing that the person has paid the fine or obeyed the order of the court or until 10 years have elapsed, whichever is earlier. This subsection shall not subject a person to ORS 809.415 (4) for failure to pay a fine relating to any pedestrian offense, bicycling offense or parking offense. Upon receipt of notice from a court, the department shall send a letter by first class mail advising the person that the suspension will

commence 60 days from the date of the letter unless the person presents the department with the notice required by this subsection.

(3) A person is subject to suspension under ORS 809.415 (4) if the person pays the department any fee or tax with a bank check and the check is returned to the department as uncollectible or the person tenders payment with a credit or debit card and the issuer of the card does not pay the department. A person who is subject under this subsection remains subject until the department receives the money for the fee or tax and any fee charged by the department under ORS 802.170 or until five years have elapsed, whichever is earlier.

**809.440 Hearing and administrative review procedures.** (1) When other procedures described under this section are not applicable to a suspension or revocation under ORS 809.409 to 809.423, the procedures described in this subsection shall be applicable. All of the following apply to this subsection:

(a) The hearing shall be given before the department imposes the suspension or revocation of driving privileges.

(b) Before the hearing, the department shall notify the person in the manner described in ORS 809.430.

(c) The hearing shall be in the county where the person resides unless the person and the department agree otherwise.

(d) The hearing shall be conducted by an administrative law judge assigned from the Office of Administrative Hearings established under ORS 183.605.

(2) The following apply when administrative review is provided under any statute or rule of the department:

(a) An administrative review shall consist of an informal administrative process to assure prompt and careful review by the department of the documents upon which an action is based.

(b) It shall be a defense to the department's action if a petitioner can establish that:

(A) A conviction on which the department's action is based was for an offense that did not involve a motor vehicle and the department's action is permitted only if the offense involves a motor vehicle.

(B) An out-of-state conviction on which the department's action is based was for an offense that is not comparable to an offense under Oregon law.

(C) The records relied on by the department identify the wrong person.

(c) A person requesting administrative review has the burden of showing by a preponderance of the evidence that the person is not subject to the action.

(d) Actions subject to administrative review shall be exempt from the provisions of ORS chapter 183 applicable to contested cases, and from the provisions of subsection (4) of this section applicable to post-imposition hearings. A suspension, revocation or cancellation shall not be stayed during the administrative review process or by the filing of a petition for judicial review. A court having jurisdiction may order the suspension, revocation or cancellation stayed pending judicial review.

(e) Judicial review of a department order affirming a suspension or revocation after an administrative review shall be available as for review of orders other than contested cases, and the department may not be subject to default for failure to appear in such proceedings. The department shall certify its record to the court within 20 days after service upon the department of the petition for judicial review.

(f) If the suspension or revocation is upheld on review by a court, the suspension or revocation shall be ordered for the length of time appropriate under the appropriate statute except that the time shall be reduced by any time prior to the determination by the court that the suspension or revocation was in effect and was not stayed.

(g) The department shall adopt any rules governing administrative review that are considered necessary or convenient by the department.

(3) When permitted under this section or under any other statute, a hearing may be expedited under procedures adopted by the department by rule. The procedures may include a limited time in which the person may request a hearing, requirements for telephone hearings, expedited procedures for issuing orders and expedited notice procedures.

(4) When permitted under ORS 809.413, 809.417, 809.419 or 809.421, a hearing may be a post-imposition hearing under this subsection. A post-imposition hearing is a hearing that occurs after the department imposes the suspension or revocation of driving privileges. All of the following apply to this subsection:

(a) The department must provide notice in the manner described in ORS 809.430 before the suspension or revocation may take effect.

(b) Except as provided in this subsection, the hearing shall be conducted as a contested case in accordance with ORS chapter 183.

(c) Unless there is an agreement between the person and the department that the hearing be conducted elsewhere, the hearing shall be held either in the county where the person resides or at any place within 100 miles, as established by the department by rule.

(5) The department has complied with a requirement for a hearing or administrative review if the department has provided an opportunity for hearing or review and the person with the right to the hearing or review has not requested it. Any request for hearing or review must be made in writing.

(6) For any hearing described under this section, and for administrative review described under this section, no further notice need be given by the department if the suspension or revocation is based upon a conviction and the court gives notice, in a form established by the department, of the rights to a hearing or review and of the suspension or revocation.

