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# Transportation and Motor Vehicles

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# Transportation and Motor Vehicles

## Transportation and Motor Vehicles; driving under the influence

Vehicle Code §§13353.1, 23216, 23217 (new); §§13353, 13353.5, 23161, 23165, 23170, 23175, 23181, 23185, 23190, 23200, 23202, 23203, 23204, 23205, 23206, 23209, 23212 (amended); §23208 (amended and renumbered).

SB 1441 (Petris); 1984 STAT. Ch 326

SB 2232 (Keene); 1984 STAT. Ch 1319

AB 3509 (Condit); 1984 STAT. Ch 1417

AB 3720 (Wyman); 1984 STAT. Ch 1585

AB 3833 (O'Connell); 1984 STAT. Ch 1205

AB 2965 (Moorhead); 1984 STAT. Ch 1431

### *Enhanced Penalties*

Chapter 1205 addresses the concern that repeat violators of California prohibitions against drunk driving are avoiding enhanced penalties for multiple offenses within a five year period.<sup>1</sup> Under prior law, repeat offenders could circumvent the intent of the Legislature to punish the offender with progressively greater severity for consistent violations when a conviction for a subsequent offense occurred before a conviction for an earlier offense was obtained.<sup>2</sup> By changing the term "prior offense" to "separate offense," and in some instances "separate violation," in reference to multiple offenses, the California Legislature provides that a person will be subject to enhanced mandatory minimum penalties for multiple violations regardless of the order in which the convictions occur.<sup>3</sup>

Prior law provided enhanced mandatory minimum penalties when a person was convicted of driving under the influence of drugs or

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1. CAL. VEH. CODE §23217.

2. *Id.*

3. *Id.*

alcohol or while addicted to a drug<sup>4</sup> (hereinafter referred to as DUI), and the offense occurred within five years of one or more *prior* offenses resulting in one or more DUI convictions or one or more convictions of proximately causing injury to another while DUI<sup>5</sup> (hereinafter referred to as injury DUI).<sup>6</sup> Prior law also provided for enhanced mandatory minimum penalties when a person was convicted of DUI and the offense occurred within five years of a *prior* offense resulting in a conviction of reckless driving based on a prescribed plea bargain procedure and reduced from an original charge of DUI<sup>7</sup> (hereinafter referred to as "wet reckless").<sup>8</sup> Chapters 1205 and 1417 provide enhanced mandatory minimum penalties when a person is convicted of DUI, and the offense occurs within five years of one or more *separate* offenses resulting in DUI convictions, convictions of injury DUI, or *one or more separate* offenses resulting in "wet reckless" convictions or any combination thereof.<sup>9</sup>

Similarly, under prior law, when a person was convicted of injury DUI and the offense occurred within five years of one or more *prior* offenses resulting in DUI convictions or injury DUI convictions, that person was subject to enhanced mandatory minimum penalties.<sup>10</sup> With the enactment of Chapter 1205, if a person is convicted of injury DUI and the offense occurs within five years of one or more *separate* offenses resulting in DUI convictions or convictions of injury DUI, or any combination thereof, that person is subject to enhanced mandatory minimum penalties.<sup>11</sup>

### Constitutional Proceedings

Under prior law, in any proceeding to invalidate on constitutional grounds a *prior* judgment of conviction of DUI or injury DUI, the

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4. See CAL. VEH. CODE §23152. A person may not drive a vehicle under the influence of a drug or alcohol or while addicted to a drug. *Id.* A person may not drive a motor vehicle with a blood alcohol content of 0.10% or more. *Id.*

5. See *id.* §23153. A person who is DUI may not do any act forbidden by law or neglect any duty imposed by law which proximately causes injury to another. *Id.*

6. See 1982 Cal. Stat. c. 1339, §17, at 4987 (amending CAL. VEH. CODE §23165); 1983 Cal. Stat. c. 637, §2, at \_\_\_\_ (amending CAL. VEH. CODE §23170); 1983 Cal. Stat. c. 637, §3, at \_\_\_\_ (amending CAL. VEH. CODE §23175).

7. See CAL. VEH. CODE §23103.5 (acceptance of a guilty or nolo contendere plea to reckless driving in place of an original charge of DUI).

8. See 1982 Cal. Stat. c. 1339, §17, at 4987 (amending CAL. VEH. CODE §23165).

9. CAL. VEH. CODE §§23165, 23170, 23175. Compare *id.* with 1982 Cal. Stat. c. 1339, §17, at 4987 (amending CAL. VEH. CODE §23170); 1983 Cal. Stat. c. 637, §3, at \_\_\_\_ (amending CAL. VEH. CODE §23175). See CAL. VEH. CODE §§23165, 23170, 23175 (mandatory penalties).

10. See 1982 Cal. Stat. c. 1339, §24, at 4990 (amending CAL. VEH. CODE §23185); 1982 Cal. Stat. c. 1339, §27, at 4992 (amending CAL. VEH. CODE §23190).

11. CAL. VEH. CODE §§23185, 23190; see *id.* (mandatory penalties). Compare *id.* with 1982 Cal. Stat. c. 1339, §24, at 4990 (amending CAL. VEH. CODE §23185), and 1982 Cal. Stat. c. 1339, §27, at 4992 (amending CAL. VEH. CODE §23190).

defendant was required to state in writing specifically how the defendant was deprived of constitutional rights.<sup>12</sup> With the enactment of Chapter 1585, a defendant must make this statement in any proceeding to invalidate on constitutional grounds a conviction of DUI, injury DUI, or “wet reckless” that was entered in a *separate proceeding*.<sup>13</sup> Additionally, Chapter 1585 requires the statement to be filed with the clerk of the court, and that a copy be served on the court that rendered the judgment and on the prosecuting attorney in the present proceedings, at least five court days prior to the hearing.<sup>14</sup> Prior law required that the court hold the hearing to determine the constitutionality of any relevant *prior* conviction outside of the presence of the jury and prior to trial of any criminal action in which the prior conviction was relevant.<sup>15</sup> Under Chapter 1205, the court is required to hold the hearing in the same manner, but to determine the constitutionality of relevant *separate* convictions.<sup>16</sup>

Under prior law, the burden of proof remained with the prosecution, the standard being beyond a reasonable doubt.<sup>17</sup> The prosecution also had the burden of producing evidence of the *prior* conviction, and the defendant had the burden of producing evidence that the defendant’s constitutional rights were infringed.<sup>18</sup> Chapter 1205 assigns the burdens of proof and production in the same manner but in relation to *separate* convictions.<sup>19</sup> Additionally, Chapter 1585 codifies case law<sup>20</sup> by providing that if the separate conviction were based on a nolo contendere or guilty plea, the defendant must provide the court with evidence of the plea, including (1) the court docket, (2) any written waivers of constitutional rights by the defendant, and (3) transcripts of the relevant proceedings at the time of the defendant’s plea.<sup>21</sup> Chapter 1585 also provides that if the defendant is represented by a public defender or counsel otherwise appointed by the court, these records, if available, must be provided to the defendant without

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12. See 1981 Cal. Stat. c. 940, §15, at 3567 (amending CAL. VEH. CODE §23208).

13. CAL. VEH. CODE §41403(a). Compare *id.* with 1981 Cal. Stat. c. 940, §15, at 3567 (amending CAL. VEH. CODE §23208).

14. CAL. VEH. CODE §41403(a).

15. See 1981 Cal. Stat. c. 940, §15, at 3567 (amending CAL. VEH. CODE §23208).

16. CAL. VEH. CODE §41403(b). Compare *id.* with 1981 Cal. Stat. c. 940, §15, at 3567 (amending CAL. VEH. CODE §23208).

17. See 1981 Cal. Stat. c. 940, §15, at 3567 (amending CAL. VEH. CODE §23208).

18. *Id.*

19. CAL. VEH. CODE §41403(b)(1)-(3). Compare *id.* with 1981 Cal. Stat. c. 940, §15, at 3567 (amending CAL. VEH. CODE §23208).

20. See *People v. Zavala*, 147 Cal. App. 3d 429, 442, 195 Cal. Rptr. 527, 535 (1983). The court held that the defendant must make a prima facie showing that the defendant’s rights were violated and must produce evidence from a relevant source that the proceedings were unconstitutional. *Id.*

21. CAL. VEH. CODE §41403(b)(3).

cost.<sup>22</sup> Under Chapter 1585, if the defendant fails to comply with any of these notice or evidentiary requirements, the court will not grant a continuance, but will consider the constitutional issue at sentencing.<sup>23</sup> If, however, the defendant shows good cause for failing to give proper notice or produce evidence, the court will grant a continuance for a reasonable time.<sup>24</sup>

Prior law permitted one challenge to the constitutionality of a *prior* conviction of DUI, injury DUI, or driving when the privilege is suspended or revoked for certain offenses.<sup>25</sup> When a proceeding to declare a prior conviction invalid on constitutional grounds was held, a determination by the court that the prior judgment was constitutionally valid precluded subsequent attack on constitutional grounds in a prosecution in which the same prior conviction was charged.<sup>26</sup> If the prior conviction were declared unconstitutional, allegation or use of that conviction in subsequent proceedings was precluded.<sup>27</sup> Chapter 1205 changes this provision only to the extent that it refers to *separate* convictions instead of *prior* convictions.<sup>28</sup>

### *Inebriation Test*

Under existing law, those who drive a motor vehicle are deemed to have given consent to a chemical test of their blood, breath, or urine to determine the blood content if lawfully arrested for DUI or injury DUI.<sup>29</sup> Failure to submit to or complete the test results in suspension of driving privileges for six months, or for one year if the person previously has been convicted of DUI within five years of the refusal or noncompletion.<sup>30</sup> Chapter 326 provides that if within five years of the refusal, the person has previously been convicted two or more times of DUI, injury DUI, or "wet reckless," driving privileges must be revoked for three years.<sup>31</sup> Additionally, Chapter 1431 provides that when the Department of Motor Vehicles is required to restrict, suspend, or revoke a person's driving privilege after a DUI

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22. *Id.*

23. *Id.* §41403(c).

24. *Id.*

25. *See* 1981 Cal. Stat. c. 940, §17, at 3568 (amending and renumbering CAL. VEH. CODE §23102.4).

26. *Id.*

27. *Id.* The Department of Motor Vehicles was required to strike the invalid prior conviction from its records. *Id.*

28. CAL. VEH. CODE §23209. *Compare id.* with 1981 Cal. Stat. c. 940, §17, at 3568 (amending and renumbering CAL. VEH. CODE §23102.4).

29. CAL. VEH. CODE §13353(a)(1).

30. *Id.*

31. *Id.*

or injury DUI conviction, or after a refusal to submit to or complete a test, then the sanction will run consecutively with a current sanction if, in addition, (1) a restriction, suspension, or revocation is already in effect for a DUI or injury DUI conviction, or for refusal to submit to or complete a test; (2) the original restriction, suspension, or revocation is administratively final and resulted from the same arrest; and (3) the court orders these sanctions to run consecutively.<sup>32</sup>

### *Probation*

Existing law provides that if a person is convicted of DUI or injury DUI and is granted probation, the terms of probation must include a period of probation not less than three years.<sup>33</sup> Chapter 1417 additionally requires, as conditions of probation, that the person must not (1) drive a vehicle with any measurable blood alcohol content; (2) refuse to submit to a chemical blood, urine, or breath test to determine the person's blood alcohol content if lawfully arrested for DUI or injury DUI; or (3) commit any criminal offense.<sup>34</sup> Chapter 1417 further provides that if a person on probation refuses a chemical test or drives with a blood alcohol content of more than 0.04%, the court must revoke or terminate the person's probation, and only may grant a new term of probation on condition that the person be confined for not less than forty-eight hours for each violation of probation, except in unusual cases when justice would best be served without the added condition.<sup>35</sup>

Existing law provides that a court granting probation to a person convicted of a first DUI or injury DUI offense must require as a condition of probation that the person participate in and successfully complete an alcohol or drug education or treatment program.<sup>36</sup> Chapter 1319 requires that a person assigned to a program furnish proof of enrollment within sixty days of the court order and proof of completion within 120 days of the court order.<sup>37</sup>

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32. CAL. VEH. CODE §§13353.1(a), (b). The Department of Motor Vehicles is required to suspend or revoke the driving privilege of a person convicted of DUI or injury DUI. *Id.* §13352. Upon the order of the court, the Department of Motor Vehicles must restrict the driving privilege of a person convicted of DUI and granted probation. *Id.* §13352.5.

34. *Id.* §23206(b)(1).

35. *Id.* §23206(c).

36. *Id.* §23206(d).

37. *Id.* §§23161(b), 23181(b). The person must participate in and complete an education or treatment program only if the county alcohol program administrators and board of supervisors have approved a program. *Id.*

38. *Id.* §§23161(e), 23181(e).

## Transportation and Motor Vehicles; arrest for driving under the influence

Vehicle Code §40300.5 (amended).<sup>1</sup>  
AB 3834 (O'Connell); 1984 STAT. Ch 722

Existing law limits the circumstances under which a peace officer may make a misdemeanor arrest.<sup>1</sup> A peace officer may make a misdemeanor arrest pursuant to an arrest warrant or when the misdemeanor is committed in the officer's presence.<sup>2</sup> Under existing law, a peace officer may make an arrest upon reasonable cause to believe<sup>3</sup> a person involved in a traffic accident<sup>4</sup> has been driving under the influence of alcohol, drugs, or both.<sup>5</sup> Driving under the influence of alcohol or drugs continues to pose a substantial danger to public health and safety.<sup>6</sup> Chapter 722 was enacted because of the severe public danger posed by drivers under the influence of alcohol.<sup>7</sup> Chapter 722 permits a peace officer to arrest a person who is observed by the officer in or about a vehicle that is obstructing a roadway when the officer has reasonable cause to believe that the person had been driving under the influence of an alcoholic beverage, any drug, or both.<sup>8</sup>

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1. See CAL. PENAL CODE §836, CAL. VEH. CODE §40300.5.

2. CAL. PENAL CODE §836. Grounds for arrest without a warrant include: commission of an offense in the officer's presence, commission of a felony whether or not in the officer's presence, and belief by the officer that a felony has been committed, whether or not a felony actually has been committed. *Id.*

3. Case law has defined reasonable cause to be that state of facts that will lead a person of ordinary care and prudence to believe and conscientiously entertain an honest and strong suspicion that the person to be arrested is guilty of a crime. See, e.g., *People v. Knutson*, 60 Cal. App. 3d 856, 863, 131 Cal. Rptr. 846, 850 (1976), *People v. Rhinehart*, 9 Cal. 3d 139, 151, 507 P.2d 642, 650, 107 Cal. Rptr. 34, 42 (1973).

4. Traffic accident refers to an accident involving at least one vehicle and describes the type of accident to which California Vehicle Code section 40300.5 applies rather than place of the accident. *People v. Ashley*, 17 Cal. App. 3d 1122, 1127, 95 Cal. Rptr. 509, 511 (1971). For example, driving a car down a six foot embankment was held to be a traffic accident in *Cowman v. Department of Motor Vehicles*, 86 Cal. App. 3d 851, 853, 150 Cal. Rptr. 559, 560 (1978).

5. CAL. VEH. CODE §40300.5.

6. 1984 Cal. Stat. c. 722, §2, at \_\_\_\_\_ (legislative findings regarding driving while under the influence of alcohol, drugs, or both).

7. *Id.*

8. CAL. VEH. CODE §40300.5.

## Transportation and Motor Vehicles; traffic accident reports

Vehicle Code §20015 (new).  
AB 2595 (Stirling); 1984 STAT. Ch 861

Under existing law, the driver of a vehicle<sup>1</sup> involved in an accident causing only property damage may choose to file a report with the California Highway Patrol or the police department in the city where the accident occurred.<sup>2</sup> Chapter 861 forbids a police or traffic officer making a counter report<sup>3</sup> of a property damage accident from including in the report any determination of fault of the reporting person, including inattentiveness.<sup>4</sup> Chapter 861 does not apply to a determination of fault that results from an on-site accident investigation by a police or traffic officer, or a knowing admission by the reporting person, if the basis for the determination is also included in the report.<sup>5</sup>

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1. CAL. VEH. CODE §670 (definition of vehicle).

2. *Id.* §20002 (driver's duties in accidents involving only property damage). *But cf. id.* §20008. In an accident involving personal injury or death a report *must* be made to the California Highway Patrol or the police department in the city where the accident occurred. *Id.*

3. *Id.* §20015(b). A counter report of a property damage accident is defined as any report of an accident involving one or more vehicles that (1) caused damage to property, but did not cause personal injury or death, (2) is prepared at an office of the California Highway Patrol or a local law enforcement agency, and (3) is written or recorded by, or with the assistance of, a peace officer. *Id.* See generally *id.* §20012 (availability of accident reports to anyone with a "proper interest" in them, including insurance companies).

4. *Id.* §20015(a).

5. *Id.* See generally *id.* §20013 (accident reports not used as evidence in court); *Carpenter v. Gibson* 80 Cal. App. 2d 269, 274-75, 181 P.2d 953, 957 (1947). A statement does not become inadmissible as evidence simply because it is included in an inadmissible accident report. *Id.*

## Transportation and Motor Vehicles; parking violations—lien sale

Vehicle Code §22851.1 (new).  
SB 1330 (Beverly); 1984 STAT. Ch 138

Existing law allows police or traffic officers to impound standing vehicles<sup>1</sup> not currently registered in California<sup>2</sup> that have five or more

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1. CAL. VEH. CODE §22651 (a vehicle may be removed by any regularly employed and salaried employee who is engaged in directing traffic or enforcing parking laws and regulations, in the city or county in which the vehicle is located).

2. *Id.* §22651(i) (includes vehicles registered in foreign jurisdictions as well as those unregistered in California).

outstanding notices of parking violations.<sup>3</sup> When removal is authorized by a public agency, a lien arises in the person legally entitled to compensation for the towing and storage of the vehicle.<sup>4</sup> After a specified time,<sup>5</sup> a lienholder may apply for authorization to conduct a vehicle lien sale to recover costs of towing and storage.<sup>6</sup> Chapter 138 establishes an additional, but subordinate,<sup>7</sup> lien against the proceeds from the sale of an impounded vehicle for satisfaction of bail for unpaid parking violation fines<sup>8</sup> for which no one has (1) answered the parking violation charges, or (2) filed an affidavit of non-ownership.<sup>9</sup> Finally, Chapter 138 provides for a defense to the perfection of a vehicle lien for unpaid bail if the owner, at the time of impoundment, was not the owner when the parking violations occurred.<sup>10</sup>

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3. *Id.* See generally *id.* §41103(a) (procedure for proper notice of parking violations).

4. *Id.* §22851 (lien on stored vehicle); CAL. CIV. CODE §3068.1 (towing and storage lien; satisfaction of lien). See generally *Stypmann v. City and County of San Francisco*, 557 F.2d 1338, 1342-43 (9th Cir. 1977) (lien on stored vehicles an unconstitutional deprivation of due process when persons not granted a hearing on the underlying parking violations prior to impoundment).

5. See CAL. VEH. CODE §22851(a); CAL. CIV. CODE §3068.1(b), (c) (time periods after which a vehicle can be sold).

6. CAL. CIV. CODE §3071 (lien sale procedure).

7. CAL. VEH. CODE §22851.1(b).

8. *Id.* §22851.1 See also CAL. CIV. CODE §3073 (following satisfaction of all liens the balance of the sale proceeds goes to the legal owner of the vehicle).

9. CAL. VEH. CODE §22851.1(c).

10. *Id.* §22851.1(b). See also *id.* §41103(b). The person charged with the parking violations must have an opportunity to file an affidavit of non-ownership. *Id.*

## **Transportation and Motor Vehicles; removal of vehicles from private property**

Vehicle Code §12111 (new), §22658 (amended).  
SB 1783 (Robbins); 1984 STAT. Ch 1334

Existing law allows an owner or person in lawful possession of private property to remove a vehicle parked on the property, subject to specified procedures.<sup>1</sup> With the enactment of Chapter 1334, an owner or person in lawful possession of private property causing removal of a vehicle must state the grounds for removal if requested by the legal or registered owner of that vehicle.<sup>2</sup> Chapter 1334 states that a towing company removing a vehicle with the authorization of

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1. CAL. VEH. CODE §22658(a), (b) (explanation of all necessary notices and procedures).

2. *Id.* §22658(g).

the property owner or the property owner's agent is not responsible for the validity of the removal.<sup>3</sup> Chapter 1334 provides, however, that the towing company is responsible for damage to the vehicle in transit and storage,<sup>4</sup> and for removal of the wrong vehicle.<sup>5</sup>

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3. *Id.*

4. *Id.* §22658(d). The owner of a vehicle may recover for damage to the vehicle resulting from any intentional or negligent act of a person removing *or* causing the removal of the vehicle. *Id.* The towing company is deemed to have possession of the vehicle for the purpose of damage in transit and storage when the vehicle is removed from private property and is in transit. *Id.* §22658(h).

5. *Id.* §22658(g).

### **Transportation and Motor Vehicles; owners' and lessees' responsibilities**

Vehicle Code §40001 (repealed); §§4766, 40002.1 (new); §§40001, 40002 (amended).

AB 3058 (Killea); 1984 STAT. Ch 981  
(*Operative July 1, 1985*)

Existing law states that the owner, or any other person responsible for the operation of a vehicle,<sup>1</sup> employing or otherwise directing the driver of the vehicle, may not cause the operation of the vehicle upon a highway<sup>2</sup> in any manner contrary to law.<sup>3</sup> A vehicle owner is prohibited from requesting, causing, or permitting operation of a vehicle in violation of (1) registration<sup>4</sup> and equipment requirements;<sup>5</sup> (2) size, weight, and load restrictions;<sup>6</sup> (3) regulations adopted pursuant to the California Vehicle Code;<sup>7</sup> or (4) certain rules and regulations of the California Health and Safety Code<sup>8</sup> and the State Air Resources Board.<sup>9</sup> Chapter 981 prohibits arrest or citation of a vehicle driver for a violation chargeable to the owner or lessee unless the vehicle is registered outside of California or unless the violation is for an

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1. CAL. VEH. CODE §670 (definition of vehicle).

2. *Id.* §360 (definition of highway).

3. *Id.* §40001(a).

4. *Id.* §40001(b)(1); *see id.* §§4000-5354 (registration requirements of vehicles).

5. *Id.* §40001(b)(2); *see id.* §§24000-28085 (equipment requirements for motor vehicles).

6. *Id.* §40001(b)(3); *see id.* §§35000-35908 (size, weight, and load requirements for motor vehicles).

7. *Id.* §40001(b)(4).

8. *See* CAL. HEALTH & SAFETY CODE §§43000-43835 (provisions regarding vehicular air pollution control).

9. CAL. VEH. CODE §40001(b)(5).

offense clearly within the responsibility of the driver.<sup>10</sup>

Existing law requires that if the driver of a vehicle is cited because of a violation of registration, equipment, or size, weight, and load regulations, and the driver is not the owner, the owner must be given written notice of the offense<sup>11</sup> and must be informed of a requirement to appear in court within ten days.<sup>12</sup> If the owner or other person responsible for the operation of the cited vehicle fails to appear after receiving notice, a warrant of arrest may be issued.<sup>13</sup> Chapter 981 provides that failure to appear also may result in the denial of registration of the vehicle involved in the offense.<sup>14</sup> Chapter 981 further authorizes the Department of Motor Vehicles to refuse to renew the registration of any vehicle for which a notice of noncompliance has been issued until the court provides notice that the cited person either has forfeited bail<sup>15</sup> or that the matter otherwise was adjudicated.<sup>16</sup>

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10. *Id.* §40001(c).

11. *See id.* §22 (method of giving notice).

12. *Id.* §40002(b).

13. *Id.*

14. *Id.* If, after 15 or more days following service of the notice, any person has failed to appear, the magistrate or clerk of the court may give notice to the Department of Motor Vehicles within 30 days following expiration of the 15 day period. *Id.* §40002.1(a). *But see id.* §40002.1(b). If a warrant of arrest has been issued on the same offense, no notice of noncompliance may be transmitted to the Department of Motor Vehicles. *Id.* Following adjudication of the matter, the magistrate or clerk immediately will (1) endorse a certificate to that effect, (2) provide the person or the person's attorney with a copy of the certificate, and (3) transmit a copy of the certificate to the Department of Motor Vehicles. *Id.* §40002.1(a).

15. *Id.* §4766(a); *see id.* §40512 (forfeiture of bail).

16. *Id.* §4766(a); *see also id.* §4766(c). The Department will not refuse registration of a cited vehicle if the registration of a cited vehicle is transferred or not renewed for two renewal periods. *Id.* The department is authorized to establish and impose a service charge upon the registrants of the vehicle in order to defray the cost of administering this process. *Id.* §4766(b).