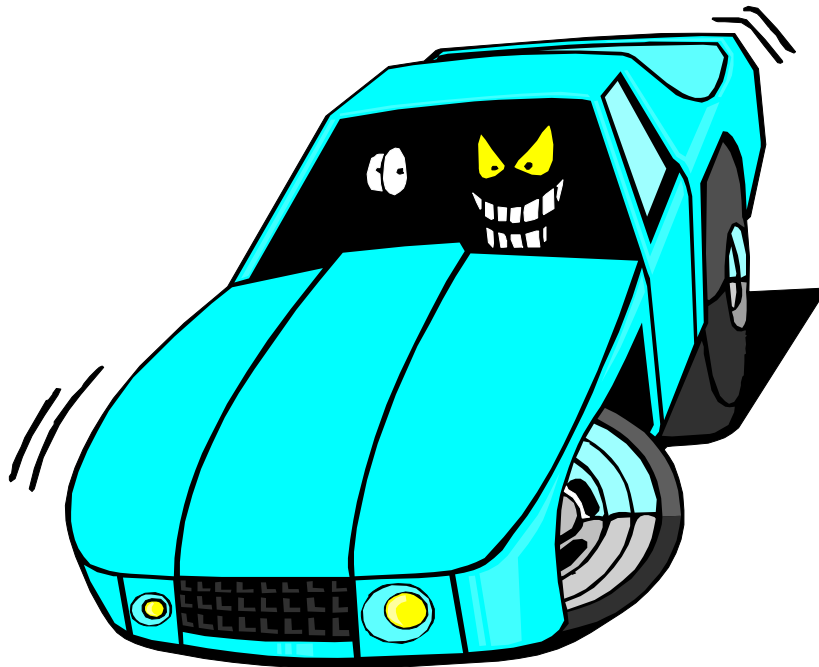




Guidelines for Actions Against the Driving Privilege Based on the Negligent Operator Treatment System



Published by
Kuwatch Law Offices
<http://www.dui-law.com>
707 456 9000

(Rev. 10/00)

DEFINITION & PURPOSE OF THE NOTS PROGRAM

The Negligent Operator Treatment System (NOTS) is based on negligent operator points and consists of a computer generated series of warning letters and progressive sanctions against the driving privilege.

NOTS affects California drivers eighteen years of age and older. Younger "provisional" drivers are also included in the NOTS program if they violate provisional probation or suspension. Provisional drivers are provided a hearing under Vehicle Code 12814.6(c) only if they are involved in an accident.

AUTHORITY

Vehicle Code §12810 requires the department to assign one point to any conviction "involving the safe operation of a motor vehicle upon the highway."

NEGLIGENT OPERATOR POINTS

NOTS actions are based on the number of negligent operator "points" drivers add to their driving record within specified time periods. Negligent operator points are added to the driving record upon receipt of conviction notices from courts and reports of responsible collisions from law enforcement which indicate that the driver contributed, was at fault, or was responsible to any degree or in any amount for the collision.

Criteria

Traffic convictions are assessed negligent operator point values ranging from zero up to three points. A major conviction when the driver is operating a commercial vehicle, is given a three point count. A responsible collision is counted as one point count whether it occurs in a commercial or noncommercial vehicle.

Points are assigned to convictions for traffic violations that involve the safe operation of a motor vehicle. Point count traffic convictions are listed in Appendix A, the DS 551, Common California Vehicle Code Violations Used in Negligent Operator Count.

One Point Convictions

Vehicle Code §12810 requires the department to assign one point to any conviction "involving the safe operation of a motor vehicle upon the highway." Examples of one point Vehicle Code violations are:

- 22348(a) Speed
- 24002 Unsafe Vehicle

A mechanical violation may be assigned zero or one point, depending on whether or not it affects safe operation. For example:

- 0 point conviction No light on license plate
- 1 point conviction Condition of brakes

Two Point Convictions

All two point convictions are mandated by the Vehicle Code. These violations are considered more serious by the legislature because of the increased traffic safety risk. Examples of two point convictions are:

- 20002 Hit and Run
- 23152 Driving Under the Influence

Commercial Vehicle Conviction/Collision Points

Under Vehicle Code §12810.5(b)(2), a conviction is assessed one or two points. Under Vehicle Code §12810, which occurs during the operation of a vehicle requiring a Class A or B license, or any certificate or endorsement listed in the section, is given a point count of 1^{1/2} times its usual value.

For example, a conviction of Vehicle Code §22348(a), speeding, is a one point violation. However, a commercial vehicle violation for the same offense is 1^{1/2} points. A responsible collision in conjunction with the conviction while operating a commercial vehicle or hazardous material vehicle is assessed one additional point for a total of 2^{1/2} points.

Out-of-State Convictions

The department also assesses negligent operator points for traffic convictions California drivers receive in other states, the District of Columbia, Puerto Rico, and Canada. Under Vehicle Code §13363, the department determines whether the same violation, if committed in California, would be assessed negligent operator point count or would be grounds for suspension or revocation. Points resulting from out-of-state convictions may form the basis, or part of the basis, for a NOTS action.

Out-of-State Collisions

If a California driver has a collision out-of-state, it may be reported to the department through the Problem Driver Pointer System (PDPS), National Driver Register or out-of-state law enforcement agencies. These collisions are entered on individual records and report the date and location of the collision. When there is not enough information to determine responsibility, these collisions are not assigned NOTS points. Therefore, no NOTS action is imposed, except if the driver is suspended at Level III or IV and the collision occurs during a suspension when it is evidence of driving while suspended.

When these reports are reviewed and it is determined that the driver was responsible, had been drinking, was injured, etc. the report is then updated onto the driver's record and, if the driver was responsible, the collision adds a NOTS point to the record.

NOTS ACTIONS

NOTS warning letters and orders consist of four levels of actions based on the following criteria:

Level I (Warning Letter)

A warning letter is generated based on the following:

Point Count	Time Period
2	Within 12 months
4	Within 24 months
6	Within 36 months

A warning letter may also be sent to a driver when a major conviction is added to the driving record.

Level II (Notice of Intent to Suspend)

A Notice of Intent to Suspend letter is sent to the driver when the following occurs:

Point Count	Time Period
3	Within 12 months
5	Within 24 months
7	Within 36 months

A notice may also be sent to a driver when a major conviction is added to the driving record.

Level III (Probation/Suspension)

The driving privilege will be suspended and an Order of Probation/Suspension will be sent to the driver under the following conditions:

Point Count	Time Period
4	Within 12 months
6	Within 24 months
8	Within 36 months

Under §12810.5 Vehicle Code, the driver is presumed to be a "prima facie" negligent operator. Prima facie evidence is evidence sufficient to establish a given fact and which, if not rebutted or contradicted, will remain sufficient.

The action is a one year probation which includes a six month suspension which run concurrently. The action is effective 34 days from the date the order is mailed.

Violation or Collision During a Period of Suspension While on a NOTS Probation

An additional six month suspension will be imposed and the probation will be extended for one year from the violation of probation if the following occurs while the driving privilege is suspended:

- the driver receives any violation while operating a motor vehicle,
- or**
- the driver is involved in a collision regardless of fault.

Level IV (Violation of NOTS Probation)

The driving privilege will be suspended and a NOTS Violation of Probation Order will be sent to the driver if any of the following occur:

- Any violation or collision occurs during a suspension.
- Any one or two point violation or responsible collision occurs during a probation period.
- Any Failure To Appear (FTA) or Failure to Pay (FTP) violation during the probation period.
- A driver under the age of eighteen years violates provisional probation because of a responsible collision, an FTA or FTP, or any other reportable violation.

First and Second Violation of Probation

The suspension period for a first or second violation of probation is six months. The probation period will also be extended for one year from the date of the violation.

Third Violation(s) of Probation

Upon a third violation of probation, a one year revocation of the driving privilege is imposed.

NOTS HEARINGS

Purpose:

The purpose of the NOTS hearing is to consider the driver's record, including mitigating and aggravating circumstances, decide whether the driver should be classified as a negligent operator under the point count system, and determine whether any action against his/her driving privilege is needed. The driver must be given the opportunity to produce evidence and testify in detail regarding his/her driver record. The hearing action must be supported by a preponderance of evidence.

Scope of NOTS Hearing

The scope of a NOTS hearing is limited to the following:

- Correctness of driver record.
- If there are any pending court charges, collisions or convictions not shown on the record (which will not be used as the basis for an action, but may reflect whether the driver has a negligent pattern of driving).
- If the driver is responsible for collisions on the driver record.
- Alcohol consumption related to major violations and collisions when indicated by the record.
- Any mitigating/aggravating factors.
- Physical and Mental conditions related to the driving record.

Stays:

A stay is a temporary withholding of a department action, such as a suspension or revocation, until a decision is made at a hearing or departmental or court review.

Stay for Hearing

If a hearing request is received within the statutory timeframe and a hearing cannot be held before the effective date of the order, a stay should be granted.

P&M Denial of Stay

A stay is not granted in NOTS cases when evidence exists of a physical or mental condition which presents an immediate driving hazard and action has been taken under Vehicle Code Section 13953.

Stay for Departmental Review

When departmental review is requested within 15 days of a NOTS hearing decision and the review cannot be completed before the effective date, a stay is required under Vehicle Code Section 14105.5.

Conditions for Higher Point Count

Class A or B drivers are allowed a higher point count before they are presumed negligent under Vehicle Code §12810.5, if the following conditions exist:

- They request and appear at a NOTS hearing.
- They do not ~~have~~ hold any of the following special certificates or endorsements: Ambulance, School Bus, School Pupil Activity Bus, Farm Labor, Tour Bus, Youth Bus, General Public Paratransit, or Hazardous Materials.
- They do not have 4 or more points in 12 months, 6 or more in 24 months, or 8 or more in 36 months that are attributable to the driver's operation of a vehicle requiring only a class C license and not requiring a certificate or endorsement, or a class M license.

Class A or B drivers meeting all of the above conditions are considered prima facie negligent operators if they have the following point count accumulated on the driving record:

- 6 points in 12 months
- 8 points in 24 months
- 10 points in 36 months

ELEMENTS OF THE DRIVER RECORD AND HISTORY WHICH HAVE A BEARING ON THE HEARING OFFICER'S FINDING AND DETERMINATION

The following elements are considered by the Hearing Officer prior to making a Finding and Determination. This list is not meant to be comprehensive or exhaustive, and a Hearing Officer may consider other elements which provide insight on the driving record.

Severity and Pattern of Violations and Collisions

Review of the driving record should determine and consider the severity of the violations (i.e. DUI, hit & run, etc.).

The driver record should also be reviewed to determine if it shows a pattern of repeated violations or collisions. Examples include:

- Multiple speed violations.

- Right of way violations.
- Signal and stop sign violations.

Patterns of violations and collisions should be compared to the driver's proposed corrective measures and weighed in evaluating whether the driver's plans for improvement are reasonable and credible.

Insight and Acceptance of Responsibility

The driving record will be reviewed to determine if the driver has a history of driving negligence, or if this is the first case of negligent operation. Stated remorse for past negligent driving may not by itself constitute evidence of the driver's understanding or acceptance of traffic safety responsibilities. The driver should offer some explanation that demonstrates that he or she understands and accepts his or her behavior and that insight will result or has resulted in corrective measures.

Prior history of suspensions for negligence should be weighed in evaluating the credibility of the driver's current expressions of concern for traffic safety and the reasonableness of the driver's plans for improvement.

Collision Responsibility

It is the hearing officer's responsibility to determine if the driver was responsible or not and whether or not a collision could have been avoided. In most cases, a finding of fact regarding who was responsible may be made from the driver's testimony.

In a hearing, the driving record alone is insufficient to support a finding of collision responsibility. Other direct evidence, for example, the driver's testimony, is used to establish responsibility. The department is required to prove the driver's responsibility for a collision. Proof may be established by the driver's statements, or by reviewing the collision report. If proof establishes non-responsibility for the collision, the department will correct the record.

The following collision details may aid in determining collision responsibility:

- Road type
- Surface condition of the road
- Speed; before and after the collision
- Legal speed limit
- Traffic; heavy, medium or light
- Distractions; pedestrians, special event, radio, inattention
- Weather; fog, rain, snow, clear, clouds, wind
- Controls; signals, signs or none
- Collision type; multi-vehicle, fixed object, pedestrians
- Vehicle type; car, truck, motorcycle, tractor/trailer
- View/visibility

- Condition of vehicle; tires, brakes, lights, signals
- Point of impact; front, rear, side
- Direction of travel
- Time and day of week
- Damages to vehicle and/or property
- Injuries
- Violations; Vehicle Code, Penal Code, Health and Safety, etc.
- Sobriety
- Physical condition
- If either driver appeared in court, what was the conclusion of any discussion about collision involvement?
- Reaching for something in the vehicle; eyes taken off the roadway; sun glare

MITIGATING CIRCUMSTANCES

Mitigation means extenuating, contributory factors, offered by the driver to lessen the degree of negligence. Mitigating circumstances will be weighed against the amount and seriousness of negligence shown by the evidence of the driving record and the driver's testimony.

Example: She drives taxi in downtown San Francisco traffic, avoids many collisions, but unable to avoid them all. (High mileage and extreme driving conditions.)

It is not possible to list all the circumstances which may be considered "mitigating." A circumstance may be mitigating in one case and not in another. The hearing officer determines if the mitigating circumstances reduce the negligence shown by the record.

Plans for Improvement/ Corrective Measures

The driver may offer testimony that he/she believes lessens the degree of negligence shown by the record. The best evidence of correction of driving habits is a description of specific and reasonable steps that are currently being taken and of the control measures used to discourage "backsliding."

Example: A driver with a speeding problem who shows evidence that a cruise control has been installed in the vehicle and plans to activate the cruise control on freeways, may have a greater chance of following through on a promise to slow down.

Any plans presented will be examined in light of the driver's credibility and past actions in these circumstances.

Vehicle Use and Mileage

"Use" is interpreted to include the driver's total vehicle use as well as use for work, school, medical treatments, or other routine activities the driver regards as significant. "Mileage traveled" includes both employment and nonemployment mileage.

Example: She previously drove a taxi in downtown San Francisco, she recently quit the job and is now working as a waitress.

The Vehicle Code does not limit consideration to employment related driving, nor does it specify how the driver's amount of use and mileage should be weighed.

Hardship

In some cases, the driver may present mitigation relating to hardship. Hardship may include situations where:

- The driver is a major contributor or sole provider of his or her family income.
- Alternative transportation is not available for significant, routine activities, such as school, medical treatments, or employment.

RESTRICTIONS

If a Class C or M driver, who is not required to have a special certificate, is presumed to be a negligent operator under Vehicle Code §12810.5, the department may issue restrictions for employment as a condition of probation, under Vehicle Code §12812.

In addition, Vehicle Code §12813 permits the department to issue any driver any restriction needed to insure safe driving. Restrictions may be issued for employment and nonemployment purposes. A restriction to allow driving under limited conditions may be appropriate when evidence of hardship related to use or mileage is presented or implied. The following factors will be considered in determining if and what type of restriction is appropriate:

- Would granting the restriction compromise traffic safety (based on factors such as the severity and pattern of the driving record, plan for improvement, acceptance of traffic safety responsibility)?
- Is it consistent with the evidence of need presented?
- Can it be understood by the driver, law enforcement and the courts?
- Can it be enforced?

PHYSICAL AND MENTAL CONDITIONS

In some cases, the driving record may indicate a possible physical or mental (P&M) condition related or unrelated to the negligent operation. If a P&M condition discovered at a NOTS hearing or interview through the driver's testimony appears to be an immediate driving hazard, the driving privilege may be suspended or revoked, effective immediately, as provided in Vehicle Code Section 13953.

DEGREE OF NEGLIGENCE/ AGGRAVATING CIRCUMSTANCES

Aggravating circumstances in a driving record or which become apparent at a hearing may be considered by the hearing officer as a reason for not reducing the action and must be balanced against any mitigation presented.

Aggravating circumstances which the hearing officer may wish to weigh include:

- Responsible collisions.
- A driving history which indicates a disregard for traffic safety.
- Major (two point) violations.
- The history or potential severity of the consequence of driving errors. For example, the driver's responsibility for the safety of passengers or transportation of hazardous materials, which, in the event of a collision, may result in injury, death or extensive property damage due to fire or explosion.
- If the driving record contains a long history of driving violations and/or at-fault collisions, a stronger action may be required to motivate lasting change. However a driving record which indicates only a few recent violations may not indicate the need for a strong sanction.
- A driver who has attended Traffic Violator School more than once and who continues to violate traffic laws may require a more severe sanction.
- Prior negligent operator actions may indicate that a driver is unwilling or unable to drive in a reasonable and prudent manner.
- A history of multiple court appearances and court suspensions/probations for driving offenses, may indicate the driver is unlikely to respond to minimal NOTS action.
- Prior violations for driving when suspended or revoked may indicate the driver's unwillingness to abide by the terms of restriction or suspension.

FTA

Under Vehicle Code §40508, when a driver fails to appear in court to have a traffic violation adjudicated, the court reports the violation to the department as a Failure to Appear (FTA) violation. An FTA is not assigned a point count because it is not a conviction; however, it may be used as supplementary evidence of negligence.

POSSIBLE DECISIONS

Possible decisions regarding the driving privilege at the conclusion of the hearing include:

Action	
SUSTAIN	Original action remains in effect.
PROBATION AND MODIFIED SUSPENSION PERIOD	Used following a hearing when the action is in effect.
PROBATION, SUSPENSION AND/OR RESTRICTION	Used following a hearing when a probation and suspension is modified to a probation with restriction.
PROBATION	Used to monitor the driver's record and includes conditions of driving, such as obeying traffic laws and remaining free of collision responsibility.
SET ASIDE (LACK OF EVIDENCE)	Used when the basis for an action is not supported by the department's evidence.
SET ASIDE (NON-RECEIPT OF NOTS ORDER)	Used when evidence exists that a driver was unaware of a NOTS action, because the initial NOTS service order was not received.
NO ACTION (DRIVER DOES NOT APPEAR)	If a driver does not appear for a hearing and presents no information to rebut or contest the prima facie record, the driver has withdrawn his or her right to a hearing.
END ACTION	Used to terminate a prior department action.

PROOF OF INSURANCE

Under Vehicle Code §12810.5(c), the department requires a driver to file proof of financial responsibility following a NOTS suspension or revocation.

FATAL AND SERIOUS INJURY ACCIDENTS

This section clarifies issues and policy regarding actions against the driving privilege which are based on fatal and serious injury accidents. This includes degree of negligence and range of sanctions available. The department may take a negligent operator action when the driver is involved in a fatal or injury accident, even though the driver may not have accumulated negligent operator points as described above.

AUTHORITY

Vehicle Code Section 13800(a) authorizes the department to investigate fatal and injury accidents to determine if the driving privilege should be revoked, suspended, restricted or placed on probation.

Pursuant to Vehicle Code Sections 12809, 12813, 13359, 13953 and 14250, the department may take action when the driver is a negligent operator because of a fatal or injury accident.

Vehicle Code Section 13802 requires the department to give due consideration to the amount of use and mileage traveled in the operation of a motor vehicle, in applying the provisions of Section 13800.

NEGLIGENCE

Action may be warranted when the driver has been less than grossly negligent, including cases involving misjudgment and inattention. Drivers are negligent if they fail to use the degree of care expected to avoid accidents. Drivers should avoid accidents by driving defensively, considering traffic, road and weather conditions, familiarity with the road, the type and conditions of their vehicles, level of driving skill and by maintaining control of their vehicles.

FACTORS RELATING TO FUTURE SAFETY RISK

- Accidents and convictions on the driving record
- Attitude of the driver
- Likelihood of recurrence
- Probable deterrent effect of a sanction
- Amount of use and mileage traveled in the operation of a vehicle

SANCTIONS

The hearing officer must evaluate whether revocation, suspension, restriction, probation or no action is appropriate, based on the degree of negligence and related factors indicating future traffic safety risk.

Revocation

Revocation is warranted when there are severe, flagrant, aggravated and reckless driving acts in which the driver disregarded foreseeable consequences. A high degree of negligence establishes an increased traffic safety risk and will generally warrant revocation, even after mitigating factors are considered.

Some examples of driving acts which may warrant revocation include:

- High speeds on crowded roads during peak traffic hours
- Attempting to evade law enforcement
- Driving under the influence combined with reckless driving acts leading to the accident
- Flagrant disregard involving foreseeable risk of traffic laws, signals or signs, weather or road conditions, known mechanical defects, or pedestrians
- Racing
- Driving recklessly in a vehicle for which they are not licensed or trained to drive

Suspension

Suspension will be considered, with or without probation, when the driver failed to exercise a reasonable amount of care to avoid an accident. Some examples which may warrant a suspension include:

- Committed a traffic violation which caused or contributed to the accident
- Attempted to pass on a winding road instead of slowing or waiting for safe area (this could warrant revocation depending on degree of disregard for traffic safety)
- Attempted to accelerate through yellow light and hit pedestrian in the crosswalk (this would warrant revocation if the driver saw the pedestrian before accelerating)
- Misjudged speed of oncoming vehicle while making a left turn and has left turn violations on the driving record

Restrictions

Term restrictions, such as course of employment, may serve as appropriate traffic safety deterrents, when there is negligence warranting action, but the likelihood of recurrent is low. When the driver caused or contributed to an accident because of skill level or physical ability, for example, at night or on the freeway, appropriate restrictions will be considered, based on the likelihood of recurrence.

Probation

Probation will be considered as a minimal action and deterrent, when action is warranted but there is a low degree of negligence and related factors indicate a pattern or tendency toward negligent operation or future risk.