

BACE LAW REPORT

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Unlicensed Operation of a Motor Vehicle: Check Your License Expiration!

Technically, driving is a privilege, not a right, offered and authorized by the Massachusetts Registry of Motor Vehicles (“RMV”). Most drivers, upon receipt of a notice that their license requires renewal, will faithfully provide the RMV with the requisite fee and paperwork. However, the RMV recently stopped issuing and mailing renewal notices, leaving countless individuals without knowledge as to the status of their licensure. Without the renewal notice, it is possible that one was driving on a suspended license, exposing oneself to criminal liability, completely unbeknownst to the driver. The violation is a misdemeanor, and includes both fines and imprisonment potential.

Massachusetts General Law, Chapter 90, Section 10 prohibits the unlicensed operation of a motor vehicle, and Section 23 of the same chapter dictates the punishment

Section 23 states in relevant part:

“after notice of such suspension or revocation of his right to operate a motor vehicle without a license has been issued and received by such person or by his agent or employer, and prior to the restoration of such license or right to operate or the issuance to him of a new license to operate shall be punished by a fine of not less than one thousand nor more than ten thousand dollars and by imprisonment in a house of correction for not less than sixty days and not more than two and one-half years.”

The RMV stopped issuing license renewals in November of 2008. The move, according to the Worcester Telegram & Gazette, was designed to save the RMV about \$600,000 annually by requiring individuals to check their own license expiration dates. Registrar Rachel Kaprielian said, “We are cutting back significantly on our courtesy mails.” Unfortunately, the cost-savings measure may have resulted in serious repercussions and unintended consequences for Massachusetts drivers.

In a notable and high profile case, WTKK-FM (96.9) talk-show host Michael Graham, was

arrested last February for driving on a suspended license. According to Graham's statements in the Boston Herald, he was arrested, hand-cuffed, fingerprinted, and placed in a jail cell after being stopped for a minor traffic offense. Graham stated that he, "...was astonished when the officer informed me that the RMV had revoked my drivers license. I don't know when and I don't know why, because I—like so many Massachusetts drivers—was never told by the RMV. If I had been, I would have had the opportunity to address whatever issue they have without the expense of being towed, or the unpleasantness of going to jail."

Graham's experience may not be atypical. This office was unable to locate data regarding the arrests for unlicensed operation after the change in policy. However, as statistics are collected, it will be interesting to compare Early 2009 arrests for unlicensed operation with those prior to the RMV canceling courtesy renewal notices.

If one is stopped for a minor traffic offense, such as speeding, and the RMV has revoked one's license due to a failure to renew, a charge for unlicensed operation will likely be initiated. The first step in the process is the receipt of a Summons to appear before what is referred to as a "Clerk's Hearing." At the hearing, the only issue before the

clerk will be whether or not there exists probable cause to issue a formal criminal complaint. Clerk's Hearings are routinely attended by individuals without the assistance of counsel; this is a serious misstep and is almost always inadvisable. If the matter is resolved, prior to the issuance of a criminal complaint, the issue will never appear on your Criminal Offender Record Information (CORI).

However, if a criminal complaint issues at the conclusion of the Clerk's Hearing, then that charge will appear on a CORI, *regardless of the ultimate outcome* of the underlying criminal charge. If one's criminal case is ultimately dismissed, continued without a finding, or even in the event of a not guilty finding, the CORI will still list the offense. This is why it is vital to retain counsel prior to attending a Clerk's Hearing.

In October of this year, the RMV reinstated the courtesy notices, but the notices will only be sent via email. Check the status of your driver's license today; should you face a Clerk's Hearing, contact an attorney without delay.

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