

HEARING FACT SHEET SPECIFICALLY FOR DUI CASES

Your license was revoked because an officer submitted a sworn statement to the Division of Motor Vehicles (DMV) indicating that you committed a DUI (driving while under the influence) offense. The statement, which may include blood, breath, or urine test results and a description of the evidence gathered by the officer, may be included in your DMV file. You may obtain a copy of your DMV file by submitting a written request with a copy of your driver's license or ID card to the DMV DUI Violations Unit, P.O. Box 17040, Charleston, WV 25317 or by fax to (304) 926-3897, and by paying a fee. You may verify your driver's license status free of charge on the DMV website (<http://www.transportation.wv.gov/dmv/Pages/dlverify.aspx>).

WHY WAS A HEARING SCHEDULED?

A hearing is set before the Office of Administrative Hearings (OAH) because you filed Written Objections to the DMV Order of Revocation with the OAH. Depending on the particular DUI offense at issue, the Hearing Examiner who will be presiding over the OAH hearing is required to make specific findings as mandated by West Virginia Code § 17C-5A-2 before the DMV Order of Revocation may be affirmed, modified, or revoked. You may access the West Virginia Code on the West Virginia Legislature's website free of charge (<http://www.legis.state.wv.us/WVCODE/Code.cfm>). If you are unable to attend the hearing, you may contact the OAH immediately and request a hearing continuance in writing. You should also e-mail a copy of the continuance request to the DMV at DMVLegal@wv.gov. Such a request may be granted if you show good cause for a continuance. Unless the hearing is continued, you will be expected to attend. It is your responsibility to provide your current contact information to the OAH while your case is pending.

WHAT IS EXPECTED OF YOU AT THE HEARING?

During the OAH hearing, the DMV will have an opportunity to present evidence, such as through testimony and/or documents, indicating that you did commit the DUI offense and that your Order of Revocation should be affirmed. You will be provided with an opportunity to rebut (disprove) this evidence and to present your own evidence in your defense. *See* W. Va. Code § 29A-5-2. It is your responsibility to ensure that the evidence on which you seek to rely is presented at the hearing. You are expected to be truthful and courteous and to follow the instructions of the Hearing Examiners. You may hire an attorney to represent you, or you may represent yourself. You may contact Legal Aid of West Virginia at (866) 255-4370 to inquire if you are income eligible and qualify to obtain free information and legal advice.

WHAT ARE THE ISSUES CONSIDERED AT THE DUI HEARING?

The principal question at the hearing will be whether you drove a motor vehicle while under the influence of alcohol, controlled substances or drugs, or drove a motor vehicle while having an alcohol concentration in your blood of eight hundredths of one percent or more, by weight, or refused to submit to the designated secondary chemical test, or drove a motor vehicle while under the age of twenty-one years with an alcohol concentration in your blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight. If the Order of Revocation indicate additional issues, such as an aggravated DUI, that you caused death or injury, had a passenger under the age of sixteen years in the vehicle, or that it was not your first DUI offense, those issues will be addressed at the hearing as well.

WHAT SHOULD YOU EXPECT FROM THE HEARING EXAMINER?

The Hearing Examiner is impartial and designated by the Chief Hearing Examiner of the OAH to conduct the hearing. The Hearing Examiner will record the hearing, swear-in witnesses, make evidentiary rulings, and may question witnesses and generally regulate the course of the hearing. While the Hearing Examiner may inform you regarding the hearing process, the Hearing Examiner will not give you legal advice. No party may discuss material case issues with the Hearing Examiner outside the presence of the other party. After the hearing, the Hearing Examiner will make a recommendation to the Chief Hearing Examiner as to whether your Order of Revocation should be affirmed, modified, or revoked.