

July 22nd, 2013

Florida Changes DUI Administrative Hearing Process

As of July 1, 2013 Florida drivers [arrested for DUI](#) will face a hard choice. For the longest time, DUI suspects would face an administrative suspension of their license from the Florida Department of Motor Vehicle Review. A driver could challenge the suspension with or without a lawyer at a formal review hearing. If a Florida driver arrested for DUI challenged the administrative suspension and won, they would get their license back and the suspension would not show up on their driving record. If the person lost the administrative hearing, they would lose their license for six months if they took and failed the breath test, and one year if they refused the breath test. This was also eighteen months for a second or more refusal.

The most devastating part of the forgoing suspensions was that each of them had a particular period of time where the driver could not drive at all, commonly called in the DUI trade as the "hard" suspension. For instance, if the driver lost the hearing and had taken the breath test, he or she would lose their license for six months but could drive to work, school and to conduct other livelihood necessities except for one 30 day period where they could not drive at all. Likewise, if the person lost their DMV hearing and faced the year suspension because of their refusal to take the test, they could still in many cases get a hardship to drive to work, school, et cetera except for a 90 day period.

Of course for most of drivers arrested for DUI, this 30 day or 90 day "hard" suspension would be devastating because Florida does not have the greatest mass transport system and most of us need a car to get to work, buy groceries or go to school.

Starting July 1st, the Florida Legislature passed a seductive new law that, seemingly on the surface, looks like a good deal for Florida drivers arrested for DUI. First time offenders, regardless of whether they took or refused the breath test, will have the opportunity to avoid the hard period of suspension if they give up their right to fight to challenge the administrative suspension and they have no disqualifying factors pursuant to the statute. What does that mean? Drivers who continue to fight the suspension and lose, will face the hard time with a period of no driving at all. Drivers who waive their right to [fight the license suspension](#) will still have their license suspended for six months for failing a breath test and one year for first refusal but they will be able to continue to drive to maintain their livelihood. So if the driver gives up the hearing, then as long as she qualifies, she can still drive and never worry about that hard suspension.

When faced with that choice, what do you think most drivers will do? Most will likely not want to take that chance of a hard suspension and will give up their right to a hearing. The State will like that because that will mean less hearings, less hearing officers and the DMV can cut staff and save money. What does the driver give up? The driver loses the opportunity to fight the administrative suspension and get his full driving privileges restored. The administrative suspension will remain on the permanent driving record even if the DUI arrest itself gets dropped and expunged. The driver loses a valuable opportunity in many cases to discover how a police officer will testify at a later [DUI trial](#) and in some cases sworn testimony that can help the Defendant.

Ultimately, it will be up to the person arrested to decide and will depend on the driver's risk tolerance. We will leave it up to our clients to decide, but when given the option, it will be hard for clients to resist the notion of waiving the hearing so they can assure themselves (as long as they qualify) that they will not face that devastating hard suspension. If that ends up being the case, the law results in the State saving money at the expense of the accused citizen essentially giving up his right to challenge the police officer's initial decision and the DMV's ultimate power to strip your license away.

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