



Photo by Mike Taheri

## New Topics in Criminal Law

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LAW OFFICES

In December of 2007, new DMV regulations went into effect that may seriously impact the driving privileges of individuals charged with DWI who refused to take a breath or blood test.

When a driver is being investigated for Driving While Intoxicated and is accused of refusing to take a breath or blood test, his or her driver license is temporarily suspended by the Court at arraignment. He or she is then entitled to a hearing before an administrative law judge of the Department of Motor Vehicles within the next fifteen days. This purpose of this hearing is to determine if (1) the arresting officer had “reasonable grounds” to believe the driver was Driving While Intoxicated, (2) the arrest was lawful, (3) the driver was advised that refusal would result in the immediate suspension and subsequent revocation of his or her license, and (4) the driver did, in fact, “refuse” to submit to a chemical test. If all of these are found in the affirmative, the driver’s license will be revoked by the DMV for at least one year. This penalty is separate from any license sanction arising from a criminal court conviction.

Prior to December of 2007, the regulations surrounding adjournments or continuances of these hearings allowed much greater latitude to the hearing officer when deciding whether the suspension or revocation of the driver’s license should be continued during the period of the adjournment. Now, whether a driver can have his or her license reinstated as a result of an adjournment is more closely regulated. If the driver requests an adjournment, then any suspension or revocation *must* be continued unless the hearing officer “affirmatively finds, on the record, that there is no reason to believe that the respondent poses a substantial traffic safety hazard and sets forth the basis for that finding on the record.”

Moreover, if the hearing officer grants a continuance of a hearing that has already begun, any driver license suspension *must* remain in effect unless the hearing officer makes a finding on the record as set forth above. This continuance of the suspension is required regardless of the reason for the continuance and whether the driver had any control over the reason.

Finally, in the case of any adjournment or continuance, the hearing officer is *required* to continue the driver license suspension under any of the following circumstances:

1. The driver has been convicted of homicide, assault, criminal negligence or criminally negligent homicide arising out of the operation of a motor vehicle;
2. The driver has two or more revocations/suspensions of his or her license in the past three years, other than a suspension that may be terminated by the performance of an act by the person;
3. The driver has two or more convictions for reckless driving in the past three years;
4. In the past ten years, the driver has three or more alcohol related driving convictions and/or refusals to submit to a chemical test. Convictions and findings of refusal arising from the same arrest count as one incident.

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