



# The Administrative Suspension Process

DUI AND ZERO TOLERANCE DRIVER LICENSE ADMINISTRATIVE REVIEW

# Florida Department of Transportation

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- ▶ Funding for this training is provided by FDOT
- ▶ According to FDOT:
  - ▶ Florida has 122,659 miles of highway
  - ▶ Florida is the 3rd most populous state (with an approximate population of 20.5 million)
  - ▶ 107 million people visit yearly



# Traffic Related Fatalities

- ▶ In 2016, there were 3,175 traffic related fatalities on Florida roadways.
- ▶ As of July 1, 2017, there have been 1,403 traffic related fatalities on Florida roadways.
- ▶ The number of traffic related fatalities in 2017 is expected to surpass 2016.

# Fatalities Related to Impaired Driving

- ▶ A significant number of traffic crashes were alcohol related.
- ▶ The 2016 numbers are not out yet, however, in 2015 there were 908 alcohol suspected fatalities. There were 6,847 alcohol suspected injuries.
- ▶ The 2016 numbers are also expected to have increased.

# Dual Processes

- ▶ The Florida Legislature has passed laws that combat impaired driving through dual processes that are independent of each other.



# Administrative Suspension Process

- ▶ All administrative DUI suspensions are based on statute and the majority are done by law enforcement at the time of arrest.

- ▶ 322.2615

- ▶ 322.2616

- ▶ 322.64



# Administrative Suspension Process

- ▶ A driver with a BAC of at least 0.08 (0.02 if under 21) will have their license suspended for 6 months, or 1 year if they have a previous suspension.
- ▶ A driver who refuses to blow, provide urine, or blood will have their license suspended for 1 year for a first refusal, or 18 months if they have a previous refusal.

# Administrative Suspension Process

- ▶ The suspension period starts at the time law enforcement takes a person's license and issues a notice of suspension.
- ▶ Within 10 days after the issuance of the notice of suspension a driver may do nothing, or make one of three elections regarding their suspension.

# Administrative Suspension Process



Review Waiver



Informal Review



Formal Review

# Review Waiver

- ▶ As of July 1, 2013, a driver may waive a formal review for a first time DUI.
- ▶ The driver must have enrolled in a DUI substance abuse education course and evaluation period to be eligible.
- ▶ This allows the driver to obtain a hardship permit immediately. By electing this option the driver waives their right to an informal or formal review.

# Hardship Permits

- ▶ With an informal or formal review, the driver is not eligible for a hardship (business purposes only) permit for 30 days (blow of at least 0.08) or 90 days (refusal) if the suspension is sustained.
- ▶ By waiving review, there is no 30 or 90 day wait, often called “hard time,” before the driver may obtain a hardship permit.

# Informal Review

- ▶ An informal review is a review of all of the material submitted by law enforcement and the driver.
- ▶ No witnesses testify.
- ▶ The Hearing Officer determines by a preponderance of the evidence whether sufficient cause exists to sustain, amend, or invalidate a suspension.

# Scope of Review

- ▶ What is the Hearing Officer determining?
- ▶ Breath/Blood/Urine provided:
  1. Whether the officer had **probable cause** to believe that the person whose license was suspended was driving or in actual physical control of a vehicle while under the influence of alcoholic beverages or chemical or controlled substance.
  2. Whether the person...had an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher....

# Scope of Review Cont'd.

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## ► Refusal:

1. Whether the officer had **probable cause** to believe that the person whose license was suspended was driving or in actual physical control of a vehicle while under the influence of alcoholic beverages or chemical or controlled substance.
2. Whether the person...refused to submit to any such test after being requested to do so by a law enforcement officer.
3. Whether the person...was told that if he/she refused to submit to such test his/her privilege to operate a vehicle would be suspended for a period of 1 year or, in the case of a second or subsequent refusal, for a period of 18 months.

# Formal Review

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- ▶ Formal review is similar to a Motion to Suppress.
- ▶ However, there is no prosecutor to present law enforcement's case.
- ▶ Testimony is under oath, witnesses testify and may be cross examined, and the Hearing Officer may receive evidence.
- ▶ Standard for evidence is relevance.

# Formal Review

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- ▶ Pursuant to 316.2615(2)(a), the following evidence must be submitted by law enforcement for consideration (if applicable):



# Formal Review Evidence



Affidavit stating officer's grounds for belief that the driver was DUI



Breath, or blood results



Affidavit stating a breath, blood, or urine test was requested and the person refused to submit

# Formal Review Evidence



The officer's description of the field sobriety exercises



Notice of Suspension



Crash Report\*



Video may be submitted without a subpoena

# Formal Review

- ▶ Like a Motion to Suppress, any lawful basis may be used to challenge the action or inaction of law enforcement in order to attempt to invalidate the license suspension.
  - ▶ Reasonable suspicion for stop
  - ▶ Actual Physical Control
  - ▶ Insufficient basis for FSEs
  - ▶ Probable Cause for arrest
  - ▶ Reading of Implied Consent\*

# Formal Review

- ▶ A formal review may be conducted by calling witnesses and presenting evidence, or solely by relying on the evidence previously discussed without calling any witnesses.



# Formal Review

- ▶ So how do I know whether to attend a formal review?
- ▶ The driver may request the Hearing Officer issues a subpoena to the officer(s) and witnesses identified in the materials submitted.

# Formal Review

- ▶ If a witness fails to appear, a party may seek enforcement of the subpoena by filing a petition for enforcement in a court.
- ▶ A party may then seek attorney's fees against the witness who failed to appear.
- ▶ By statute, a failure to comply with an order of the court shall result in a finding of contempt.

# Formal Review

- ▶ If a witness cannot appear they must notify the Hearing Officer in writing prior to the formal review.
- ▶ If the arresting officer or the breath technician fail to appear the Hearing Officer is required by statute to invalidate the suspension.

# *Larmer v. DHSMV*

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- ▶ Whether a refusal by a driver arrested for DUI to provide a breath sample constitutes a refusal when the driver changes his mind?



# *Larmer v. DHSMV*

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- ▶ Totality of circumstances approach.
- ▶ Driver may change mind and avoid refusal penalty where the retraction came moments after refusal, still continuously in the presence of law enforcement, and in circumstances where no inconvenience to officers.

# *DHSMV v. Green*

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- ▶ Whether a driver arrested for DUI has a right to select a different initial test to be used to determine their BAC?



# *DHSMV v. Green*

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- ▶ It is the officer who requests the test, not the driver who selects it.
- ▶ A driver has no right to demand a blood test instead of a breath test.
- ▶ However, following a breath test statute provides for the driver, at their own expense, to do an independent test and an officer must provide timely telephone access and not hinder the driver.

# *Kaiser v. State*

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- ▶ Did the technician observing Kaiser prior to the breath test during the 20 minute observation period do so properly?



# *Kaiser v. State*

- ▶ This is a question for the finder of fact.
- ▶ A technician is not required to stare fixedly at the driver for the entire period of time.
- ▶ However, the technician must observe the driver for the entire observation period and restart the period if necessary.

# Gallardo v. State

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- ▶ Is a visual estimation of speed alone a lawful basis for a traffic stop?



# *Gallardo v. State*

- ▶ Visual estimation of speed alone is sufficient.
- ▶ In order to be sufficient, detail about vantage point, opportunity to observe the vehicle, and training and experience must be articulated.
- ▶ If a speed measuring device is then used, describe and explain which device was used.

Questions?