

The background of the slide is a photograph of a grand, classical-style building with numerous tall, fluted columns and ornate architectural details. The image is slightly faded and serves as a backdrop for the text.

THE ADMINISTRATIVE HEARING PROCESS

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Purpose

To give you a basic understanding of the hearing process (how it works and why it is structured the way it is)

Objective

To facilitate and expedite
the evaluation process



The Administrative Hearing Process

License Definitions

Revocation (of driving privileges)

Permanent loss of driving privileges

SOS hearing is required for permit prior to eligibility date for reinstatement

SOS hearing is required for reinstatement after eligibility date for reinstatement

The Administrative Hearing Process

License Definitions

Suspension (of driving privileges)

Temporary loss of driving privileges

SOS hearing is required for permit prior to eligibility date for reinstatement

Only required to pay fee after eligibility date for reinstatement (no hearing)

The Administrative Hearing Process

License Definitions

Summary Suspension (of driving privileges)

Temporary loss of driving privileges after refusal to take chemical test or failure of chemical test (BAC over .08) when under arrest for DUI

The Administrative Hearing Process

License Definitions

Summary Revocation (of driving privileges)

Permanent loss of driving privileges following an arrest for DUI involving a motor vehicle accident that caused personal injury or death to another and only with a refusal to take chemical test.

(Public Act 96-1344, eff. 7-1-11.)

The Administrative Hearing Process

Summary Suspension First Offenders Driving privileges are suspended for:

- Six months for taking and failing chemical test
- Twelve months for refusal of chemical testing
- Provided that offender has no other DUI convictions or supervisions in the prior five years

P. A. 99-467, eff. 1 January 2016

The Administrative Hearing Process

Summary Suspension Second Offenders

Driving privileges are suspended for:

- 12 months for failing chemical test
- 36 months for refusing chemical test
- Only if the offender has one or more supervisions or convictions for DUI in the prior five years

P. A. 99-467, eff. 1 January 2016 and P.A. 99-290

Summary Suspension Process

First Offender

- Statutory Summary Suspension requires implied consent to take chemical test upon request
- Civil Process affects only driving privileges
- Offender asks for an *implied consent* hearing
- Offender carries initial burden of going forward with evidence at *implied consent* hearing that the suspension should be rescinded.
- Offender has 45 days to contest suspension from date Sworn Report is served on them

Summary Suspension Process

First Offender

- Burden of proof is “preponderance of evidence”
- Court *rescinds* or *upholds* summary suspension
- Offender can accept invitation from SOS to participate in the Monitoring Device Driving Permit (MDDP) program issued by BAIID Dept
- No rehabilitative measures required prior to the issuance of the MDDP
- Required to install a BAIID on their vehicle while driving on the MDDP

Summary Suspension/Revocation: Process for *Multiple Offender*

- Multiple Offenders can only apply for a Restricted Driving Permit (RDP) at a SOS (formal) hearing to drive relief during the suspension period
- Evaluation and verification of completion of recommended intervention must be submitted at a SOS (formal) hearing to apply for RDP
- The Department of Administrative Hearings grants permit with an interlock on the vehicle during the entire suspension period

The Administrative Hearing Process

Court Definitions

Supervision

Granted only once per lifetime; Finding of guilt or plea of guilty; Must abide by conditions for specific period of time (i.e. 1 year); Judgment is entered upon permanent driving record.

Conviction

Finding of guilt or plea of guilty; Judgment is entered upon permanent criminal record and upon permanent driving record

THE CRIMINAL PROCESS

(all offenders)

Trial Process

- Arraignment
- Pre-Trial Conference
- Plea Agreement
- Trial by Judge or Jury
- Guilty or Not Guilty
Verdict is rendered

Post-trial sentencing

- Court Supervision
(reported only on driving record with no effect on license)
- Conviction (reported on criminal and driving record with license revocation for period of years)

The Criminal Process has Formal Courtroom Rights

- Right to Counsel
- Presumption of innocence
- Proof of guilt beyond a reasonable doubt
- Revocation of driving privileges after conviction
- Right to appeal outcome to appellate courts

Results of Criminal Process

When the court enters guilty judgment the offender must:

- Comply with all court requirements
- Pay a fine and/or go to jail
- Obtain an alcohol-drug evaluation and complete all required intervention
- Seek driving relief from revocation of driving privileges due to conviction

The background of the slide is a photograph of a grand, classical building with a series of tall, fluted columns and an ornate pediment. The building is made of light-colored stone or marble. The image is slightly faded and serves as a backdrop for the text.

The Ultimate Objective of the Hearing Process

*Quantify the Risk
to Public Safety*

Issues at the Hearing

The background of the slide features a faded, sepia-toned image of a grand classical building. It has multiple stories with a series of tall, fluted columns supporting a heavy entablature. The architecture suggests a government or institutional building, possibly a courthouse or a legislative chamber, which is fitting for the topic of a hearing.

- What is nature and extent of the problem?
- Is the problem resolved?
- Is petitioner a safe and responsible driver?
- What are the hardships, if applicable?

Results of the Hearing

Hearing officer applies administrative code requirements to the facts of the case.

A decision is mailed to the petitioner.

Petitioner must have evaluator respond to the denial before their next hearing.

The Administrative Hearing Process

Petitioner Population:
Defendants Convicted of:



- **DUI or Aggravated DUI**
- **Leaving the scene of an injury or fatal collision**
- **Reckless Homicide**
- **Multiple Moving Violations in a short period of time (i.e. 1 year)**

Vehicle Code Mandates

The eligibility date to apply for reinstatement results from the number of DUI Convictions:

- One year/ First Conviction
- Five years/Second Conviction
- Ten years/Third Conviction
- Lifetime ineligible/Fourth conviction
- *Any combination of convictions for: DUI, leaving the scene of a crash involving personal injury or death, and reckless homicide.

Further Mandates

- Conviction for leaving the scene of a fatal or personal injury collision results in a revocation with a three (3) year eligibility date for reinstatement. Sec. 6-208(b)1 of the IVC.
- P.A. 90-543, eff. 1 Dec. 1997

Further Mandates

- Conviction for reckless homicide/Agg. DUI due to the operation of a motor vehicle results in a revocation with a minimum of a two (2) year eligibility date for reinstatement. If the offender is sentenced to prison, then they are not eligible for **any** driving relief for two (2) years from the date of release from imprisonment. Sec. 6-208(b)1 of the IVC.
- Incarceration release dates must be verified.

P.A. 90-543, eff. 1 Dec. 2001, and P.A. 92-343, eff. 1 Jan. 2002

Further Mandates

- Two or three DUI Convictions: Petitioner must drive on permits with interlock (all registered vehicles) for five years prior to reinstatement.
- Four or more DUI Convictions: Petitioner is never eligible for reinstatement but may apply for a lifetime permit after five years of hard revocation (measured from the later date of revocation or release from incarceration); must demonstrate 3 years of abstinence and must drive with an interlock forever

P.A. 99-290, eff. 1 January 2016

Further Mandates

Permit Definitions:

- Hardship permit: issued prior to eligibility date for resentment if the Petitioner demonstrates undue hardship for one of six purposes (employment, medical, educational, daycare, support/recovery programs or court-ordered community service).
- Probationary permit: issued only after eligibility date for reinstatement at **discretion** of hearing officer in lieu of reinstatement for any legal purpose (12 hours/6 days/200 mile radius).

Further Mandates

Permit Definitions:

BMO permit: issued to BAID multiple offender (two to three convictions for DUI) in two year increments for five years prior to reinstatement. No hardship requirement-even if not yet eligible for reinstatement-for any legal purpose (12 hours/6 days/200 mile radius).

Life-time permit: hardship permit issued to a life-time offender in two year increments.

Beginning the Hearing Process

First.....start with the consultation.

The *informal* hearing officer:

- ✓ Uses a Checklist of offenses
- ✓ Provides the driving record
- ✓ Provides orientation to SOS requirements

Informal Hearings

First Offenders

- Petitioner can have an *informal hearing* at local driver's license facility if they only have one DUI disposition on their driving record. Petitioner may also have a formal hearing at their option.
- Appointment is not required but call first to make sure informal hearing officer is present.
- Petitioner carries burden of proof (clear and convincing evidence)

Informal Hearings

First Offenders

- Petitioner has right to counsel but will not be provided counsel
- Petitioner will need evaluation and proof of completion of countermeasures
- Petitioner will have interview with hearing officer
- Case will then be reviewed and letter sent out
- If denied, can attend another informal hearing in 30 days or request a *formal* hearing

Conclusion of Informal Hearing Process

Administrative requirements if granted relief

- Financial responsibility (high risk/SR22)
insurance
- Written and driving tests
- Assessed fees

Formal Hearing

Multiple Offenders

- Petitioners must have a formal hearing if they have two DUI dispositions on their driving record or the case involves death.
- Petitioner must request a formal hearing in writing with a \$50 filing fee.
- Petitioner carries burden of proof by clear and convincing evidence
- Petitioner has right to counsel but none will be provided.

Formal Hearing

Multiple Offenders

- Petitioner will need an evaluation and proof of completion of counter measures
- Hearing officer will review all of petitioners documents and testimony prior to making decision
- Formal courtroom proceedings followed with transcription of proceedings to be used in case of court administrative review

What Happens Next?

The Hearing Officer makes a formal recommendation to the SOS for issuing or deny driving relief. The SOS reviewer adopts or rejects the recommendation upon reviewing the hearing officer's written:

- Findings of Fact
- Conclusions of Law

Conclusion of the Formal Hearing Process

- If *granted relief*; petitioner must complete administrative requirements including:
 - Fees
 - Insurance
 - Written and driving tests
 - BAIID (interlock device)
- If *denied*; Petitioner can reapply in three months or appeal SOS decision to the circuit court of Cook, Sangamon or Jefferson County.



The Administrative Hearing Process

*Kevin Ryan, Formal Hearing Officer
Illinois Secretary of State, Department
of Administrative Hearings*

Service Provider Role In Hearing Process

Provide a clinically objective report that specifically addresses an individual client's relationship to alcohol or other drugs.

Do not advocate for driving relief



Hearing Officer Role in Hearing Process

Consider all available information and determine whether an individual petitioner represents an acceptable risk to be granted driving relief.

The primary responsibility is public safety and welfare.

5 Decision Making Factors

- #1: Have the minimum requirements been fulfilled?
- #2: Are there deficiencies in the submitted documentation?
- #3: How did the petitioner present themselves at the hearing?
- #4: What is the petitioner's overall driving record?
- # 5: What type of driving relief is the petitioner eligible for?

Decision Making Factors



Factor #1

Have Minimum Requirements been fulfilled?

Factor # 1

Minimum Requirements

- ✓ Current alcohol and drug evaluation no older than 6 months at time of hearing. (Remember the Alcohol/Drug Evaluation Uniform Report must include a recitation of the petitioner's alcohol/drug use history, from first use to present use.)
- ✓ Documentation of compliance with recommendations corresponding to classification level.

MINIMAL RISK

- ✓ Alcohol/Drug Evaluation Uniform Report properly signed and dated within six months of the date of hearing and a current Update Evaluation when appropriate.
- ✓ Document completion of Driver Risk Education with a post-test score of 75% or greater.

MODERATE RISK

- ✓ Alcohol/Drug Evaluation Uniform Report properly signed and dated within six months of the date of hearing and a **current Update Evaluation when appropriate.**
- ✓ Document completion of Driver Risk Education with a post-test score of 75% or greater.
- ✓ Document completion of a minimum of 12 hours of Early Intervention or provide a clinical rationale for non-completion of such program.

Early Intervention Documentation

- ✓ Summary report on letterhead stationary regarding intervention provided and its outcome.
- ✓ Specific issues that were explored/addressed relating to the individual petitioner's use of alcohol/drugs.
- ✓ Provider's perception of what individual petitioner gained and his/her ability to avoid development of future alcohol/drug problems.

Significant Risk

- ✓ Alcohol/Drug Evaluation Uniform Report properly signed and dated within six months of the date of hearing and a **current Update Evaluation when appropriate**.
- ✓ Document completion of Driver Risk Education with a post-test score of 75% or greater.
- ✓ Document completion of a minimum of twenty hours of treatment.
- ✓ Provide clinical rationale for any modification in required minimum recommendation (increase or decrease) and/or Treatment Needs Assessment and Waiver when appropriate.

Treatment Documentation

- ✓ Secretary Of State Treatment Verification form with required attachments:
 - Individualized treatment plan
 - Discharge summary
 - Continuing care plan or clinical rationale for determining continuing care not necessary
 - Continuing Care Status Report

Criteria for Continuing Care Status Report Documentation

- ✓ Summary report on letterhead stationary.
- ✓ If ongoing, level of progress in completing follow-up activities detailed in plan.
- ✓ If completed, summary report discussing progress throughout course of completing follow-up activities detailed in plan.

High Risk (Non-Dependent)

- ✓ Alcohol/Drug Evaluation Uniform Report properly signed and dated within six months of the date of hearing and a **current Update Evaluation when appropriate.**
- ✓ Document completion of a minimum of seventy-five hours of treatment.
- ✓ Provide clinical rationale for any modification in required minimum recommendation (increase or decrease), and/or a Treatment Needs Assessment and Waiver when appropriate.

High Risk (Non-Dependent) Requirements continued...

- ✓ Provision of a clinical explanation for why dependency was ruled out.
- ✓ Minimum of 3 written statements from people who see petitioner on regular and frequent basis.

High Risk (Non-Dependent) Requirements continued...

- ✓ Document either total abstinence or continued use in a non-problematic manner for at least 12 consecutive months to be considered for full reinstatement.
- ✓ May be reduced to at least 6 months when considering RDP.

High Risk (Dependent)

- ✓ Alcohol/Drug Evaluation Uniform Report properly signed and dated within six months of the date of hearing and a **current Update Evaluation when appropriate.**
- ✓ Document completion of a minimum of seventy-five hours of treatment.
- ✓ Provide clinical rationale for any modification in required minimum recommendation.

High Risk (Dependent) Requirements continued...

- ✓ Document total abstinence for at least 12 consecutive months to be considered for full reinstatement.
- ✓ May be reduced to at least 6 months when considering RDP.
- ✓ Minimum of 3 written statements from people who see petitioner on regular and frequent basis.

High Risk (Dependent) Requirements (continued)

- ✓ Document involvement in a support/recovery program.
- ✓ Minimum of 3 written statements from fellow members/participants in the program.
- ✓ If petitioner's support is non-traditional, petitioner must also identify what the program is and explain how it works and keeps him/her abstinent.

Decision Making Factors



Factor #2

Are there deficiencies in the documentation submitted?



Factor #2

Primary Problem is Inconsistency


- ✓ Inconsistency within documents
- ✓ Inconsistency between documents
- ✓ Inconsistency between petitioner's testimony and documents
- ✓ Inconsistency between petitioner's testimony and witness testimony

Decision Making Factors

Factor #3

How did the petitioner present himself/herself at hearing?





Factor #3

Petitioner and Presentation at Hearing

- ✓ Understanding and acceptance
- ✓ Credibility
- ✓ Demeanor

Decision Making Factors

Factor # 4

What is the petitioner's overall driving record?



Factor # 4

Overall Driving Record

- ✓ Consider all offenses, not just alcohol/drug-related driving offenses.

(driving while suspended/revoked, speeding, etc.)

- ✓ Has petitioner demonstrated an inability to utilize driving privileges in a responsible manner?

(especially driving privileges while on a RDP)



Decision Making Factors

Factor # 5

What type of driving relief is the petitioner eligible for?

Factor # 5

Eligibility

✓ Reinstatement (if applicable)

✓ Restricted Driving Permit

(BMO RDP, Probationary RDP, Employment RDP, Support RDP, etc.)

✓ Hardship (if applicable)

Other Notes...

... PDPS

...All Alcohol/Drug Related Offenses

...Medical Cannabis, Opioid Withdrawal Prescription

...BAIID, BMO, LIFETIME

...RDP length