

LAST DAY** D.M.V. HEARING REQUEST - ADMIN PER SE - IN PRO PER

(0.08% B.A.C. or Chemical Test Refusal)

My name: _____ Driver's License No.: _____

I was arrested for drunk driving (Veh. C. §§ 23152, 23153 or an equivalent offense) on (date): _____, in the State of California at (location of arrest): _____

I hereby demand a D.M.V. hearing in accordance with the provisions of Veh. C. §13558, which requires the hearing to be held and a decision to be reached, prior the effective date of the suspension or revocation. I do not waive my right to have a hearing held and decision reached prior to the effective date of the suspension or revocation.*

Additionally:

- ◆ I demand a stay of the suspension or revocation pending the hearing and decision, but only for such time as no other driving privilege suspension or revocation is effective.
- ◆ I demand discovery under Gov. C. §11507.6.
- ◆ I object to conducting all or part of the hearing by telephone, television or other electronic means, but may be willing to agree to that later.
- ◆ ___ (Check if applicable) I do not speak English. I will require an interpreter at the hearing who speaks _____.
- ◆ At this time, I am representing myself in this matter, but I expect to hire an attorney soon and when I do you'll be informed of that.

Signature

Date

Phone number

* NOTICE: Vehicle Code §§ 13353.3, 13558 and 40000.1, make it an infraction to fail to hold my hearing and decide the matter prior to the effective date of the suspension or revocation herein, unless the hearing date is continued with good cause or held later with my consent. In addition, Gov. C. §1222 makes it a misdemeanor for a government employee to fail to follow his or her official duty.

** In calculating the 10th day, the first day is excluded (Civil. C. §10). If the last day to request the hearing falls on a Saturday, Sunday or a holiday, the request may be made on the next business day (Gov. C. §§ 6700 and 6707).

INSTRUCTIONS

THE SUSPENSION

Nearly everyone arrested for drunk driving in California is given an Admin Per Se (APS) Notice of Suspension (or revocation) of their driving privilege in connection with the arrest, and is entitled to a hearing at the D.M.V. to contest it. Experienced and knowledgeable attorneys win most of these hearings (see below). If the police believe you refused a chemical test or you took one and they believe your blood alcohol level was over the 0.08% legal limit, you were probably served with the notice of suspension. They would have also taken your driver's license at that time, unless it was from another state. (It's the privilege to drive which is suspended, not the license itself, so out-of-staters are subject to the suspension even though they retain their driver's license.)

The length of time your driving privilege is suspended depends upon (1) how many previous arrests and convictions you have for drunk driving or other equivalent offenses **within the past seven years**, and (2) whether the current suspension is for chemical test refusal or a blood alcohol level over the legal limit. (Previous arrests only are counted if you were suspended under this Admin Per Se procedure, but didn't get a conviction of drunk driving.)

Chemical Test Refusal

If your suspension is for chemical test refusal, it's for one, two or three years, depending upon whether you have one, two or three or more previous arrests or convictions.

Blood Alcohol Level Over Limit

If your suspension is for a blood alcohol level over the legal limit, the suspension is for four months, unless you have one or more prior arrests or convictions, in which case it's for one year.

FIRST OFFENDER DUI PROGRAM OPTIONS: A first offender who enrolls in a first offender DUI Program (licensed by the California Department of Alcohol and Drug Programs) is eligible to select one of two optional restricted licenses after a 30-day waiting period on full suspension. After the restriction is completed, the driver gets full driving privileges.

Under the first option, the restricted license lasts for 60 days, or until the three-month program is completed, but in any event no more than 90 days. But the restriction only allows driving to and from and in connection with the program. (A person who is fully suspended for 90 days is also eligible for this option, since that person also may not drive to and from and in connection with work.)

Alternatively, the driver may select a five-month restriction that allows driving to and from and in connection with work also. (See <http://www.dui.com> for more information on first offender programs.)

You will probably want to wait to see if you win the hearing before enrolling in the program. Call 916 322 2964 for a list of licensed program providers in your area. You may need to shop around to find one that will accept you without a referral from a judge.

COMMERCIAL DRIVER OPTION: If this is your first drunk driving arrest ever, and you had a commercial driver's license and you weren't driving a commercial vehicle at the time you were arrested, you can elect to take a 30-day suspension followed by five months of restricted driving.

ATTORNEYS WIN MOST APS HEARINGS

In a recent year, only 8% of those suspended actually requested a hearing, but 34% of them kept their driving privileges as a result of demanding a hearing. **Many experienced attorneys win more than 50% of these hearings.** But most importantly, the reason they win often has nothing to do with whether or not you actually refused a chemical test or drove with an illegal blood alcohol level. It depends instead on the DMV's reliance on paperwork, rather than live witnesses, to prove their case against you.

Did I say, "prove their case against you"? Yes I did. Contrary to the information printed on the notice of suspension, you do not have to "show that suspension or revocation is not justified". Instead, state law puts the burden of proof on the D.M.V., which must show that the suspension is justified by the law and the facts of your case. **Initially, they have to prove you refused a chemical test or were driving with an illegal blood alcohol, you do not have to prove otherwise.** And they try to do this without live witnesses. That's why experienced and knowledgeable attorneys win the hearings so easily. The paperwork is often defective.

DEADLINES

If you make the request for a hearing within 10 days of the date you were given the suspension notice (usually the same day you were arrested) you are absolutely entitled to two things: (1) a hearing on the validity of the suspension to be held and decided prior to the effective date of the suspension and, (2) a stay of the suspension order pending the hearing decision if it is not held and decided within 30 days of when you were given the notice. (In addition, if the suspension notice served on you is an old one saying you have 30 days to request a hearing, then you do have 30 days, and a stay must also be granted.)

Many D.M.V. hearings are held and decided far beyond the 30-day deadline, in violation of state law. The D.M.V. defends this lawlessness by saying that the deadline is "directory only" and not "mandatory". The truth is, Veh. C. §40000.1 and Gov. C. §1222 both make it a crime to fail to hold a hearing and decide it before the statutory deadline, unless you agree to a later date or the hearing is continued for good cause beyond the deadline.

DON'T PROVIDE UNNECESSARY INFORMATION

In order for your hearing request to be granted, you need not supply the D.M.V. with any additional information, exceeding that provided on this form, which could be used to aid the D.M.V. in its effort to suspend or revoke your driving privileges. This form supplies the D.M.V. with the minimal information legally necessary to obtain the right to have a hearing. The D.M.V. has the right to obtain more information from you later by way of "discovery", in accordance with state law and their own regulations (Gov. C. §11507.6 and Title 13, Cal. C. of Regs, §115.05), but may not condition granting your initial request for a hearing upon your compliance with a demand for that additional information.

Though there may be some unforeseen risk of consequences for withholding additional information which are not contemplated at this time, it is felt that the benefits of not unnecessarily assisting the D.M.V. in taking your driving privilege outweigh those risks.

HOW TO USE THIS FOR

As previously stated, this hearing request must usually be made within 10 days of the notice of suspension, which is usually the date you were arrested. **It must be postmarked or actually received by the D.M.V. within that time.**

In determining when the 10th day is, begin counting days on the day following the day you were arrested (Cal. Civil C. §10). For instance, if you were arrested on the 5th of the month, start counting with the 6th of the

month. The 10th day would be on the 15th of the month. If the last day falls on a weekend or state holiday, the deadline is extended to the next business day (Cal. Civil C. §10; Cal. Gov. C. §§ 6700 and 6707).

Fill in all the blanks as appropriate. Your name should be stated exactly as it appears on your driver's license. This form does not tell the D.M.V. your current mailing address. If the D.M.V. does not have your current mailing address, report a change of address at the closest D.M.V. field office prior to delivering this hearing request to the Driver Safety Division.

The form asks you to write in the exact location of your arrest. This is because Veh. C. §13558, subdivision (b), states that, *The hearing shall be held at a place designated by the department as close as practicable to the place where the arrest occurred, unless the parties agree to a different location.* If you are unable to give an address, or don't know the city or town, then state the county where the arrest occurred, and describe the location as best as you can, for example, "Mendocino County on U.S. Highway 101 about 3 miles north of the City of Willits".

If the D.M.V. contacts you, remember the previous admonition that you have no obligation to tell them any additional information, such as the name of the cop who arrested you, the police agency he or she is employed by, the police report number, etc., in order to obtain a hearing.

D.M.V. DRIVER SAFETY FIELD OFFICE PHONE NUMBERS

Call the number for the field office which is closest to the location of your arrest to determine which office is the correct one to deliver this form to.

Oakland: 510 563 8900; Fax: 510 563 8951

Sacramento: 916 227 2970; Fax: 916 227 2901

City of Commerce: 323 724 4000; Fax: 323 724 9262

El Segundo: 310 615 3500; Fax: 310 615 3581

Fresno: 559 488 4292; Fax: 559 445 5657

Irvine: 949 440 4416; Fax: 949 440 4424

Oxnard: 805 488 0863; Fax: 805 488 3219

San Bernardino: 909 383 7413; Fax: 909 383 7439

San Diego: 858 627 3901; Fax: 858 627 3925

San Francisco: 415 557 1170; Fax: 415 557 7375

San Jose: 408 277 1314; Fax: 408 277 1033

WARNING THE OAKLAND DRIVER SAFETY OFFICE, AND POSSIBLY OTHERS, ROUTINELY FAIL TO ACKNOWLEDGE FAXED HEARING REQUESTS OR FALSELY STATE THAT THE REQUEST WAS RECEIVED AND THE SUSPENSION WAS STAYED WHEN IN FACT THEIR RECORDS WILL FALSELY STATE THAT NEITHER HAS HAPPENED.

TO BE ABSOLUTELY SURE THAT YOUR HEARING REQUEST HAS BEEN RECEIVED, SEND IT BY CERTIFIED MAIL. BE SURE TO REQUEST A RETURN RECEIPT SO YOU'LL HAVE PROOF THAT IT WAS DELIVERED. OR YOU COULD PERSONALLY DELIVER THE HEARING REQUEST TO A DRIVER SAFETY FIELD OFFICE AND OBTAIN A RECEIPT FOR IT. IN EITHER CASE, INCLUDE A COVER LETTER STATING THAT YOU DELIVERED IT AND STATE THE DATE THAT WAS DONE. ALSO STATE YOUR UNDERSTANDING THAT, (1) IT WAS DELIVERED ON TIME, AND (2) A HEARING HAS BEEN GRANTED, AND (3) THE SUSPENSION OR REVOCATION IS STAYED PENDING THAT HEARING AND DECISION.

DO NOT RELY ON AN ORAL STATEMENT THAT YOUR HEARING REQUEST HAS BEEN RECEIVED AND THAT YOUR SUSPENSION IS STAYED PENDING THE HEARING AND DECISION. A LARGE NUMBER OF PEOPLE HAD DONE SO IN LATE 1998 AND HAD BEEN FALSELY ARRESTED AND THEIR CARS WRONGFULLY IMPOUNDED. CARRY THE COVER LETTER WITH YOU, ALONG WITH A COPY OF THIS HEARING REQUEST FORM, AS IT APPEARED WHEN YOU DELIVERED IT, AND YOUR PROOF OF DELIVERY TO THE D.M.V.

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Please help improve this information by reporting problems, and any errors in phone numbers, etc., to:

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