

## LICENSE SUSPENSIONS, ADMINISTRATIVE SUSPENSION, CHEMICAL TEST FAILURES

License suspensions are a major concern for many clients. Most of us need to drive for work and family purposes. Almost all of us drive to and from work and many of us drive while we are at work, from one work location to another, to visit with clients, and /or run errands. Also, if we have children, you probably need to drive them back and forth to school, sporting events, various other events and activities.

When you are charged with Operating While Intoxicated, the police officer who makes the arrest is required to complete a standard form of probable cause affidavit. A copy of the standard Affidavit for Probable Cause is attached. This probable cause affidavit is generally delivered from the police department to the county prosecutor's office. The county prosecutor will review that probable cause affidavit along with other documents and information submitted by the police department in order to decide what formal charges to file against you. When the formal charges are filed with the court, that probable cause affidavit will accompany the charges. A judge will review the probable cause affidavit and if it is filled out correctly, the judge will find probable cause and sign an order to suspend your license. This is usually called an administrative suspension (or suspension for chemical test failure). It is provided for in Indiana Code 9-30-6-1. If you took a clinical test such as a blood test, urine test, or the data master breathe test and failed, then the administrative suspension will be for 180 days. If you refuse to take any chemical test, then the administrative suspension will be for one year (unless you have any prior Operating While Intoxicated conviction, in which case the administrative suspension for refusal will be for two years).

If you are convicted of Operating While Intoxicated, that is if you plead guilty or are found guilty, then the administrative suspension can change. For a first offense Operating While Intoxicated conviction, the law requires a suspension of 90 days up to 2 years. In most cases in most counties, for a first offense if there is no serious accident or other aggravating circumstance the prosecutor and judge will allow a 90 day suspension, So, it is possible to reduce the suspension down to 90 days. The law also allows for a conditional or restricted license for a first offense. Under the law it is possible to have your license suspended for only 30 days and then have a conditional license for a minimum of 180 days. A conditional license will only allow you to drive for purposes of employment and certain other purposes specified by the court (usually those purposes are to complete the requirements of the probation, e.g., probation appointments, alcohol counseling, etc.).

If you were suspended for refusing the chemical test, then the license suspension can be more difficult. It will be necessary to get a court order stating that you did not actually knowingly and willingly refuse a breath test in order for that one year suspension to be vacated. Most prosecutors are usually agreeable (if you are pleading guilty). However, some prosecutors in some counties will not agree. If you are under a one year suspension for refusal and the prosecutor will not agree to vacate the refusal suspension, and you cannot get the judge to order that there was not a knowing refusal, then it will be necessary for you to file a petition for a hardship license (usually in a different court) in order to get restricted license that will allow you to drive for employment.

The administrative license suspensions are very unfair. Lawyers have fought them for decades. Unfortunately, the Courts have upheld these laws. The arguments that lawyers have made have focused on the constitutional right to be considered innocent until proven guilty. With administrative suspensions in Operating While Intoxicated cases, you are considered guilty without a trial and without real proof – only a probable cause affidavit. To provide some due process, Indiana law allows for judicial review. Pursuant to Indiana Code 9-30-6-9, you may file a petition for judicial review and the court is required to hold a prompt hearing. At your hearing, you would have the burden of proving that the administrative suspension is illegal or otherwise inappropriate. Issues that could be raised during such a judicial review include things like: 1) you did not actually fail a chemical test (such as a .07 case), 2) the test was not properly administered, 3) you did not knowingly refuse a breath test, 4) the officer did not correctly advise you of the consequences of refusing a breath test.

In a few counties within the state, the prosecutor's office has a program available that may allow you to keep a valid license while your case is pending. Also, there are a few counties that allow for you to drive with an ignition interlock device in your vehicle in lieu of an administrative suspension. An ignition interlock device is a breath test machine that is wired into your vehicle ignition so that you have to take a breath test before starting your vehicle and randomly as you are driving, the device will signal you to breathe into it. If you test positive for alcohol on your breath, the device will turn off your car and will not allow it to start until the device is reset. I emphasize that of the 92 counties in the State of Indiana very few allow for either of these programs. Overwhelmingly, if you are charged with OWI, you should expect your license to be suspended for at least for a little while.