

### WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Office of Administrative Hearings 300 Capitol Street, 10<sup>th</sup> Floor, Charleston, West Virginia 25301 (304) 356-2233 • Fax: (304) 558-1316

Thomas J. Smith, P. E. Cabinet Secretary

Jim Justice Governor

### **FISCAL YEAR 2016**

### ANNUAL REPORT AND STATISTICAL ANALYSIS



TERESA D. MAYNARD, CHIEF HEARING EXAMINER

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### INTRODUCTION BY THE CHIEF HEARING EXAMINER

The Office of Administrative Hearings (OAH) is tasked with the responsibility of providing fair and impartial hearings to litigants involved in contested driver's license revocation proceedings. OAH is bound by the law as interpreted by the Supreme Court of Appeals of West Virginia, which has created some discord among the defense bar following the issuance of the decisions in *Dale v. Odum*, 233 W.Va. 601, 760 S.E.2d 415 (2014); *Reed v. Beckett*, No. 15-1044; *Reed v. Pettit*, No. 14-0372; and *Patricia S. Reed, Commissioner, West Virginia Division of Motor Vehicles v. Jeffrey Hill*, 235 W. Va. 1, 770 S.E.2d 501 (2015). The federal constitution as well as the West Virginia Constitution provide that no person shall be deprived of property without due process of law. Due process of law entitles an individual to a notice of the action the Division of Motor Vehicles (DMV) intends to take against the individual's driving privilege as well as an opportunity to be heard.

Currently, forty-one (41) states have adopted administrative license revocation (ALR) laws similar to those established in West Virginia. The National Highway Traffic Safety Administration (NHTSA) continues to encourage every state to implement an ALR system by providing incentives such as grants that can be used to sponsor impaired driver prevention programs. NHTSA studies have shown that driving under the influence (DUI) related fatalities have been reduced in State's that have separated the administrative revocation process from the criminal proceeding. The Center for Disease Prevention has also identified the ALR system as a viable means of DUI prevention.

The administrative hearing differs from the criminal proceeding in several ways most significantly in the standard of proof. Because the administrative process is considered a civil remedy, the DMV does not have to establish guilt beyond a reasonable doubt. Instead, the hearing examiner applies a preponderance of the evidence standard to determine whether the driver more likely than not drove his or her vehicle while under the influence of alcohol, drugs, and/or controlled substances or failed to submit to the designated secondary chemical test. The burden of proof rests upon the DMV; however, the Petitioner has the opportunity to produce evidence and testimony to rebut that offered by the DMV. Because the criminal proceeding focuses on a violation of criminal law, while the administrative proceeding focuses on an individual's driving behavior, a driver's license can be administratively revoked even when a criminal charge has been dropped or reduced to a non-revocable offense such as reckless driving.

Although criminal and administrative proceedings are treated very differently, it is common for certain conduct to have both criminal and administrative ramifications. For instance, an attorney who embezzles money from a client may face criminal charges for theft at which time he or she may be found "not guilty" under the "beyond a reasonable doubt" standard; however, that same evidence may be sufficient to establish "by a preponderance of the evidence" that the attorney's administrative license to practice law should be revoked or suspended. NHTSA recognizes the nuances of administrative versus criminal proceedings and recommends that the administrative

sanction "be handled separately from the criminal proceeding. Due to differing procedural aspects, the findings and outcome of an ALR action normally should not affect a criminal proceeding, and vice versa."

In 2016, West Virginia was ranked twelfth in the nation in DUI prevention among all fifty (50) states and the District of Columbia. The nine (9) states that do not currently have ALR systems in place ranked significantly lower with Tennessee being the highest at nineteen and South Dakota being the lowest at fifty-one (51). The remaining seven (7) states ranged in placement between thirty (30) and forty-eight (48).

Throughout its short existence, OAH has been cognizant of budgetary issues and has ended each fiscal year with unexpended monies. In the last two years, the agency has decreased its fleet from fifteen (15) vehicles to six (6) vehicles. In FY 2016, OAH had a budget surplus of almost fifteen percent (15%). Currently, the agency has used less than forty-five percent (45%) of its budget with only five (5) months remaining in FY 2017. In light of the current financial crisis facing the State, OAH is now in the process of reducing the overall number of employees from thirty (30) to twenty-eight (28) while creating an additional paralegal position in the Legal Department, which will assist in the streamlining of the order entry process.

### CREATION OF THE OFFICE OF ADMINSTRATIVE HEARINGS

OAH originated through Senate Bill 186 which passed during the 2010 Regular Legislative Session and became effective on June 11, 2010. West Virginia Code § 17C-5C-1 provides that OAH is created as a separate operating agency within the West Virginia Department of Transportation, and the transition of authority from the DMV to OAH was completed by October 1, 2010, as mandated. However, the Hearing Examiners employed by OAH continued to conduct hearings on behalf of DMV regarding alleged offenses, which occurred prior to the effective date of the statute.<sup>1</sup>

Specifically, the creation of the Office of Administrative Hearings and the organization of the office are addressed in West Virginia Code §17C-5C-1 and §17C-5C-2. Those sections state:

### §17C-5C-1. Office created; appointment of Chief Hearing Examiner.

(a) The Office of Administrative Hearings is created as a separate operating agency within the Department of Transportation.

<sup>&</sup>lt;sup>1</sup> NOTE: A decision issued on July 20, 2012, by the Supreme Court of Appeals establishes THAT THE DMV RETAINS JURISDICTION OVER CASES involving offenses occurring PRIOR TO JUNE 11, 2010 – and the OAH hearing examiners no longer conduct DMV hearings or draft DMV Orders.

- (b) The Governor, with the advice and consent of the senate, shall appoint a director of the office who shall serve as the administrative head of the office and as chief hearing examiner.
- (c) Prior to appointment, the Chief Hearing Examiner shall be a citizen of the United States and a resident of this state who is admitted to the practice of law in this state.
- (d) The salary of the Chief Hearing Examiner shall be set by the Secretary of the Department of Transportation. The salary shall be within the salary range for comparable administrators as determined by the State Personnel Board created by section six, article six, chapter twenty-nine of this code.
- (e) The Chief Hearing Examiner during his or her term shall:
  - (1) Devote his or her full time to the duties of the position;
  - (2) Not otherwise engage in the active practice of law or be associated with any group or entity which is itself engaged in the active practice of law: Provided, That nothing in this paragraph may be construed to prohibit the Chief Hearing Examiner from being a member of a national, state or local bar association or committee, or of any other similar group or organization, or to prohibit the Chief Hearing Examiner from engaging in the practice of law by representing himself, herself or his or her immediate family in their personal affairs in matters not subject to this article.
  - (3) Not engage directly or indirectly in any activity, occupation or business interfering or inconsistent with his or her duties as Chief Hearing Examiner;
  - (4) Not hold any other appointed public office or any elected public office or any other position of public trust; and
  - (5) Not be a candidate for any elected public office, or serve on or under any committee of any political party.
- (f) The Governor may remove the Chief Hearing Examiner only for incompetence, neglect of duty, official misconduct or violation of subsection (e) of this section, and removal shall be in the same manner as that specified for removal of elected state officials in section six, article six, chapter six of this code.
- (g) The term of the Chief Hearing Examiner shall be six years. A person holding the position of Chief Hearing Examiner may be reappointed to that position subject to the provisions of subsection (b).

### §17C-5C-2. Organization of office.

- (a) The Chief Hearing Examiner is the chief administrator of the Office of Administrative Hearings and he or she may employ hearing examiners and other clerical personnel necessary for the proper administration of this article.
  - (1) The Chief Hearing Examiner may delegate administrative duties to other employees, but the Chief Hearing Examiner shall be responsible for all official delegated acts.

- (2) All employees of the Office of Administrative Hearings, except the Chief Hearing Examiner, shall be in the classified service and shall be governed by the provisions of the statutes, rules and policies of the classified service in accordance with the provisions of article six, chapter twenty-nine of this code.
- (3) Notwithstanding any provision of this code to the contrary, those persons serving as hearing examiners within the Division of Motor Vehicles on the effective date of this article as enacted during the Regular Session of the 2010 Legislature, shall be eligible and given first preference in hiring as hearing examiners pursuant to this article.
- (b) The Chief Hearing Examiner shall:
  - (1) Direct and supervise the work of the office staff;
  - (2) Make hearing assignments;
  - (3) Maintain the records of the office;
  - (4) Review and approve decisions of hearing examiners as to legal accuracy, clarity and other requirements;
  - (5) Submit to the Legislature, on or before the fifteenth day of February, an annual report summarizing the office's activities since the end of the last report period, including a statement of the number and type of matters handled by the office during the preceding fiscal year and the number of matters pending at the end of the year; and
  - (6) Perform the other duties necessary and proper to carry out the purposes of this article.
- (c) The administrative expenses of the office shall be included within the annual budget of the Department of Transportation.

### DESCRIPTION OF THE OFFICE OF ADMINISTRATIVE HEARINGS

The mission of OAH is to provide a neutral forum for the fair and impartial resolution of contested license revocations initiated by DMV. OAH has jurisdiction over most matters involving contested motor vehicle license revocations. However, the Legislature did not transfer jurisdiction of revocation orders issued to persons who fail to carry automotive insurance, nor in matters involving punitive actions taken by DMV against motor vehicle dealerships.

OAH conducts hearings and, based on the determination of the facts of the case and applicable law, renders decisions affirming, reversing or modifying the actions taken by DMV. OAH functions include, but are not limited to the following:

- Conducting administrative hearings in contested cases involving license revocations issued by DMV.
- Issuing final orders, either resulting from administrative hearings, or other circumstances that result from activities or omissions not involving the holding of an administrative hearing.
- Statistically tracking cases to conclusion within the framework of each fiscal year.

### PURPOSE OF THE OFFICE OF ADMINISTRATIVE HEARINGS

The purpose of OAH is to conduct administrative hearings regarding license revocation or suspension orders issued by DMV and to issue decisions, which uphold, reverse, or modify the revocation or suspension of citizens' driving privileges.

### MISSION OF THE OFFICE OF ADMINISTRATIVE HEARINGS

The Mission of OAH is to provide a neutral forum for the fair and impartial resolution of license revocations or suspensions initiated by DMV.

### JURISDICTION OF THE OFFICE OF ADMINISTRATIVE HEARINGS

West Virginia Code §17C-5C-3 establishes that OAH has jurisdiction to hear and determine:

- (1) Appeals from an order of the Commissioner of the Division of Motor Vehicles suspending a license pursuant to section eight, article two-b, chapter seventeen-b of this code;
- (2) Appeals from decisions or orders of the Commissioner of the Division of Motor Vehicles suspending or revoking a license pursuant to sections threec, six and twelve, article three, chapter seventeen-b of this code;
- (3) Appeals from orders of the Commissioner of the Division of Motor Vehicles pursuant to section two, article five-a of this chapter, revoking or suspending a license under the provisions of section one of this article or section seven, article five of chapter;
- (4) Appeals from decisions or orders of the Commissioner of the Division of Motor Vehicles denying, suspending, revoking, refusing to renew any license or imposing any civil money penalty for violating the provisions of any licensing law contained in chapters seventeen-b and seventeen-c that are administered by the Commissioner of the Division of Motor Vehicles; and
- (5) Other matters which may be conferred on the office by statute or legislatively approved rules.

However, the vast majority of the appeals adjudicated by OAH are filed in response to revocation orders issued by the West Virginia Division of Motor Vehicles for various offenses relating to driving under the influence of alcohol, controlled substances, or drugs (DUI). These offenses include DUI, DUI causing bodily injury; DUI causing death; DUI with a minor passenger; DUI when under the age of twenty-one (21); DUI with a blood alcohol content of fifteen hundredths

of one percent (.15) or more; refusal to submit to the secondary chemical test to determine the alcohol concentration level of the blood, and knowingly permitting an impaired person to operate your motor vehicle.

West Virginia Code §17C-5C-4 sets forth the procedures to be followed during hearings conducted by OAH. West Virginia Code §17C-5C-4 states:

- (a) A hearing before the office shall be heard de novo and conducted pursuant to the provisions of the contested case procedure set forth in article five, chapter twentynine-a of this code to the extent not inconsistent with the provisions of chapters seventeen-b and seventeen-c of this code. In case of conflict, the provisions of chapters seventeen-b and seventeen-c of this code shall govern.
- (b) Notwithstanding any provision of this code to the contrary, the Commissioner of the Division of Motor Vehicles may be represented at hearings conducted by the Office and evidence submitted by the Commissioner may be considered in such hearings with or without such representation.
- (c) The West Virginia Rules of Evidence governing proceedings in the courts of this state shall be given like effect in hearings held before a hearing examiner. All testimony shall be given under oath.
- (d) Except as otherwise provided by this code or legislative rules, the Commissioner of the Division of Motor Vehicles has the burden of proof.
- (e) The hearing examiner may request proposed findings of fact and conclusions of law from the parties prior to the issuance by the office of the decision in the matter.

West Virginia Code §17C-5A-2 sets forth the procedures for notice of hearings, revocations and review of the Final Orders issued by the OAH. West Virginia Code §17C-5A-2 states:

(a) Written objections to an order of revocation or suspension under the provisions of section one of this article or section seven, article five of this chapter shall be filed with the Office of Administrative Hearings. Upon the receipt of an objection, the Office of Administrative Hearings shall notify the Commissioner of the Division of Motor Vehicles, who shall stay the imposition of the period of revocation or suspension and afford the person an opportunity to be heard by the Office of Administrative Hearings. The written objection must be filed with Office of Administrative Hearings in person, by registered or certified mail, return receipt requested, or by facsimile transmission or electronic mail within thirty calendar days after receipt of a copy of the order of revocation or suspension or no hearing will be granted: Provided, That a successful transmittal sheet shall be necessary for proof of written objection in the case of filing by fax. The hearing shall be before a hearing examiner employed by the Office of Administrative Hearings who shall rule on evidentiary issues. Upon consideration of the designated record, the hearing examiner shall, based on the determination of the facts of the case and applicable law, render a

- decision affirming, reversing or modifying the action protested. The decision shall contain findings of fact and conclusions of law and shall be provided to all parties by registered or certified mail, return receipt requested.
- (b) The hearing shall be held at an office of the Division of Motor Vehicles located in or near the county in which the arrest was made in this state or at some other suitable place in the county in which the arrest was made if an office of the division is not available. The Office of Administrative Hearings shall send a notice of hearing to the person whose driving privileges are at issue and the person's legal counsel if the person is represented by legal counsel, the investigating or arresting law-enforcement officers, the Division of Motor Vehicles, and the Attorney General's Office, if the Attorney General has filed a notice of appearance of counsel on behalf of the Division of Motor Vehicles.
- (c) (1) Any hearing shall be held within one hundred eighty days after the date upon which the Office of Administrative Hearings received the timely written objection unless there is a postponement or continuance.
  - (2) The Office of Administrative Hearings may postpone or continue any hearing on its own motion or upon application by the party whose license is at issue in that hearing or by the commissioner for good cause shown.
  - (3) The Office of Administrative Hearings may issue subpoenas commanding the appearance of witnesses and subpoenas duces tecum commanding the submission of documents, items or other things. Subpoenas duces tecum shall be returnable on the date of the next scheduled hearing unless otherwise specified. The Office of Administrative Hearings shall issue subpoenas and subpoenas duces tecum at the request of a party or the party's legal representative. The party requesting the subpoena shall be responsible for service of the subpoena upon the appropriate individual. Every subpoena or subpoena duces tecum shall be served at least five days before the return date thereof, either by personal service made by a person over eighteen years of age or by registered or certified mail, return receipt requested, and received by the party responsible for serving the subpoena or subpoena duces tecum: Provided, That the Division of Motor Vehicles may serve subpoenas to lawenforcement officers through electronic mail to the department of his or her employer. If a person does not obey the subpoena or fails to appear, the party who issued the subpoena to the person may petition the circuit court wherein the action lies for enforcement of the subpoena.
- (d) Law-enforcement officers shall be compensated for the time expended in their travel and appearance before the Office of Administrative Hearings by the law-enforcement agency by whom they are employed at their regular rate if they are scheduled to be on duty during said time or at their regular overtime rate if they are scheduled to be off duty during said time.
- (e) The principal question at the hearing shall be whether the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of

- eight hundredths of one percent or more, by weight, or did refuse to submit to the designated secondary chemical test, or did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight.
- (f) In the case of a hearing in which a person is accused of driving a motor vehicle while under the influence of alcohol, controlled substances or drugs, or accused of driving a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, or accused of driving a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, the Office of Administrative Hearings shall make specific findings as to: (1) Whether the investigating law-enforcement officer had reasonable grounds to believe the person to have been driving while under the influence of alcohol, controlled substances or drugs, or while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, or to have been driving a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight; (2) whether the person was lawfully placed under arrest for an offense involving driving under the influence of alcohol, controlled substances or drugs, or was lawfully taken into custody for the purpose of administering a secondary test: Provided, That this element shall be waived in cases where no arrest occurred due to driver incapacitation; (3) whether the person committed an offense involving driving under the influence of alcohol, controlled substances or drugs, or was lawfully taken into custody for the purpose of administering a secondary test; and (4) whether the tests, if any, were administered in accordance with the provisions of this article and article five of this chapter.
- (g) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, or did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused the death of a person and was committed in reckless disregard of the safety of others and if the Office of Administrative Hearings further finds that the influence of alcohol, controlled substances or drugs or the alcohol concentration in the blood was a contributing cause to the death, the commissioner shall revoke the person's license for a period of ten years: Provided, That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article within the

- ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.
- (h) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused the death of a person, the commissioner shall revoke the person's license for a period of five years: Provided, That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.
- (i) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused bodily injury to a person other than himself or herself, the commissioner shall revoke the person's license for a period of two years: Provided, That if the license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: Provided, however, That if the person's license has previously been suspended or revoked more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.
- (j) If the Office of Administrative Hearings finds by a preponderance of the evidence that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, but less than fifteen hundredths of one percent or more, by weight, or finds that the person knowingly permitted the persons vehicle to be driven by another person who was under the influence of alcohol, controlled substances or drugs, or knowingly permitted the person's vehicle to be driven by another person who had an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight the commissioner shall revoke the person's license for a period of six months or a period of fifteen days with an additional one hundred and twenty days of participation in the Motor Vehicle Alcohol Test and Lock Program in accordance with the provisions of section three-a of this article: Provided, That any period of participation in the Motor Vehicle Alcohol Test and Lock Program that has been imposed by a court pursuant to section two-b, article five of this chapter shall be credited against any period of participation imposed by the commissioner: Provided,

however, That a person whose license is revoked for driving while under the influence of drugs is not eligible to participate in the Motor Vehicle Alcohol Test and Lock Program: Provided further, That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: And provided further, That if the person's license has previously been suspended or revoked more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

- (k) (1) If in addition to finding by a preponderance of the evidence that the person did drive a motor vehicle while under the influence of alcohol, controlled substance or drugs, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person did drive a motor vehicle while having an alcohol concentration in the person's blood of fifteen hundredths of one percent or more, by weight, the commissioner shall revoke the person's license for a period of forty-five days with an additional two hundred and seventy days of participation in the Motor Vehicle Alcohol Test and Lock Program in accordance with the provisions of section three-a, article five-a, chapter seventeen-c of this code: Provided, That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: Provided, however, That if the person's license has previously been suspended or revoked the person's license more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.
  - (2) If a person whose license is revoked pursuant to subdivision (1) of this subsection proves by clear and convincing evidence that they do not own a motor vehicle upon which the alcohol test and lock device may be installed or is otherwise incapable of participating in the Motor Vehicle Alcohol Test and Lock Program, the period of revocation shall be one hundred eighty days: Provided, That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: Provided, however, That if the person's license has previously been suspended or revoked more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.
- (1) If, in addition to a finding that the person did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person when driving did an act forbidden by

law or failed to perform a duty imposed by law, which act or failure proximately caused the death of a person, and if the Office of Administrative Hearings further finds that the alcohol concentration in the blood was a contributing cause to the death, the commissioner shall revoke the person's license for a period of five years: Provided, That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

- (m) If, in addition to a finding that the person did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused bodily injury to a person other than himself or herself, and if the Office of Administrative Hearings further finds that the alcohol concentration in the blood was a contributing cause to the bodily injury, the commissioner shall revoke the person's license for a period of two years: Provided, That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: Provided, however, That if the person's license has previously been suspended or revoked more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.
- (n) If the Office of Administrative Hearings finds by a preponderance of the evidence that the person did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, the commissioner shall suspend the person's license for a period of sixty days: Provided, That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article, the period of revocation shall be for one year, or until the person's twenty-first birthday, whichever period is longer.
- (o) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person when driving did have on or within the Motor vehicle another person who has not reached his or her sixteenth birthday, the commissioner shall revoke the person's license for a period of one year: Provided, That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years:

Provided, however, That if the person's license has previously been suspended or revoked more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

- (p) For purposes of this section, where reference is made to previous suspensions or revocations under this section, the following types of criminal convictions or administrative suspensions or revocations shall also be regarded as suspensions or revocations under this section or section one of this article:
  - (1) Any administrative revocation under the provisions of the prior enactment of this section for conduct which occurred within the ten years immediately preceding the date of arrest;
  - (2) Any suspension or revocation on the basis of a conviction under a municipal ordinance of another state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in section two, article five of this chapter for conduct which occurred within the ten years immediately preceding the date of arrest; or
  - (3) Any revocation under the provisions of section seven, article five of this chapter for conduct which occurred within the ten years immediately preceding the date of arrest.
- (q) In the case of a hearing in which a person is accused of refusing to submit to a designated secondary test, the Office of Administrative Hearings shall make specific findings as to: (1) Whether the arresting law-enforcement officer had reasonable grounds to believe the person had been driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (2) whether the person was lawfully placed under arrest for an offense involving driving under the influence of alcohol, controlled substances or drugs, or was lawfully taken into custody for the purpose of administering a secondary test: Provided, That this element shall be waived in cases where no arrest occurred due to driver incapacitation; (3) whether the person committed an offense relating to driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (4) whether the person refused to submit to the secondary test finally designated in the manner provided in section four, article five of this chapter; and (5) whether the person had been given a written statement advising the person that the person's license to operate a motor vehicle in this state would be revoked for at least forty-five days and up to life if the person refused to submit to the test finally designated in the manner provided in said section.
- (r) If the Office of Administrative Hearings finds by a preponderance of the evidence that: (1) The investigating officer had reasonable grounds to believe the person had been driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (2) whether the person was lawfully placed under

arrest for an offense involving driving under the influence of alcohol, controlled substances or drugs, or was lawfully taken into custody for the purpose of administering a secondary test: Provided, That this element shall be waived in cases where no arrest occurred due to driver incapacitation; (3) the person committed an offense relating to driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (4) the person refused to submit to the secondary test finally designated in the manner provided in section four, article five of this chapter; and (5) the person had been given a written statement advising the person that the person's license to operate a motor vehicle in this state would be revoked for at least forty-five days and up to life if the person refused to submit to the test finally designated, the commissioner shall revoke the person's license to operate a motor vehicle in this state for the periods specified in section seven, article five of this chapter. The revocation period prescribed in this subsection shall run concurrently with any other revocation period ordered under this section or section one of this article arising out of the same occurrence. The revocation period prescribed in this subsection shall run concurrently with any other revocation period ordered under this section or section one of this article arising out of the same occurrence.

(s) If the Office of Administration finds to the contrary with respect to the above issues the commissioner shall rescind his or her earlier order of revocation or shall reduce the order of revocation to the appropriate period of revocation under this section or section seven, article five of this chapter. A copy of the Office of Administrative Hearings final order containing its findings of fact and conclusions of law made and entered following the hearing shall be served upon the person whose license is at issue or upon the person's legal counsel if the person is represented by legal counsel by registered or certified mail, return receipt requested or by electronic mail if available. The final order shall be served upon the commissioner by electronic mail. During the pendency of any hearing, the revocation of the person's license to operate a motor vehicle in this state shall be stayed.

A person whose license is at issue and the commissioner shall be entitled to judicial review as set forth in chapter twenty-nine-a of this code. Neither the Commissioner nor the OAH may stay enforcement of the order. The court may grant a stay or supersede as of the order only upon motion and hearing, and a finding by the court upon the evidence presented, that there is a substantial probability that the appellant shall prevail upon the merits and the appellant will suffer irreparable harm if the order is not stayed: Provided, That in no event shall the stay or supersede as of the order exceed one hundred fifty days. Notwithstanding the provisions of section four, article five of said chapter, the Office of Administrative Hearings may not be compelled to transmit a certified copy of the file or the transcript of the hearing to the circuit court in less than sixty days.

(t) In any revocation or suspension pursuant to this section, if the driver whose license is revoked or suspended had not reached the driver's eighteenth birthday at the time of the conduct for which the license is revoked or suspended, the driver's license shall

be revoked or suspended until the driver's eighteenth birthday or the applicable statutory period of revocation or suspension prescribed by this section, whichever is longer.

(u) Funds for this section's hearing and appeal process may be provided from the Drunk Driving Prevention Fund, as created by section forty-one, article two, chapter fifteen of this code, upon application for the funds to the Commission on Drunk Driving Prevention.

Also, Title 105, Code of State Rules, Series 1, provides procedures regarding the initiation and administration of appeals that are heard and determined by OAH from orders and decisions of the Commissioner of the DMV. It states definitions, provides service and filing deadlines, sets forth required information and data for written objections, informs regarding hearing notices and locations, and addresses hearing continuances and postponements. The rule sets forth prehearing notification requirements, covers subpoenas, discovery, motions, stipulations and exhibits, and informs regarding the consequences of a failure to appear at a hearing. It also addresses hearings and evidence, hearing transcripts, the official record, transcript requests, final orders, and motions to reconsider, and it sets fees.

### WRITTEN OBJECTIONS TO REVOCATION ORDERS

Any person (hereinafter "the Petitioner") whose driving privilege has been revoked or suspended pursuant to an Order of Revocation or Suspension issued by DMV for a DUI offense may file a Written Objection with OAH. The Written Objection must be filed with OAH within thirty (30) days of the person's receipt of the Revocation or Suspension Order.

The OAH Docketing Department is comprised of seven (7) full-time positions (currently two positions are vacant) whose function is to process the Written Objection and schedule all administrative hearings. The Docketing Department reviews all Written Objections to confirm that the appeal was timely filed by the Petitioner and then all pertinent information is entered into the Agency database. During Fiscal Year 2016, the OAH Docketing Department received and processed one thousand four hundred forty-one (1441) <a href="mailto:new">new</a> Written Objections. Of these requests, one thousand two hundred sixty-eight (1268) were granted, and one hundred fifty-three (153) were denied for various reasons.

Once it is verified that the Written Objection was timely filed, the Docketing Department notifies DMV of the appeal of the revocation order, and a stay of the imposition of the revocation period is entered and remains in effect during the pendency of the appeal.

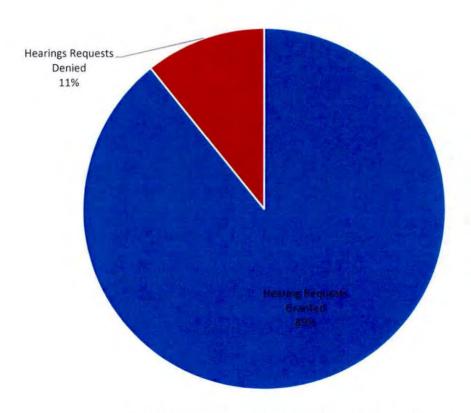
The OAH Docketing Department schedules the administrative hearing to be conducted within one hundred eighty (180) days of the receipt of the Written Objection and is responsible for issuing a hearing notice advising the parties of the date, time and location of the administrative hearing. During fiscal year 2016, the OAH Docketing Department scheduled five thousand eight

hundred two (5802) administrative hearings. Currently there are seventy-eight (78) initial hearings to be scheduled and three hundred forty-eight (348) hearings to be rescheduled.

Finally, at the request of the person whose license is at issue, the OAH Docketing Department generates subpoenas commanding the appearance of witnesses and subpoenas duces tecum commanding the submission of documents at the administrative hearing.

**FISCAL YEAR 2016 New Written Objections Filed** 

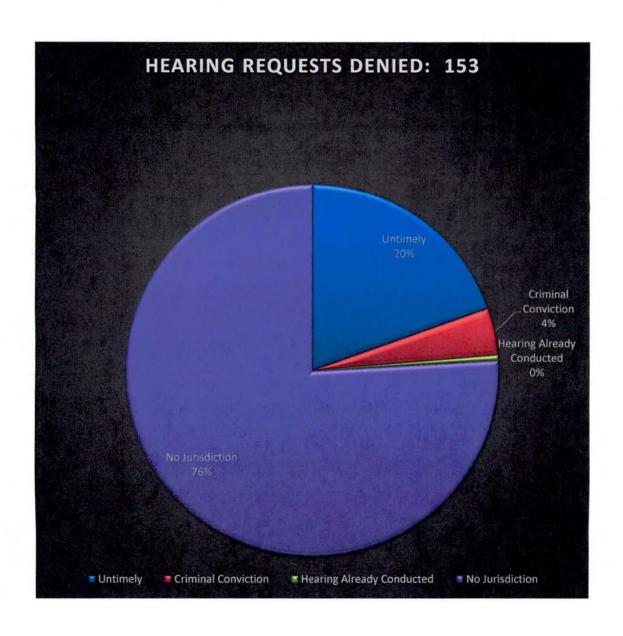
New Written Objections Filed	1421
Hearing Requests Granted	1268
Hearing Requests Denied	153



NEW WRITTEN OBJECTIONS FILED: 1421

## FISCAL YEAR 2016 Hearing Requests Denied

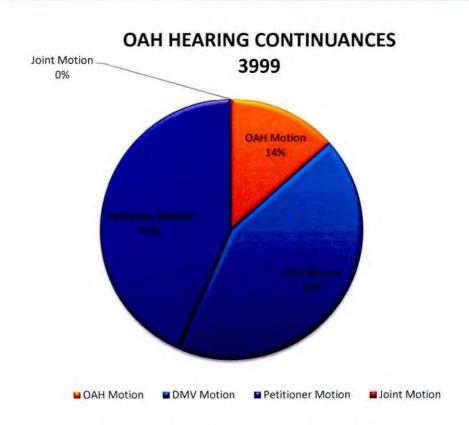
New Hearing Requests Denied	153
Untimely	95
Criminal Conviction	20
Hearing Already Conducted	2
No Jurisdiction	36



### **CONTINUANCES**

OAH may continue or postpone any hearing on its own motion, upon application by the party whose license is at issue, or by the Commissioner of the DMV for good cause shown. During fiscal year 2016, OAH issued three thousand nine hundred ninety-nine (3999) continuances and there are currently three hundred forty-eight (348) administrative hearings to be rescheduled as a result of these continuances.

Continuances	3999
OAH Motion	537
DMV Motion	1724
Petitioner Motion	1735
Joint Motion	3



### ADMINISTRATIVE HEARINGS

OAH employs twelve (12) Hearing Examiners to preside over and to conduct administrative hearings regarding the revocation and suspension of an individual's driving privilege for alleged violations of the Motor Vehicle Code.

These Administrative Hearings are held at the DMV Regional Offices located in or near the County in which the arrest was made or at some other suitable place in the county in which the arrest was made if an office of the division is not available. Hearing Examiners are assigned to specific geographical regions throughout the State and travel from their home office to conduct these hearings. A realignment of the geographical areas of assignment resulted in a significant reduction in the Agency fleet. The Agency currently has six (6) motor vehicles permanently assigned to Agency personnel.

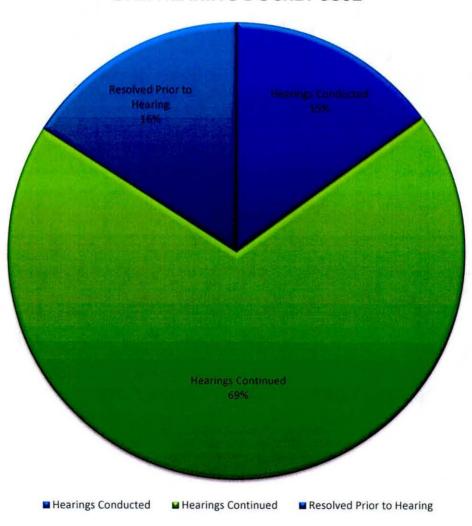
During the administrative hearing, the Hearing Examiner is required to issue rulings on evidentiary issues, take testimony, and admit exhibits in order to create a designated record of the proceedings. During fiscal year 2016, there were five thousand eight hundred two (5802) administrative hearings scheduled on the OAH docket. The Hearing Examiners conducted eight hundred seventy-three (873) administrative hearings, and nine hundred thirty (930) hearings were cancelled after being resolved prior to the hearing date. The remaining three thousand nine hundred ninety-nine (3999) administrative hearings were continued.

After the conclusion of the administrative hearing, the parties are afforded the opportunity to submit proposed Findings of Fact and Conclusions of Law for consideration by the Hearing Examiner. Prior to submitting these proposed findings, the parties may request a copy of the audio of the administrative hearing and/or a transcript of the proceedings. During fiscal year 2016, OAH received and processed two hundred fifty-five (255) requests for audios. The Office of Administrative Hearings contracted with an outside vendor transcription company to produce thirty-five (35) hearing transcripts.

After considering the designated record, the Hearing Examiner, based upon the determination of the facts of the case and applicable law, renders a recommended decision which affirms, reverses, or modifies the Order of Revocation issued by the Commissioner of the DMV against the individual's driving privilege. The decision contains Findings of Fact and Conclusions of Law and is provided to the parties. During fiscal year 2016, the Hearing Examiners submitted eight hundred seventeen (817) Final Orders to the OAH Legal Department for review.

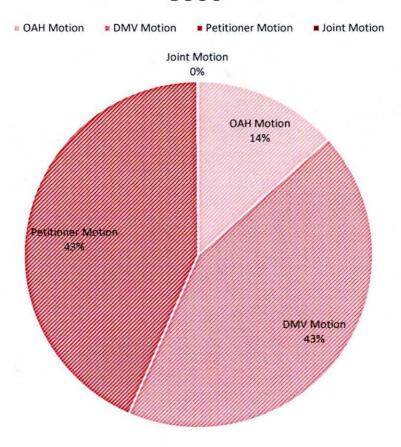
OAH Hearings Scheduled	5802
Hearings Conducted	873
Hearings Continued	3999
Resolved Prior to Hearing	930

## **OAH HEARING DOCKET 5802**



Fiscal Year 2016 Hearing Con	tinuances
Continuances	3999
OAH Motion	537
DMV Motion	1724
Petitioner Motion	1735
Joint Motion	3

## OAH HEARING CONTINUANCES



### **FINAL ORDERS**

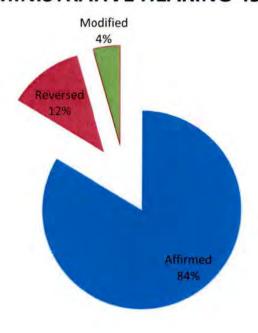
Once the Hearing Examiner completes the decision, the file is returned to the OAH Legal Department. Four (4) paralegals review each Order for legal accuracy, clarity and other requirements. The OAH Legal Department processes and disseminates approved final orders; maintains detailed databases including pertinent information regarding the final orders issued by the Agency, and enters proper codes in the database to reflect current status of driver's licenses.

During Fiscal year 2016, OAH issued four hundred fifty-nine (459) Final Orders after the administrative hearing was conducted. As a result, three hundred eight-four (384) Revocation Orders where upheld, fifty-five (55) Revocation Orders were reversed, and twenty (20) Revocation Orders were modified.

It is noted that any person who has entered a guilty plea or who has been convicted of the parallel criminal charge arising from the same DUI offense is entitled only to a limited scope hearing to adjudicate the remaining enhancement, such as refusing to submit to the secondary chemical test to determine the alcohol concentration of the blood.

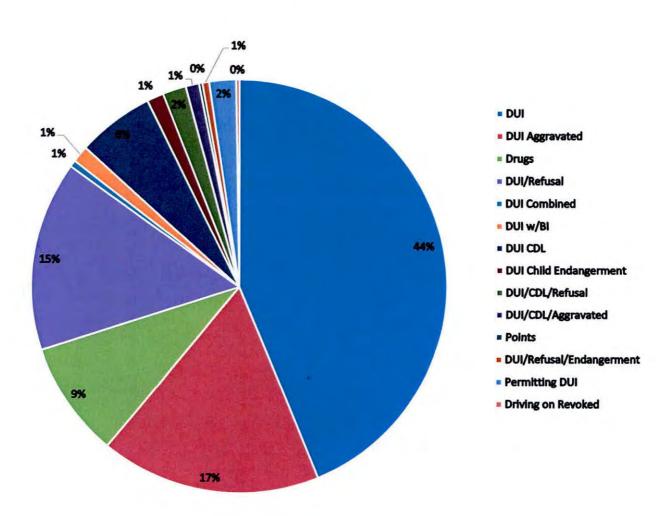
Fiscal Year 2016 Total Orde	ers Entered After Hearing
Total Orders Entered	459
Affirmed	384
Reversed	55
Modified	20

# DISPOSITION OF OAH CASES AFTER ADMINISTRATIVE HEARING 459



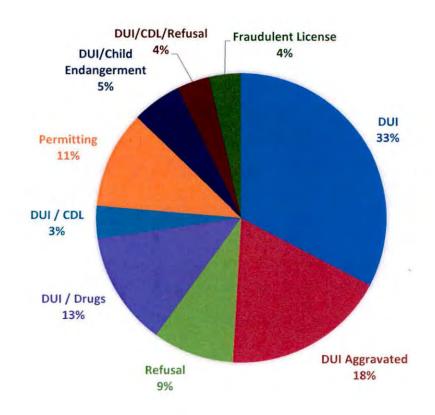
Fiscal Year 2016 Orders Affirming Order of Revocation by Offense	
Total Orders Entered	384
DUI	168
DUI Aggravated	66
Drugs	35
DUI w/Refusal	57
DUI Combined	02
DUI Causing Bodily Injury	05
DUI / Child Endangerment	05
DUI/Refusal/Child Endangerment	02
DUI CDL	23
DUI CDL w/ Refusal	07
DUI CDL Aggravated	04
Points	01
Knowingly Permitting DUI	08
Driving on Revoked	01

### **ORDERS AFFIRMING ORDER OF REVOCATION: 384**



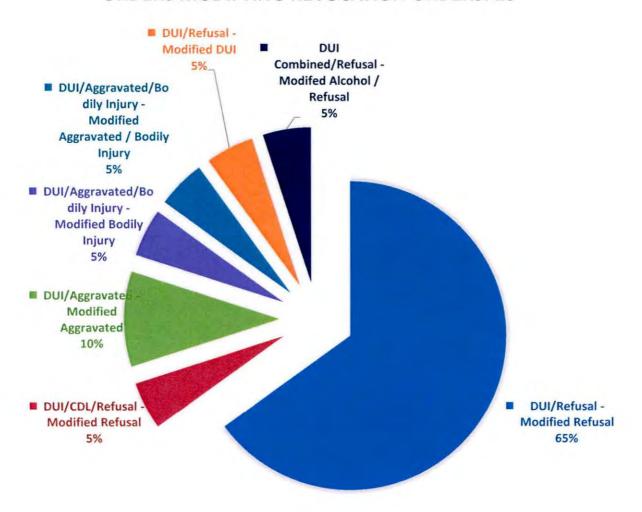
Fiscal Year 2016 Orders Reversing Order of Revocation by Alleged Offense		
Total Orders Entered	55	
DUI	18	
DUI Aggravated	10	
Refusal	05	
DUI / Drugs	07	
DUI with CDL	02	
Knowingly Permitting	06	
DUI/Child Endangerment	03	
CDL/Refusal	02	
Fraudulent License	02	

### **ORDERS REVERSING REVOCATION ORDERS: 55**



Fiscal Year 2016	Orders Modifying Order of Revocation by	Alleged Offense
Total Orders Entered		20
OFFENSE	MODIFIED	TOTAL
DUI / Refusal	Refusal	13
DUI / Refusal	DUI	1
DUI / Refusal / CDL	Refusal	1
DUI / Aggravated	Aggravated	2
DUI / Aggravated / Bodily Injury	Bodily Injury	1
DUI / Aggravated / Bodily Injury	Aggravated / Bodily Injury	1
DUI Combined / Refusal	Alcohol / Refusal	1

### **ORDERS MODIFYING REVOCATION ORDERS: 20**

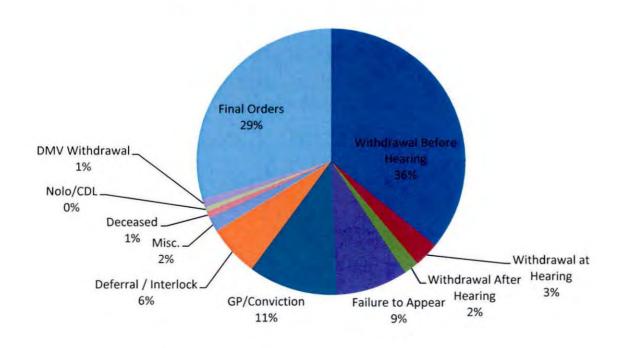


### RESOLUTION OF WRITTEN OBJECTIONS

In addition to the Final Orders entered after an administrative hearing previously discussed, the OAH Legal Department is also responsible for generating Orders issued as a result of withdrawals of the written objection, failure of the Petitioner to appear at the administrative hearing, the Petitioner's entry into the deferral program, convictions or guilty pleas to the parallel criminal charge, death of the Petitioner, and the withdrawal of the revocation order by the DMV. During Fiscal year 2016, OAH issued Orders, which resolved one thousand five hundred fifty-two (1552) Written Objections.

Fiscal Year 2016 Resolution of Written Objections	
Total Orders Entered	1552
Withdrawal Before Hearing	556
Withdrawal at Hearing	47
Withdrawal After Hearing	28
Failure to Appear	135
Deferrals/Interlock	96
Guilty Pleas/Conviction	166
Deceased	14
Nolo/CDL	08
DMV Withdrawal	16
Final Orders	459
Misc.	27

### Resolution of All Written Objections: 1552



### TIME FRAME FOR ISSUANCE OF FINAL ORDERS

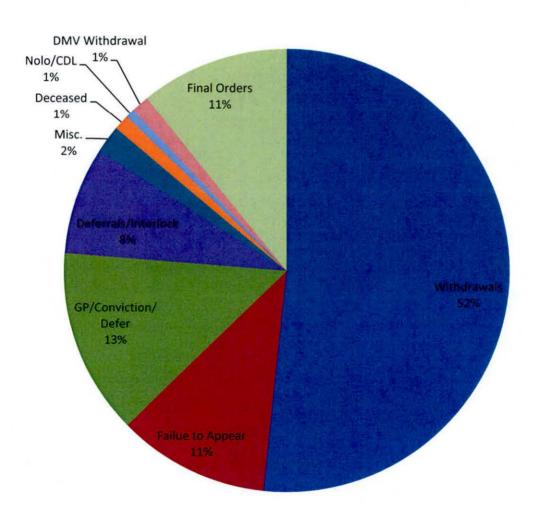
Initially, it was the goal of OAH to ensure by the end of FY 2012 that the time period existing between the date that the evidentiary hearing is conducted and the subsequent issuance of a final order does not exceed six (6) months. However, while preparing statistics for fiscal year 2012, it became apparent with current staffing limitations, that such goal was overly ambitious. Further review of the statistics indicated, assuming current staffing levels remain static, that a nine (9) month time-frame for the issuance of Final Orders entered after the conclusion of an evidentiary hearing was more realistic. For Fiscal year 2016, OAH entered four hundred fifty—nine (459) Orders after the conclusion of the administrative hearing. Of those, one hundred thirty-two (132) or twenty-nine percent (29%) were issued within nine (9) months after the conclusion of the evidentiary hearing.

The performance measure regarding Final Orders issued within nine (9) months reflects all cases that were finally adjudicated by OAH, regardless of whether an evidentiary hearing was conducted. In addition to the orders entered after an evidentiary hearing, these Final Orders also include those which were entered by OAH as a result of the Petitioner's entry of a guilty plea to the parallel criminal charge, the Petitioner's decision to participate in the Deferral Program, or to withdraw his or her Written Objections to the Order of Revocation entered by the Commissioner of the DMV. It should be noted that the OAH Legal Section processes the Final Orders entered as a result of a withdrawal, deferral or guilty plea as expeditiously as possible, and that the time-frame for the issuance of these Final Orders is calculated based upon the date that the Written Objection was initially filed by the Petitioner.

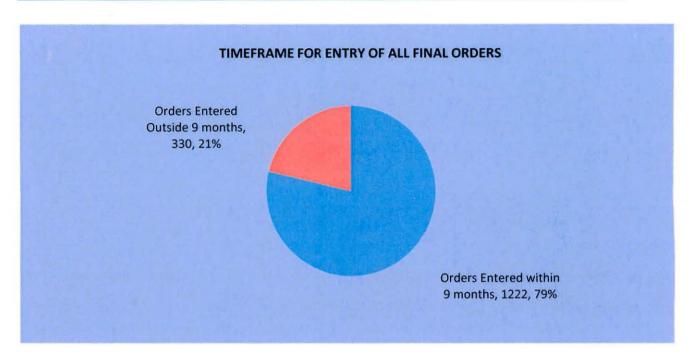
For Fiscal year 2016, OAH entered one thousand five hundred fifty-two (1552) Orders which resolved Written Objections filed regarding Orders of Revocation or Suspension issued by the Commissioner of the DMV. Of those, one thousand two hundred twenty-two (1222) Orders, or seventy-nine percent (79%), were issued within the nine (9) month time-frame.

Total Orders Entered	1552
Orders Entered within 9 Months	1222
BREAKDOWN	
Withdrawals	631
Failure to Appear	135
Deferrals/Interlock	96
Conviction/Guilty Plea	166
Deceased	14
Nolo/CDL	08
DMV Withdrawal	16
Final Orders after Hearing	132
MISC.	24

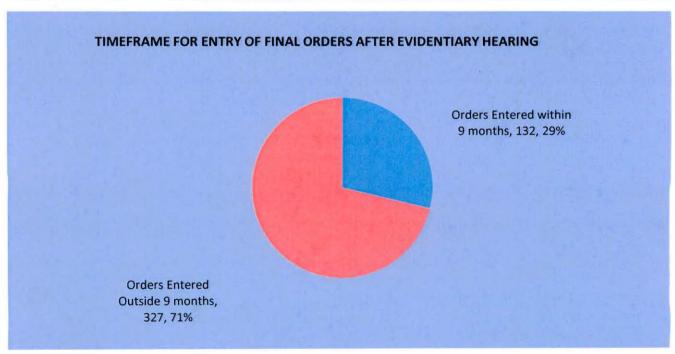
## Final Orders Issued within 9 Months: 1222



Fiscal Year 2016 Time Frame for Entry of All Final Or	ders	
Total Orders Entered		1552
Entered within 9 Month Period		1222
Entered outside of 9 Month Period		330

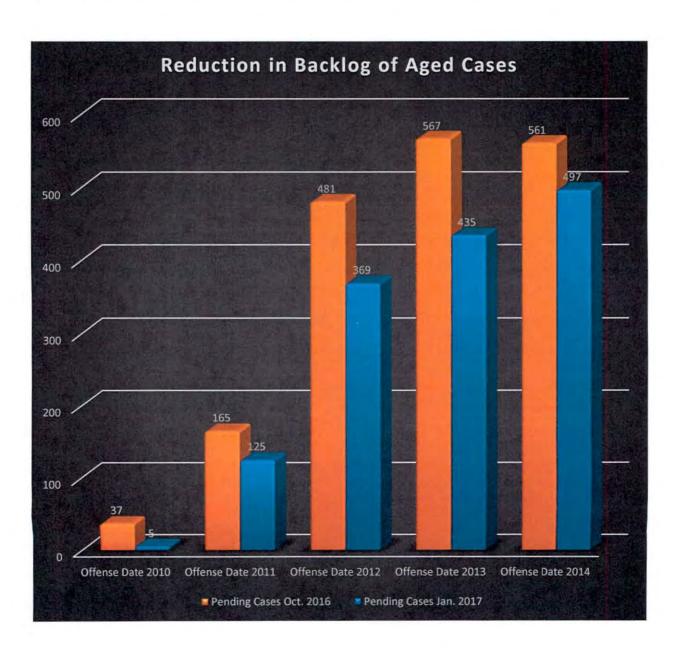


Fiscal Year 2016 Time Frame for Entry of Final Orders AFTER Evidentiary Hearing	
Total Orders Entered	459
Entered within 9 Month Period	132
Entered outside of 9 Month Period	327



### SHIFTING AGENCY POLICY REGARDING ISSUANCE OF FINAL ORDERS

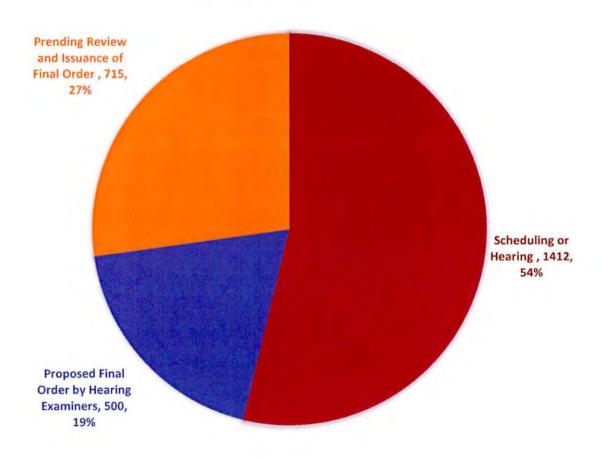
Of greater significance is the newly appointed Chief Hearing Examiner's decision to change the prior administration's emphasis on issuing Final Orders within ninety (90) days from the date of the administrative hearing, to prioritizing cases based upon the date of the alleged DUI offense. Even during a short timeframe, October 2016 to January 2017, this reformation of Agency policy has resulted in a significant reduction in the number of aged cases pending resolution before this Agency. The chart below illustrates the reduction in the total number of pending cases with an alleged offense date in 2010 through 2014 as of October 2016 (orange) to the total number of pending cases with an alleged offense date in 2010 through 2014 as of January 2017 (turquoise).



### MATTERS PENDING BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

There are currently two thousand six hundred twenty-seven (2627) cases pending before OAH. Of these one thousand four hundred twelve (1412) are pending scheduling by the OAH Docketing Department or an administrative hearing before the OAH Hearing Examiner; five hundred (500) are pending the submission of a proposed Final Order by the Hearings Examiner; and there are seven hundred fifteen (715) proposed Final Orders submitted by the Hearing Examiners which are pending review, approval and issuance.

### PENDING CASES: 2627



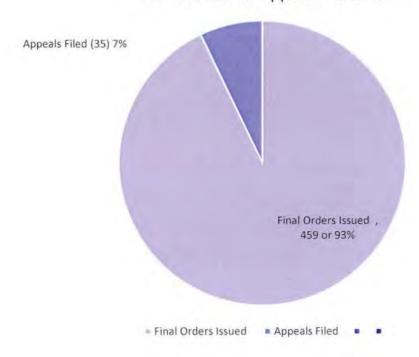
### APPEALS OF OFFICE OF ADMINISTRATIVE HEARINGS ORDERS

After the issuance of the "Decision of the Hearing Examiner and Final Order of the Chief Hearing Examiner", either party aggrieved by the Final Order may petition for appeal in Circuit Court in accordance with the provisions of West Virginia Code §29A-5-4. Once OAH is notified that an appeal of the administrative order has been filed, the OAH Legal Department is responsible for preparing a certified copy of the record of the case, including a transcript of the administrative hearing, and to file the same along with a Statement of Matters with the appropriate Circuit Clerk within ninety (90) days. During Fiscal Year 2016, thirty-five (35) appeals of Final Orders entered by OAH have been filed in various Circuit Courts throughout the State. Ten (10) appeals were filed by the DMV and twenty-five (25) appeals were filed by the Petitioner.

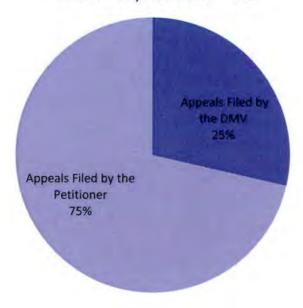
\*Orders issued by the Circuit Court may be appealed to the West Virginia Supreme Court. The OAH Legal Department is responsible to monitor these appeals, obtain the decisions entered by the Supreme Court, and advise the Hearing Examiners and other staff of the relevant effect of these Orders.

Fiscal Year 2016 Appeals of OAH Final Orders	
Final Orders Entered After Hearing	459
TOTAL Appeals Filed	35
Appeals Filed by the DMV	10
Appeals Filed by the Petitioner	25

Total Number of Appeals Filed: 35



Appeals of Final Orders (35) By Party: DMV - 10, Petitioner - 25



### ACCOMPLISHMENTS OF THE OFFICE OF ADMINISTRATIVE HEARINGS

### Docketing:

OAH continues to strive to improve and streamline the internal docketing system to ensure an efficient scheduling process for all matters before OAH. Such efforts have resulted in affording the OAH Docketing Department, currently consisting of five (5) employees, the ability to accurately process one thousand four hundred twenty-one (1421) Written Objection/Hearing Request forms during the last reporting period, and to schedule (or reschedule after a continuance was granted) five thousand eight hundred two (5802) administrative hearings.

### **Administrative Hearings:**

The Hearing Examiners are assigned to specific geographical regions throughout the State and are required to travel to various DMV regional offices to conduct hearings. OAH continues to realign the Hearing Examiners' areas of assignment in an effort to decrease the amount of travel time expended, and the number of State vehicles assigned. As a result, the OAH fleet has been reduced to six (6). Such realignment has also resulted in a decrease in the backlog of pending cases in several areas.

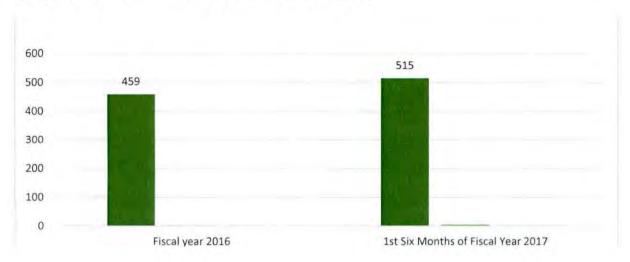
OAH conducted several training seminars to ensure that the Hearing Examiners are aware of all current case law as well as the Agency's position regarding the effects of such rulings. Also of significance was a seminar which specifically provided information to the Hearing Examiners

regarding "Advanced Roadside Impaired Driving Enforcement" (ARIDE), which placed emphasis on DUIs involving drugs.

### **Final Orders:**

OAH has implemented the use of a more streamlined Final Order format. While still a "work in progress", the use of this format has resulted in a significantly higher number of Orders being issued. During Fiscal Year 2016, OAH issued one thousand five hundred fifty-two (1552) Final Orders, four hundred fifty-nine (459) after the administrative hearing was conducted. However, during the first six (6) months of Fiscal Year 2017, the Legal Department has issued five hundred fifteen (515) Final Orders after administrative hearing – which will result in a projected increase of one hundred twenty-two percent (122%).

Final Order Comparison graph below illustrates a significant increase in the number of Final Orders entered after an evidentiary hearing is conducted between the entire 2016 Fiscal year (459) and the first six months of Fiscal Year 2017 (515)



Final Order Comparison graph below illustrates a significant increase in the number of Final Orders entered after an evidentiary hearing between Fiscal Year 2012and Fiscal year 2017 (projected)



### Appeals:

Finally, when a party files an appeal of the Final Order issued by the Chief Hearing Examiner of the Office of Administrative Hearings, the Legal Department is responsible to prepare and file a certified copy of the administrative record with the Circuit Clerk. During Fiscal Year 2016, the Legal Department prepared and filed administrative record for thirty-five (35) appeals.

### **GOALS AND OBJECTIVES**

OAH has defined the following specific goals and objectives:

Revise the Agency's organizational chart to establish a fourth paralegal position and reduce the overall number of staffing positions. This will allow for continued improvement in the issuance of final orders in an expeditious manner and reduce the overall agency expenses incurred for salaries and associated benefits.

Expand the electronic file system and reassign certain responsibilities regarding updating the electronic file to the Hearing Examiners, which will allow for the Legal Department to assign additional duties to the OAII and increased productivity.

Continue to realign the geographic locations assigned to each Hearing Examiner to maintain continued reduction of travel time and the backlog of cases.

Continue to streamline the process utilized to process Final Orders and to revise the Final Order format. This should result in increased productivity, and the expeditious issuance of consistent Final Orders.

Evaluate assignment of duties to the paralegals in the Legal Department and the current procedure associated with the review of recommended final orders and the compilation of a certified record.

Continue to conduct seminars for the Hearing Examiners and other staff members to ensure adequate training and consistent recommended decisions from the Hearing Examiners and paralegals.

Research available software which would enable the audios of administrative hearings to be sent to the requesting party via electronic transmission which would result in a significant reduction in the time expended by the Legal Department responding to such requests.

Resume efforts to complete and implement the use of "template" Orders, which would be quickly generated by the mainframe database system in instances where a written objection is resolved through a withdraw of the request for an administrative hearing, the Petitioner's election to participle in the deferral program, the entry of a guilty plea or other such manner that does not require an administrative hearing.