

**DEPARTMENT OF TRANSPORTATION
OFFICE OF ADMINISTRATIVE HEARINGS**



Fiscal Year 2015 Annual Report

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INTRODUCTION BY THE ACTING CHIEF HEARING EXAMINER

The Office of Administrative Hearings (OAH) has as its primary mission the duty to provide a neutral forum for the fair and impartial resolution of contested cases involving the revocation, denial or disqualification of, or refusal to issue, a driver's license by the Commissioner of the West Virginia Division of Motor Vehicles. The vast majority of cases the agency handles involve contested revocations for driving under the influence.

The Agency operates under the authority of the WV Department of Transportation and has been in existence operationally since October 2010. The Agency was created as the result of a legislative decision to transfer authority for making determinations in these contested cases from the Division of Motor Vehicles to the OAH.

Now in its sixth year of existence, OAH has made great strides in implementing changes that emphasize the application of fundamental fairness in the hearing and adjudicatory process. Further, docketing and scheduling procedures have evolved from a rudimentary beginning to a current point of significant improvement and efficiency.

Significant achievements to date include the enactment of Legislative Rules, the implementation of electronic docketing and filing systems that have substantially reduced paper requirements while dramatically reducing costs associated with physical delivery requirements related to delivering files to hearing examiners. Other cost saving achievements include the use of email, fax and regular mail in place of what in the past had required certified mail, to provide notices, orders and final orders to the DMV and, when available, to the parties who contest the DMV order and/or their legal counsel. Further, OAH is collecting fees for the provision of audios of administrative hearings, transcripts and file documents to requesting parties.

CREATION OF THE OFFICE OF ADMINSTRATIVE HEARINGS

The 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 the OAH is created as separate operating agency within the West Virginia Department of Transportation, and the transition of authority from the Division of Motor Vehicles to the OAH was completed by October 1, 2010, as mandated.

DESCRIPTION OF THE OFFICE OF ADMINISTRATIVE HEARINGS

The mission of the Office of Administrative Hearings (OAH) is to provide a neutral forum for the fair and impartial resolution of contested license revocations initiated by the Division of Motor Vehicles. 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 the OAH is to conduct administrative hearings regarding license revocation or suspension orders issued by the West Virginia Division of Motor Vehicles, 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 the OAH is to provide a neutral forum for the fair and impartial resolution of license revocations or suspensions initiated by the West Virginia Division of Motor Vehicles.

JURISDICTION OF THE OFFICE OF ADMINISTRATIVE HEARINGS

West Virginia Code §17C-5C-3 establishes that the 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 three-c, 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.

The vast majority of the appeals adjudicated by the Office of Administrative Hearing 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 the 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 twenty-nine-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 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.

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 the Division of Motor Vehicles for a DUI offense may file a Written Objection with the OAH. The Written Objection must be filed with the OAH within thirty days of the person’s receipt of the Revocation or Suspension Order.

The OAH Docketing Department is comprised of six (6) 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 2015, the Docketing Department received and processed 1449 new Written Objections. Of these requests, 1297 were granted and 152 were denied for various reasons.

Once it is verified that the Written Objection was timely filed, the Docketing Department notifies the West Virginia Division of Motor Vehicles 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.

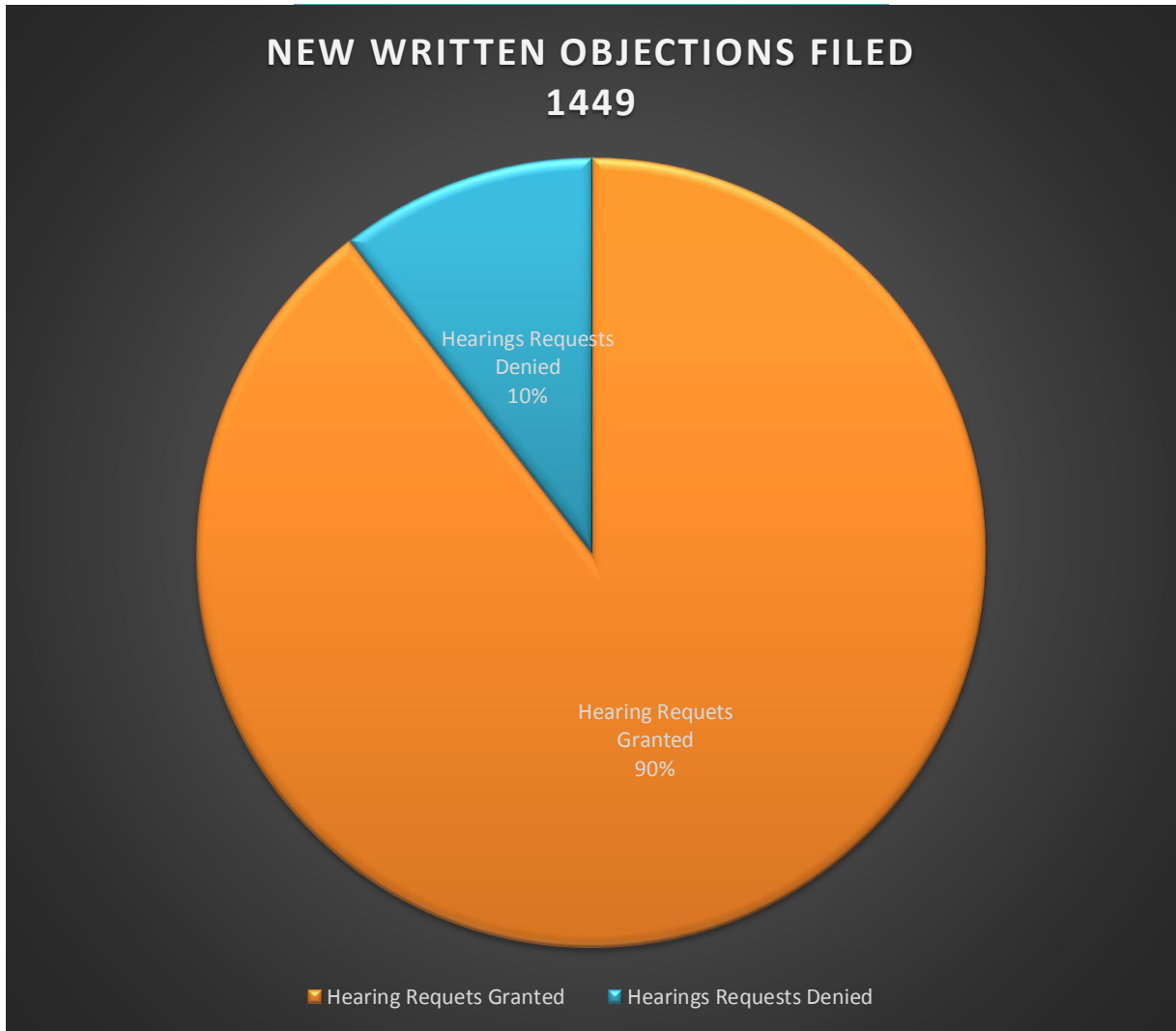
The Docketing Department schedules the administrative hearing to be conducted within one hundred eighty (180) days of the receipt of the Written Objection and is responsible to issue a hearing notice advising the parties of the date, time and location of the administrative hearing. During fiscal year 2015, the OAH Docketing Department scheduled 5309 administrative hearings. Currently there are 37 initial hearings to be scheduled and 148 hearings to be rescheduled.

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

FISCAL YEAR 2015

New Written Objections Filed

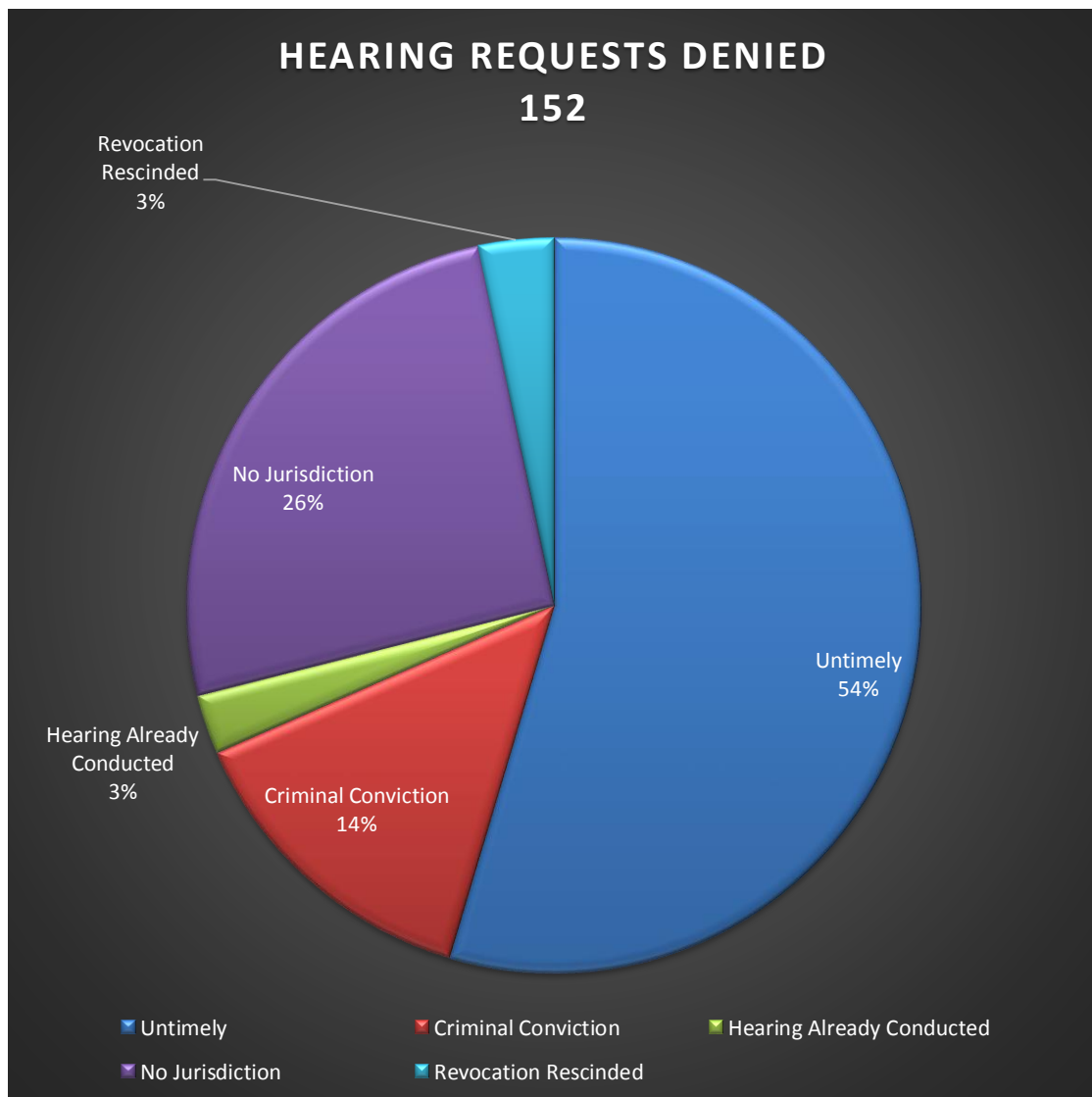
New Written Objections Filed	1449
Hearing Requests Granted	1297
Hearing Requests Denied	152



FISCAL YEAR 2015

Hearing Requests Denied

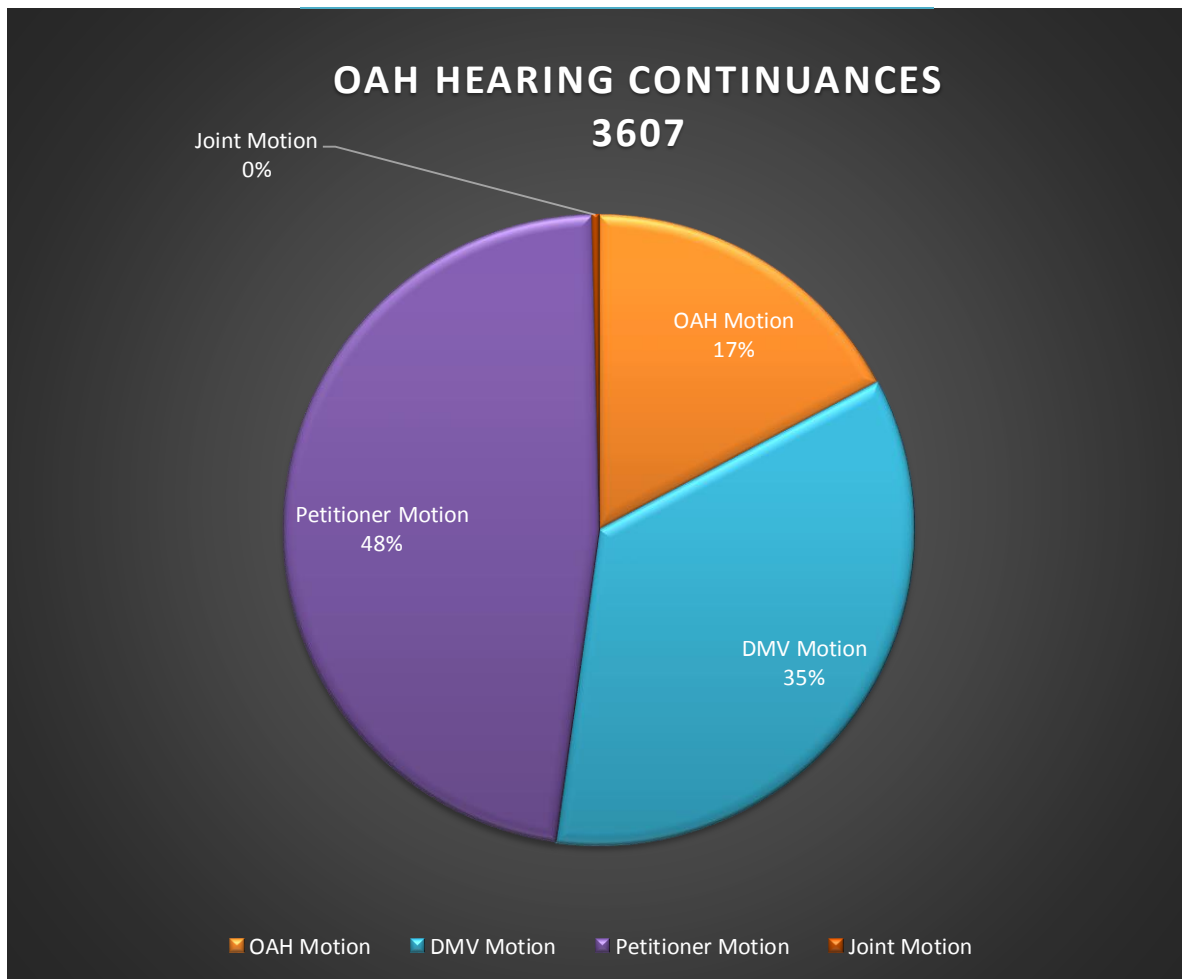
New Hearing Requests Denied	152
Untimely	83
Criminal Conviction	21
Order of Revocation Rescinded	5
Hearing Already Conducted	4
No Jurisdiction	39



CONTINUANCES

The 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 Division of Motor Vehicles for good cause shown. During fiscal year 2015, the OAH issued 3607 continuances and there are currently 148 administrative hearings to be rescheduled as a result of these continuances.

Fiscal Year 2015 Hearing Continuances	
Continuances	3607
OAH Motion	622
DMV Motion	1261
Petitioner Motion	1712
Joint Motion	12



ADMINISTRATIVE HEARINGS

The 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 Division of Motor Vehicles 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.

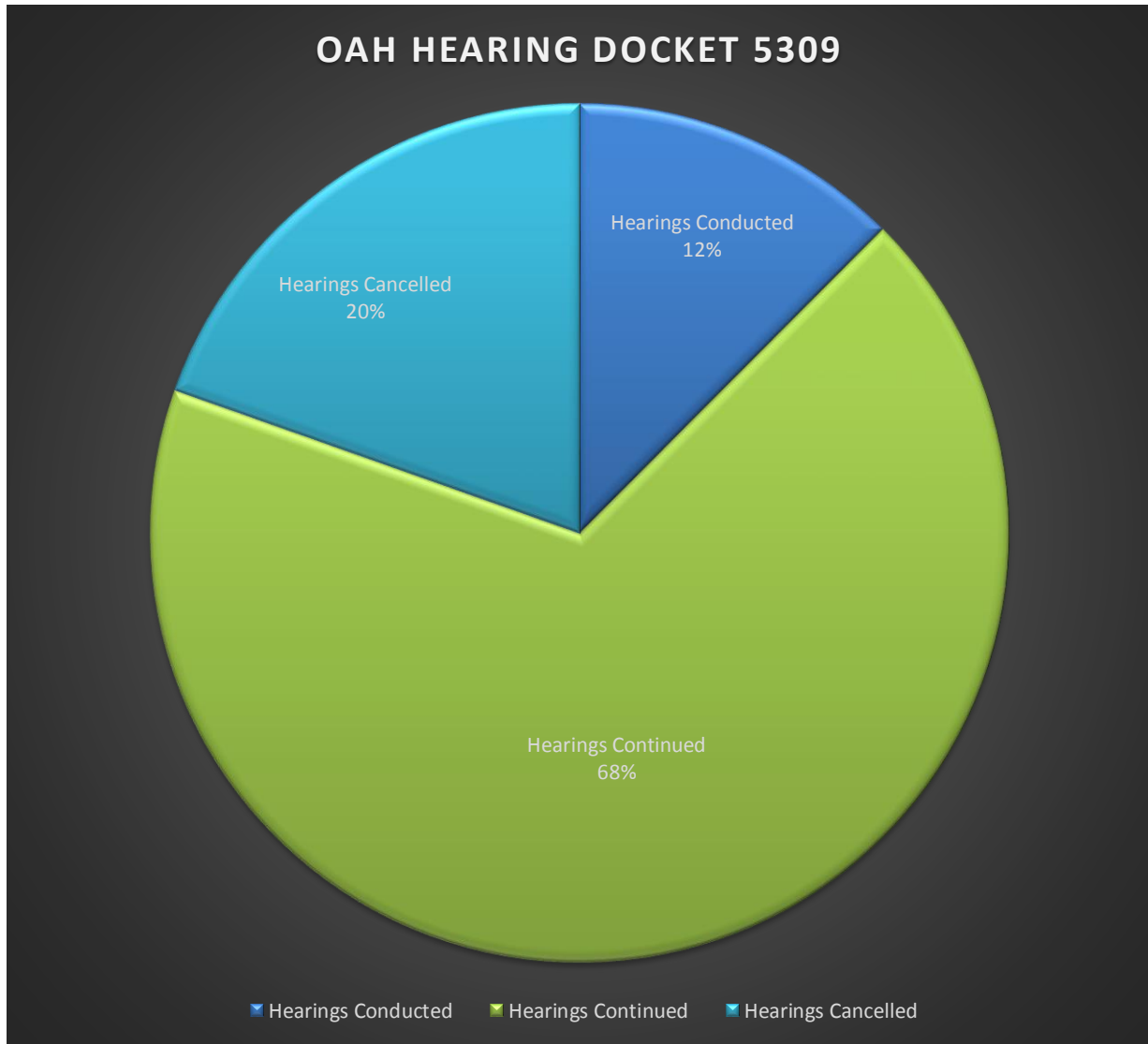
During the administrative hearing, the Hearing Examiner is required to issue rulings on evidentiary issues, take testimony, and admit exhibits in order to create a designated record of the proceedings. During fiscal year 2015 there were 5,309 administrative hearings scheduled on the OAH docket. The Hearing Examiners conducted 662 administrative hearings and 1040 hearings were cancelled. The remaining 3607 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 2015, the OAH received and processed 149 requests for audios. The Office of Administrative Hearings contracted with an outside vendor transcription company to produce thirty-nine (39) 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 West Virginia Division of Motor Vehicles 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 2015, the Hearing Examiners submitted 723 Final Orders to the OAH Legal Department for review.

FISCAL YEAR 2015 OAH HEARING DOCKET

OAH Hearings Scheduled	5309
Hearings Conducted	662
Hearings Continued	3607
Cancelled	1040



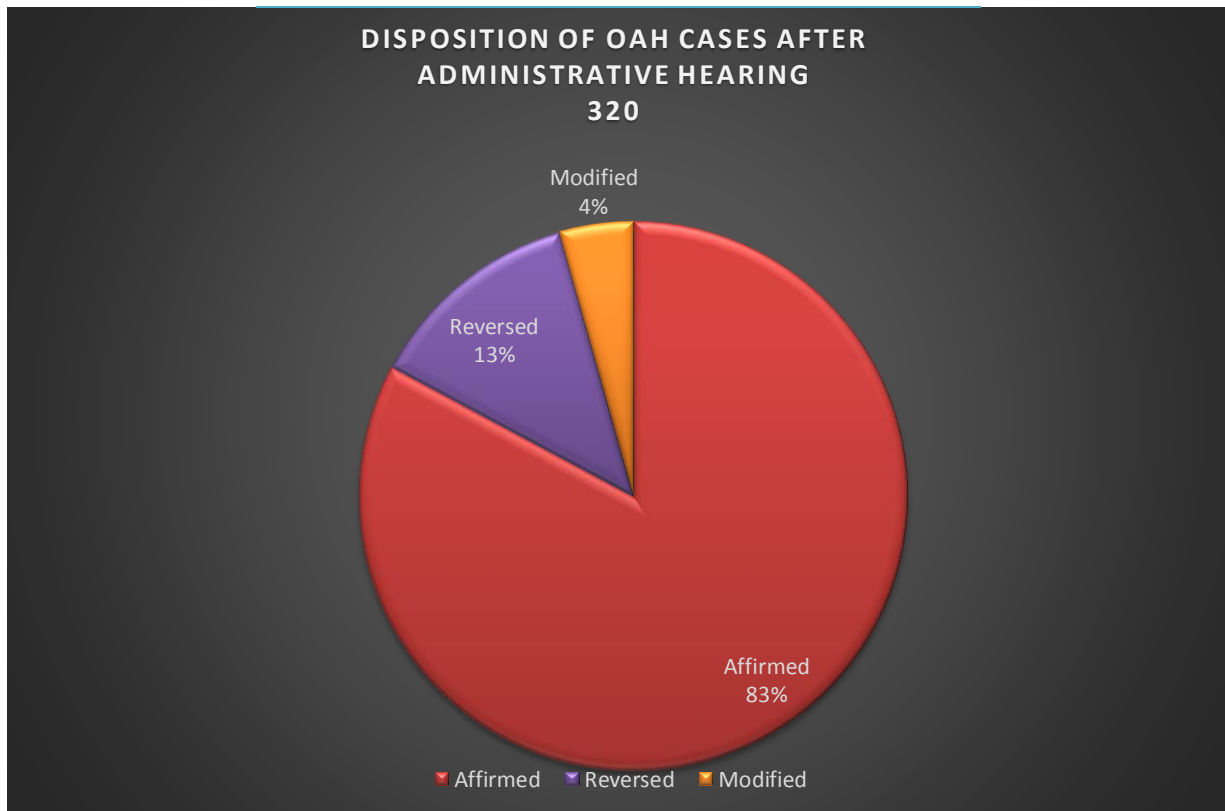
FINAL ORDERS

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

During Fiscal year 2015, the OAH issued 320 Final Orders after the administrative hearing was conducted. As a result, 265 Revocation Orders where upheld, 41 Revocation Orders were reversed, and 14 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.

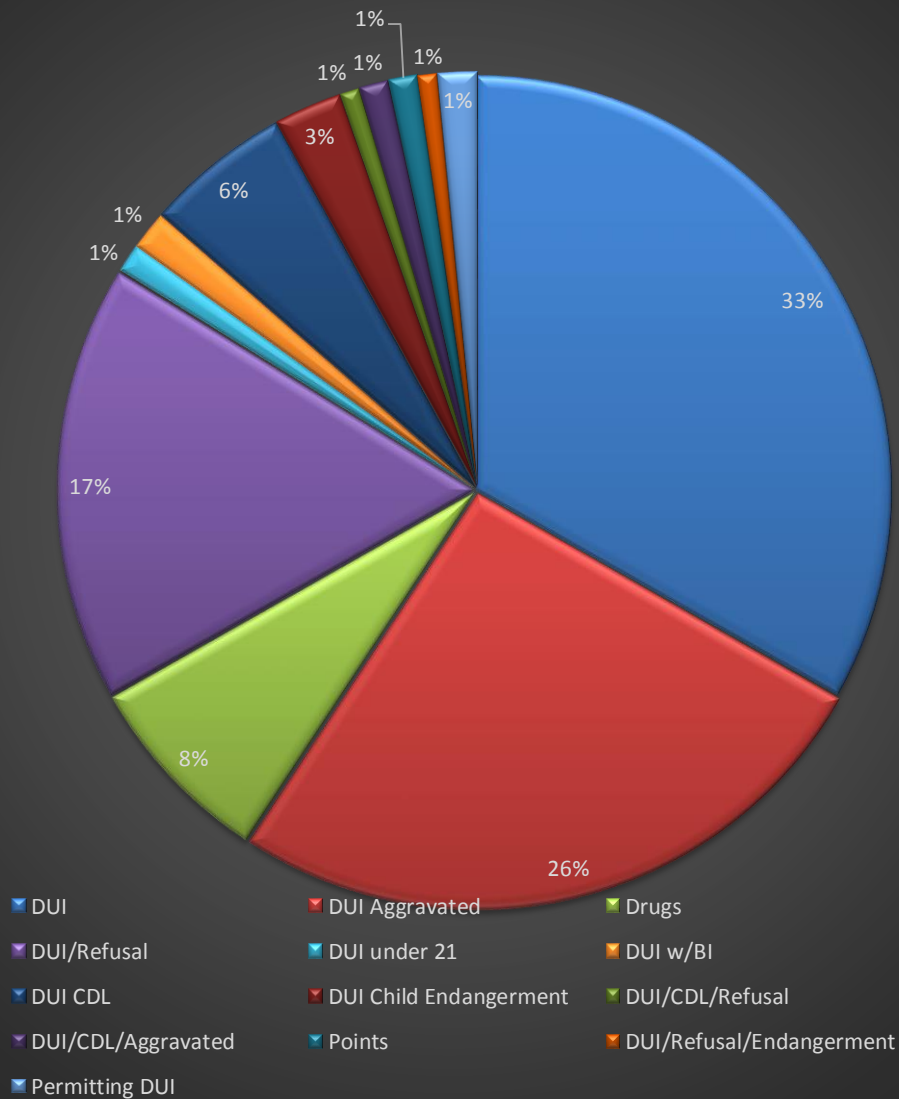
Fiscal Year 2015 Total Orders Entered After Hearing	
Total Orders Entered	320
Affirmed	265
Reversed	41
Modified	14



Fiscal Year 2015 Orders Affirming Order of Revocation by Offense

Total Orders Entered	265
DUI	88
DUI Aggravated	69
Drugs	20
DUI w/Refusal	45
DUI Under 21 years of age	03
DUI Causing Bodily Injury	04
DUI / Child Endangerment	07
DUI/Refusal/Child Endangerment	02
DUI CDL	15
DUI CDL w/ Refusal	02
DUI CDL Aggravated	03
Points	03
Knowingly Permitting DUI	04

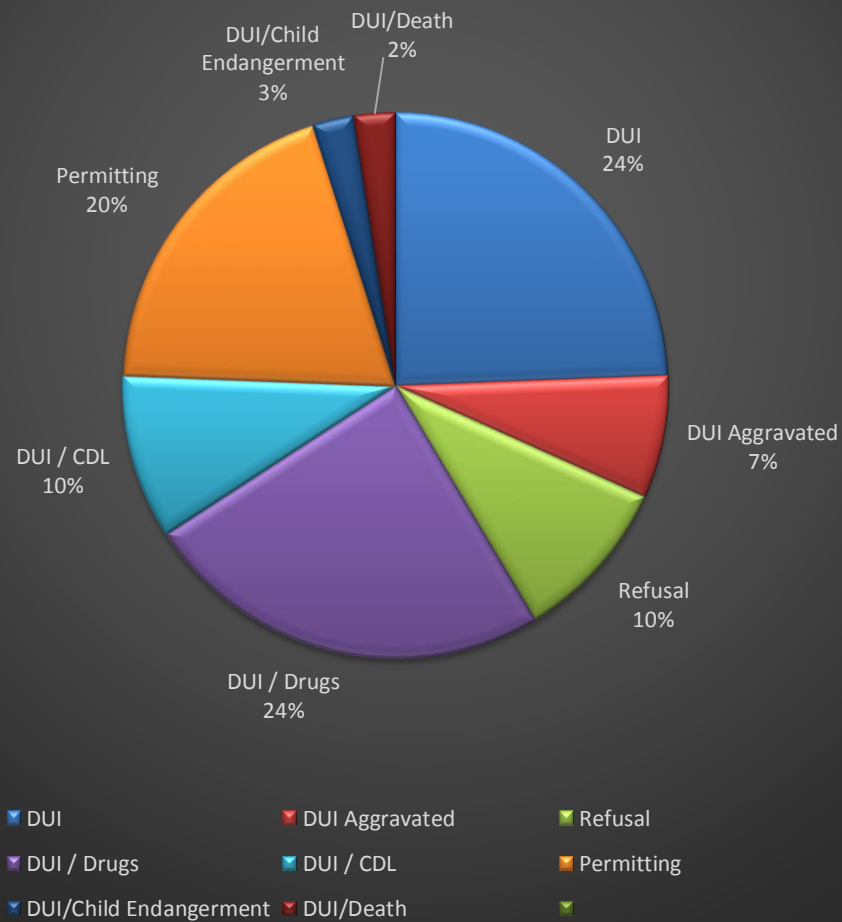
ORDERS AFFIRMING ORDER OF REVOCATION



Fiscal Year 2015 Orders Reversing Order of Revocation by Alleged Offense

Total Orders Entered	41
DUI	10
DUI Aggravated	03
Refusal	04
DUI / Drugs	10
DUI with CDL	04
Knowingly Permitting	08
DUI/Child Endangerment	01
DUI / Death	01

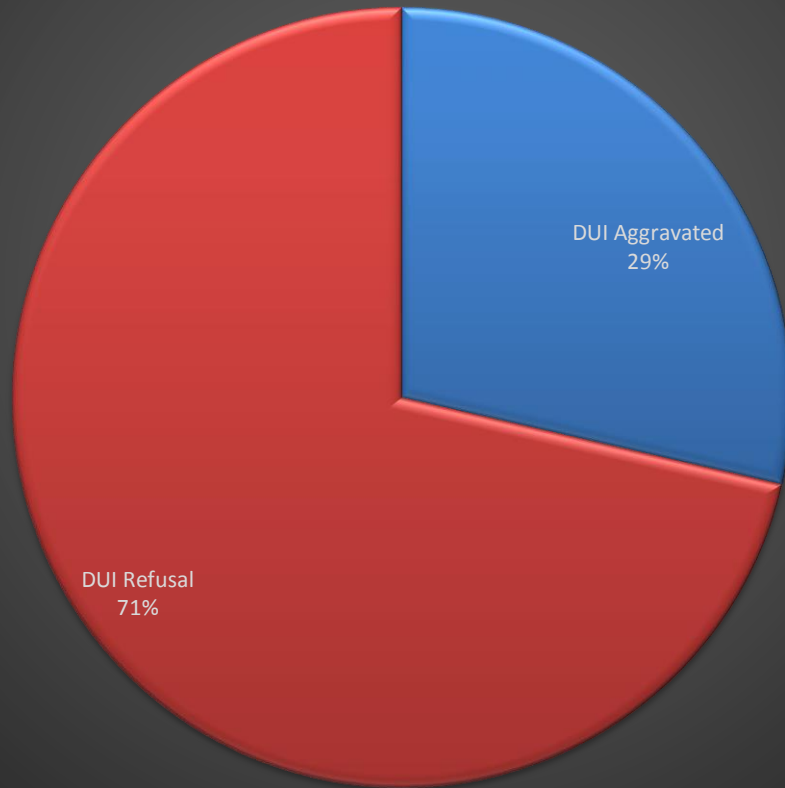
**ORDERS REVERSING REVOCATION ORDERS
41**



Fiscal Year 2015 Orders Modifying Order of Revocation by Alleged Offense

Total Orders Entered	14
DUI / Refusal	10
DUI / Aggravated	4

ORDERS MODIFYING REVOCATION ORDERS
14

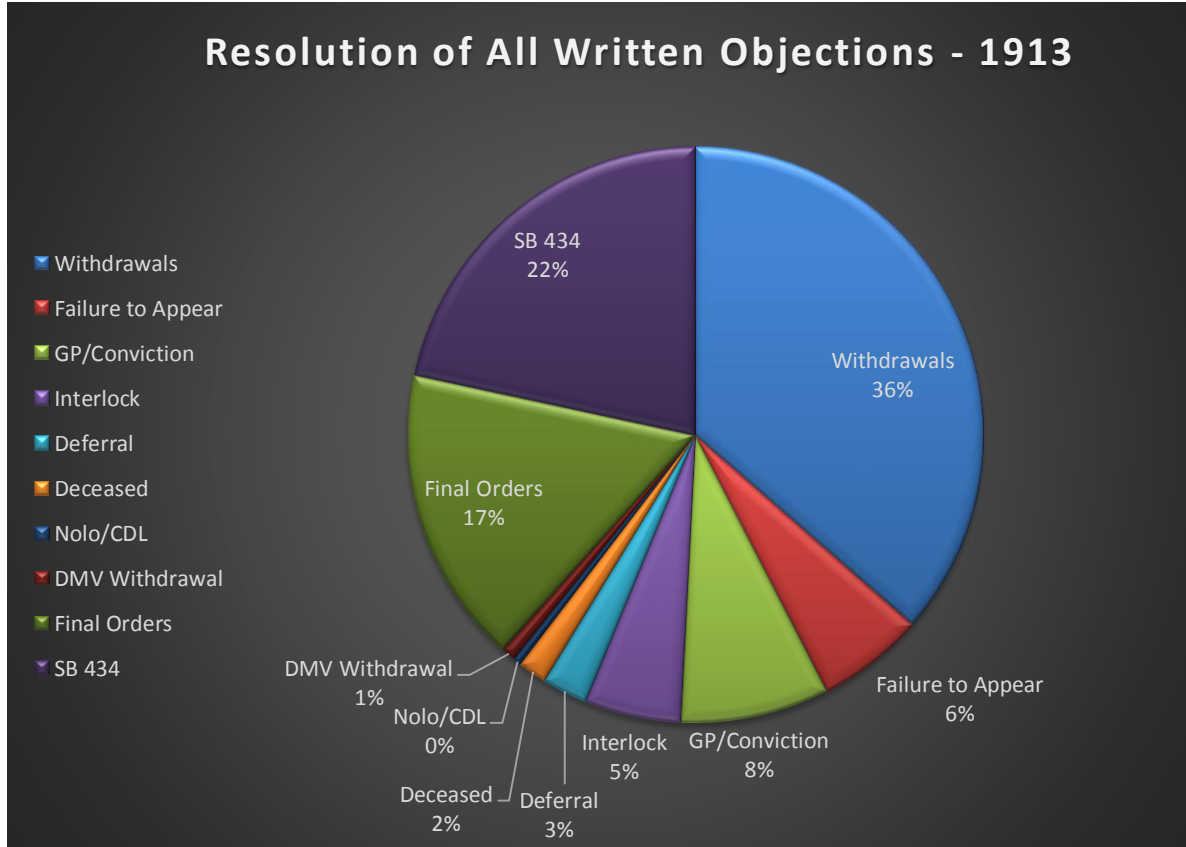


■ DUI Aggravated ■ DUI Refusal ■ ■ ■ ■ ■ ■ ■ ■

RESOLUTION OF WRITTEN OBJECTIONS

In addition to the Final Orders entered after an administrative hearing previously discussed, the Legal Department is also responsible to generate 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 Division of Motor Vehicles. During Fiscal year 2015, the OAH issued Orders which resolved 1913 Written Objections.

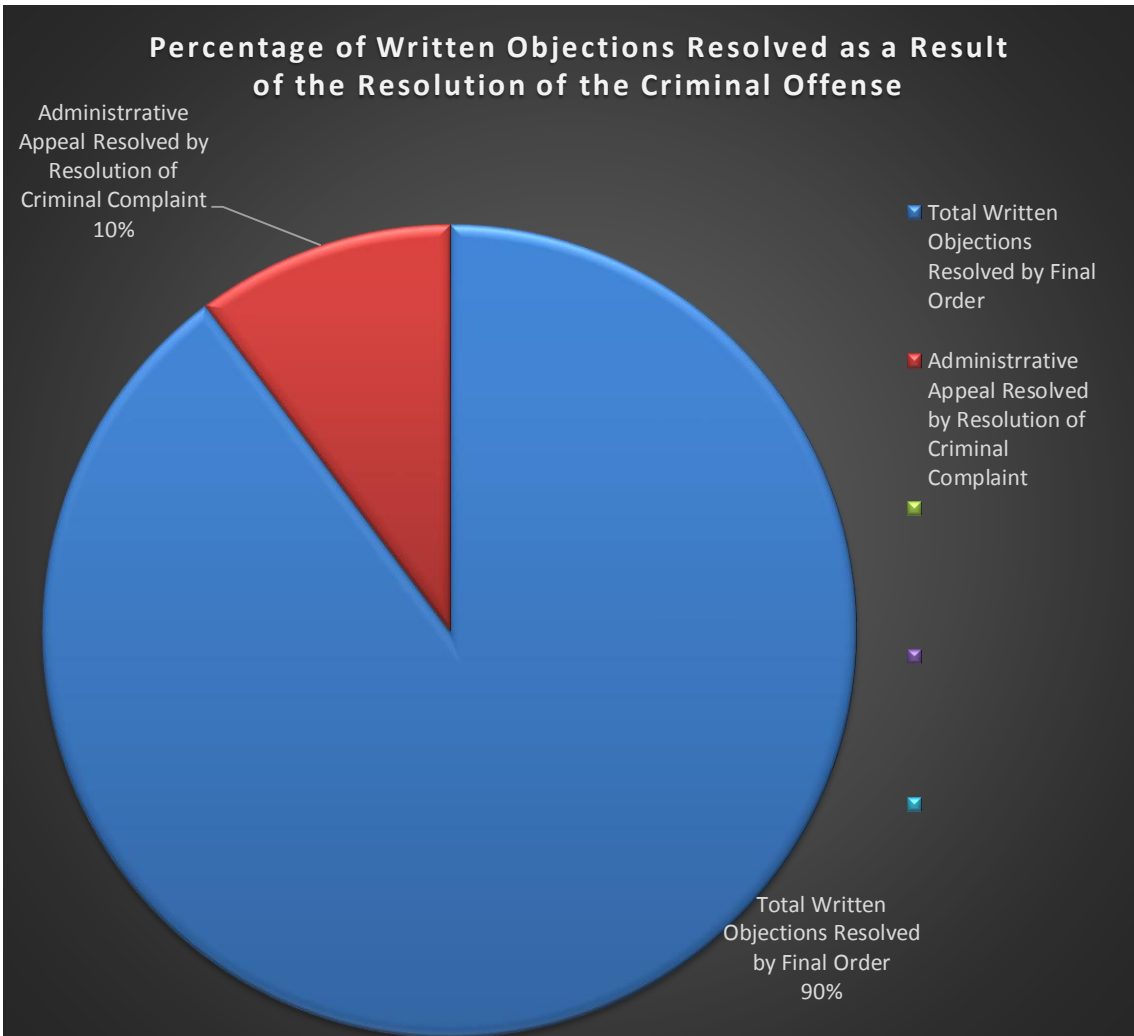
Fiscal Year 2015 Resolution of Written Objections	
Total Orders Entered	1913
Withdrawals	697
Failure to Appear	115
Deferrals	49
Guilty Pleas/Conviction	160
Interlock	103
Deceased	31
Nolo/CDL	09
DMV Withdrawal	15
Final Orders	320
SB 434	414



If a Petitioner pleads guilty to or is convicted of the parallel criminal offense, they are no longer entitled to an administrative hearing regarding the revocation of his or her driving privileges. Upon receipt of notification of the conviction, the Office of Administrative Hearings enters an Order striking the contested revocation from the docket.

Fiscal Year 2015
Percentage of Written Objections Resolved as a result of the
Resolution of the Criminal Offense

TOTAL Written Objections Resolved	1913
Resolution by Action in Magistrate Court	218
Resolution by Final Order issued by OAH	1695



TIME FRAME FOR ISSUANCE OF FINAL ORDERS

Initially it was the goal of the 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 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 month time-frame for the issuance of Final Orders entered after the conclusion of an evidentiary hearing was more realistic. For Fiscal year 2015, the OAH entered 320 Orders after the conclusion of the administrative hearing. Of those, 76 (24%) were issued within nine months after the conclusion of the evidentiary hearing.

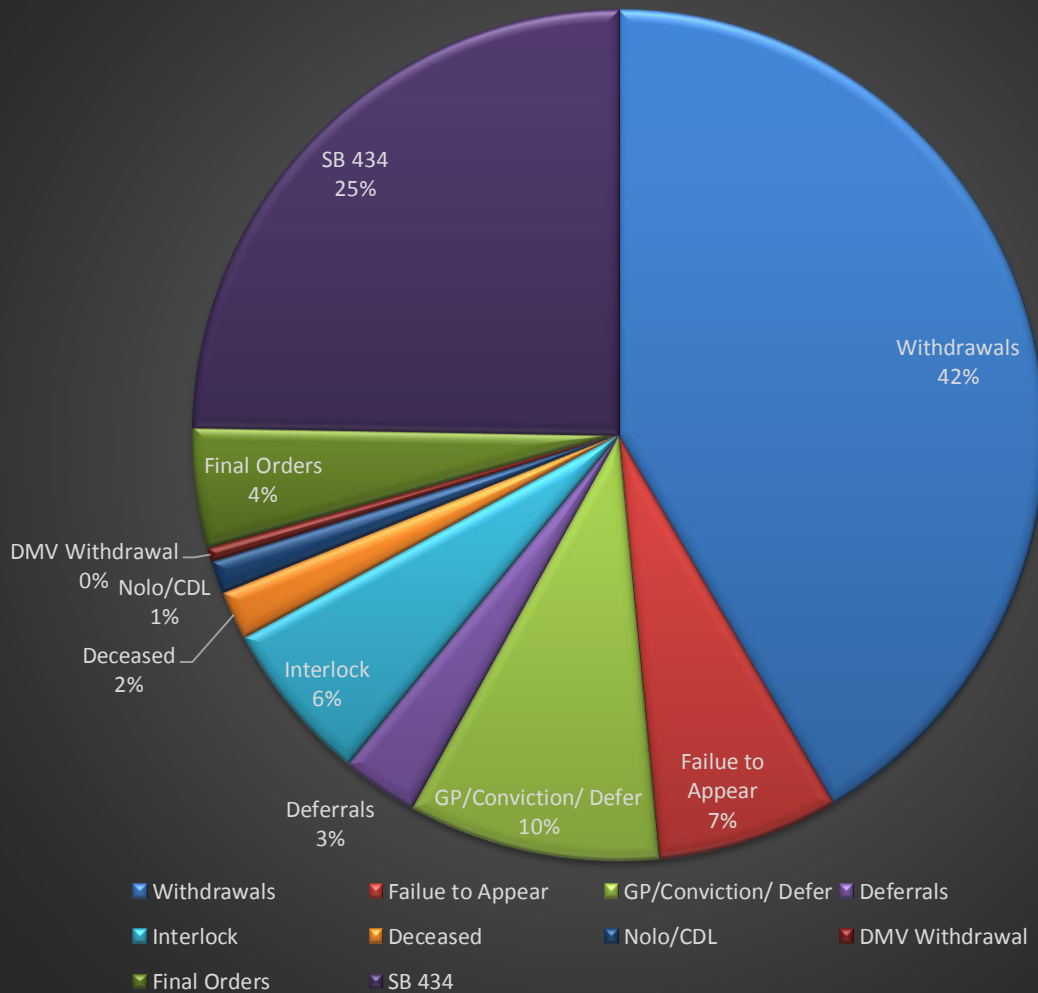
The performance measure regarding Final Orders issued within nine (9) months reflects all cases that were finally adjudicated by the OAH, regardless of whether an evidentiary hearing was conducted. In addition to the orders entered after an evidentiary hearing, these Final Orders also include those which were entered by the 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 WVDMV. It should be noted that the OAH 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 2015, the OAH entered 1913 Orders which resolved Written Objections filed regarding Orders of Revocation or Suspension issued by the Commissioner of the WVDMV. Of those, 1669 (87%) Orders were issued within the nine month time-frame.

Fiscal Year 2015 Time Frame for Entry of All Final Orders

Total Orders Entered	1913
Orders Entered within 9 Months	1669
BREAKDOWN	
Withdrawals	697
Failure to Appear	115
Deferrals	49
Conviction/ Guilty Plea/Deferral	160
Interlock	103
Deceased	31
Nolo/CDL	09
DMV Withdrawal	15
Final Orders after Hearing	76
SB 434	414

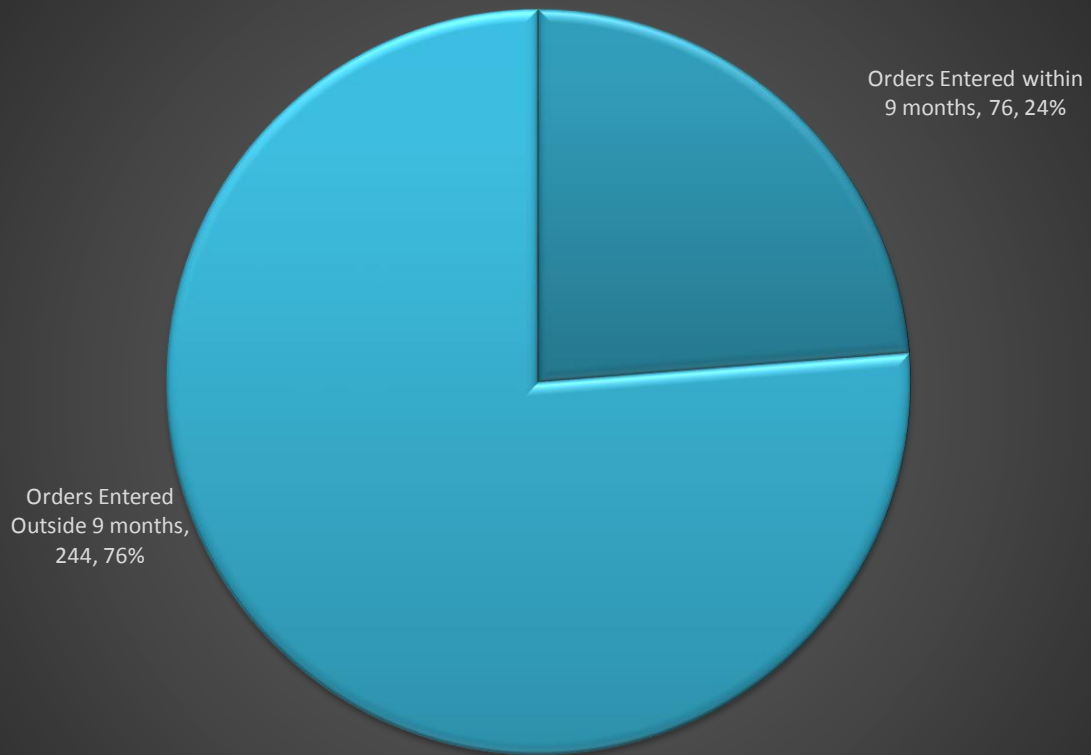
Final Orders Issued within 9 Months
1669



Fiscal Year 2015
Time Frame for Entry of Final Orders
After Administrative Hearing

Total Orders Entered	320
Entered within 9 Month Period	76
Entered outside of 9 Month Period	244

TIMEFRAME FOR ENTRY OF ORDERS
AFTER ADMINISTRATIVE HEARING
320



Orders Entered within 9 months Orders Entered Outside 9 months

APPEALS OF OFFICE OF ADMINISTRATIVE HEARINGS ORDERS

Once a Final Order has been reviewed by the Legal Department and approved by the Hearing Examiner, the Final Order is entered by Chief Hearing Examiner and subsequently distributed to the parties. Either party aggrieved by the Final Order may petition for appeal in Circuit Court accordance with the provisions of West Virginia Code §29A-5-4. During Fiscal Year 2015, 24 appeals of Final Orders entered by the OAH have been filed in various Circuit Courts throughout the State. Six appeals were filed by the Division of Motor Vehicles and of those two were appeals of Modified Revocation Orders. Eighteen appeals were filed by the Petitioner.

Fiscal Year 2015 Appeals of OAH Final Orders	
Final Orders Entered After Hearing	320
TOTAL Appeals Filed	24
Appeals Filed by the DMV	06
Appeals Filed by the Petitioner	18

