

OATH/KRIMSTOCK HEARING MANUAL

- Client has right to a post-seizure retention hearing
- Hearing decides whether the NYPD or Client retains the vehicle while a forfeiture action is pending.
 - This hearing is **not** the forfeiture case, that may still be filed post hearing
- **Requesting an OATH Hearing:**
 - **Notice of Right To Retention Hearing: (see attached 1-2)**
 - Client should receive the Notice when arrested
 - It will also be mailed to the registered owner of the vehicle.
 - If not received, contact NYPD to get a copy of the form
 - Form should be completed, and original sent via certified mail (no fax) to NYPD ASAP!
 - *Practice Tip:* after scheduling a hearing, you can call the NYPD attorney and get the standard settlement offer. This can be useful since it can sometime take over a month for the NYPD to send the paperwork.
 - **Hearing:**
 - Hearing will be scheduled within 10 business days or receipt of request for hearing
 - They are scheduled quickly and difficult to adjourn
 - Prior to hearing there is a settlement conference, where the OASAS program and fine will be offered again. (standard settlement program).
 - The hearing is on the record in front of a judge with the Arresting officer present (sometimes)
 - The rules of evidence are relaxed so hearsay is allowed.
 - Often times the only evidence presented by the NYPD is the arrest paperwork
 - If client does not testify, it is presumptively an adverse inference against them
 - **Krimstock Test:**
 - Hearing decision is based on 3 prong test:
 1. Probable Cause to Stop
 2. Likelihood of the NYPD winning a forfeiture case
 3. Likelihood that client would return car if forfeited (often the only prong client can testify about if criminal case is still pending)
 - a. *Heightened Risk to Public Safety Standard (see below)*
 - **Decision:**
 - Win Hearing:
 - Client will receive release in the mail within 3 business days of the hearing
 - NYPD may serve summons to commence forfeiture case on client in person at the hearing or in the near future
 - An answer must be served within 20 days of service if in person, 30 days if served by mail (CAP has template)
 - Lose Hearing:
 - NYPD now has power to file forfeiture case
 - Client should make formal demand immediately so that the 25 day limit starts (see DWI Vehicle Seizure Packet)

Krimstock Prong 3: Heightened Risk to Public Safety Standard

- This is the prong most OATH hearings are decided upon
- The standard is merely whether there is a risk to the public in returning the vehicle to the defendant

Factors:

- There are various Positive and Negative Factors that are considered in making this decision.
 - The hearing decisions are comprised of a balance of many of the following things.
- **BAC:** The initial consideration is the BAC of the client when arrested:
 - Generally, anything above a .15 is presumptively reckless so a client will lose an OATH hearing
 - See attached chart showing various BAC's and outcomes.
- **Incident:**
 - A narrative of the incident will have to be provided if your client testifies.
 - Any of the following are negative:
 - Speeding
 - Accidents
 - Reckless Driving
 - Injuries
 - Medical Attention
 - Vehicle Damages
- **Arrest Charges:**
 - Serious Felony Offenses are highly negative
 - Criminal Possession of a loaded firearm
 - Substantial quantity of controlled substance
- **Criminal History:**
 - No other criminal history is great positive factor in establishing a good character, law abiding defendant
 - Prior DWI within a recent time period makes it almost impossible to win a hearing
 - Any prior criminal history can be negative, though
- **Driving Record:**
 - Prior suspensions are always considered negatively
- **Employment:**
 - Positive work history again shows a hard working individual
- **ROR:**
 - Being ROR's at arraignments shows strong community ties
- **Return of the car if NYPD wins forfeiture case:**
 - Another consideration is if the car will be disposed of prior to the termination of a forfeiture case
 - This turns on:
 - If car is registered in NY
 - If owner is in NY
 - Large/Small Resale Value of the Car.

Positive/Negative	Blood Alcohol	Case	Info
Positive	.131%	<i>Williams</i>	First arrest for driving while intoxicated or impaired. Vehicle was stopped, wedged on top of traffic barrier.
Positive	.150%	<i>Vanegas</i>	"Mere fact of a single arrest for operating a motor vehicle while intoxicated, without more, is insufficient to demonstrate a heightened risk to public safety." - Def was driving and swerving -
Positive	.153%	<i>Jones</i>	-first DWI arrest, no criminal or unsafe driving record, court considered def's steady job.
Positive	"dept failed to offer test results into evidence" but respondent conceded it was "high"	<i>MacFarland</i>	-first arrest; "all vehicles are at some risk of loss, theft or damage. Brief mention of accident in police report. Minor accident does not demonstrate heightened risk to public - BUT "a very high BAL might show a recklessness behind the wheel that would substantially heighten the risk to both the public and the preservation of the vehicle."
Positive	Field sobriety was .156, breathalyzer later showed .14	<i>Javier</i>	First and only arrest. Car accident → def sideswiped another car. "impressed me with solid roots in the community." Two jobs, six kids.
Positive	Declined breathalyzer	<i>Dalley</i>	Accident, half-bottle of rum in seat, no prior arrests or convictions
Positive	Reckless driving and reckless endangerment	<i>Fung</i>	First arrest, cites MacFarland. One prior arrest for "federal charges of stolen property" didn't indicate disposition. Def also admitted prior accidents too.
Positive	Underlying is gun possession, not DUI	<i>Arnold</i>	"commission of a crime, without more, is not enough to satisfy this requirement [to prove the heightened risk of public safety.]
Positive	-possession of weapon in 3rd	<i>Jones</i>	Had prior convictions (mostly misdemeanors). Protecting son from other son. Considered respondent's demeanor—remorseful—and substance of testimony to determine that he doesn't pose heightened risk to public.
Negative	.126	<i>Busgit</i>	Felony conviction, prior DWI, 1 year license

			revocation, registered in FL
Negative	.207 .239	<i>Serrano</i>	Passenger had approached cop to ask for directions.
Negative	.22	<i>Cevallos</i>	Accident, out of state registration. "over .20% displays a complete disregard for his safety, the safety of passengers and the safety of the public."
Negative	.126	<i>Solomon</i>	Suspended license at time of arrest. PO found def slumped over wheel, ignition running.
Negative	CPCS, CPW, marijuana and failure to obey traffic signal	<i>Rice</i>	Ran a red, found 74 bags of coke, a loaded .45 handgun and two bags of marijuana. Prior DWI arrest (pg to violation) and an assault conviction, and a robbery arrest → criminal history + serious nature of these charges = HPS risk
Negative	Robbery (1st and 2nd deg), CPW 2nd, menacing 2nd	<i>Van Rossum</i>	Def used his vehicle to flee scene of crime! Possession of loaded firearm relates directly to public safety.

The
City
of
New York



POLICE DEPARTMENT
LEGAL BUREAU
CIVIL ENFORCEMENT UNIT
2 LAFAYETTE STREET-5th Floor
NEW YORK, N.Y. 10007-1307

1

Dear Vehicle Owner:

Enclosed is a *Notice of Right to Hearing Regarding Seized Vehicle*. If you want a hearing as described in the enclosed Notice, it is necessary that you thoroughly complete and mail the attached form, or return it in person, to the Vehicle Seizure Unit at the above address. Please read the form carefully. You might of course, also consider consulting legal counsel if you have not already done so.

Whether or not you indicate that you want a hearing by returning the attached form, the Property Clerk of the New York City Police Department may be willing to settle its claim against the vehicle. If it is, a letter outlining the terms of the settlement will be sent to you shortly. If you do not receive such a letter within ten days after receipt of this notice, please call the Vehicle Seizure Unit at (917) 454-1111. When you call please have available the seizure number of your vehicle which is listed on the top of the enclosed form. Thank you for your consideration in this matter.

Vehicle Seizure Unit



**NOTICE OF RIGHT TO
RETENTION HEARING**
PD 571-1218A (10-06)

2

FOR POLICE DEPARTMENT USE ONLY

Pct of Arrest	Arrest No.	Voucher No.	Command Veh. Seizure No.
AJO Name (Last, First, M.I.)		Tax No.	Chart
Defendant's/Driver's Name (Last, First, M.I.)		Date of Arrest	
Year and Make of Vehicle Seized		VIN No.	
Did Anyone Suffer a Serious Physical Injury As a Result of This Incident?	<input type="checkbox"/> YES <input type="checkbox"/> NO	If Yes, Briefly Describe Injury	

NOTICE OF RIGHT TO A RETENTION HEARING

You are entitled to a hearing to determine whether it is valid for the Property Clerk to retain the vehicle seized in connection with an arrest. Please complete this form, make and keep a copy for yourself, and deliver or mail the completed original form to **NYPD Legal Bureau, Two Lafayette Street, 5th Floor, New York, NY 10007, Attention: Vehicle Seizure Unit.** When the form is received, you will be notified of the date, time and place where your hearing is scheduled to be held. The NYPD Legal Bureau will do its best to accommodate your schedule by having the retention hearing on a date when you are available. Please indicate in the space provided below the date(s), if any, within the next four weeks following the receipt of this form, when you are NOT available to attend a hearing. A retention hearing will be scheduled within ten (10) business days after we receive this form, and will be held at the Office of Administrative Trials and Hearings, located at 40 Rector Street, Sixth Floor, New York, NY, 10006, telephone no. (212) 442 - 4900. The retention hearing will provide you with an opportunity to be heard either yourself or through your attorney with respect to three issues: (1) whether probable cause existed for the arrest the vehicle operator; (2) whether it is likely that the City will prevail in an action to forfeit the vehicle; and (3) whether it is necessary that the vehicle remain impounded in order to ensure it's availability for a judgment of forfeiture. The burden of proof by a preponderance of the evidence as to each of these issues will be upon the Police Department, and the judge may consider such hearsay and other evidence as the judge may consider reliable. If the Police Department proof is insufficient as to any of these issues, the vehicle will be returned to the claimant. Only one person may appear as claimant, and if more than one of these forms is received by the Police Department, priority will go to the registered owner of the vehicle.

Name of Person Accepting Hearing			Telephone No. ()	
Address	City	State	Zip Code	Apt. No.
Person Accepting Hearing: <input type="checkbox"/> Defendant <input type="checkbox"/> Owner <input type="checkbox"/> Other (Specify)				
List All Dates (Mon - Fri) During The Next Four (4) Weeks, When You Will NOT Be Available To Attend A Hearing:				
Is The Vehicle Being Claimed:		Name of Leasing/Financing Company		
<input type="checkbox"/> Leased <input type="checkbox"/> Financed <input type="checkbox"/> Owned Outright				
Defendant's Name			Telephone No. ()	
Address	City	State	Zip Code	Apt. No.
Claimant's Legal Representative			Telephone No. ()	
Address	City	State	Zip Code	Suite No.
Copy Received:	Signature of Claimant			

NOTE: This Section MUST be Completed in Full in Order to Process Your Acceptance of the Retention Hearing.