

## MINUTES

### KANSAS DUI COMMISSION

September 14-15, 2009  
Room 143-N—Statehouse

#### Members Present

Senator Tim Owens, Chairperson  
Representative Janice Pauls, Vice-Chairperson  
Senator David Haley  
Representative Lance Kinzer  
Gregory Benefiel  
Pete Bodyk  
Mark Bruce  
Honorable Jennifer Jones  
Secretary Don Jordan  
Wiley Kerr  
Mary Ann Khoury  
Ken McGovern  
Chris Mechler  
Helen Pedigo  
Marcy Ralston  
Honorable Peter Ruddick  
Dalyn Schmitt  
Les Sperling  
Ed Klumpp substituted for Police Chief Bob Story  
Jeremy Thomas  
Douglas Wells  
Secretary Roger Werholtz  
Karen Wittman

#### Staff Present

Athena Andaya, Kansas Legislative Research Department  
Jerry Donaldson, Kansas Legislative Research Department  
Jason Thompson, Office of the Revisor of Statutes  
Sean Ostrow, Office of the Revisor of Statutes  
Doug Taylor, Office of the Revisor of Statutes  
Karen Clowers, Committee Assistant

#### Others Attending

See attached list.

**Monday, September 14  
Morning Session**

The meeting was called to order by Chairperson Thomas C. "Tim" Owens at 10:02 a.m.

Ed Klumpp requested a correction to the minutes of August 6-7 indicating he substituted for Police Chief Bob Story on August 7. Chris Mechler requested a spelling correction. *Helen Pedigo moved, Chris Mechler seconded, to approve the minutes of August 6-7, 2009 as corrected. Motion carried.*

The Commission heard presentations on Electronic Submission of DUI Records and Information Sharing.

Wiley Kerr and Steve Montgomery of the Kansas Bureau of Investigation provided the Commission with an overview on the current KBI database. Information included the current capabilities regarding record keeping and information sharing. Mr. Montgomery described the types of information provided to the agency and what information currently is available to law enforcement. Discussion followed addressing how the specific needs of prosecutors regarding previous convictions could be provided in a prompt and concise fashion. Several points made during the discussion included:

- Convictions in Kansas versus out-of-state convictions will continue to be a problem;
- Municipal courts cover two-thirds of DUI cases and reporting standards differ widely. Large municipalities use electronic reporting, whereas small jurisdictions do not have that capability;
- The need for a good exchange model and State mandated guidelines regarding the transfer of data to ensure consistency throughout the State; and
- Problems regarding records before 1996, between 1996 and 2001, and the need for consistency across the State at all levels do exist.

The discussion then proceeded to address the lifetime look back regarding DUI convictions and possible decay rates. The laws have changed considerably over the years, and records that would have been expunged or decayed are now back on an individual's record.

Kelly O'Brien, Office of Judicial Administration, provided the Commission with a review of the FullCourt Case Management software system used to manage court cases (Attachment 1). This software is used in 103 counties across the State and is a client-server based system. The court data is stored at the client's server (*i.e.*, in each county) and can provide court information to state agencies as provided by statute. There is no statewide repository of court data in Kansas. Mr. O'Brien then described how and what information is sent from FullCourt to Driver Control in the Department of Revenue.

Marcy Ralston addressed the Commission on information received by the Division of Motor Vehicles. Ms. Ralston stated the Division receives data from hundreds of courts and estimates approximately 86 percent of municipal courts submit data electronically. Electronic submission is still voluntary. Ms. Ralston described the process followed when information is sent to Driver

Control. She indicated much of the information is still entered manually which provides opportunity for errors. Currently, there is a new system in development which will address these issues. The new system also will allow police and prosecutors access to the information. Ms. Ralston indicated that convictions prior to 1996 were routinely purged at the end of the required five-year limit until the law was changed in 2001.

The Commission recessed for lunch.

### **Afternoon Session**

The meeting reconvened at 1:00 p.m

The Commission heard presentations on DUI from a Court Clerk's Perspective.

Bettina Jamerson, Clerk of the Municipal Court, Prairie Village, Kansas addressed the Commission on the process used on DUI cases in the City of Prairie Village (Attachment 2). Ms. Jamerson described in detail the process that must be followed and the various steps taken in a DUI prosecution.

Alice Adams, District Court Clerk, Geary County, Kansas, presented to the Commission the procedural steps taken by county clerks on DUI cases (Attachment 3). Ms. Adams also stressed the importance of entering information accurately; errors could cause devastating effects.

The Commission heard presentations on DUI from a municipal prosecutor's perspective.

Beth Boldt, City Prosecutor, Merriam, Kansas, addressed the Commission on the challenge's she faces when prosecuting a DUI case. Merriam, Kansas consists of four square miles in Johnson County with a population of 11,000 people, but approximately 100,000 individuals pass through the city limits each day due to interstate highways and "major artery" streets. Ms. Boldt has trained with police and works closely with police to protect the residents of Merriam. She suggested simplifying the laws to make it easier for every person along the process to do their job. She indicated that "practiced" drunks know how to get around the system and strongly recommended addressing penalties for refusing breath tests. It is extremely difficult to prosecute a DUI without a breath test. Ms. Boldt indicted HGN (horizontal gaze nystagmus) test is a useful, reliable test to distinguish when someone is under the influence of alcohol. The tests are admissible in several states and the Commission should recommend their use in Kansas.

Hillary Boye, Assistant City Attorney, Hiawatha, Kansas, presented the Commission with a small city perspective on DUI prosecution (Attachment 4). Ms. Boye indicated it is difficult to keep up with the ever changing laws regarding DUI and she feels there has been a lack of consistency in the last three years. Her most difficult issue is obtaining a complete driving record for the same reasons stated throughout these meetings. There is no easy way to obtain previous conviction histories. In addition, Hiawatha is very close to the Nebraska border, and often offenders are from out-of-state. Other states treat DUI's differently, and records can be difficult to read and costly to obtain. Ms. Boye stated she has found the second conviction treatment requirements usually are unsuccessful when forced. It is difficult to find treatment, especially affordable treatment in rural areas, and requires transportation to treatment. This usually involves driving while on a suspended license. Ms. Boye recommends use of the ignition interlock device rather than implementing a suspended license and increased penalties for breath test refusals.

John Knoll, Senior Assistant City Attorney, Overland Park, Kansas, provided a large city prosecutor's perspective of DUI (Attachment 5). Mr. Knoll indicated several challenges regarding the prosecution of a DUI including:

- The search for prior convictions is difficult and tedious requiring a mailed letter rather than a phone call and causes substantial delays;
- Blood tests do not get processed quickly enough; and
- Not all Kansas Disposition Reports are reported.

Mr. Knoll stated it would be extremely helpful to have "one-stop" shopping for journal entries for prior and pending cases and suggested enforcement of reporting laws would result with a more accurate accounting of prior cases.

Sarah Riley-Hansen addressed the Commission regarding licensing of professional service providers for all DUI offenders (Attachment 6). The case was made for the importance of licensing which would provide consumer safety, oversight and accountability, to clients while providing screening and assessment, treatments, and documentation of progress.

Secretary Don Jordan indicated that SRS supports licensing of addiction counselors and recommended that the Behavioral Sciences Regulatory Board would be the appropriate agency to monitor such licensing.

*Chris Mechler moved, Roger Werholtz seconded, to endorse licensing and recommend licensing to the Legislature.* Following discussion, Chairperson Owens delayed vote on the motion to the October meeting so members may consider the subject.

The meeting was adjourned at 4:15 p.m.

### **Tuesday, September 15 Morning Session**

The meeting was called to order by Chairperson Owens at 9:07 a.m.

Jason Thompson, Revisor of Statutes Office, provided the Commission with a review of the ignition interlock legislation in New Mexico, the first state to require ignition interlock devices (Attachment 7).

Following the presentation, the Commission discussed and questioned various points of the New Mexico law. Max Strauss, Kansas Ignition Interlock Association, answered additional information and technical questions on interlock devices. He indicated historically, it has been found that indigent cases need to have some fiscal input on the devices. Nebraska had 100 percent coverage which resulted in an enormous amount of damaged units and since will provide assistance but not the full cost.

The Commission broke into subcommittees for discussion on their assigned topics.

The Commission reconvened at 1:00 p.m.

Kevin Barone of Kansas Ignition Interlock addressed the Commission regarding a CD to be provided to the Commission with information regarding the New Mexico study results on ignition interlock.

Roger Werholtz provided a summary of discussions from the Subcommittee on Corrections. Their overall goal is to keep people from driving while intoxicated and/or from committing additional offenses and recommendations are based on from the assumption that the mechanics required will mesh with the system. Initial recommendations concerning convictions are:

- The current penalties for a first conviction is sufficient but there is a need to criminalize refusals to submit to breath tests;
- The current second offense penalty is adequate;
  - The range of options available to the courts is generally adequate but the majority of members felt that jail time should really mean jail time;
  - Offenders using the ignition interlock system should be on probation with a more systemic feedback on performance provided to probation, courts, and treatment providers;
  - There is a need to have treatment imposed by the Courts be based on meaningful evaluations which includes verified criminal history, treatment history, and is responsive to the individual's treatment needs; and
  - Independent verification of client self-reporting;
- Third-time DUI offenses should be a misdemeanor with the same penalties currently attached to third-time convictions.
  - Should be handled at the district court level;
  - Assumes that the treatment now being targeted towards third DUI's as a felony remains available;
  - Supervision shifts to community corrections;
  - Revocation time is served in county jails; and
  - Requires at least 12-month probation period.

The subcommittee will revisit details of third DUI penalties; they are concerned with the perception of "moving backwards."

Fourth and subsequent DUI convictions are felonies with substantial sentences and incapacitation becomes the predominant strategy.

Secretary Werholtz stressed that all of the recommendations are based on the assumption of an accurate criminal history.

Karen Wittman presented results from the Law Enforcement subcommittee on the issues regarding arrests, processing, and record keeping, resulting in several recommendations.

- KCJIS appears to be the most suitable source for comprehensive reporting.
  - Reports will need a certification statement to overcome hearsay rule; and
  - Reports will need to contain specific data including arrest information, prosecution information and conviction information.
- Legislation will be needed to address counties charging in State government agencies for information they failed to report initially (usually disposition data);
- Initiate an auditing factor to enforce compliance in reporting;
- Sanctions imposed for prosecutors amending DUI charges to lesser charges;
- Fees imposed for a driver license hearing with a reduced charge for phone hearings; and
- Simplify the process for obtaining a search warrant for blood or urine tests and requested information on the time limits used in other states.

Les Sperling addressed the Commission on discussion results of the Substance Abuse and Treatment Subcommittee.

- Recommends a SSA (single state authority) to license ADSAP (Alcohol and Drug Safety Action Program) and provide information to the Courts;
- The SSA will produce a licensing standard for ADSAP agencies;
- Development of a standardized assessment tool to provide Courts with appropriate clinical information;
- SSA develop a standard for clinical best practice (education, outcomes);
- Recommends the use of the use of the American Society of Addiction Medicine (ASAM) criteria as an information tool and make recommendations based upon the severity of the problem;
- SSA adjust the rules to agencies administering ASAM criteria to provide consistency across the state;
- Monitoring is not working as anticipated and recommends that language be eliminated and that responsibility not be attached to the ASAM license or designation; and
- The subcommittee recommends moving the fourth time DUI program to the third offense due to the high success rate.

Dalyn Schmitt provided an update on the fourth DUI program which lost its funding September 1, essentially ending the program. Fourth offenders now have less accountability and with the current statute of moving fourth DUI sanctions to the third offense the program will need to be funded, enforced, and measurable.

Jeremy Thomas indicated the fourth offense treatment program was very effective.

Les Sperling indicated data shows that any engagement in treatment is beneficial and the more offenders who can be monitored and supervised, the better the results. From a clinical perspective only, speciality courts may provide better results and he would like for the Commission to investigate this subject further.

The meeting adjourned at 1:55 p.m.

The next scheduled meeting is October 1, 2009.

Prepared by Karen Clowers  
Edited by Athena Andaya

Approved by Commission on:

October 1, 2009

(Date)

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

DUI COMMISSION COMMITTEE GUEST LIST

DATE: 9-14-09

NAME	REPRESENTING
SEAN MILLER	CAPITOL STRATEGIES
Whitney Damm	Distilled Spirits Council of the U.S.
Kevin Berone	KITA
Kaly Ozner	QJA
Melanie Watkins	QJA
Corey Kenney	City of Lenexa
DARIAH DERNOVIAH	KHP
P.E. "TUCK" DUNCAN	KS Wine & spirits wholesalers Assn.
Kathy Porter	Seediceed Brewer
Tim Lupton	C-T



PLEASE CONTINUE TO ROUTE TO NEXT GUEST

DUI COMMISSION COMMITTEE GUEST LIST

DATE: 9-15-09

NAME	REPRESENTING
DARIAN DEKINWISH	KHP
Kevin Barone	KIIA
Jeff Zehnder	WIBW Radio
SEAN MILLER	CAPITOL STRATEGIES
Corey Kenney	City of Lawrence



State of Kansas

## Office of Judicial Administration

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Kansas DUI Commission  
Monday, September 14, 2009

Kelly O'Brien  
Chief Information Technology Officer

A major point that I need to make about the FullCourt Case Management system is that it is designed to do exactly what its name implies -- manage cases. The system needs to be able to provide information to those entities that are required by law to receive specified information, and it does. While the Judicial Branch is always mindful that it is part of and supplies information to many other systems (criminal justice, corrections, social services, health and environment, and others), we must also always be mindful of our mission within the justice system. Effectively and efficiently managing cases and reaching dispositions in those cases are essential to our mission.

When the Judicial Branch purchased the FullCourt software years ago, we used the model that has been well established by the legislative Joint Committee on Information Technology. We performed a thorough needs analysis, separating those functions that we needed from those that we simply wanted or wished for. In other words, "bells and whistles" were weeded out from consideration. We analyzed systems in use in other states and municipalities to see what users thought about the various systems. We engaged in a vigorous bidding process. We made the decision to purchase a software product "off the shelf," which means that we bought a product already in use, that has been market tested, and which was priced to reflect the fact that other users were sharing in the cost of its development. Historically, many computer software programs have been built from the ground up, and have been built to accommodate every work process in place, in exactly the manner in which workers want it to be built. We know from the experience of others that these kinds of systems are often extremely expensive, are not fully completed, and if completed, they often do not offer the functionality, flexibility, and ability to be updated that are characteristics of a good system. We knew that, in many cases, it would be less expensive and better to change our work processes to match the software, and we did, where possible. In other words, we "went vanilla," which means we made as few modifications to the software as possible. This helps to maintain the integrity of the software and also helps to keep the cost down. Every modification to software carries with it a cost, and that cost usually must be paid again every time the software is upgraded and some of these modifications can be very costly.

All of these factors and others have resulted in a FullCourt software application that works well for the Kansas court system and is quite popular among its users.

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Attachment 1

FullCourt is a client server based system, this means there is a server at each courts and the data is stored on this server. When an agency makes a request for court information, a program has to be written that goes out to each court and extracts the requested data. We then package the information and send it to the requesting agency. There is not a repository of statewide court data anywhere.

This is the file(s) that are created for driver control at the Department of Revenue. As required by statute, Kansas District Courts are to send three file sets to Driver Control, at the Kansas Department of Revenue. The following files are transferred every working/business day: 1) minor conviction file; 2) major conviction file; and 3) suspension/reinstatement file. Driver control defines that types of violations submitted using a record layout document. Consequently, all court convictions are not coded for submission as a conviction on a driver's record.

**Minor Convictions:** Traffic convictions that are considered minor violations by Driver Control are included in this file. The statute number and description are not included; a DMV code is used to identify the violation. For example, DMV code SP3 is a speeding violation. Citation related data is submitted which includes DL number, vehicle related data, as well as hazardous material, construction, CDL vehicle, CDL license, and accident flags. Also transmitted is party information, including driver name, address, and DOB.

Citations that are not included: violations not reportable to driver control (i.e. chapter 66 trucking violations); diversions and dismissals.

**Major Convictions:** Traffic convictions that are considered major violations by Driver Control are included in this file (misdemeanor and felony violations). DUI diversion data is included in this file as reportable to DMV. Also included are any suspensions that are related to the conviction. For example, there is a mandatory statutory suspension of 30 days for a first time violation of 41-0727, Liquor; Purchase/consumption alcoholic liquor/CMB by minor. This suspension is included as part of the convicting record.

The major violation file includes the statute number and description as well as the corresponding DMV code described above. Citation related data is submitted which includes DL number, vehicle related data, as well as hazardous material, construction, CDL vehicle, CDL license and accident flags. Also transmitted is party information, including driver name, address, and DOB.

Citations that are not included: violations not reportable to driver control; diversions (other than DUI diversions) and dismissals.

**Suspension/Reinstatement:** Drivers that fail to comply with terms of citation can be suspended by the court and are reported in this file. Driver control defines what types of charges are suspend-able using a DMV suspend code. For example, the DMV suspend code for DUI is DI1. Citation, party and vehicle related data, as described above in the minor and major conviction file, is included in this file. Reinstatement's for DMV suspend-able charges are also included in this file. Suspensions are coded "S" and reinstatement's codes "R."

Kansas DUI Commission  
DUI from a Clerk's Perspective

In prosecuting a charge of Driving Under the Influence, the prosecutor checks the defendant's driving record and criminal history to determine if the defendant has had prior diversions or convictions. A diversion can only be granted once in a lifetime, but that was not always the case. It is possible you could find a defendant with more than one prior diversion. In determining what number offense is before the Court, you must count lifetime priors. The court should not consider any prior conviction or diversion in which the person neither had, nor waived any right to the assistance of counsel.

The prosecutor requests a certified driving record from the driver's state he/she is licensed in and possibly other states where defendant is known to reside or has resided in the past. In the Kansas City metro area, the courts have access to the ALERT (Automated Law Enforcement Response Team) computer which is maintained by the Kansas City, MO Police Department. It encompasses approximately 120 criminal justice and criminal justice-related agencies, each with the capability of entering record information into the system. Kansas users have access to KCJIS (Kansas Criminal Justice Information System) which checks KBI (Kansas Bureau of Investigation) records and covers both those records supported by fingerprints or not. These systems may be queried to check criminal history record information (CHRI) for the defendant. It is through these queries that prior DUI diversions, probations, or convictions are discovered.

Another tool is the III (Interstate Identification Index) which provides a means of conducting national criminal history record searches. Each criminal history record is supported by a criminal fingerprint submission. Kansas takes ownership of their records through this system so they are able to provide more complete history than the FBI could. If Kansas owns the record you will receive the complete Kansas rap sheet in your response. If the FBI owns the Kansas record then you will receive the III rap sheet that is missing disposition information. III rap sheets, whether FBI or Kansas owned, will only show records that are supported by fingerprints.

Once the CHRI is obtained, the prosecutor can then follow up with the charging court to obtain certified copies of the diversion or conviction. Our court has its own Diversion Agreement,

Journal Entry of Sentencing and Journal Entry of Probation that fit our needs. These forms are completed when a defendant charged with DUI is diverted or convicted and placed on probation. When requested by other courts to provide a certified record of a prior diversion or conviction we copy these forms and certify them. They state whether there was an attorney of record, his/her name, or if a written waiver was obtained. They contain fines, fees, drug/alcohol education, jail sentence and/or house arrest, diversion/probation term, etc. In my opinion, it would not be necessary to standardize these forms. As long as the form contains the disposition of the case and whether or not the defendant was represented by counsel or signed a waiver that should suffice to prove a prior DUI.

When a defendant is charged with DUI, the arresting officer generates a KADR (Kansas Adult Disposition Report) at the time of arrest. The officer completes the section that includes the defendant's name and identifiers; Arresting Agency ORI (Originating Agency's Identification, a number assigned by FBI for all police, courts, and prosecutors), Agency Name, Case # and Date of Arrest; the K.S.A. that the defendant is being cited for and the charge description. The officer also includes fingerprints of the defendant's index fingers on this form. The KADR has a transaction number assigned to it that the officer will include on the full set of fingerprints that is taken of the defendant. The KBI can then link the two, KADR and fingerprint card(s). This is important because for the record to show on a III rap sheet, there has to be a criminal fingerprint submission.

The KADR is forwarded to the municipal court. It is the court's responsibility to complete the KADR when a disposition is reached on the DUI charge and forward a copy to the KBI. The KADR completes the picture for KBI because up to that point all they have is the arrest report from the Arresting Agency. The disposition on the KADR can be dismissal, diversion, conviction, probation; the form would include date of diversion/judgment/sentencing, fines, restitution, lab fees, jail time, length of diversion or probation, house arrest, alcohol/drug evaluation and/or education, etc. If the defendant was not fingerprinted at time of arrest, it is the courts responsibility to fingerprint the defendant and forward the prints to KBI.

The disposition on the DUI charge is abstracted electronically to the Department of Revenue, Driver Control Bureau, by the court. Diversions, convictions and probations are all reported. Information is provided whether the defendant was represented by counsel or a written waiver was obtained. The abstracted information is then attached to the defendant's driving record and can be obtained by a court requesting a certified driving record.

I hope this gives you some insight into the court process regarding a DUI charge; i.e., the steps that take place in checking for prior diversions or probations to assist in the prosecution of the current DUI, and the steps taken to report the disposition of that charge.

Respectfully submitted,

Bettina Jamerson  
Court Administrator  
Prairie Village/Mission Hills  
Municipal Court

## Prosecuting a DUI from a Clerk's Perspective

- I. Determine whether or not defendant had prior DUI's
  - a. Check defendant's driving record
    1. Check state defendant is licensed in
    2. Check state(s) in which defendant resides or has resided.
  - b. Check defendant's criminal history record
    1. ALERT (Automated Law Enforcement Response Team)
      - a. KCMO Metro area users search
        - i. Records are entered by metro area criminal justice and criminal justice-related agencies.
    2. KCJIS (Kansas Criminal Justice Information System)
      - a. Kansas search
        - i. KBI records
          1. Covers both those records supported by fingerprints or not.
    3. III (Interstate Identification Index)
      - a. National search
        - i. Records are supported by a criminal fingerprint submission
- II. If priors located,
  - a. Follow up with charging court for certified copies of diversion or conviction.
- III. Prepare appropriate paperwork according to case disposition
  - a. Diversion Agreement
  - b. Journal Entry of Sentencing
  - c. Journal Entry of Probation
  - d. Order of Dismissal
- IV. Include in the disposition paperwork
  - a. Disposition of case
    1. Dismissal

2. Diversion
3. Conviction
4. Probation

b. Attorney of Record or if written waiver obtained

V. KADR (Kansas Adult Disposition Report)

a. Initiated by Arresting Officer at time of arrest

1. Transaction number links it to defendant's fingerprints
2. Includes prints of defendant's index fingers

b. Forwarded to municipal court

1. Court to complete when a disposition is reached
2. Forward a copy to KBI

a. Closes the open arrest on record with KBI giving a disposition to the criminal history record.

VI. Abstract to Department of Revenue, Driver Control Bureau

a. Disposition is attached to driving record

1. Diversion
2. Conviction



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Kansas DUI Commission  
Monday, September 14, 2009

Testimony of Alice Adams, Geary County Clerk of the District Court

Thank you for the opportunity to address you this morning on "DUI from a Clerk's Perspective." I thought that it might be helpful to provide you with some background of the types of work clerks of the district court perform, the specific steps required of clerks in DUI cases, and some of the issues specific to DUI cases that arise in district courts across the state.

### General Background

On an annual basis, approximately 500,000 cases are filed in Kansas district courts. Of that total, approximately 200,000 are traffic cases. Of the traffic cases, approximately 6,000 annually are DUI cases. (There were 5,722 case filings including a DUI charge in FY 2004; 5,714 in FY 2005; 5,661 in FY 2006; 6,086 in FY 2007; and 5,883 in FY 2008.)

For statistical purposes, DUI cases are filed as traffic cases. Of all of the types of cases filed in the district courts each year, traffic cases require the least amount of clerk time and effort. Having made that statement, I must emphasize that I am comparing the amount of clerk time spent on traffic cases to the overwhelming amount of time clerks spend on other types of cases filed in the district courts. Other types of cases are much more labor intensive for both clerks and judges. For example, in many Chapter 60 cases (major civil and domestic), the records can literally fill boxes with multiple motions, hearings, and post-decree proceedings. Criminal cases are similar. Chapter 61 limited actions and small claims cases often include post-judgment hearings in aid, garnishments, executions, and other collection-related hearings that can also extend for months or years. Child in Need of Care and other juvenile cases also include many hearings required by state and federal law and also can extend for years. There are similar circumstances in other types of cases.

While traffic cases, including DUI cases, are less labor intensive for clerks of the district court than most other types of cases, they do require a significant amount of clerk time. The sheer number of traffic filings makes this particular case type onerous. In my court, we have noticed a significant increase in the number of traffic cases filed – we have had almost 1,150 more cases filed this year than this time last year. It is too soon in the fiscal year to determine if this is a trend and I do not know what the statewide experience has been. I also need to

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Attachment 3

emphasize that DUI cases demand more attention, care, and skill than other traffic cases. Among other issues, it should be noted that, as penalties for DUI cases increase, there appears to be a corresponding increase in requests for jury trials, which require more work even if a plea occurs before the actual trial.

## **Procedural Steps for Clerks of the District Court in DUI Cases**

While it is difficult to note every step required of clerks of the district court in DUI cases, the following analysis is intended to provide you with some idea of the type of information that comes into clerk of the district court offices, how that information is processed and disseminated, and what steps need to be taken to resolve a case. Please note that this analysis assumes a typical case, and does not take into account cases in which some procedural aspects may differ, cases in which there is a high degree of public interest or inquiries, or cases in which a party or attorney may make numerous inquiries or present unusual circumstances. Also not included are the steps that must be taken if an interpreter or other accommodations are needed.

### **RECEIVING THE COMPLAINT:**

The complaint or law enforcement affidavit is received from the trooper, sheriff, or county or district attorney. In some courts, the troopers or sheriffs will leave the Uniform Complaint and Notice to Appear with the county attorney, who then files the appropriate paperwork with the court. In other courts, where the trooper or sheriff file the citation directly with the court, the clerks have to contact the county attorney to determine if the charge is a first, second, third, or subsequent offense.

- Each document must be file-stamped.
- Filing a document requires that the clerk complete the following steps:
  - review the document;
  - enter the appropriate information on the appearance docket;
  - run the document through a scanner;
  - index the image;
  - punch holes in the paper; and
  - place the papers in the case file. (Attached is a sample of instructions for entering information on the appearance docket.)

### **SETTING UP A CASE FILE:**

The case file must be created, and the first appearance must be set. If the defendant has bonded out and the bond reaches the court before the complaint does, the clerk must set the bond hearing, get the judge's approval on the bond, and then track the money and the bond sheet until the complaint arrives. Sometimes this is complicated by miscommunication regarding dates set by the sheriff's office, so calls must be made and correcting notices must be sent.

Clerks across the state use various types of case files, depending upon local preference and practice. Some may use a flat file with prongs; others will use an envelope. A label may be printed, or some may handwrite information, such as case number, name, date filed, and charges on the outside of the file jacket.

To set a first appearance or bond hearing, the clerk must consult the court calendar and enter the hearing. Some will use the case management system to track court hearings and others will use other types of calendars in addition to the case management system to accommodate county or district attorneys and others.

#### ISSUING PROCESS:

If the charge is filed by long-form complaint, the clerk may have to process and issue the summons or warrant.

Issuing a summons or warrant requires that the clerk enter the information on the appearance docket, make sufficient copies for the sheriff, and then deliver the document to the sheriff.

#### HEARINGS:

During the first hearing, the clerk must perform the following steps:

- Note the actions taken and the result or disposition;
- get notice of the next hearing to the parties;
- notify any appointed attorneys of the case and the next hearing; and
- file the Financial Affidavit for Court Appointed Counsel along with the application in cases with appointed counsel.
- The courtroom clerk may electronically record the hearing and enter pertinent information on the recording system log, either by computer or by hand.

In Geary County, the clerk will make handwritten notes on the court docket, and then later transfer them to the case management system. A hearing will be entered on the calendaring system, and the clerk may print a notice of hearing to be sent to the attorneys and parties. If an attorney has been appointed, the clerk will generate a document with pertinent information for the appointed attorney, and also give the attorney's contact information to the defendant.

The case will be set for further hearings. That process varies from court to court. For instance, in Geary County if the case is a felony, a preliminary hearing will be scheduled, but a status hearing will be scheduled first, so that the court knows that the defense and prosecution are ready. Keep in mind that every time a hearing is held, clerks are resulting each hearing and sending any required notices.

“Resulting a hearing” means that the clerk is making a general note of how the hearing ended, such as “hearing held,” “hearing continued,” etc. If they are using electronic recording, they are also noting the start and end time of each hearing. If the hearing is recorded by a court reporter, the clerk will record the reporter’s name.

Some cases will be set for numerous motion hearings before trial. Also, any time a case appears on the docket, a journal entry is generated by the attorneys or the court to reflect what happened, and each document must be file-stamped, entered on the appearance docket, imaged, indexed, and filed in the case file.

Unless the defendant enters a plea before a case goes to trial, the clerk will pull the case file to make sure that any late-filed documents are included. Sometimes the attorneys will come into court and ask for a continuance, in which case the above process occurs all over again.

#### JURY TRIALS:

If the defendant requests a jury trial, the clerk must take the following steps:

- call an adequate number of jurors from which to select the panel;
- send the summons;
- track and process each returned questionnaire; and
- produce a jury list and copies of questionnaires for each attorney and the judge.

Most courts are complaining of a poor rate of return on jury questionnaires, so the number of notices sent is large in comparison to the actual number of jurors needed. Pulling a jury requires that the clerk or secretary calculate how many jurors will be required. The clerk estimates the rate of return on questionnaires and enters the necessary information in the jury software system. For example, Geary County will send out 180 questionnaires to get 36 to 40 potential jurors in the courtroom.

Regarding jury questionnaires, the clerk must take the following steps:

- print and fold the questionnaires,
- stuff them into envelopes, and run them through the postage meter.
- As the questionnaires are returned, the clerk will review the questionnaire and enter the required information into the software.
- The clerk must keep track of the questionnaires that are returned by the post office as undeliverable and will continue to monitor the returns to ensure that an adequate number of jurors will be available.
- The clerk also corresponds either by mail or by phone with jurors to assist them with the process and respond to questions and needs.

**Bailiff Duties Performed by Clerks.** At the present time, due to the elimination of temporary hours statewide, bailiffs are no longer available in most courts. Therefore, bailiff duties are being performed by clerks. At the end of the trial, the clerk will generate a list of jurors and the amount of money they are due. The clerk will take the necessary steps to see that

the jurors are paid, which vary from court to court depending upon county clerk practices. In my own office, we send the juror list to the county clerk and then sort and mail the checks once they have been cut by the county clerk.

#### ADDITIONAL FILINGS:

Drug and alcohol evaluations are ordered in DUI cases. Because they contain confidential information and cannot be viewed by the public, they are not filed in the case file, which is open to the public. These evaluations require a separate file and filing system. Pre-sentence investigations may also be ordered and may fall into this category as well.

#### SENTENCING:

If the defendant is convicted and sentenced, or if the defendant enters a plea, the clerks will perform the following steps:

- process the sentencing journal entry;
- complete the necessary statistics;
- enter the assessed costs and fines into the case management system;
- send a statement; and
- under certain circumstances, send copies of the journal entry to other agencies, such as the KBI, Sentencing Commission, and Department of Corrections.
- If the defendant is ordered to jail or prison, a commitment packet must be prepared for the facility.
- Information on traffic offenses, including DUIs, is transmitted electronically to the Division of Motor Vehicles. For a variety of reasons, the DMV computer or DMV staff may request additional or clarifying information, which the clerks must submit manually, rather than electronically. This creates a significant amount of additional work for clerks of the district court.

#### PROBATION/DIVERSION:

If a defendant is put on probation or is granted a diversion, there is always the chance that he or she will not succeed. In that case, the prosecutor will file motions to revoke the probation or diversion. This process results in additional paperwork, all of which must be entered on the appearance docket, imaged, and filed. Clerks may also sit in during those hearings and maintain the necessary records, send the necessary notices, and continue to maintain the files.

#### APPEALS:

Then come the appeals. Once again, the clerk is entering each document on the appearance docket, imaging, and filing the paper. He or she is recording each hearing and the results of the hearing. In some cases, the appeal will be heard by a district judge and in others the appeal will be heard by the Court of Appeals. Creating the appeal file for the Court of Appeals is a time-consuming and detailed process and by necessity must be done within certain

time frames and to certain specifications. Any deviations on the part of the clerk will result in a delayed appeal.

#### RECORD MANAGEMENT:

Once the case becomes inactive, managing the case files takes clerk time as well. In the case of most traffic files, the time the actual file must be kept is limited. However, in the case of a DUI, the case file must be kept forever, unless it is properly archived pursuant to Supreme Court Rule 108. Filing space is something most clerks' offices are short on and the maintenance of inactive records takes effort and planning. The files can be microfilmed and then destroyed, which results in expense to the county. In many cases, offsite storage must be used. This takes additional clerk's office staff time to deliver records to a facility and to retrieve those records if they are requested at a later time.

### Conclusion

We've all heard the computer axiom, "garbage in, garbage out," and most of us have a natural suspicion of the electronic world. For that reason, traffic clerks are extremely meticulous and detail-oriented, because they really have to be. We try to make sure that every traffic case is recorded accurately for the electronic transmission of records to the Department of Motor Vehicles, because we realize that what we do affects someone's driving record, insurance costs, and other aspects of their lives. However, in the case of a DUI or other serious charge, many clerks will take extra care to double-check their records because a mistake can be catastrophic to the driver, causing many headaches and added expense. That extra effort should be appreciated by the public, and we're glad to do it, but it means extra steps for the clerks.

## DUI'S

Get ticket and/or long form complaint/information from CA office before setting up case.

1. Click on Cases on top toolbar
2. Click on Cases from Prosecutor
3. Check mark box of the case you are working on
4. Click process
5. Case type is Traffic
6. Case subtype is Misdemeanor
7. Click OK
8. Case number is automatically assigned- write it on the ticket and the complaint/information and copy of complaint/information for CA
9. Close out of that screen
10. Go to case
11. Click on Charges
12. Double check the charges on the complaint/information with the charges in the charge tab
  - a. Fill in citation numbers from the ticket to correspond to the correct charge in full court
  - b. If no ticket or no citation for specific charge use the next generic number on the list at Amy Su's desk.
13. If DUI charge has any alternative charges go to the comment box on the Charge tab and type "OR IN THE ALTERNATIVE x2" (or however many alternatives there are)
14. Save & Close
15. Set new Must Appear hearing date either off of bond or the ticket
16. Go to ROA's
17. Click New
18. Date is file stamped date
19. ROA code is COM- 'Complaint/Information'- enter in Count 1- charge, statute, level...etc until all charges from complaint/information are listed exactly as they are titled on complaint/information.
20. Create top ROA with charges and hearing date
  - a. If there is a cash bond make sure to list that on the Top ROA as \*\*\*\$500 cash bond on file\*\*\*
21. Enter bond if there is one
22. Scan citations, complaint/information, and bond

MAKE YELLOW FILE W/ LABEL AND HANDWRITTEN NAME AND PUT FILE UNDER THE CORRECT HEARING DATE IN THE FILING CABINET.

**ISSUES FOR MUNICIPAL PROSECUTORS WITH  
KANSAS DUI LAWS**

- I. City of Hiawatha
  - a. Population: 4,000 residents
  - b. County Seat of Brown County
  - c. Municipal Court held every Wednesday at 4pm
    - i. Prosecutor-since Aug. 2006
    - ii. Total DUIs by year
      - 1. 7-1-06 – 6-30-07: 24 cases (3%)
      - 2. 7-1-07 – 6-30-08: 13 cases (3%)
      - 3. 7-1-08 – 6-30-09: 26 cases (4%)
  - d. Alcohol Sources
    - i. Bars-4
    - ii. Liquor Stores-2
    - iii. Beer Stores-4
  
- II. Issues
  - a. Changing DUI Laws
    - i. K.S.A. 8-1567 lists history changes in 2007 and 2008
    - ii. House Bill 2096 in 2009
    - iii. No consistency in the last three years
  - b. Obtaining a COMPLETE driving record
    - i. July 2009 amendment to 8-1567 requires city prosecutors to receive driving record and KBI records
      - 1. Dept. of Rev. does NOT always have complete record
        - a. Convictions not entered by court
          - i. Too old to be added now
          - ii. Must retrieve certified copies from court
          - iii. Requires some honesty from defendant or knowledge by prosecutor or officer
        - b. Convictions too old and were dropped before 2000
      - 2. KBI Records
        - a. Can be confusing as list arrest then prosecution
        - b. Court again may not report
    - ii. Defendants from other states
      - 1. May not keep track of DUIs in the same manner
      - 2. May not be able to read driving record (i.e. Mississippi)
      - 3. Nebraska
        - a. In close proximity
        - b. Does not recognize DUI diversions
        - c. Charge \$4.00 for record
  - c. Penalties for DUI
    - i. Length of Penalty
      - 1. First Time -48 hours to 6 months with 48 hours and \$500-\$1,000 fine



2. Second Time-90 days to 12 months with at least 5 consecutive days (48 in jail 72 on work release or house arrest)
3. Third and Fourth being dealt with and seem to be heading in the right direction in July 2010
- ii. Required Treatment under 8-1567 (e) and 8-1008 (Second Conviction)
  1. Usually unsuccessful if forced to treatment
  2. Hard to find treatment
  3. Hard to find affordable treatment
  4. Must drive to treatment if found (suspension)
- iii. Suspension Ineffective
  1. Penalty enhanced if caught driving but still not enough
  2. Suspension usually result of alcohol test failure and not DUI conviction (DI4 and not DI8 or DI1)
- iv. Impoundment
  1. Not feasible in our city
  2. Do not have facility
  3. If had facility would not be able to afford staff and insurance if claims arose after keeping vehicle for such a long period of time
- v. Ignition Interlock
  1. Better solution
  2. Required installation check necessary (not before reinstated but should be installed ASAP)
  3. Stricter penalty needed
    - a. K.S.A. 8-1014 (When required)
      - i. Refuse: First refusal - one year suspended and one year interlock
      - ii. Failure: Second -fourth failure-one year suspended and one year interlock
      - iii. .15 or higher
        1. First - one year suspended and one interlock
        2. Second - one year suspended and two interlock
        3. Third - one year suspended and three interlock
        4. Fourth - one year suspended and four interlock
    - b. K.S.A. 8-291 (Penalty)
      - i. First conviction: up to \$250 and suspend 30 days - two years
      - ii. Second conviction: up to \$500 and suspend 90 days - two years
      - iii. Suspension is not enough of a deterrent!!

# Outline of Testimony to Kansas DUI Commission September 14, 2009

## I. DEMOGRAPHIC INFORMATION

The City of Overland Park

166,917 residents

Daytime population exceeds 300,000

Average gross annual income is \$96,047, 144% of the national average

2008 Statistics:

- 876 DUI Charges Filed
- 9% were under the age of 21
- Average bac 0.161

824 DUI Dispositions:

- 43% Diversion
- 38% Found guilty trial/plea
- 2% Found not guilty
- 17% dismissed (64% of dismissals were felony referrals)

Overall Jail Cost \$320,145

- 39% recouped through assessment of jail fee

CWIP 130 defendants diverted from jail sentence

House Arrest 395

Source - 2008 State of the Court Report

## II. CHARGING/REPORTING/DOCUMENTING

### A. Charging

- Have checked all available sources for priors for several years
- Not all prosecutors do
- Holes in the data
- Breath test failure on driving record but no corresponding III or KCJIS Record
- Arrest on III or KCJIS record but no disposition
- Even with newest legislation, blood test cases may not be documented soon enough (No reportable event (arrest/test failure/first appearance) until KBI results. See 12-4106 and 12-4517 as amended by 2009 HB 2096)
- Even though a conviction record may exist, case law may prevent enhancement of a sentence because lack of evidence of representation or waiver of counsel

### B. Reporting

- Not all prosecutors file KDRs and not all courts submit fingerprints upon conviction
- Not much enforcement of the reporting laws

- Conversion of municipal offenses in KCJIS system to generic K.S.A. 00-0600 and "municipal ordinance violation" is not helpful to prosecutors.

### **C. Documenting**

- Court function, not a prosecutor function
- Standard DUI Journal Entry may be a good thing
- Lots of reinventing the wheel - DUI PSI similar to a sentencing guidelines PSI that is conclusive unless challenged may be a good thing (see, e.g., 21-4715(c) as amended by 2009 HB 2060)

### **III. DE NOVO APPEALS**

Municipal prosecutors may have to do everything twice

- Appeal to district court 12-4601
- De Novo proceedings 22-3609
- Judges in first-class cities have to be attorneys 12-4105
- Are De Novo appeals necessary for all courts?

### **IV. BOND ENHANCEMENT/RESTRICTIONS**

- Pending cases difficult to spot
- Person with four DUI arrests in a month - bonded as first offender each time

### **V. ENHANCEMENT FOR CHILD IN THE CAR**

Should be actual imprisonment vs. house arrest or other alternative confinement.

### **VI. LIFETIME LOOKBACK**

If a prosecutor can find it, she should be able to use it

### **VII. ENHANCED PENALTIES FOR REPEAT OFFENDERS**

- Less likely to cooperate with law enforcement investigations
- Should administrative and criminal penalties be more severe for those who refuse to cooperate?

### **VIII. DISCOVERY ISSUES/ABUSE**

Statute similar to K.S.A. 8-1020 applicable to a criminal case?

### **IX. LIMITING THE NUMBER OF COURTS THAT PROSECUTE DUI**

Will fewer courts promote consistency or do standards need to be more consistent?

Can district courts and DAs handle the increased workload?

Restrict by size of city?

# Licensure for Addiction Counselors

Presented by  
The Kansas Association of Addiction Professionals  
(KAAP)  
*September 14, 2009- DUI Commission*

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## Past Licensure Efforts

- 1991 - KADACA (now KAAP) attempted to gain licensure status for substance abuse counselors
  - Resulted in a registration law enacted in July 1992
  
- 2000 and 2001 - KAAP drafted addiction counselor licensure bills that were not passed by the legislature.

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## Current Licensure Efforts

- 2005 - KAAP volunteers from across the state began working on a lengthy required licensure application
  - Input was solicited from multiple stakeholders:
    - Kansas Association of Addiction Professionals (KAAP)
    - Kansas SRS/Addiction and Prevention Services (AAPS)
    - Kansas Behavioral Sciences Regulatory Board (BSRB)
    - Kansas Educators Alliance
    - Kansas Department of Corrections (DOC)

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### Current Licensure Efforts (cont'd)

- 2009 –
  - March 2009 - the completed licensure application was submitted to the Kansas Department of Health and Environment (KDHE)
  - June 2009 – 1<sup>st</sup> of 4 KDHE hearings to review our licensure application
  - September 2009 –
    - Meeting with Gov. Parkinson
    - Licensing Informational Presentations – Program Directors, BSRB, DUI Commission, etc.
    - Final KDHE review hearing

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### The Case for Licensure

- Who we are - current addiction counselor profile
- Why addiction counseling is unique and important
- Why counselor licensure is needed

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### Who We Are: The Kansas Counselor Profile

- Approx. 1500 credentialed alcohol/drug counselors
  - Average age - 49
  - 59% are female
  - 80% have a bachelors degree
  - 70% earn less than \$35,000/yr.
  - 80% have worked 5 years or more in the field
  - 60% have worked 10 years or more in the field
- Kansas Addiction Workforce Survey, 2006*

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**What We Do:**

- Screening and assessment
- Referral
- Treatment planning
- Counseling – individual, group, family
- Education
- Documentation
- Discharge planning

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**What We Do: (cont'd)**

- Service coordination/collaboration
  - Criminal justice system – courts, corrections
  - Health care system – physicians, public health, hospitals
  - Mental health practitioners – community mental health centers and private practitioners
  - Other social service agencies

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**Where We Practice:**

- Licensed substance abuse programs
  - Outpatient
  - Residential
- Assessment centers
- Community mental health centers
- Criminal justice system programs
- Hospitals
- Prevention/education programs
- Kansas Social and Rehabilitation Services (SRS)
- Kansas Alcohol and Drug Safety Action Programs (ADSAP)

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**Why Addiction Counseling Is Unique:**

■ **RECOVERY FOCUS**

- Historically, many addiction counselors entered the field as a result of their own personal recovery.
- Today...
  - We continue to embrace our recovery tradition and recognize the richness that experiential knowledge brings to our field.
  - We also value and require professional knowledge gained through education and training in evidence-based practices.
  - We understand that these different ways of knowing can be highly complementary in treating the unique needs of clients/families.

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**Why Addiction Counseling Is Unique:**  
(cont'd)

■ **SPECIALIZED KNOWLEDGE BASE**

- Psychopharmacology – knowledge of drugs of abuse and drug interactions
- Addictionology – knowledge of the neurological, physiological, and psychological aspects of addiction
  - Brain chemistry
  - Tolerance
  - Withdrawal
  - Craving

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**Why Addiction Counseling Is Unique:**  
(cont'd)

■ **SPECIALIZED EDUCATION/TRAINING:**

- National standards - Substance Abuse and Mental Health Services Administration (SAMHSA) has developed national standards that identify the core competencies for addiction counselors (TAP 21).
- In Kansas, ten institutions of higher of education provide programs based on the national standards.
- The Kansas Addiction Educators Alliance meets regularly in a peer review process to ensure quality and consistency of the addiction counselors' curriculum.

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### Why Addiction Counseling Is Important:

- Prevalence of alcohol and drug abuse
- Unmet treatment needs
- Vulnerability of our client population

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### Importance: Prevalence of Use

- Alcohol Use
  - "Alcohol is the foremost risk to health in developing countries and ranks third in developed countries."  
*World Health Organization report, 2005*
  - Alcohol was identified as the most commonly used substance in the United States.
  - Approximately half of all of Americans aged 12 or older reported being current drinkers.
    - Approximately 23% reported binge drinking, defined as 5 or more drinks in a row.
    - Approximately 7% reported heavy drinking, defined as binge drinking on 5 or more occasions in the past month.  
*National Survey on Drug Use and Health, 2007*

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### Importance: Prevalence of Use (cont'd)

- Drug Use
  - 8.2% of the U.S. population aged 12 or older reported using illicit drugs.
  - Marijuana is the most commonly used illicit drug in the U.S.  
*National Survey on Drug Use and Health, 2007*
  - Kansas high school seniors reported:
    - 35.4% tried marijuana at least once
    - 16.2% used marijuana within the 30 days preceding the survey
    - 8.6% tried ecstasy at least once
    - 5.8% tried non-prescribed prescription drugs
    - 4.5% tried meth at least once  
*Kansas Communities that Care Survey, 2008*

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### Importance: Unmet Treatment Need

- “Approximately 10% of Kansans (200,581 adults and 24,574 adolescents) are in need of addiction treatment.”
- “Most Kansans in need of treatment don’t receive it.”
- “There is a shortage of . . . treatment programs and counselors in many areas of the state.”

*Kansas Comprehensive Substance Abuse Treatment Needs Assessment,  
DataCorp, 2006*

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### Importance: Vulnerable Population

- Often intoxicated at the point of admission
- Frequently disadvantaged--indigent, unemployed, homeless
- Disenfranchised
- Medically compromised
- Co-occurring mental health issues
- Stigmatized

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### Why Licensure is Needed?

- KAAP believes that licensure is the most appropriate level of regulation for addiction counselors in the state of Kansas.
- Licensure would provide:
  1. Improved consumer protection
  2. Increased consumer confidence
  3. Advancement of the field – parity with other behavioral health professionals
  4. Attraction and retention of a professional workforce

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## Current Credentialing

	KAAP	SRS/AAPS	BSRB
Credential Estab.	1978	1994	1995
Title	Certified Alcoholism/Drug Counselor	None* <small>(*...eligible to practice alcohol and other drug counseling in a licensed alcohol and drug abuse treatment program in the State of Kansas.)</small>	Registered Alcohol and Other Drug Counselor
Credential Designation	CADC I, II, or III	None*	RAODAC
Number	304	1500	59
Consumer Protection	Limited to KAAP members	None	Limited to registered counselors

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## Why Licensure?

### Improved Consumer Protection

- Clients have the right to expect ethical treatment and practical recourse for malpractice.
- We have multiple counselor credentials and program licensure, but none protects consumers by ensuring a competent, ethical counselor.

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## Why Licensure?

### Increased Consumer Confidence

- Clients have the right to expect treatment from addiction counselors who meet established standards of education, training, competence, and supervision
- Licensure would replace all existing credentials and set education, training, competency testing, supervision standards for all counselors.

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## Why Licensure?

### Advancement of the field

- SRS recognizes that licensure is the logical next step for our field and is supportive of our efforts
- BSRB is willing to administer addiction counselor licensure
- Parity bills for insurance have passed at the national and state level
  - We MUST be licensed to ensure appropriate reimbursement by insurance companies

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## Why Licensure?

### Retention of a professional workforce

- Education and training requirements have continued to increase over the past 10-15 years
- Over 80% of the current workforce have bachelor's degrees
- Licensure will help attract a quality workforce

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## Impact of Licensure:

- Impact on consumer safety
  - Defined expectations for addiction counselor education/training, competency, and scope of practice
  - Oversight and accountability - investigation of consumer complaints (ethics, practice standards)
- Impact on workforce
  - Current workforce "swept in" as licensed counselors
  - Other professions not affected – our scope of practice limited to dx and tx of SUDs

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## Other States - Licensing

- All states regulate addiction counseling
- 23 states have enacted licensure
  - All use the same core competency framework used for addiction counseling program curriculum.
  - All have given addiction counselor licensees the authority to diagnose substance use disorders.
  - All have given addiction counselors licensees the authority to provide all modalities of treatment and supervise other addiction counselors, trainees, and students.

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## Kansas Addiction Counselor Licensure Proposal:

- Two levels of licensed addiction counselors
  - Licensed Addiction Counselor (LAC)
  - Licensed Clinical Addiction Counselor (LCAC)
- Both levels would have the authority to diagnose and treat substance use disorders
- Only LCAC would be able to practice independently without an AAPS program license

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## Licensure Proposal – New Counselors

- |   |   |
|---|---|
| <ul style="list-style-type: none"><li>■ Licensed Addiction Counselor (LAC)<ol style="list-style-type: none"><li>1. Baccalaureate degree (including completion of required addiction coursework supporting diagnosis and treatment of substance use disorders)</li><li>2. Passing score on national addiction counselor exam</li><li>3. Evidence of meriting public trust</li></ol></li><li>■ Option for BSRB licensed masters level clinicians to test out (added experience requirement)</li></ul> | <ul style="list-style-type: none"><li>■ Licensed Clinical Addiction Counselor (LCAC)<ol style="list-style-type: none"><li>1. Masters or doctorate degree in a social services field (including completion of required addiction coursework supporting diagnosis and treatment of substance use disorders)</li><li>2. 4,000 hours of post-graduate supervised professional exp.</li><li>3. Passing score on national addiction counselor exam</li><li>4. Evidence of meriting public trust</li></ol></li></ul> |
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## Transition Proposal - "Grandfathering"

- Licensed Addiction Counselor (LAC)
  1. AAPS credential \*
  2. Proof of competency
    - Documentation of professional A&D work experience  
OR
    - Documentation of passing score on national addiction counselor examination  
AND
    - Documentation of completion required CEUs in diagnosis of substance use disorders
  3. Application/fee

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## Transition Proposal - "Grandfathering"

- Licensed Clinical Addiction Counselor (LCAC)
  1. AAPS credential
  2. BSRB license at clinical level (i.e., LSCSW, LCPC, LCMFT, LCP)
  3. Proof of competency
    - Documentation of professional A&D work experience  
OR
    - Documentation of passing score on national addiction counselor examination  
AND
    - Documentation of completion required CEUs in diagnosis of substance use disorders
  4. Application/fee

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## Licensure vs. Current Credentialing

	Licensure	RAODAC CADC AAPS
Authority to diagnose	Yes	No
Authority to practice independently (at the LCAC level)	Yes	No
Parity with other behavioral health professionals	Yes	No
Educational requirements	Based on current national competencies	Varied

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## Fees

- There will be an application fee and an initial licensure fee
- Bi-annual (once every two years) licensure fees will be comparable to fees charged to other professions

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## Proposed Timeline

- **Sept. 2009:** Obtain final KDHE committee approval
- **Nov-Dec 2009:** Write licensure bill to be introduced during the 2010 legislative session
  - This will be a legislative priority for the field--your advocacy will be critical
  - Licensure informational meetings will be scheduled around the state
- **2010:** Formulation of BSRB regulations
- **2011 or 2012?:** Licensure will go into effect

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## In Conclusion

- Licensure will advance the addiction counseling profession and improve consumer protection and confidence
- We would like your support!

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Office of Revisor of Statutes  
300 S.W. 10th Avenue  
Suite 010-E, Statehouse  
Topeka, Kansas 66612-1592  
Telephone (785) 296-2321 FAX (785) 296-6668

MEMORANDUM

To: Members of the Kansas DUI Commission  
From: Jason Thompson, Assistant Revisor of Statutes (JT)  
Date: September 15, 2009  
Subject: Ignition Interlock in New Mexico

This memorandum provides a brief overview of New Mexico law concerning ignition interlock devices. In 2005, New Mexico became the first state to require ignition interlock devices for all offenders convicted of driving while intoxicated (DWI), even first time offenders. According to Mothers Against Drunk Driving (MADD), 8 states now mandate or highly incentivize ignition interlocks for all persons convicted of DUI: New Mexico, Arizona, Louisiana, Illinois, Washington, Nebraska, Alaska and Colorado.

New Mexico Statute 66-8-102, subsection N, provides that: "Upon a conviction pursuant to this section, an offender shall be required to obtain an ignition interlock license and have an ignition interlock device installed and operating on all motor vehicles driven by the offender, pursuant to rules adopted by the bureau. Unless determined by the sentencing court to be indigent, the offender shall pay all costs associated with having an ignition interlock device installed on the appropriate motor vehicles."

The length of time that interlock must be used increases after each conviction: 1 year for the 1<sup>st</sup> conviction; 2 years for the 2<sup>nd</sup> conviction; 3 years for the 3<sup>rd</sup> conviction; and lifetime for the 4<sup>th</sup> or subsequent conviction. However, N.M.S.A. 66-8-102, subsection O, provides that: "A district court may, for good cause shown, remove the ignition interlock device requirement and order restoration of the license; provided that the offender has not been subsequently convicted of driving a motor vehicle while under the influence of intoxicating liquor or drugs."

Attached to this memo are copies of N.M.S.A. 66-8-102 (DWI) and N.M.S.A. 66-5-501 through 66-5-504 (Ignition Interlock Licensing Act). Also attached are summary documents from the New Mexico Department of Transportation concerning DWI penalties, a time line of ignition interlock milestones since 1999, and a time line of major DWI legislation since 2003. Finally, there is a copy of enrolled New Mexico Senate Bill No. 275, adopted in 2009, which requires a minimum of 6 months of driving with an ignition interlock device before reinstatement of a driver's license.

I have not attached a copy of the rules and regulations implementing ignition interlock devices due to their length, but they contain provisions similar to those in Kansas concerning: approval of interlock devices; manufacturer responsibilities; device performance standards; data recording requirements; service center licensing and responsibilities; installer certification and responsibilities; and driver requirements. The rules can be found in New Mexico Administrative Code sections 18.20.11.1 through 18.20.11.26 (available at <http://www.nmcpr.state.nm.us/NMAC/>).



West's New Mexico Statutes Annotated Currentness

Chapter 66. Motor Vehicles

▣ Article 8. Crimes, Penalties and Procedure (Refs & Annos)

▣ Part 2. Traffic Offenses (Refs & Annos)

→ § 66-8-102. **Persons under the influence of intoxicating liquor or drugs; aggravated driving while under the influence of intoxicating liquor or drugs; penalty**

A. It is unlawful for a person who is under the influence of intoxicating liquor to drive a vehicle within this state.

B. It is unlawful for a person who is under the influence of any drug to a degree that renders the person incapable of safely driving a vehicle to drive a vehicle within this state.

C. It is unlawful for:

(1) a person to drive a vehicle in this state if the person has an alcohol concentration of eight one hundredths or more in the person's blood or breath within three hours of driving the vehicle and the alcohol concentration results from alcohol consumed before or while driving the vehicle; or

(2) a person to drive a commercial motor vehicle in this state if the person has an alcohol concentration of four one hundredths or more in the person's blood or breath within three hours of driving the commercial motor vehicle and the alcohol concentration results from alcohol consumed before or while driving the vehicle.

D. Aggravated driving while under the influence of intoxicating liquor or drugs consists of a person who:

(1) drives a vehicle in this state and has an alcohol concentration of sixteen one hundredths or more in the person's blood or breath within three hours of driving the vehicle and the alcohol concentration results from alcohol consumed before or while driving the vehicle;

(2) has caused bodily injury to a human being as a result of the unlawful operation of a motor vehicle while driving under the influence of intoxicating liquor or drugs; or

(3) refused to submit to chemical testing, as provided for in the Implied Consent Act, and in the judgment of the court, based upon evidence of intoxication presented to the court, was under the influence of intoxicating liquor or drugs.

E. A person under first conviction pursuant to this section shall be punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment for not more than ninety days or by a fine of not more than five hundred dollars (\$500), or both; provided that if the sentence is suspended in whole or in part or deferred, the period of probation may extend beyond ninety days but shall not exceed one year. Upon a first conviction pursuant to this section, an offender shall be sentenced to not less than twenty-four hours of community service. In addition, the offender may be required to pay a fine of three hundred dollars (\$300). The offender shall be ordered by the court to participate in and complete a screening program described in Subsection K of this section and to attend a driver rehabilitation program for alcohol or drugs, also known as a "DWI school", approved by the bureau and also may be required to participate in other rehabilitative services as the court shall determine to be necessary. In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to not less than forty-eight consecutive hours in jail. If an offender fails to complete, within a time specified by the court, any community service, screening program, treatment program or DWI school ordered by the court or fails to comply with any other condition of probation, the offender shall be sentenced to not less than an additional forty-eight consecutive hours in jail. Any jail sentence imposed pursuant to this subsection for failure to complete, within a time specified by the court, any community service, screening program, treatment program or DWI school ordered by the court or for aggravated driving while under the influence of intoxicating liquor or drugs shall not be suspended, deferred or taken under advisement. On a first conviction pursuant to this section, any time spent in jail for the offense prior to the conviction for that offense shall be credited to any term of imprisonment fixed by the court. A deferred sentence pursuant to this subsection shall be considered a first conviction for the purpose of determining subsequent convictions.

F. A second or third conviction pursuant to this section shall be punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment for not more than three hundred sixty-four days or by a fine of not more than one thousand dollars (\$1,000), or both; provided that if the sentence is suspended in whole or in part, the period of probation may extend beyond one year but shall not exceed five years. Notwithstanding any provision of law to the contrary for suspension or deferment of execution of a sentence:

(1) upon a second conviction, an offender shall be sentenced to a jail term of not less than ninety-six consecutive hours, not less than forty-eight hours of community service and a fine of five hundred dollars (\$500). In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than ninety-six consecutive hours. If an offender fails to complete, within a time specified by the court, any community service, screening program or treatment program ordered by the court, the offender shall be sentenced to not less than an additional seven consecutive days in jail. A penalty imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement; and

(2) upon a third conviction, an offender shall be sentenced to a jail term of not less than thirty consecutive days, not less than ninety-six hours of community service and a fine of seven hundred fifty dollars (\$750). In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than sixty consecutive days. If an offender fails to complete, within a time specified by the court, any community service, screening program or treatment program ordered by the court, the offender shall be sentenced to not less than an additional sixty

consecutive days in jail. A penalty imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement.

G. Upon a fourth conviction pursuant to this section, an offender is guilty of a fourth degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a term of imprisonment of eighteen months, six months of which shall not be suspended, deferred or taken under advisement.

H. Upon a fifth conviction pursuant to this section, an offender is guilty of a fourth degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a term of imprisonment of two years, one year of which shall not be suspended, deferred or taken under advisement.

I. Upon a sixth conviction pursuant to this section, an offender is guilty of a third degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a term of imprisonment of thirty months, eighteen months of which shall not be suspended, deferred or taken under advisement.

J. Upon a seventh or subsequent conviction pursuant to this section, an offender is guilty of a third degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a term of imprisonment of three years, two years of which shall not be suspended, deferred or taken under advisement.

K. Upon any conviction pursuant to this section, an offender shall be required to participate in and complete, within a time specified by the court, an alcohol or drug abuse screening program approved by the department of finance and administration and, if necessary, a treatment program approved by the court. The requirement imposed pursuant to this subsection shall not be suspended, deferred or taken under advisement.

L. Upon a second or third conviction pursuant to this section, an offender shall be required to participate in and complete, within a time specified by the court:

- (1) not less than a twenty-eight-day inpatient, residential or in-custody substance abuse treatment program approved by the court;
- (2) not less than a ninety-day outpatient treatment program approved by the court;
- (3) a drug court program approved by the court; or
- (4) any other substance abuse treatment program approved by the court.

The requirement imposed pursuant to this subsection shall not be suspended, deferred or taken under advisement.

M. Upon a felony conviction pursuant to this section, the corrections department shall provide substance abuse counseling and treatment to the offender in its custody. While the offender is on probation or parole under its supervision, the corrections department shall also provide substance abuse counseling and treatment to the offender or shall require the offender to obtain substance abuse counseling and treatment.

N. Upon a conviction pursuant to this section, an offender shall be required to obtain an ignition interlock license and have an ignition interlock device installed and operating on all motor vehicles driven by the offender, pursuant to rules adopted by the bureau. Unless determined by the sentencing court to be indigent, the offender shall pay all costs associated with having an ignition interlock device installed on the appropriate motor vehicles. The offender shall operate only those vehicles equipped with ignition interlock devices for:

- (1) a period of one year, for a first offender;
- (2) a period of two years, for a second conviction pursuant to this section;
- (3) a period of three years, for a third conviction pursuant to this section; or
- (4) the remainder of the offender's life, for a fourth or subsequent conviction pursuant to this section.

O. Five years from the date of conviction and every five years thereafter, a fourth or subsequent offender may apply to a district court for removal of the ignition interlock device requirement provided in this section and for restoration of a driver's license. A district court may, for good cause shown, remove the ignition interlock device requirement and order restoration of the license; provided that the offender has not been subsequently convicted of driving a motor vehicle while under the influence of intoxicating liquor or drugs. Good cause may include an alcohol screening and proof from the interlock vendor that the person has not had violations of the interlock device.

P. In the case of a first, second or third offense under this section, the magistrate court has concurrent jurisdiction with district courts to try the offender.

Q. A conviction pursuant to a municipal or county ordinance in New Mexico or a law of any other jurisdiction, territory or possession of the United States or of a tribe, when that ordinance or law is equivalent to New Mexico law for driving while under the influence of intoxicating liquor or drugs, and prescribes penalties for driving while under the influence of intoxicating liquor or drugs, shall be deemed to be a conviction pursuant to this section for purposes of determining whether a conviction is a second or subsequent conviction.

R. In addition to any other fine or fee that may be imposed pursuant to the conviction or other disposition of the offense under this section, the court may order the offender to pay the costs of any court-ordered screening and treatment programs.

S. With respect to this section and notwithstanding any provision of law to the contrary, if an offender's sentence was suspended or deferred in whole or in part and the offender violates any condition of probation, the court may impose any sentence that the court could have originally imposed and credit shall not be given for time served by the offender on probation.

T. As used in this section:

(1) "bodily injury" means an injury to a person that is not likely to cause death or great bodily harm to the person, but does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the person's body; and

(2) "commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(a) has a gross combination weight rating of more than twenty-six thousand pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten thousand pounds;

(b) has a gross vehicle weight rating of more than twenty-six thousand pounds;

(c) is designed to transport sixteen or more passengers, including the driver; or

(d) is of any size and is used in the transportation of hazardous materials, which requires the motor vehicle to be placarded under applicable law.

#### CREDIT(S)

L. 1953, Ch. 139, § 54; L. 1955, Ch. 184, § 8; L. 1965, Ch. 251, § 1; L. 1969, Ch. 210, § 2; L. 1978, Ch. 35, § 510; L. 1979, Ch. 71, § 7; L. 1981, Ch. 370, § 2; L. 1982, Ch. 102, § 1; L. 1983, Ch. 76, § 2; L. 1985, Ch. 178, § 2; L. 1987, Ch. 97, § 3; L. 1988, Ch. 56, § 8; L. 1993, Ch. 66, § 7; L. 1997, Ch. 43, § 1, eff. July 1, 1997; L. 1997, Ch. 205, § 1; L. 1999, Ch. 61, § 1; L. 2003, Ch. 51, § 10; L. 2003, Ch. 90, § 3, eff. March 28, 2003; L. 2003, Ch. 164, § 10, eff. July 1, 2003; L. 2004, Ch. 42, § 1, eff. March 2, 2004; L. 2005, Ch. 241, § 5, eff. June 17, 2005; L. 2005, Ch. 269, § 5, eff. June 17, 2005; L. 2007, Ch. 321, § 10, eff. April 2, 2007; L. 2007, Ch. 322, § 1, eff. April 2, 2007; L. 2008, Ch. 72, § 3, eff. May 14, 2008.

Formerly 1941 Comp., § 68-2317; 1953 Comp., § 64-22-2; 1953 Comp., § 64-8-102.

#### HISTORICAL AND STATUTORY NOTES

L. 2002, Ch. 82, § 1, provided in subsec. I for installation of ignition interlock devices for first time offenders and added provisions comprising subsecs. J and K.

L. 2003, Ch. 51, § 10; L. 2003, Ch. 90, § 3; and, L. 2003, Ch. 164, § 10, amended this section. L. 2003, Ch. 164, § 10, set forth pursuant to § 12-1-8, substituted in subsec. N “or of a tribe, where the ordinance or law” for “that”.

L. 2004, Ch. 42, § 1, rewrote subsec. C, which had read: “It is unlawful for a person who has alcohol concentration of eight one hundredths or more in his blood or breath to drive a vehicle within this state.”

Also, L. 2004, Ch. 42, § 1, in the third sentence of subsec. E, changed “Subsection H” to “Subsection K”; in the fifth sentence of subsec. E, inserted “or fails to comply with any other condition of probation”; inserted the sixth sentence of subsec. E, relating to suspension or deferral of sentence and violation of a probation condition; in par. F(1), changed “seventy-two consecutive hours” to “ninety-six consecutive hours”; inserted new subsec. G, which had read:

“G. Upon a fourth or subsequent conviction pursuant to this section, an offender is guilty of a fourth degree felony, as provided in Section 31-18-15 NMSA 1978, and shall be sentenced to a jail term of not less than six months, which shall not be suspended or deferred or taken under advisement.”

Further, L. 2004, Ch. 42, § 1, inserted new subsecs. H to J, relating to fifth, sixth, and seventh convictions, respectively; designated former subsec. H as subsec. K, and in that subsection deleted “approved by the department of finance and administration” following “screening program”; inserted new subsecs. L and M, relating to treatment programs and a felony conviction, respectively; designated former subsecs. I through N as subsecs. N through S, respectively; and designated former subsec. O as subsec. T, and in that subsection deleted “and” from the end of par. (1), designated former par. (2) as par. (3), and added new par. (2), defining “commercial motor vehicle”.

Both L. 2005, Ch. 241 and L. 2005, Ch. 269 amended this section; Ch. 269 included the amendments made by Ch. 241. The text was set forth as amended by L. 2005, Ch. 269 pursuant to § 12-1-8.

L. 2005, Ch. 269, § 5, in subsec. E, substituted “offender shall be sentenced to not less than twenty-four hours and not more than forty-eight hours of community service. In addition, the offender may be required to pay a fine” for “offender may be sentenced to not less than forty-eight hours of community service or a fine”, and deleted a sentence relating to a suspended sentence and if offender violates any condition of probation, court will impose original sentence and no credit given for time served; in subsec. F, par. (2), inserted “ninety-six hours of community service” following “thirty consecutive days” and “community service” preceding “screening program or treatment program”, respectively; in subsec. I, inserted “Upon a sixth conviction pursuant to this section, an offender is guilty of a” preceding “third degree felony”; and rewrote subsecs N through T, which formerly read:

“N. Upon a first conviction for aggravated driving while under the influence of intoxicating liquor or drugs pursuant to the provisions of Subsection D of this section, as a condition of probation, an offender shall be required to have an ignition interlock device installed and operating for a period of one year on all motor vehicles driven

by the offender, pursuant to rules adopted by the bureau. Unless determined by the sentencing court to be indigent, the offender shall pay all costs associated with having an ignition interlock device installed on the appropriate motor vehicles. If an offender drives a motor vehicle that does not have an ignition interlock device installed on the motor vehicle, the offender may be in violation of the terms and conditions of his probation.

“O. Upon a first conviction for driving while under the influence of intoxicating liquor or drugs pursuant to the provisions of Subsection A, B or C of this section, as a condition of probation, an offender may be required to have an ignition interlock device installed and operating for a period of one year on all motor vehicles driven by the offender, pursuant to rules adopted by the bureau. Unless determined by the sentencing court to be indigent, the offender shall pay all costs associated with having an ignition interlock device installed on the appropriate motor vehicles. If an offender drives a motor vehicle that does not have an ignition interlock device installed on the motor vehicle, the offender may be in violation of the terms and conditions of his probation.

“P. Upon any subsequent conviction pursuant to this section, as a condition of probation, a subsequent offender shall be required to have an ignition interlock device installed and operating for a period of at least one year on all motor vehicles driven by the subsequent offender, pursuant to rules adopted by the bureau. Unless determined by the sentencing court to be indigent, the subsequent offender shall pay all costs associated with having an ignition interlock device installed on the appropriate motor vehicles. If a subsequent offender drives a motor vehicle that does not have an ignition interlock device installed on the motor vehicle, the subsequent offender may be in violation of the terms and conditions of his probation.

“Q. In the case of a first, second or third offense under this section, the magistrate court has concurrent jurisdiction with district courts to try the offender.

“R. A conviction pursuant to a municipal or county ordinance in New Mexico or a law of any other jurisdiction, territory or possession of the United States or of a tribe, when that ordinance or law is equivalent to New Mexico law for driving while under the influence of intoxicating liquor or drugs, and prescribes penalties for driving while under the influence of intoxicating liquor or drugs, shall be deemed to be a conviction pursuant to this section for purposes of determining whether a conviction is a second or subsequent conviction.

“S. In addition to any other fine or fee that may be imposed pursuant to the conviction or other disposition of the offense under this section, the court may order the offender to pay the costs of any court-ordered screening and treatment programs.

“T. As used in this section:

“(1) ‘bodily injury’ means an injury to a person that is not likely to cause death or great bodily harm to the person, but does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the person's body;

“(2) ‘commercial motor vehicle’ means a motor vehicle or combination of motor vehicles used in commerce to

transport passengers or property if the motor vehicle:

“(a) has a gross combination weight rating of more than twenty-six thousand pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten thousand pounds;

“(b) has a gross vehicle weight rating of more than twenty-six thousand pounds;

“(c) is designed to transport sixteen or more passengers, including the driver; or

“(d) is of any size and is used in the transportation of hazardous materials, which requires the motor vehicle to be placarded under applicable law; and

“(3) ‘conviction’ means an adjudication of guilt and does not include imposition of a sentence.”

Both L. 2007, Ch. 321, § 10 and L. 2007, Ch. 322, § 1 amended this section. The text was set forth as amended by L. 2007, Ch. 322, § 1 pursuant to NMSA 1978, § 12-1-8.

L. 2007, Ch. 321, § 10, in subsec. B, substituted “degree that renders the person” for “degree that renders him”; in subsec. C, pars. (1) and (2), substituted “the person's” for “him”; in subsec. D, par. (1), substituted “the person's” for “his”; and in subsec. T, par. (1), added “and” following “organ of the person's body”, and deleted par. (3), which had read:

“(3) ‘conviction’ means an adjudication of guilt and does not include imposition of a sentence.”

L. 2007, Ch. 322, § 1, rewrote subsecs. B and C; in subsec. E, deleted “and not more than forty-eight hours” following “an offender shall be sentenced to not less than twenty-four hours”; and in subsec. F, pars. (1) and (2), inserted “not less than”.

L. 2008, Ch. 72, § 3, in subsec. T, par. (1), added “and” and deleted par. (3).

#### CROSS REFERENCES

- Accessories, aiding or abetting a crime, see § 30-1-13.
- Alternative sentencing facility for DWI offenders, see § 33-3A-1.
- Attempt to commit a felony, punishment, see § 30-28-1.
- Commercial motor vehicles, license disqualification, see § 66-5-68.
- Conditional discharge orders, see § 31-20-13.
- Costs and fees, judgment and sentence, see NMRA, Form 9-602.
- County jails, deduction of time for good behavior, see § 33-3-9.
- Disclosures by the state for enhanced sentences, see NMRA, Rule 5-501.



Driver's license revocation mandatory, see § 66-5-29.  
 Driving while license suspended or revoked, see § 66-5-39.  
 Fingerprinting of arrested persons, see § 29-3-8.  
 Habitual felony offenders, sentencing, see §§ 31-18-17 to 31-18-20.  
 Judgment and sentence, criminal forms, see NMRA, Form 9-604.  
 Jury instructions, aggravated driving involving drugs or alcohol, see NMRA, Crim. UJI 14-4506 to 14-4509.  
 Jury instructions, driving under the influence of alcohol, see NMRA, Crim. UJI 14-4501.  
 Jury instructions, driving under the influence of drugs, see NMRA, Crim. UJI 14-4502.  
 Jury instructions, driving with elevated blood alcohol level, see NMRA, Crim. UJI 14-4503.  
 Jury instructions, homicide by vehicle while under the influence, see NMRA, Crim. UJI 14-243 and 14-245.  
 Motor vehicles, influence of intoxicating liquor or drugs, fee upon conviction, see § 31-12-7.  
 Payment of costs, judgment and sentence, criminal forms, see NMRA, Form 9-601.  
 Rules of Civil Procedure for the District Courts, see NMRA, Rule 1-001 et seq.  
 Rules of Civil Procedure for the Magistrate Courts, see NMRA, Rule 2-101 et seq.  
 Rules of Criminal Procedure for the District Courts, see NMRA, Rule 5-101 et seq.  
 Rules of Criminal Procedure for the Magistrate Courts, see NMRA, Rule 6-101 et seq.  
 Sentences for misdemeanors and petty misdemeanors, see § 31-19-1.  
 Sentences for noncapital felonies, see §§ 31-18-15 to 31-18-16.1.

#### ADMINISTRATIVE CODE REFERENCES

Health, alcohol and drug abuse, policies, procedures and standards for state's Driving While Impaired (DWI) schools, see N.M. Admin. Code 7.32.20.

Transportation and highways, traffic safety, minimum standards for breath alcohol ignition interlock devices, see N.M. Admin. Code 18.20.11.

#### LIBRARY REFERENCES

Automobiles ↪ 332, 359.

Westlaw Key Number Searches: 48Ak332; 48Ak359.

C.J.S. Motor Vehicles §§ 1336, 1352, 1380, 1382 to 1394, 1414 to 1419, 1451 to 1452, 1484, 1503, 1510, 1539.

#### RESEARCH REFERENCES

ALR Library

119 ALR, Federal 319, What Constitutes "Violent Felony" for Purpose of Sentence Enhancement Under Armed Career Criminal Act (18 U.S.C.A. § 924(E)(1)).

119 ALR 5th 379, Admissibility and Sufficiency of Extrapolation Evidence in Dui Prosecutions.

West's New Mexico Statutes Annotated Currentness

Chapter 66. Motor Vehicles

▣ Article 5. Licensing of Operators and Chauffeurs; Financial Responsibility; Uninsured Motorists' Insurance; Identification Cards (Refs & Annos)

→ Part 6. Ignition Interlock Licensing

→ § 66-5-501. Short title

Sections 1 through 4 of this act may be cited as the "Ignition Interlock Licensing Act".

**§ 66-5-502. Definitions**

As used in the Ignition Interlock Licensing Act:

A. "denied" means the division has refused to issue an instruction permit, driver's license or provisional license pursuant to the provisions of Subsection D of Section 66-5-5 NMSA 1978;

B. "ignition interlock device" means a device, approved by the traffic safety bureau, that prevents the operation of a motor vehicle by an intoxicated or impaired person;

C. "ignition interlock license" means a driver's license issued to a person by the division that allows that person to operate a motor vehicle with an ignition interlock device after that person's driving privilege or driver's license has been revoked or denied. The division shall clearly mark an ignition interlock license to distinguish it from other driver's licenses; and

D. "revoked" means the division, pursuant to the provisions of Section 66-5-29 or 66-8-111 NMSA 1978, has terminated a person's driving privilege or driver's license for driving while under the influence of intoxicating liquor or drugs.

**§ 66-5-503. Ignition interlock license; requirements; exclusions**

A. A person whose driving privilege or driver's license has been revoked or denied or who has not met the ignition interlock license requirement as a condition of reinstatement pursuant to Section 66-5-33.1 NMSA 1978 may apply for an ignition interlock license from the division.

B. An applicant for an ignition interlock license shall:

(1) provide proof of installation of the ignition interlock device by a traffic safety bureau-approved ignition in-

terlock installer on any vehicle the applicant drives; and

(2) sign an affidavit acknowledging that:

(a) operation by the applicant of any vehicle that is not equipped with an ignition interlock device is subject to penalties for driving with a revoked license;

(b) tampering or interfering with the proper and intended operation of an ignition interlock device may subject the applicant to penalties for driving with a license that was revoked for driving under the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act; [FN1] and

(c) the applicant shall maintain the ignition interlock device and keep up-to-date records in the motor vehicle showing required service and calibrations and be able to provide the records upon request.

C. A person who has been convicted of homicide by vehicle or great bodily injury by vehicle while under the influence of intoxicating liquor or drugs, as provided in Section 66-8-101 NMSA 1978, shall not be issued an ignition interlock license.

[FN1] NMSA 1978, § 66-8-105 et seq.

**§ 66-5-504. Penalties**

A. A person who is issued an ignition interlock license and operates a vehicle that is not equipped with an ignition interlock device is driving with a license that was revoked for driving under the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act and may be subject to the penalties provided in Section 66-5-39 NMSA 1978.

B. A person who is issued an ignition interlock license and who knowingly and deliberately tampers or interferes or causes another to tamper or interfere with the proper and intended operation of an ignition interlock device may be subject to the penalties for driving with a license that was revoked for driving under the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act as provided in Section 66-5-39 NMSA 1978.

END OF DOCUMENT

AT 3

**DWI Penalties Chart**

First Offense	MISDEMEANOR	<ul style="list-style-type: none"> <li>• 6 months to 1 year license revocation (1 year if under 21).</li> <li>• Up to 90 days jail.</li> <li>• Mandatory: DWI school, alcohol evaluation, ignition interlock for 1 year, community service.</li> <li>• Other: treatment</li> </ul>
Second Offense	MISDEMEANOR	<ul style="list-style-type: none"> <li>• 2-year license revocation.</li> <li>• Up to 364 days jail, 96 hours mandatory.</li> <li>• Up to \$1,000 fine, \$500 mandatory.</li> <li>• Other Mandatory Penalties: Alcohol evaluation, community service, treatment, ignition interlock for 2 years.</li> <li>• Other: Up to 5 years probation.</li> </ul>
Third Offense	MISDEMEANOR	<ul style="list-style-type: none"> <li>• 3-year license revocation.</li> <li>• Up to 364 days jail, mandatory 30 days.</li> <li>• Up to \$1,000 fine, \$750 mandatory.</li> <li>• Other Mandatory Penalties: Alcohol evaluation, community service, treatment, ignition interlock for 3 years.</li> <li>• Other: Up to 5 years probation.</li> </ul>
Fourth Offense	FELONY FOURTH DEGREE	<ul style="list-style-type: none"> <li>• Lifetime license revocation, with 5-year court review.</li> <li>• Up to 18 months prison, 6 months mandatory.</li> <li>• Up to \$5,000 fine.</li> <li>• Other Mandatory Penalties: Alcohol evaluation, treatment, lifetime ignition interlock with.</li> <li>• 5-year court review.</li> </ul>
Fifth Offense	FELONY FOURTH DEGREE	<ul style="list-style-type: none"> <li>• Lifetime license revocation, with 5-year court review.</li> <li>• Up to 2 years prison, 1 year mandatory.</li> <li>• Up to \$5,000 fine.</li> <li>• Other Mandatory Penalties: Alcohol evaluation, treatment, lifetime ignition interlock with</li> <li>• 5-year court review.</li> </ul>
Sixth Offense	FELONY THIRD DEGREE	<ul style="list-style-type: none"> <li>• Lifetime license revocation, with 5-year court review.</li> <li>• Up to 30 months prison, 18 months mandatory.</li> <li>• Up to \$5,000 fine.</li> <li>• Other Mandatory Penalties: Alcohol evaluation, treatment, lifetime ignition interlock with.</li> <li>• 5-year court review.</li> </ul>

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Seventh or Subsequent Offense	FELONY THIRD DEGREE	<ul style="list-style-type: none"> <li>• Lifetime license revocation, with 5-year court review.</li> <li>• Up to 3 years prison, 2 years mandatory.</li> <li>• Up to \$5,000 fine.</li> <li>• Other Mandatory Penalties: Alcohol evaluation, treatment, lifetime ignition interlock with</li> <li>• 5-year court review.</li> </ul>
Aggravated DWI	.16 BAC or above, refusal to take BAC test, or cause bodily injury while DWI	<ul style="list-style-type: none"> <li>• 1st Offense, Mandatory: Additional 2 days jail.</li> <li>• 2nd Offense, Mandatory: Additional 4 days jail.</li> <li>• 3rd Offense, Mandatory: Additional 60 days jail.</li> </ul>
Driving While Revoked for DWI	MISDEMEANOR	<ul style="list-style-type: none"> <li>• 1-year revocation added to current revocation period.</li> <li>• Up to one year in jail, 7 days mandatory.</li> <li>• Up to \$1,000 fine; \$300 mandatory.</li> <li>• Other: 30 days immobilization of vehicle driven by offender.</li> <li>• Driving without an interlock when it's required by an interlock license is driving while revoked.</li> </ul>
Selling or Giving Alcohol to a Minor	FELONY FOURTH DEGREE	To knowingly sell, serve or give alcoholic beverages to a minor, or to permit a minor to consume alcoholic beverages, or to assist a minor to buy alcoholic beverages. Does not apply to parents serving their own children in their home, to an adult spouse of a minor, or to the use of alcohol in religious services. Minor here means someone under 21 years of age.

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### Ignition Interlock:

New Mexico was the first state in the nation to mandate that ALL convicted DWI offenders have an ignition interlock installed in their vehicle – sending a strong drunk driving deterrence message to the public.

An alcohol ignition interlock is a device installed in an offender’s vehicle that prevents it from starting if the driver’s blood alcohol content (BAC) is above a specified set limit. They are proven to be an effective tool in the battle against drunk driving.

For more information on Ignition Interlocks visit <http://ipl.unm.edu/traf/certification/InterlockLic.htm>

#### Ignition Interlock Legislative Milestones

1999	Law passed giving courts the option to require ignition interlocks for 2nd and 3rd DWI offenses
2002	Requires ignition interlocks to be installed on the vehicles of all convicted repeat DWI offenders and aggravated DWI offenders
2003	Ignition Interlock License Act passed to allowing convicted DWI offenders the right obtain a license to drive anywhere, anytime, unless convicted of vehicular homicide or great bodily injury by vehicle while DWI
2005	Requires ANY convicted offender to obtain an ignition interlock
2007	Mandatory interlock law extended to include motorists who have moved to NM and have a prior DWI conviction

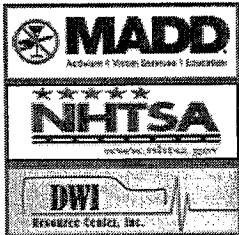


### Drunk Busters

#DWI (cell phones only)  
**1 (877) DWI-HALT**  
**1 (877) 394-4258**

**Emergency Dial 911**  
 New Mexico State Police  
 1 (888) 442-NMSP  
 1 (888) 442-6677

#### Other DWI Websites and Organizations:



### ... News Room ...

#### Press Releases

- San Juan County Law Enforcement Agencies Named Winner of Governor’s Fourth Annual DrunkBuster Awards [Read more...](#)
- Governor Bill Richardson Announces 100 Days and Nights of Summer Kickoff [Read more...](#)
- Governor Bill Richardson Applauds Court Ruling on Three Strikes DWI Prosecution [Read more...](#)
- Governor Bill Richardson Signs Firefighter, Ignition Interlock and Auto Theft Bills in Albuquerque [Read more...](#)
- Governor Bill Richardson Announces Record Low Alcohol-Involved Fatalities [Read more...](#)
- DWI Day at the State Capitol [Read more...](#)

#### DWI Videos

- (8/2008) **Gov. Richardson DWI Update:** English (WMV)
- (12/2008) **The Storm:** English (Quicktime) | English (Windows Media Player)

#### Billboard Campaign

- "The Storm is Coming" Poster and Billboard (.jpg)
- DWI Branded for Life Arts

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### Legislation:

When Governor Richardson took office in 2003, he made reducing drunk driving a policy priority for his administration.

The state has taken an aggressive stance in passing tougher laws and penalties for DWI. Below are descriptions of DWI Legislation in New Mexico since 2003.

2008 | 2007 | 2006 | 2005 | 2004 | 2003

#### 2008

##### HB 100

##### Ignition Interlock Tampering Penalties

A vehicle operator who disconnects or otherwise tampers with an interlock when it's required by law is now subject to the same penalties as those for driving while revoked for DWI.

#### 2007

##### HB 126 /SB 437

##### Interlocks for Certain Out-of-State Drivers

Requires drivers from other state who apply for a New Mexico drivers license to have an ignition interlock license if they were convicted of a DWI in any state or the District of Columbia or any government division subdivision. The legislature also makes a \$1.1 million startup appropriation to MVD for verification and background checks of out of state drivers and allows the Division to charge applicants \$15 in the future for such verification.

##### HB 266

##### Liquor Tax Distribution to Local DWI Fund

Increases the distribution of the alcohol excise tax to counties for expenditure on reducing DWI. This bill will change the distribution to provide an additional \$3.1 million dollars of the liquor excise tax to address local DWI efforts, according to the Legislative Fiscal Report.

##### SB 121

##### Prevention of Wrong Way Highway Traffic Study

Appropriation of \$1,000 to fund a pilot project to assess ways to prevent wrong-way traffic on highway off-ramps.

##### SB 440

##### DWI Chemical Test Time Limits

Clarifies that the per se DWI crime is now to have a BAC of .08 or higher within three hours of driving, when the BAC is from alcohol consumed before or while driving. This allows a three hour window for the administration of breath or blood test without the need for an expert to calculate the BAC at the time of driving.

##### SB 591

##### Interlock Program Confidentiality

Allows court, probation and parole authorities to determine indigency. Provides for confidentiality of certain interlock information.

#### 2006

##### HB 122

##### Change Interlock Device Fund Administration

The administration of the Ignition Interlock Device Fund (for indigent offenders) is changed from the Local Government of the Department of Finance to the Traffic Safety Bureau of the Department of Transportation. The TSB will determine by rule the amount of the fee imposed on this convicted of DWI and will distribute the fees imposed to the Interlock Device Fund.

#### 2005

##### HB 282

##### Ignition Interlocks for All DWI Offenders

ANY convicted offenders must now obtain an ignition interlock license and have an ignition interlock installed and operating on all motor vehicles driven by offender as follows:

- a. One year for a first conviction
- b. Two years for a second conviction
- c. Three years for a third conviction
- d. Lifetime for a fourth or subsequent conviction, subject to a five year review in district court.

##### SB 516

##### Revise Definition of Ignition Interlock



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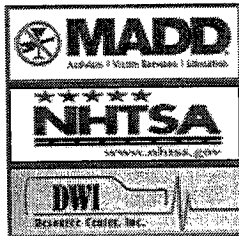


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#### Other DWI Websites and Organizations:



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Redefined approved ignition interlock device as one "that prevents the operation of a motor vehicle by an intoxicated or impaired person.

**2004**

**HB 487**

**Penalties for Providing Alcohol to Minors**

It is a felony (fourth degree) for a person to sell, serve, give, buy or deliver alcohol to a minor or assist a minor to buy, procure or be served alcohol. This includes getting someone else to give alcohol to minors by deceptive practices.

**HB 487**

**DWI Amendments**

1. DWI is raised from fourth degree felony to a third degree felony on a sixth or subsequent offense.
2. Makes substance abuse counseling and treatment mandatory on every subsequent offense and for all persons incarcerated for DWI.
3. Tribal convictions are now included as priors for purposes of sentence enhancement.
4. Each prior DWI conviction within the last 10 years now adds four years to a prison sentence for vehicular homicide. This doubled the previous enhancement of two years.

**2003**

**SB 501**

**Ignition Interlock Devices**

Ignition Interlock License Act is passed, allowing DWI offenders to obtain a license to drive anywhere at anytime, unless they have been convicted of vehicular homicide or great bodily injury while DWI.

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AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; REQUIRING A MINIMUM OF SIX MONTHS OF DRIVING WITH AN IGNITION INTERLOCK DEVICE BEFORE REINSTATEMENT OF A DRIVER'S LICENSE; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2007.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 66-5-33.1 NMSA 1978 (being Laws 1985, Chapter 47, Section 1, as amended) is amended to read:

"66-5-33.1. REINSTATEMENT OF DRIVER'S LICENSE OR REGISTRATION--IGNITION INTERLOCK--FEE.--

A. Whenever a driver's license or registration is suspended or revoked and an application has been made for its reinstatement, compliance with all appropriate provisions of the Motor Vehicle Code and the payment of a fee of twenty-five dollars (\$25.00) is a prerequisite to the reinstatement of any license or registration.

B. If a driver's license was revoked for driving while under the influence of intoxicating liquor or drugs, for aggravated driving while under the influence of intoxicating liquor or drugs or pursuant to the Implied Consent Act, the following are required to reinstate the driver's license:

- (1) an additional fee of seventy-five

1 dollars (\$75.00);

2 (2) completion of the license revocation  
3 period;

4 (3) satisfaction of any court-ordered  
5 ignition interlock requirements; and

6 (4) a minimum of six months of driving with  
7 an ignition interlock license with no attempts to circumvent  
8 or tamper with the ignition interlock device.

9 C. The department may reinstate the driving  
10 privileges of an out-of-state resident without the  
11 requirement that the person obtain an ignition interlock  
12 license for a minimum of six months, if the following  
13 conditions are met:

14 (1) the license revocation period is  
15 completed;

16 (2) satisfactory proof is presented to the  
17 department that the person is no longer a resident of New  
18 Mexico; and

19 (3) the license reinstatement fee is paid.

20 D. Fees collected pursuant to Subsection B of this  
21 section are appropriated to the local governments road fund.  
22 The department shall maintain an accounting of the fees  
23 collected and shall report that amount upon request to the  
24 legislature."

25 Section 2. Section 66-5-503 NMSA 1978 (being Laws 2003, SJC/SB 275  
Page 2

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1 Chapter 239, Section 3, as amended) is amended to read:

2 "66-5-503. IGNITION INTERLOCK LICENSE--REQUIREMENTS--  
3 EXCLUSIONS.--

4 A. A person whose driving privilege or driver's  
5 license has been revoked or denied or who has not met the  
6 ignition interlock license requirement as a condition of  
7 reinstatement pursuant to Section 66-5-33.1 NMSA 1978 may  
8 apply for an ignition interlock license from the division.

9 B. An applicant for an ignition interlock license  
10 shall:

11 (1) provide proof of installation of the  
12 ignition interlock device by a traffic safety bureau-approved  
13 ignition interlock installer on any vehicle the applicant  
14 drives; and

15 (2) sign an affidavit acknowledging that:  
16 (a) operation by the applicant of any  
17 vehicle that is not equipped with an ignition interlock  
18 device is subject to penalties for driving with a revoked  
19 license;

20 (b) tampering or interfering with the  
21 proper and intended operation of an ignition interlock device  
22 may subject the applicant to penalties for driving with a  
23 license that was revoked for driving under the influence of  
24 intoxicating liquor or drugs or a violation of the Implied  
25 Consent Act; and

1 (c) the applicant shall maintain the  
2 ignition interlock device and keep up-to-date records in the  
3 motor vehicle showing required service and calibrations and  
4 be able to provide the records upon request.

5 C. A person who has been convicted of  
6 homicide by vehicle or great bodily injury by vehicle while  
7 under the influence of intoxicating liquor or drugs, as  
8 provided in Section 66-8-101 NMSA 1978, shall not be issued  
9 an ignition interlock license."

10 Section 3. EFFECTIVE DATE.--The effective date of the  
11 provisions of this act is July 1, 2009. \_\_\_\_\_

SJC/SB 275  
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