

January 30, 2012

The following are bullet points of my testimony concerning DUI legislation. There are some elaborations, as appropriate. I would request that this be circulated to Senate and House Committee members who will be considering the DUI bill. My written testimony is as follows:

- K.S.A. 8-1015(a)(1), permits substitution of a restricted interlock device during the suspension period following a DUI conviction, test failure, or test refusal. The application cannot be submitted until 45 days after the suspension commences. Currently, the restricted interlock during the remainder of the year that would otherwise be suspended permits driving to and from work, school, treatment, and the interlock provider. I would suggest that the following driving be permitted during the restricted interlock time:
  - During work so that people can maintain their employment. It would be reasonable to require documentation that would demonstrate the work purpose of the driving at the time of the driving.
- During the unrestricted interlock time, not the suspension time or restricted interlock time that substitutes for the suspension, a person who owns their own business should be permitted to drive during work without an interlock device. Again, documentation can be required to be provided to a law enforcement officer at the time of driving showing the work purpose of the driving. Currently, a person can drive their employer's vehicle without an ignition interlock during normal business activities if the licensee does not partially or entirely own or control the employer's vehicle or business. K.S.A. 8-1015(3). This proposed change would not differentiate between an employee's work driving based on ownership of the vehicle or business.
- Senate Bill 6 focused on lengthier interlock requirements and less suspension time. The theory was that use of the interlock would accomplish the goal of eliminating driving under the influence because the vehicle could not be operated by a person impaired. This would permit people to work and perform useful functions in society.

The Department of Revenue is interpreting that when a person applies for retroactive application of the new terms of interlock rather than suspension, that they may not get credit for the full term that they have been suspended against the interlock term. For instance, a person who refused a breath test as a 2<sup>nd</sup> occurrence would have been subject to a 2 year suspension under the previous law. Under current law, they would be required to have a 1 year suspension followed by a 2 year interlock. If that person has already served 1 ½ years of suspension and applies for retroactive application of the new law, as permitted by K.S.A. 8-1015(a)(1), the law should be changed to mandate 6 months credit against the interlock for the additional time that they were suspended rather than being interlocked. The full term of the sanction would be the same. Part of the interlock time would be served as a suspension under the old law rather than an interlock.

- When an application is made for a restricted interlock, the person must prove they have installed the interlock device. They still cannot drive the interlock equipped vehicle until the Department of Revenue sends them an order that says they can drive with an interlock device rather than being suspended. There is a delay between the time that the interlock device is installed and paid for until the time that the Department of Revenue notifies them that they can actually drive the interlock equipped vehicle. This time can be 6 weeks.

It is requested that the branch offices of the motor vehicle division be permitted to change the driving status immediately upon being provided verification of the installation of the interlock to speed the process up that the interlock authority is permitted.

After the committee meeting, Marcy Ralston, KDR, informed me that they are trying to establish an interface between the interlock providers and KDR to permit immediate change of driving status upon acquisition of the interlock device. If this is promptly established, this accomplishes the purpose that I seek to accomplish. This interface cannot be implemented until new computer software is implemented at KDR. This may be a lengthy process. I feel obliged to advise you of Marcy's comments, that I became aware of after my testimony. Currently, however, there is simply too much delay between the time of interlock installation and the change of driving status.

- Refusal of the breath test should not be criminalized for the following reasons:
  - The cost of incarceration is too great.
  - A person can already be punished for DUI if they are driving while impaired, the purpose of the law. The need for this new crime does not justify the cost.

- Conviction of refusing a breath test would be double punishment for the same driving incident if they could also be convicted of DUI.
- The purpose of DUI laws are to remove people impaired by alcohol. A person who refuses a breath test is not necessarily impaired. People refuse breath tests for a number of reasons completely unrelated to impairment, including:
  - Belief that the privacy of their body is being invaded without a warrant.
  - People want to talk to an attorney before making this breath test decision. The officer does not permit it.
  - A person wants a blood test rather than a breath test. The officer may only offer a breath test.
  - Being in shock at being confronted by an officer.
  - Being intimidated by the officer.
  - Believing they should not have been stopped.
  - Believing there is no factual basis for an arrest.
  - The officer treats them disrespectfully or improperly.
  - People are scared.
  - People don't know how the machine works and whether it is accurate or reliable.
  - Don't know what .08 is or how a machine calculates it.
  - No knowledge of the reputation of the machine manufacturer.
  - No knowledge or confidence in the accuracy of the machine.
  - No knowledge or confidence in the operator's competency.
  - Afraid about getting contagious infectious diseases.
  - Belief that the machine is not infallible.
  - The test cannot be repeated because the breath sample is destroyed.
  - Do not trust the machine.
  - Do not know how many drinks it takes to be over the limit even if they are not impaired.
- It makes no sense to punish a person for exercising their choice not to take a test in an amount equal to or greater than driving under the influence which could endanger people.

Sincerely,

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