

**OFFICE OF THE KINGMAN COUNTY ATTORNEY
MATTHEW W. RICKE
349 N. Main, P.O. Box 454
Kingman, KS 67068
(620)532-3044**

February 9, 2015

State Representative
Jack Thimesch

RE: House Bill Concerning Driving; Relating to Convictions and Diversions; Habitual Violator Status; Expungement of Driving Under the Influence and other Driving Offenses

Dear Representative Thimesch:

Thank you for serving as the Representative for District 114. At your request, I have reviewed the House Bill that you proposed. When we discussed the changes that you proposed, I wanted to read the same to see if it would hinder enforcement or prosecution of offenders. After reading your proposed changes, I do not believe this Bill would hinder the prosecution of people violating the Habitual Violator Statute, nor the Driving Under the Influence Laws in this State. Typically, a diversion is only for first time offenders or persons with very little or no criminal history. As a result, not treating a diversion agreement as a prior conviction would have little or no impact on the violators that I typically prosecute. The change requiring seven or more years, rather than 10 or more years for the expungement of a DUI, would also not hinder my efforts in prosecuting persons for Driving Under the Influence. The statute would still allow me to use an expunged conviction in a subsequent prosecution for an offense which requires the expunged conviction as an element. For instance, if someone has a DUI expunged after seven years and were to receive another DUI in the eighth year, I could still use the expunged conviction to enhance the severity level and punishment for the subsequent DUI.

Allowing a person who has had no convictions for seven years to expunge a previous DUI could increase the opportunities for that person to become employed or move on to better employment. The Bill that you have proposed seems to allow someone who has made a mistake to move forward after that mistake, as long as that person has not been convicted of any crimes during that seven year period. However, since an expunged conviction can be used to enhance the prosecution on a subsequent charge of DUI, it would not hinder the prosecution and punishment should that person obtain another DUI.

I do not want to appear to support Driving Under the Influence of Alcohol, and I am aware of the horrible effects of people who choose to Drive Under the Influence. If your Bill in any way hindered the prosecution or punishment of person Driving Under the Influence, I would not support it. However, I do not see that your Bill would hinder the prosecution or punishment for persons Driving Under the Influence. Rather, it would allow for a person who demonstrated that he or she had learned from a conviction to expunge that conviction for purposes such as employment.

As you know, currently all other expugnable offenses only require between one and five years before the offense can be expunged. This includes some felony offenses that are not otherwise excluded from expungement. The House Bill that you propose would still have someone convicted of a misdemeanor Driving Under the Influence waiting much longer to seek an expungement than someone convicted of a felony offense. In summary, I am in support of your proposed Bill. I believe the Bill has potential to help someone who has learned from his or her mistake, while at the same time not standing in the way of prosecution for persons who have not learned from the mistake.

Yours very truly,



Matthew W. Ricke,
Kingman County Attorney

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