

UPDATE FOR THOSE DEFENDING DRINKING DRIVERS

You're not more attractive, I'm just
Superdrunk

Overview

- Credits:
 - Patrick Barone, Esq.
 - Slade Sokol
- Highlight the changes to MCL 257.625 (superdrunk); 257.303; 257.319 and 257.304.
- Sobriety Court
- Metrology for Lawyers
 - Embrace the Error
- Overview of Handouts

The Change is Awkward Drafting

- Sec. 625. (1) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person is operating while intoxicated. As used in this section, "operating while intoxicated" means any of the following:
 - (a) The person is under the influence of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance.
 - (b) The person has an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or, beginning October 1, 2013, the person has an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
 - (c) ~~The~~ Beginning October 31, 2010, the person has an alcohol content of 0.17 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

Awkkkkkwarrrd

- (c) Beginning October 31, 2010, the person has an alcohol content of 0.17 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

The Major Points

- ▣ It creates new penalties for .17 grams ethanol per 210 liters of breath/100 milliliters blood/67 liters of urine (MCL 257.625(1)(c)).
 - Jail up to 180 days.
 - Remember the Home Rule Cities Act
 - Fine of \$200 to \$700.
 - Suspended License = 1 year (MCL 257.303).
 - Mandatory Alcohol Rehabilitation.
 - Mandatory Breath Alcohol Ignition Interlock Device (BAAID).

The New Driver License Sanctions

- ▣ MCL 257.304.
- ▣ "Sobriety Court License."
- ▣ The SOS "shall issue" a restricted license if:
 - The SOS receives certification from a sobriety court judge that the person is admitted into sobriety court as defined by the RJA;
 - 45 days of the suspension passed;
 - A 625k BAIID was installed on the ride (257.304(A));
- ▣ The restricted license is revoked if:
 - The sobriety court judge notifies the SOS of the removal of the person from sobriety court; the operation of the ride without the BAIID or tampering/circumventing of the BAIID or the person removed the BAIID (257.304(6); 600.1084(6)).

The BAIID

- ▣ Stays in place UNTIL:
- ▣ A hearing officer for the SOS orders an unrestricted license –
 - Completes sobriety court program successfully;
 - The minimum period for the sanction passes, i.e. 45 days on a superdrunk suspension (MCL 257.625(5)).
- ▣ The presumption is that the BAIID stays even after sobriety court is finished;
 - *The person must complete the suspension (257.304(5)(7)).*
- ▣ Can qualify a person for a restricted license where the person has 2 “or more” convictions (MCL 257.304(1)).

Sobriety Court

- ▣ MCL 600.1084 (The Revised Judicature Act)
- ▣ It is a pilot project that starts January 1, 2011 and runs 3 years.
- ▣ More administrative hassles for courts.
- ▣ Eligibility:
 - TWO or more convictions of 625(1) or (3) or a combination of (1) or (3) and zero tolerance (6).
 - The way the statute is written – superdrunks do not qualify.
- ▣ ALL sobriety courts MUST provide documentation IF they participate in the BAIID project.
 - Tracking the impact on public safety – whose been naughty and whose been nice.
 - Holds the driver responsibility fees in abeyance (304(8)) as well as the immobilization/forfeiture requirement (304(9)).

Metrology = The Science of Measurement

- “All BAC measurements represent a range of values, any of which could represent the true value with a given level of confidence. Thus, no reliable result can be reported without an estimate of uncertainty.” State of Washington v Fausto, et al., Case No. C076949 and 9Y6231062, P. 8

Dr. Felix Adatsi in P v Jabrocki

- P. 18.23
- Q: “Okay. You haven’t calculated an error rate based on possible sources of error that may have occurred during the testing process. Isn’t that correct?”
- A: “No, we haven’t.”

- P 43.9 “By the time we come to the next inspection, we will be in compliance with – the – the requirement is that the testing laboratory must have – develop the method of determining uncertainty of measurement. So what ASCLAD will expect to see from us when they come next time will be – they’re gonna ask you what is the error or the variance in the result that you’ve reported. ASCLD does not compell (sic) us to express the result findings with that of a variance. It does not.”

- P 51.24: “We did not conduct a classical uncertainty budget, and I really don’t think we will. I mean there are other – “

□ P 54.19 “My final results – my final results do not reflect the uncertainty at the present time, and I – I don’t think they will. Unless – unless we are forced to do that, I don’t think we will.”