

TESTIMONY OF JOHN C. PETERSON
SENATE JUDICIARY COMMITTEE
2011 SB 7
NEUTRAL – PROPOSED AMENDMENT
January 27, 2011

Mr. Chairman, members of the Committee.

The Commission recognized the need for and included in SB 7 a “decay” or “look back” provision. That provision sets a specific date after which offenses are counted as prior offenses.

Page 65, Section 25, line 33:

(u) When determining whether a conviction is a first, second, third, fourth, or subsequent conviction of a violation in this section: (1) convictions for violations . . . or entering into a diversion agreement . . . shall be taken into account, but only convictions or diversions occurring on or after July 1, 1996. Nothing in this provision shall be construed as preventing any court from considering any convictions or diversions occurring during the person’s lifetime in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offender(sic);

Prior to that time records either were not kept or were inconsistently maintained. Also that date was 5 years prior to July 1, 2001, and until July 1, 2001, the law had a 5 year rolling decay period (i.e., offenses were considered a prior offense only if they occurred in the preceding 5 years).

However, I would suggest that the date for the look back should be changed to 2001.

That is the effective date of the major enactment, then SB 67, in which DUI related penalties were significantly increased. Notably in that bill, instead of a 5 year rolling decay of convictions or diversions, the look back was for life.

So prior to July 1, 2001, an individual if they pled guilty or took a diversion, did so under a set of rules whereby after a 5-year period it would no longer be considered a prior offense. After July 1, 2001—all were on notice that the rules had changed and that any offenses would never decay. With these increased penalties, fundamental fairness would dictate the date for the beginning of the “look back” provisions would be July 1st of 2001.

I would therefore suggest an amendment by striking “1996” and inserting “2001” on page 65, section 25, subsection (u)(1) and of striking the sentence immediately following that as being inconsistent with the decay language immediately above.

1 shall not be required to, may elect one or two of the three prior to
2 submission of the case to the fact finder.

3 (4) (s) Upon a third or subsequent conviction, the judge of any court
4 in which any person is convicted of violating this section, may revoke the
5 person's license plate or temporary registration certificate of the motor
6 vehicle driven during the violation of this section for a period of one year.
7 Upon revoking any license plate or temporary registration certificate
8 pursuant to this subsection, the court shall require that such license plate
9 or temporary registration certificate be surrendered to the court.

10 (v) For the purpose of this section: (1) "Alcohol concentration"
11 means the number of grams of alcohol per 100 milliliters of blood or per
12 210 liters of breath.

13 (2) "Imprisonment" shall include any restricted environment in
14 which the court and law enforcement agency intend to retain custody and
15 control of a defendant and such environment has been approved by the
16 board of county commissioners or the governing body of a city.

17 (3) "Drug" includes toxic vapors as such term is defined in K.S.A.
18 2009 Supp. 21-3612, and amendments thereto.

19 (w) (1) The amount of the increase in fines as specified in this
20 section shall be remitted by the clerk of the district court to the state
21 treasurer in accordance with the provisions of K.S.A. 75-4215, and
22 amendments thereto. Upon receipt of remittance of the increase provided
23 in this act, the state treasurer shall deposit the entire amount in the state
24 treasury and the state treasurer shall credit 50% to the community
25 alcoholism and intoxication programs fund and 50% to the department of
26 corrections alcohol and drug abuse treatment fund, which is hereby
27 created in the state treasury.

28 (x) Upon every conviction of a violation of this section, the court
29 shall order such person to submit to a pre-sentence alcohol and drug
30 abuse evaluation pursuant to K.S.A. 8-1008, and amendments thereto.
31 Such pre-sentence evaluation shall be made available, and shall be
32 considered by the sentencing court.

33 (1) When determining whether a conviction is a first, second, third,
34 fourth or subsequent conviction of a violation of this section:

35 (1) Convictions for a violation of this section, or a violation of an
36 ordinance of any city or resolution of any county which prohibits the acts
37 that this section prohibits, or entering into a diversion agreement in lieu
38 of further criminal proceedings on a complaint alleging any such
39 violations, shall be taken into account, but only convictions or diversions
40 occurring on or after July 1, 2006. Nothing in this provision shall be
41 construed as preventing any court from considering any convictions or
42 diversions occurring during the person's lifetime in determining the
sentence to be imposed within the limits provided for a first, second, third

"2001"

Delete

26

1 ~~or subsequent offender~~
2 (2) any convictions for a violation of the following sections
3 occurring during a person's lifetime shall be taken into account: (A)
4 Section 2, and amendments thereto; (B) K.S.A. 8-2-144, and amendments
5 thereto; (C) K.S.A. 32-1131, and amendments thereto; (D) subsection (a)
6 (3) of section 40 of chapter 136 of the 2010 Session Laws of Kansas, and
7 amendments thereto; (E) subsection (g) of section 48 of chapter 136 of
8 the 2010 Session Laws of Kansas, and amendments thereto; and (F)
9 aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or
10 vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was
11 committed while committing a violation of K.S.A. 8-1567, and
12 amendments thereto;