

## The New "Super Drunk" Law

By Michael F. Kelly • Kelly Law Offices



Recent amendments to the Michigan Drunk Driving Statute created a "Super Drunk" category for first offense Drunk Drivers with a bodily blood alcohol content (BAC) of 0.17 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine. "Super Drunks" will face more limitations on their driving privileges, can be sentenced to jail longer, and be required to pay higher fines than the people convicted of the current drunk driving laws. The new law takes effect October 31, 2010.

The amendments require a longer period of license suspension for Super Drunks, one (1) year as opposed to six (6) months under the present law. A restricted license will not be issued until 45 days after the suspension begins, as opposed to 30 days under the present law.

The amendments also require that the vehicle operated by the convicted driver be equipped with an approved and properly installed ignition interlock device, which must be calibrated so that the vehicle cannot be started if the BAC level of the operator reaches 0.025 or more. An additional one (1) year of suspension and restriction, including a new 45 day period of no driving, will be imposed if the person attempts to operate the vehicle with a BAC of 0.025 or more. This provision, however, would not apply to a start-up test failure occurring within the first two (2) months after the device is installed.

The interlock device cannot be removed while the person is operating the vehicle with a restricted license unless the Secretary of State issues an order authorizing its removal. As a condition of removal, the installer must verify that the person who operated the vehicle had no instances of reaching or exceeding a BAC of 0.025 after the first two (2) month period.

A person convicted as a "Super Drunk" could be sentenced to a maximum of 180 days in jail as opposed to the 93 days under the present law. In addition, the minimum fine will be \$200.00 and will not exceed \$700.00, an increase from not less than \$100.00 but not more than \$500.00. The maximum community service that can be imposed under the amendments will remain at 360 hours, which is the same as those with BAC's below 0.17.

The amendments require the court to order a person convicted of a high BAC offense to participate in and complete a rehabilitative program as part of the sentence. Currently, this requirement only applies to repeat drunk driving offenses. The amendments specify that appropriate rehabilitative programs include, but are not limited to, an alcohol treatment program or a self-help program for a period of not less than one (1) year. The treatment plan would have to be devised from an assessment performed by an appropriately licensed alcohol assessor and approved by the court. The requirement to screen and

assess "Super Drunk" offenders prior to imposing sentence and ordering rehabilitation treatment would not require the person to successfully complete a rehabilitative program before the issuance of a restricted license with a properly installed and calibrated ignition interlock device.

Obviously the increase of penalties for a "Super Drunk" will have an impact on plea negotiations. At what level will a prosecutor agree to reduce the charges on a person charged with a 0.17 BAC? The administrative rules for administration of a Data Master test and admission into evidence allow for a deviation of 0.02. If a person has a BAC test result of no more than 0.18, which may in fact be only 0.16, is the margin of error permitted by the administrative rules taken into consideration?

Evidentiary hearings and motions to suppress should be filed in every case where the readings are slightly above 0.17. Likewise, those charged with operating or attempting to operate a vehicle with a BAC above 0.025 will want to challenge the admissibility of the readings generated by the ignition interlock device. This will also require evidentiary hearings and motions to suppress.

At the request of the Secretary of State, the amendments will not take effect until October 31, 2010, when changes to the office's information technology system will be capable of implementing the new provisions. ■