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HB 463 ARREST AUTHORITY; DRIVING ON SUSPENDED OPERATOR'S LICENSE; AND DUI SUSPENDED OPERATOR'S LICENSE

The question has been asked several times since the training on House Bill 463 was conducted as to whether an officer may arrest on the charge of operating on a suspended/revoked operators license, and operating on a license revoked/suspended for DUI. As a reminder, first and foremost, per our teaching instructions, you should ALWAYS check with your county attorney, since he/she is the one who will be defending you in the event of a problem, as well as for prosecution guidance.

Officers may still arrest for traffic offenses that carry jail time as potential punishment. That is, at a minimum, the offense must be a class B misdemeanor. KRS 281.765 provides this authority to arrest. To find which traffic offenses an officer may arrest for, you need to check the "Penalties" section of the statute (KRS 186.990).

KRS section 186.990 reads in part as follows:

(3) A person who violates the provisions of KRS 186.450(4), (5), or (6) or 186.452(3), (4), or (5) shall be guilty of a violation. A person who violates any of the other provisions of KRS 186.400 to 186.640 shall be guilty of a class B misdemeanor.

The first sentence in subsection (3) referring to specific sections of KRS 186.450 and KRS 186.452 concern PERMIT holders and makes violations of permit provisions a FINE only punishment. Since all remaining statutes covered between KRS 186.400 to KRS 186.640 are misdemeanors, then you may still arrest pursuant to KRS 281.765.

KRS 186.620 reads in part as follows:

(2) No person who has not applied

for an operator's license or whose operator's license has been denied, canceled, suspended or revoked, or whose privilege to operate a motor vehicle has been withdrawn, shall operate any motor vehicle upon the highways while the license is denied, canceled, suspended, or revoked or his privilege to operate a motor vehicle is withdrawn, or the license has not been applied for. (This is a class B misdemeanor, and is arrestable.)

Also, no operator's license, per the provisions of KRS 186.410, is a class B misdemeanor, and is an arrestable offense.

Operating on a license revoked/suspended for DUI is covered in KRS 189A.090. Subsection (2) makes the first offense a class B misdemeanor; and enhances the penalties for subsequent offenses, making this statute one that an officer may make an arrest for as well.

HOTEL GUEST PRIVACY

Within the past year, both Kentucky and the U.S. Court of Appeals, Sixth Circuit, have ruled that guests do not retain an expectation of privacy once they have overstayed at a hotel past the checkout time. In both Blades v. Com., 339 S.W.3d 450 Ky., 2011 and U.S. v. Lanier, 636 F.3d 228 (6th Cir. 2011), law enforcement officers entered the room following the expiration of the rental period and found contraband. And, in both cases, the respective courts agreed that a guest has no expectation of privacy in the room following the check-out time, absent specific circumstances that might have given them a reason to believe that they might.

UNDERAGE DRINKING

It is often a surprise to law enforcement officers to learn that Kentucky law (and the law of other states) permits a juvenile to drink an alcoholic beverage under specific circumstances. In Pritchard (and others) v. Hamilton Township Board v. Trustees, 424 Fed.Appx. 492 (6th Cir. 2011), officers made a number of arrests at a backyard party. During the raid, they discovered an underage subject drinking an alcoholic beverage who they subsequently cited. Officers knew, however, that the boy was at the party with his father who presumably allowed him to have the drink. The charges were dismissed and the officers involved were subsequently sued for the arrest. The officers denied knowing that Ohio law permitted a juvenile subject to drink alcoholic beverages under those circumstances, although it clearly did, with the Court stating that "knowledge of [a] statute is imputed to the police officers." (It was particularly egregious since he was cited under the same provision that provided the exception.) Kentucky law provides the same exception in KRS 530.070, unlawful transaction with minor in the third degree. It should be noted, however, that this does not, of course, permit the juvenile to drive after the fact nor does it permit the juvenile to become so intoxicated he or she would be at risk of harm.

TERRY FRISK AND OFFICER SAFETY

In the recent unpublished case of Shelton v. Com., 2011 WL 1515288 (Ky.App., 2011), the Kentucky Court of Appeals emphasized that a Terry frisk is done only for the purpose of locating a potential weapon, and only when there is reasonable suspicion that the individual actually has a

