



KACDL Calls for Fairness Under New DUI Law

Up until April 9, 2016, calculating whether a DUI charge should be treated as a first or second offense was relatively simple. The question was: Is the date of the previous DUI charge older than five years from the date of the new charge? It was easy for defendants, prosecutors, and others in the justice system to make a determination of whether or not a new DUI charge was subject to greater penalties because of a past one.

The Kentucky Legislature changed all that by increasing the ‘look-back’ window for DUI offenses from five years to 10 years. This changed the question to: Is the date of the previous DUI charge older than *ten* years? This may sound simple on paper, but there is a fundamental element that the legislation did not address – Defendants in previous DUI cases signed guilty plea agreements that stated explicitly that their DUIs could be used against them for only five years going forward, and in fact allowed for complete expungement of the charges after the five-year lookback period had ended.

So now we have courts trying to determine whether or not the government should be allowed to change the terms of their agreements with thousands upon thousands of people. The Kentucky Association of Criminal Defense Lawyers (KACDL) believes this is a simple matter of contract law and fair dealing. In order for there to be a contract, you must have at least two parties, and there must be an offer, an acceptance of that offer, and some sort of consideration that either party gives up in order to make the contract legally binding. In the case of DUI guilty pleas we have all three.

When one party does not follow through with the terms of the contract, it is considered a breach, and the other party can rightfully request that the contract be enforced or voided. As Warren Circuit Judge John R. Grise put it when recently reviewing this issue, “The principle of contract law, as well as our ‘historical ideals of fair play and substantial justice,’ bind the government to the agreement it made with [the defendant], and the Commonwealth cannot rely on the General Assembly’s subsequent change of law to escape its terms.” In other words, the government must maintain their end of the bargain. We hope higher courts will agree with him.

The government has made promises. People have relied on those promises. The state should not be in the business of breaching contracts with its own citizens. The new law should not be used against those who never agreed to its terms. KACDL is hopeful that our Courts will take the fair and just approach and rule in favor of defendants who have kept their end of the bargain.

Signed,

Attorney Larry Forman, on behalf of KACDL

Note: The Kentucky Association of Criminal Defense Lawyers is the only organized, statewide, all-inclusive group of criminal defense lawyers in Kentucky. We remain committed to penal code reform, to fairness and justice for all citizens accused of crimes in the Commonwealth of Kentucky, and to unwavering service to the criminal defense community through effective and supportive networking, advocacy and education.