

UNDERSTANDING & DEFENDING AGAINST DUI-RELATED ADMINISTRATIVE HEARINGS

Presented by Robert A. Anderson, Jr.

Primary Source: Leslie F. Hulnick, John E. Stang, C. Ryan Gering & J. Matthew Leavitt, Chapter 26, The Law of DUI, “Kansas Criminal Law, Fifth Edition”, Kansas Bar Association.

4/23/2026

A faint, grayscale background image of several horses, likely at a racetrack or farm, is visible behind the text in the bottom section of the slide.

ROADMAP

Basic Overview

Temporary Driving Privileges

Administrative Hearing Request

Time & Place of Hearing

Discovery & Witnesses at Hearing

Scope of Administrative Hearings (& prohibited issues)

Potential Defenses at the Administrative Hearing

Appeal Rights

Q & A

OVERVIEW

The administrative hearing is the process by which the government (Kansas Dept. of Revenue) attempts to suspend (and later restrict) a person's driving privileges because of a chemical test failure or refusal to submit to a chemical test.

While the administrative hearing goes hand-in-hand with "Driving Under the Influence of Alcohol and/or Drugs", the outcome of the administrative hearing is independent of any corresponding criminal case. The reverse is not wholly independent – a conviction for DUI will trigger an administrative suspension.

You (and the licensee) should know: THESE ARE VERY DIFFICULT TO WIN!

OVERVIEW

Oversimplified recipe for an administrative suspension:

You start with law enforcement having “reasonable grounds” to believe you are (1) a person who was DUI; or (2) a CDL holder, driving a commercial vehicle, while having alcohol or drugs in their system; or (3) a person under the age of 21 having alcohol or drugs in their system.

PLUS: a failed chemical test or a refusal to submit to a chemical test.

**OFFICER'S CERTIFICATION AND NOTICE OF SUSPENSION
(SEE REVERSE SIDE FOR HEARING INFORMATION)**

INSTRUCTIONS: This form is to be used to certify a test refusal or test failure. A copy of the completed form is required to be served upon the person; a copy is to be forwarded to the Division of Vehicles within seven (7) days after service on the driver, and a copy should be retained by a certifying officer.

DRIVER INFORMATION			
Name (Last)	(First)	SSN	Date of Birth
Current Address		City	
		State	
Driver's License No.	State of Issuance	City	

CDL YES NO **CMV** YES NO (If yes, CDL-5 form required also) **HAZ.MAT.** YES NO

ADDRESS: The above address will be treated as a change of address if different from that on file with the Division of Vehicles and will be used for all correspondence with the person unless the Division of Vehicles is notified by the person in writing of a different address or a change of address. You can change your address on the internet, by mail or fax to Central Office Operations, or by going to any Kansas Driver's License Examining Station.

LAW ENFORCEMENT OFFICER'S CERTIFICATION

CERTIFICATION INSTRUCTIONS: To certify a test refusal or test failure, (1) each officer must complete the statement, if necessary, (2) at least one officer must initial on the line to the left of each of the statements intended to be certified and (3) each officer who initials a statement must sign in the space provided below.

1. On _____, 20____, reasonable grounds existed to believe that the above-named person, within the State of Kansas in _____ County, had been operating a vehicle while under the influence of alcohol and/or drugs in violation of state statute, city ordinance or county resolution, or had been attempting to operate a vehicle while under the influence of alcohol and/or drugs in violation of state statute, city ordinance or county resolution (If certifying a failure of a test, the officer must certify that reasonable grounds existed to believe the person was operating a vehicle, and/or had been driving a commercial vehicle, as defined in K.S.A. 8-2-128, and amendments thereto, while having alcohol or other drugs in such person's system, and/or is under 21 years of age while having alcohol or other drugs in such person's system.

2. The person had been placed under arrest or otherwise taken into custody or had been involved in a vehicle accident or collision.

3. The person was presented oral and written notice as required by K.S.A. 8-1001(a) and amendments thereto.

4. Check one: The person refused to submit to or complete testing as requested by a law enforcement officer. The result of the test showed that the person had an alcohol concentration of .08 or greater in such person's blood or breath. **NOTE:** Please attach a readable copy of the test report.

5. Reason(s) for the initial contact and/or stop: Uncommitted traffic violation(s) (explain below), Officer arrived at scene of accident, Vehicle already stopped, Other (explain) _____

6. Reasonable grounds for my belief that the person was operating or attempting to operate a vehicle: Saw person operate, Person identified self as driver, Other (explain) _____

7. Reasonable grounds for my belief that the person was under the influence of alcohol and/or drugs: Odor of alcoholic beverages, Alcoholic beverage containers found in vehicle, Slurred or slurred speech, Unsteady gait, Bloodshot eyes, Difficulty in communicating, Poor balance or coordination, Person stated alcohol/drugs consumed, Other (explain) _____

8. A copy of this document which contains a Notice of Driver's License Suspension is being served on _____, 20____ by (check one) Personal service, Mailing by first-class mail to the address shown above. **NOTE:** Personal service is required if a determination of refusal or failure is made while the person is in custody.

IF CERTIFYING A FAILURE OF A BREATH TEST, STATEMENTS 9, 10 AND 11 MUST ALSO BE COMPLETED AND CERTIFIED

9. The testing equipment used was certified by the Kansas Department of Health and Environment.

10. The testing procedures used were in accordance with the requirements set out by the Kansas Department of Health and Environment.

11. The person who operated the testing equipment was certified by the Kansas Department of Health and Environment to operate such equipment.

I hereby certify to the Division of Vehicles that each of the statements I have initialed above are true and accurate, under penalty of K.S.A. 8-1001(b), and amendments thereto.

Title and name (printed) _____ Title and name (printed) _____

Agency name: _____ Agency name: _____

Agency address: _____ Agency address: _____

City/State/Zip: _____ City/State/Zip: _____

Signature of Law Enforcement Officer _____

Signature of Law Enforcement Officer _____

TEMPORARY DRIVER'S LICENSE

THIS NOTICE IS:

NOT VALID as a temporary license for the reason that your license: Has expired, Has been revoked, Has been suspended, Has been cancelled, or You have no driver's license.

VALID as a temporary license until the 30th day after the date of service of this document. You must carry this notice with you when driving. This temporary license allows the operation of the same classes of vehicles and is subject to the same restrictions as the driver's license surrendered.

Any temporary driver's license will end and your driving privileges will be suspended on the 30th day after service of this document unless an administrative hearing has been timely requested and the required \$50 hearing fee paid, as set out in the **INSTRUCTIONS FOR REQUESTING AN ADMINISTRATIVE HEARING ON THE REVERSE SIDE OF THIS FORM.**

Before a test or tests are administered, the officer is required by K.S.A. 8-1001, and amendments thereto, to provide the person the oral and written notices contained on the implied consent advisory (DC-78). If the person was driving a commercial motor vehicle, as defined by Kansas law, the oral and written notice required by K.S.A. 8-2-146 should also be given. If the person is under the age of 21, the oral and written notice required by K.S.A. 8-1807a should also be given.

Distribution: 1st copy (white) copy to Division of Vehicles 2nd copy (yellow) for your file 3rd copy (pink) to licensee/driver

**NOTICE OF DRIVER'S LICENSE SUSPENSION
(Pursuant to K.S.A. 8-1002)**

Based upon the certification on the reverse side of this form, your driving privileges are hereby suspended, pursuant to K.S.A. 8-1014, effective the 30th day after the date of service of this notice, unless a timely request for hearing is made, together with timely payment of the required hearing fee (see below). The action taken on your license depends upon whether the officer(s) certified a test refusal or a test failure (a completed test result of .08 or greater) and whether you have any prior "occurrences" on your driving record. "Occurrence" is defined in K.S.A. 8-1013(a), as amended by the 2012 legislature, as "a test refusal, test failure or alcohol or drug-related conviction, or any combination thereof arising from one arrest." Entry into a diversion agreement in lieu of prosecution on a prior occasion is treated as a prior "alcohol or drug-related conviction," pursuant to K.S.A. 8-1013(b)(2). You may request a copy of your driving record in writing from Central Office Operations, Division of Vehicles, Kansas Department of Revenue at PO Box 12821, Topeka, Kansas, 66601 or, visit <http://www.kansas.gov/mvr> to request a copy of your driving record online.

If paragraph 4 of the certification on the reverse side indicates you refused to submit to or complete a test, the following action will be taken on your driving privileges:

- First Occurrence:** 1 year suspension & 2 year ignition interlock restriction
- Second Occurrence:** 1 year suspension & 3 year ignition interlock restriction
- Third Occurrence:** 1 year suspension & 4 year ignition interlock restriction
- Fourth Occurrence:** 1 year suspension & 5 year ignition interlock restriction
- Fifth or Subsequent Occurrence:** 1 year suspension & 10 year ignition interlock restriction

If paragraph 4 of the certification on the reverse side indicates you failed a test and the test result was .05 or above, but less than .15, the following action will be taken on your driving privileges:

- First Occurrence:** 30 day suspension & 180 days of ignition interlock restriction if you have not previously had your driving privileges revoked, suspended, canceled or withdrawn or been previously convicted of any of the following violations: (1) K.S.A. 8-169; (2) K.S.A. 41-727; (3) any violations listed in K.S.A. 8-285(a) or (4) been convicted of three or more moving traffic violations committed on separate occasions within a 12-month period. If your driving privileges have previously been revoked, suspended, canceled or withdrawn or your driving record contains convictions as set out above, you will receive a 30 day suspension & 1 year of ignition interlock restriction.
- Second Occurrence:** 1 year suspension & 1 year ignition interlock restriction
- Third Occurrence:** 1 year suspension & 2 year ignition interlock restriction
- Fourth Occurrence:** 1 year suspension & 3 year ignition interlock restriction
- Fifth or Subsequent Occurrence:** 1 year suspension & 10 year ignition interlock restriction

If paragraph 4 of the certification on the reverse side indicates you failed a test and the test result was .15 or above, the following action will be taken on your driving privileges:

- First Occurrence:** 1 year suspension & 1 year ignition interlock restriction
- Second Occurrence:** 1 year suspension & 2 year ignition interlock restriction
- Third Occurrence:** 1 year suspension & 3 year ignition interlock restriction
- Fourth Occurrence:** 1 year suspension & 4 year ignition interlock restriction
- Fifth or Subsequent Occurrence:** 1 year suspension & 10 year ignition interlock restriction

If you possess a commercial driver's license, the following additional action will be taken on your commercial driving privileges as a result of a conviction for violating K.S.A. 8-167 or section 2 of chapter 172 of the 2012 Session Laws of Kansas (to be codified at K.S.A. 2012 Supp. 8-1026) or upon a final determination that you have refused or failed a test, as defined in K.S.A. 8-1013, and amendments thereto.

- First Occurrence,** as defined by K.S.A. 8-1013(e): 1 year suspension of commercial driving privileges
- Second Occurrence,** as defined by K.S.A. 8-1013(e): permanent revocation of commercial driving privileges

PROCEDURE FOR REQUESTING AN ADMINISTRATIVE HEARING

• A hearing request may be made either by making a written request which is postmarked within 14 calendar days after the date of service of this form, or by sending a written request by electronic facsimile (fax) to the Division of Vehicles within 14 calendar days after the date of service of this form. If this form was served on you by mail, you will have an additional 3 days, pursuant to K.S.A. 80-206(d).

• The hearing request must include your full name, driver's license number, birth date and a telephone number at which you or your legal representative can be reached if necessary.

• The hearing request must include your current address. If the address you provide in your written request for a hearing is different than the address on the reverse side of this form, the address in your hearing request will be treated as a change of address pursuant to K.S.A. 8-248. All correspondence will be sent to the address provided in the hearing request.

• The hearing request must state whether you want to have the certifying officer(s) subpoenaed to the administrative hearing. If you wish to contest the facts contained in the officer's certification at the administrative hearing, you have the burden of disproving those facts, and you may need to compel the appearance of the certifying officer(s) to do so. If you fail to request any officer's attendance at the time you make a hearing request, your right to compel that attendance by subpoena will be deemed waived and the Law Enforcement Officer's Certification will be admitted as evidence at the hearing.

• You must pay a non-refundable hearing fee of \$50.00 within the time period for making a timely request for a hearing (check or money order preferred). The \$50 hearing fee must be postmarked within the time period for making a timely hearing request or your hearing request will be denied. (A taxed image of cash or of a check or money order will not be accepted.)

• **HEARING LOCATION.** Upon receipt of your timely written hearing request and fee, a hearing will be scheduled by telephone conference call. You may request that the hearing be conducted in person before a representative of the Director of Vehicles. Any request for an in person hearing must be made at the time you request a hearing. A written notice will be mailed to you setting out the time, date and place of the hearing. Any temporary driving privileges granted on the reverse side of this document will be extended until a final determination is made.

• Mail hearing requests to:
Central Office Operations
Attn: Administrative Hearing Section
P.O. Box 2744
Topeka, KS 66601-2744
(785) 296-0911

• Send electronic facsimile (fax) requests to: (785) 296-0276

**TESTING NOTICES – BREATH OR OTHER BODILY SUBSTANCE
(NOT BLOOD OR URINE)**

1. You have no right to consult with an attorney regarding whether to submit to testing, but, after the completion of the testing, you may request and have the right to consult with an attorney and may secure additional testing.
2. If you **refuse** to submit to and complete the test or tests, your driving privileges will be suspended for a period of one year.
3. If you **fail** a test, your driving privileges will be suspended for a period of either 30 days or one year.
4. Refusal to submit to testing may be used against you at any trial or hearing on a charge arising out of the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both.
5. The results of the testing may be used against you at any trial or hearing on a charge arising out of the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both.

UNDER 21 NOTICES

If the person is **UNDER 21**, read the additional notices below:

1. It is unlawful for any person less than 21 years of age to operate or attempt to operate a vehicle in this state with a breath or blood alcohol content of .02 or greater.
2. If you are less than 21 years of age at the time of the test request and submit to and complete the test or tests and the test results show an alcohol concentration of .02 or greater, but less than .08, on your first occurrence, your driving privileges will be suspended for 30 days and on your second or subsequent occurrence, your driving privileges shall be suspended for one year.

CDL NOTICES

If the person has been driving a **COMMERCIAL MOTOR VEHICLE**, read additional notice below:

1. Whenever a law enforcement officer has reasonable grounds to believe a person has been driving a commercial motor vehicle while having alcohol or other drugs in such person's system and the person refuses to submit to and complete a test or tests requested by a law enforcement officer or submits to and completes a test requested by a law enforcement officer which determines that the person's alcohol concentration is .04 or greater, the person will be disqualified from driving a commercial motor vehicle for at least one year, pursuant to Kansas law.

OFFICER INSTRUCTIONS: All tests are to be administered at the direction of a law enforcement officer and the law enforcement officer shall determine which type of test or tests to request. Keep a completed copy of this document for your file.

- PROVIDE A COPY OF THIS FORM TO THE PERSON.
- READ ALL APPLICABLE NOTICES.
- REQUEST THAT THE PERSON SUBMIT TO A TEST OR TESTS.

WILL YOU TAKE A: BREATH TEST OTHER BODILY SUBSTANCE TEST (NOT BLOOD OR URINE)

RESPONSE: Yes No

Name of Licensee

Officer Administering Testing

Date

DC-70 (Rev. 07/19)

TESTING NOTICES – BLOOD OR URINE

1. If you **refuse** to submit to and complete the test or tests, your driving privileges will be suspended for a period of one year.
2. If you **fail** a test, your driving privileges will be suspended for a period of either 30 days or one year.
3. The results of the testing may be used against you at any trial or hearing on a charge arising out of the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both.
4. After the completion of the testing, you may request and have the right to consult with an attorney and may secure additional testing.

UNDER 21 NOTICES

If the person is **UNDER 21**, read the additional notices below:

1. It is unlawful for any person less than 21 years of age to operate or attempt to operate a vehicle in this state with a breath or blood alcohol content of .02 or greater.
2. If you are less than 21 years of age at the time of the test request and submit to and complete the test or tests and the test results show an alcohol concentration of .02 or greater, but less than .08, on your first occurrence, your driving privileges will be suspended for 30 days and on your second or subsequent occurrence, your driving privileges shall be suspended for one year.

CDL NOTICES

If the person has been driving a **COMMERCIAL MOTOR VEHICLE**, read additional notice below:

1. Whenever a law enforcement officer has reasonable grounds to believe a person has been driving a commercial motor vehicle while having alcohol or other drugs in such person's system and the person refuses to submit to and complete a test or tests requested by a law enforcement officer or submits to and completes a test requested by a law enforcement officer which determines that the person's alcohol concentration is .04 or greater, the person will be disqualified from driving a commercial motor vehicle for at least one year, pursuant to Kansas law.

OFFICER INSTRUCTIONS: All tests are to be administered at the direction of a law enforcement officer and the law enforcement officer shall determine which type of test or tests to request. Keep a completed copy of this document for your file.

- PROVIDE A COPY OF THIS FORM TO THE PERSON.
- READ ALL APPLICABLE NOTICES.
- REQUEST THAT THE PERSON SUBMIT TO A TEST OR TESTS.

WILL YOU TAKE A: BLOOD TEST URINE TEST

RESPONSE: Yes No

Name of Licensee

Officer Administering Testing

Date

DC-70 (Rev. 07/19)

HOW DO WE AVOID A LICENSE SUSPENSION/RESTRICTION?

1. Avoid “conviction” for DUI in the criminal case

**** conviction for DUI is fatal for any client*

2. “Win” the administrative hearing

**** a “win” may not be necessary for an out-of-state licensee*

Alcohol Actions Chart

Alcohol Actions For Drivers Under 21

Chemical Test Result	1st Occurrence	2nd Occurrence	3rd Occurrence	4th Occurrence	5th Occurrence
BAC .02-.0799 Driving Record Code (A81)	30 Day Suspension 330 Days Interlock No Exam	1 Year Suspension No Exam	1 Year Suspension No Exam	1 Year Suspension No Exam	1 Year Suspension No Exam

Alcohol Actions For Drivers Of All Ages - BAC .08 to .1499

Chemical Test Failure	1st Occurrence	2nd Occurrence	3rd Occurrence	4th Occurrence	5th Occurrence
BAC .08 to .1499 Driving Record Code (DI6)	30 Day Suspension 6 Month or 1 Year Interlock \$200 Reinstatement Fee	1 Year Suspension 1 Year Interlock \$400 Reinstatement Fee	1 Year Suspension 2 Year Interlock \$600 Reinstatement Fee	1 Year Suspension 3 Year Interlock \$800 Reinstatement Fee	1 Year Suspension 10 Year Interlock \$800 Reinstatement Fee

DUI Conviction	1st Occurrence	2nd Occurrence	3rd Occurrence	4th Occurrence	5th Occurrence
BAC .08 to .1499 Driving Record Code (DI1)	30 Day Suspension 6 Month or 1 Year Interlock \$200 Reinstatement Fee	1 Year Suspension 1 Year Interlock \$400 Reinstatement Fee	1 Year Suspension 2 Year Interlock \$600 Reinstatement Fee	1 Year Suspension 3 Year Interlock \$800 Reinstatement Fee	1 Year Suspension 10 Year Interlock \$800 Reinstatement Fee

Vehicle Battery - With DUI Conviction	1st Occurrence	2nd Occurrence	3rd Occurrence	4th Occurrence	5th Occurrence
BAC .08 to .1499 Driving Record Code (RK2)	30 Day Suspension 6 Month or 1 Year Interlock \$200 Reinstatement Fee	1 Year Suspension 1 Year Interlock \$400 Reinstatement Fee	1 Year Suspension 2 Year Interlock \$600 Reinstatement Fee	1 Year Suspension 3 Year Interlock \$800 Reinstatement Fee	1 Year Suspension 10 Year Interlock \$800 Reinstatement Fee

Chemical Test Refusal Court Conviction	1st Occurrence	2nd Occurrence	3rd Occurrence	4th Occurrence	5th Occurrence
BAC .08 to .1499 Driving Record Code (A12)	30 Day Suspension 6 Month or 1 Year Interlock \$200 Reinstatement Fee	1 Year Suspension 1 Year Interlock \$400 Reinstatement Fee	1 Year Suspension 2 Year Interlock \$600 Reinstatement Fee	1 Year Suspension 3 Year Interlock \$800 Reinstatement Fee	1 Year Suspension 10 Year Interlock \$800 Reinstatement Fee

Alcohol Actions For Drivers Of All Ages - BAC .15 or Greater

Chemical Test Failure	1st Occurrence	2nd Occurrence	3rd Occurrence	4th Occurrence	5th Occurrence
BAC .15 or Greater Driving Record Code (A12)	1 Year Suspension 1 Year Interlock \$200 Reinstatement Fee	1 Year Suspension 2 Year Interlock \$400 Reinstatement Fee	1 Year Suspension 3 Year Interlock \$600 Reinstatement Fee	1 Year Suspension 4 Year Interlock \$800 Reinstatement Fee	1 Year Suspension 10 Year Interlock \$800 Reinstatement Fee

DUI Conviction	1st Occurrence	2nd Occurrence	3rd Occurrence	4th Occurrence	5th Occurrence
BAC .15 or Greater Driving Record Code (A16)	1 Year Suspension 1 Year Interlock \$200 Reinstatement Fee	1 Year Suspension 2 Year Interlock \$400 Reinstatement Fee	1 Year Suspension 3 Year Interlock \$600 Reinstatement Fee	1 Year Suspension 4 Year Interlock \$800 Reinstatement Fee	1 Year Suspension 10 Year Interlock \$800 Reinstatement Fee

Vehicle Battery - With DUI Conviction	1st Occurrence	2nd Occurrence	3rd Occurrence	4th Occurrence	5th Occurrence
BAC .15 or Greater Driving Record Code (RK2)	1 Year Suspension 1 Year Interlock \$200 Reinstatement Fee	1 Year Suspension 2 Year Interlock \$400 Reinstatement Fee	1 Year Suspension 3 Year Interlock \$600 Reinstatement Fee	1 Year Suspension 4 Year Interlock \$800 Reinstatement Fee	1 Year Suspension 10 Year Interlock \$800 Reinstatement Fee

Chemical Test Refusal Court Conviction	1st Occurrence	2nd Occurrence	3rd Occurrence	4th Occurrence	5th Occurrence
BAC .15 or Greater Driving Record Code (A12)	1 Year Suspension 1 Year Interlock \$200 Reinstatement Fee	1 Year Suspension 2 Year Interlock \$400 Reinstatement Fee	1 Year Suspension 3 Year Interlock \$600 Reinstatement Fee	1 Year Suspension 4 Year Interlock \$800 Reinstatement Fee	1 Year Suspension 10 Year Interlock \$800 Reinstatement Fee

Alcohol Actions For Drivers Of All Ages - Chemical Test Refusal (Administrative)

Chemical Test Refusal Administrative	1st Occurrence	2nd Occurrence	3rd Occurrence	4th Occurrence	5th Occurrence
Driving Record Code (DI8)	1 Year Suspension 2 Year Interlock \$600 Reinstatement Fee	1 Year Suspension 3 Year Interlock \$900 Reinstatement Fee	1 Year Suspension 4 Year Interlock \$1,200 Reinstatement Fee	1 Year Suspension 5 Year Interlock \$1,500 Reinstatement Fee	1 Year Suspension 10 Year Interlock \$1,500 Reinstatement Fee

TEMPORARY DRIVING PRIVILEGES & RELIEF IF SUSPENDED

Once the DC-27 is served, the licensee's driving privileges will be automatically suspended in 30-days (based upon the action chart we just looked at) **UNLESS** the licensee makes a timely request for an **administrative hearing**. (K.S.A. 8-1020(a))

The DC-27 acts as the licensee's valid license until the administrative hearing.

After the administrative hearing, if the suspension is upheld, the licensee's driving privileges will be automatically suspended in 30-days unless that administrative decision is appealed to the District Court. (see K.S.A. 8-1020(b) & (c)).

Side Note: Application for Modification of Suspension

Kansas Department of Revenue
Application to Modify Alcohol Related Suspension or Revocation
www.kstrevenue.gov

Applicant Information:

(Printed Name) _____ (Driver's License Number) _____ (Date of Birth) _____

(Current Street Address) _____ (City) _____ (State) _____ (Zip) _____

If your suspension or revocation was imposed or occurred prior to July 1, 2011, answer the question below:
Have you operated a vehicle while you were suspended or revoked? Yes No

I, the undersigned, hereby certify I have reviewed all sections of this application and am aware of and agree to the conditions of this application as detailed within the form. I acknowledge the \$100 application fee is nonrefundable. I further certify all information I have recorded on this application is true and correct.

(Signature) _____ (Date) _____

Instructions

- You may apply to the Division of Vehicles for a determination on whether you are eligible to have your alcohol or drug related suspension or revocation modified to operate a motor vehicle equipped with an Ignition Interlock device. To be eligible for this modification you must meet the following criteria, otherwise your request will be denied:
 - Include a \$100 non-refundable fee with the application
 - Your driving privileges must be suspended as provided in subsection (a), (b) or (c) of K.S.A. 2011 Supp. 8-1014, and amendments thereto
 - Your driving privileges are not currently suspended, revoked or canceled for a non-alcohol or drug related occurrence
- If your suspension or revocation was imposed or occurred prior to July 1, 2011:
 - You may apply to modify your current permanent alcohol or drug related revocation. If approved, you may receive credit for previously served suspension or revocation time served in excess of one year. The basis for suspension or revocation must spring from K.S.A. 2011 Supp. 8-1014, or amendments thereto.
 - The requirements for crediting served suspension time (exceeding the first year of suspension) against the ignition interlock restriction period, are: 1) the applicant's driving record indicates no driving by the applicant during the applicable suspension or revocation period; 2) the applicant completes this form indicating that the applicant did not drive during the applicable suspension or revocation period; and 3) the applicant pays the appropriate fee.
- You will receive written notice of your application being approved or denied. If approved, you will be required to provide proof of installation of a State-approved ignition interlock device before a restricted driving privileges are issued. If the application is denied, the reasons for the denial will be stated.
- Please be advised, any time spent serving a restriction to ignition interlock with modified driving privileges does not count towards ignition interlock periods that follow the modified period.
- If you are a commercial licensed driver and your commercial driving privileges are currently disqualified, the modification and restriction will only apply toward your regular driving privileges. Your commercial driving privileges will remain disqualified.
- If this application is denied, any subsequent application will require another nonrefundable \$100.00 application fee.
- Modifications do not apply to suspensions for drivers who are under 21 with a BAC under .08.
- Suspension and Ignition Interlock periods beginning July 1, 2011:

Table 1 - Chemical Test Failure (alcohol 15 or greater)			Table 2 - Chemical Test Failure (alcohol 10 or greater)			Table 3 - Refusal of an Evidentiary Chemical Test		
Occurrence	Suspension	Restriction	Occurrence	Suspension	Restriction	Occurrence	Suspension	Restriction
1st	30 days	6 months/yr	1st	1 year	1 year	1st	1 year	2 years
2nd	1 year	1 year	2nd	1 year	2 year	2nd	1 year	3 years
3rd	1 year	2 years	3rd	1 year	3 year	3rd	1 year	4 years
4th	1 year	3 years	4th	1 year	4 year	4th	1 year	5 years
5th or more	1 year	10 years	5th or more	1 year	10 years	5th or more	1 year	10 years

Send this application, along with the \$100 fee, to: Division of Vehicles
Driver Solutions
PO Box 12021
Topeka KS 66601-2021

DC-1015 (Rev. 08/23)

What does a request look like?

HEARING REQUESTS

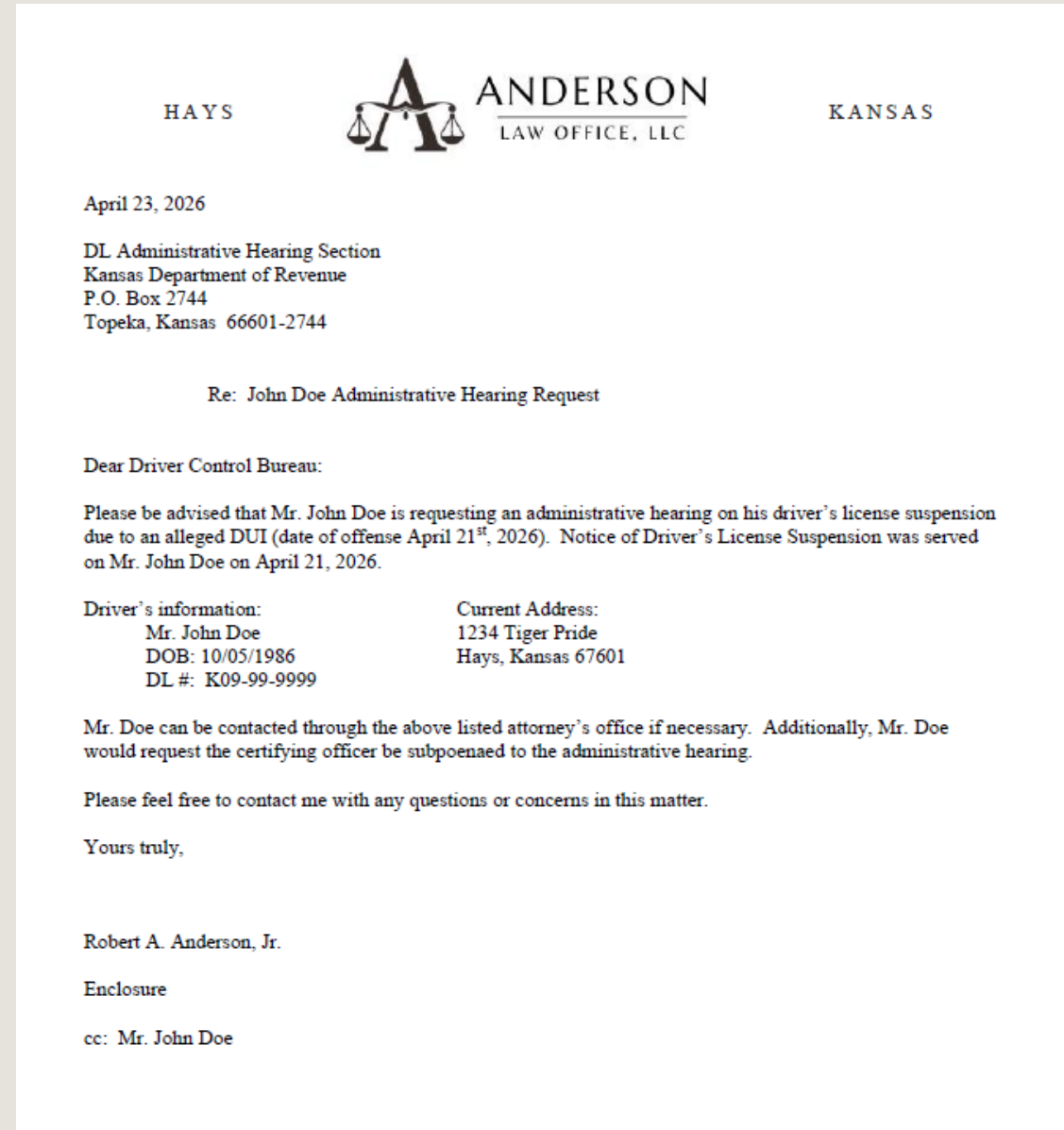
The timing of the request for an administrative hearing is critical! If mailed, the postmark must be within 14 calendar days of service of the DC-27 (“Notice of Suspension”). If faxed, it must be sent within the same 14-day window.

So, if someone calls about a DUI, **time is of the essence!**

Also very important, you must specifically request that the certifying officer be present.

See (again) K.S.A. 8-1020

See also the backside of the DC-27e



THE ADMINISTRATIVE HEARING



TIME, PLACE, & WITNESSES

*Upon receiving a request for an administrative hearing, the Kansas Department of Revenue must **forthwith** set the matter for hearing (usually 30-60 days and, inevitably when you're not available requiring you to request a continuance).*

Generally, these hearings are conducted over the telephone. Your client need not be present unless they wish to testify. It seems as though the administrative hearing officer sets these hearings for a 20-minute time slot.

By statute, the only witnesses allowed at the administrative hearing are the licensee, any officer who signed the certification form (DC-27), and “one other witness who was present at the time of the issuance of the certification and called by the licensee.” (K.S.A. 8-1020(g))

Who presides? An “Administrative Hearing Officer”, not a judge.

SO, WHAT'S THE SCOPE OF
THE HEARING?
WHAT'S AT ISSUE?

“DO NOT THINK GREAT
THOUGHTS, JUST READ
THE STATUTE” -JAMES CONCANNON

SCOPE OF HEARING

THE SCOPE OF THE ADMINISTRATIVE HEARING IS LIMITED BY STATUTE AND DIFFERS DEPENDING ON WHETHER A FAILURE OR REFUSAL IS INVOLVED, AND WHETHER A BLOOD OR BREATH TEST IS INVOLVED. SEE K.S.A. 8-1020(H)(2)(A)-(H).

REFUSALS

- (1) Did the officer have reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs; or if the driver is under 21 years of age, was the driver operating or attempting to operate a vehicle while having alcohol or other drugs in their system?
- (2) Was the person in custody or arrested, or had they been involved in a vehicular accident resulting in property damage, personal injury or death?
- (3) Was the person given proper notice, both oral and in writing, as required by K.S.A. 8-1001?
- (4) Did the person refuse to submit to and complete a requested test?

BREATH TEST FAILURES

All of the same issues as if it were a refusal, plus:

- (1) Were the testing equipment & operator certified by the Kansas Department of Health & Environment?
- (2) Were the testing procedures used in substantial compliance with the KDHE regulations?
- (3) Was the test result .08 or greater?
- (4) Was the person operating or attempting to operate a vehicle?

BLOOD TEST FAILURES

All of the same issues as if it were a refusal, plus:

- (1) Was the testing equipment and procedures reliable?
- (2) Was the person who operated the testing equipment qualified?
- (3) Was the test result .08 or greater?
- (4) Was the person operating or attempting to operate a motor vehicle?

PROHIBITED ISSUES:

If a substantive issue is not listed in the statute (K.S.A. 8-1020(h)), it cannot be raised at the hearing.

For example, in *Linenberger v. Kansas Dept. of Revenue*, 28 Kan. App.2d 794, the court held that the officer's noncompliance with the five-day notification requirement in K.S.A. 8-1002(e) cannot be addressed at the hearing because it is not one of the enumerated issues.

IMPORTANT: Constitutional challenges, such as an unlawful stop in violation of the Fourth Amendment, cannot be taken up at the Administrative Hearing. However, it can and ought to be preserved for appeal to the District Court (simply notify the administrative hearing officer at the beginning of the hearing that you know you cannot take up issues x, y, and z, but that you'd like them preserved for appeal).

BURDEN OF PROOF

The licensee has the burden of proving, by a preponderance of the evidence, that the facts set out in the officer's certification are either false or insufficient. The licensee must also show that the order of suspension and/or restriction should be dismissed.

K.S.A. 8-1020(k)



COMMON DEFENSES

STRATEGY

Look for Issues with the DC-27 & DC-70

Was the DC-27 personally served on your client?

Were they personally served by the officer who certified service on the DC-27?

Did the officer provide written AND oral notice (DC-70)?

Did they provide & read the correct notice based upon the requested test?

Was the notice used up to date? Did they read it word-for-word, or did they miss something (substantial compliance)?

Any portions of the DC-27 incorrectly marked, erroneously left blank, etc.?

Be a defense attorney!

Identify Constitutional issues and preserve them for appeal in case the suspension is upheld.

Identify and preserve a Franks Issue (contest the validity of a search warrant)

Challenge the officer's "reasonable grounds" to believe the person was under the influence when driving (post operation consumption of alcohol)

Challenge whether the officer had "probable cause" to arrest and therefore, lacked grounds to request a chemical test.

Get Lucky?

While this is not actually grounds for dismissal, often times, if the certifying officer fails to show, the hearing officer will dismiss the action.

Did the KDR get this hearing set "forthwith"? What does that mean? Has your client been prejudiced?



APPEAL RIGHTS

APPEAL TO THE DISTRICT COURT

Any order issued by the hearing officer may be appealed to the district court. This is accomplished by filing a “Petition for Review of Administrative Hearing” with the district court.

This must be done within 14-days of the effective date of the order. See K.S.A. 8-1020(p); K.S.A. 8-259.

After filing the Petition, you will have the Court generate a summons through e-flex. Both the Petition and the Summons must be served on the Kansas Department of Revenue.

Upon serving the Secretary with the petition for review, the temporary driving privileges shall be extended until the decision on the petition is final.

The hearing on appeal to the district court is de novo, and the burden of proof is on the party claiming the invalidity of the agency’s action.

Issues on appeal are limited to those raised and preserved during the administrative hearing.

Q&A



THANK
YOU!

