

# **DUI AGGRAVATING CIRCUMSTANCES (KENTUCKY) AS OF JULY 15, 2010**

## **I. Operating a Motor Vehicle:**

1. In excess of 30 mph above the speed limit;
2. In the wrong direction on a limited access highway;
3. That causes a death or a serious physical injury;
4. With a Blood Alcohol Concentration in blood or breath of .15, or higher, as measured by test(s) of a sample of the operator's blood or breath taken within two (2) hours of the cessation of the operation of the motor vehicle; and,
5. That is transporting a passenger under the age of 12.

## **II. It is also an aggravating circumstance in cases where a DUI 2<sup>nd</sup> or subsequent offense is charged<sup>1</sup> if one:**

6. Refuses to submit to any test(s) of breath, blood, or urine which are requested by an officer who has reasonable grounds to believe that the person was operating or in physical control of a motor vehicle in violation of KRS 189A.010(1) [driving while intoxicated law].

Received: \_\_\_\_\_

Date:     /     /

Attorney: \_\_\_\_\_

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<sup>1</sup> The "refusal aggravator" does NOT apply to DUI 1<sup>st</sup> offense.

*Commonwealth of Kentucky v Gaitherwright*, Ky., 70 S.W.3d 411 (2002)