



## Suggested Changes to Ignition Interlock Statutes

Submitted by the Department of Public Advocacy

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- I. *Clarify that a person who does not install an ignition interlock device is eligible for an unrestricted license at the end of the suspension and ignition interlock periods.*

### 189A.340 Ignition interlock devices and licenses.

- (1) (a) Except as provided in KRS 189A.420(4), at the time that the court revokes a person's license under any provision of KRS 189A.070, for an offense in violation of KRS 189A.010(1)(a),(b),(e), or (f), the court shall also order that, at the conclusion of the license revocation, any license the person shall be issued ***prior to the completion of the applicable ignition interlock period*** shall restrict the person to operating only a motor vehicle or motorcycle equipped with a functioning ignition interlock device.
- (b) The ignition interlock periods shall be as follows:
  1. ***For a first offense in which penalties are imposed under the provisions of KRS 189A.010(5)(a)***, ~~The first time in a five (5) year period, a functioning ignition interlock device shall be installed for a period of six (6) months, if at the time of offense, any of the aggravating circumstances listed under KRS 189A.010(11) were present while the person was operating or in physical control of a motor vehicle.~~
  2. ***For a second offense in which penalties are imposed under the provisions of KRS 189A.010(5)(b)***, ~~The second time in a five (5) year period, a functioning ignition interlock device shall be installed for a period of twelve (12) months.~~
  3. ***For a third or greater offense in which penalties are imposed under the provisions of KRS 189A.010(5)(c) or KRS 189A.010(5)(d)***, ~~The third or subsequent time in a five (5) year period, a functioning ignition interlock device shall be installed for a period of thirty (30) months.~~

*DPA Comments: DPA represents persons who are too poor to afford an attorney, and often, too poor to afford other expenditures, such as the fees necessary to install an IID and successfully complete the program. If mandatory, the IID program will result in some people never getting their license back. Thus, while wealthy persons will always one day be able to resume driving without an IID-restricted license, some poor persons never will. Though driving may be a “privilege” instead of a “right,” taking away a license permanently will have undesired consequences:*

*Rearranging of priorities: Some defendants who would have chosen to sit out the mandatory period of time requiring an IID rather than spend money going to rent, food, child support or other obligations, now may choose to forego those obligations otherwise they will never get a license back.*

*Increased time on the road: Some clients, even if they could afford an IID, cannot also afford even the most modest vehicle. (For instance, a client may have picked up a DUI charge while driving the car of a friend or other family member.) In order to get a license back, many clients who would never have tried to own a car may now try to get one through the help of friends or family, and as a result of ownership, may now be on the road more than ever before they owned a car, and if the drinking behavior has not changed by that time, this puts the community as well as the client in a worse position than before.*

*Decreased chances of employment: Especially in rural areas where people often live too far away to walk to work, the fact that they can never get a license may mean they never get a job.*

## II. Require Waiver or Reduction of Fees for Indigent Defendants

### **189A.420 Required information for issuance of hardship license -- Prerequisite to court authorization for person seeking to operate motor vehicle or motorcycle equipped with ignition interlock device -- Fees and costs.**

\* \* \*

- (6) All persons applying for an ignition interlock license shall pay a nonrefundable application fee to the Transportation Cabinet in an amount not to exceed the actual cost to the cabinet for issuing the ignition interlock license, but not to exceed two hundred dollars (\$200). **This fee shall not be waived, but shall be reduced to \$20 for defendants determined to be indigent by the court.**
- (7) The court shall require the person to pay the reasonable cost of leasing or buying, installing, servicing, and monitoring the device. If the court determines that a defendant is indigent, the court ~~may~~**shall**, based on a sliding scale established by the Supreme Court of Kentucky by rule, require the defendant to pay the costs imposed under this section in an amount that is less than the full amount of the costs associated with the lease, purchase, or installation of an ignition interlock device and associated servicing and monitoring fees. **A defendant may petition the court for a finding of indigency at**

**any time prior to the completion of the ignition interlock requirement.** If a defendant pays to an ignition interlock provider the amount ordered by the court under this subsection, the provider shall accept the amount as payment in full. Neither the Commonwealth, Transportation Cabinet, or any unit of state or local government shall be responsible for payment of any costs associated with an ignition interlock device.

*DPA Comments: Currently, the sliding scale for indigent persons is permissive, not mandatory. A change is needed, especially if the IID program is implemented as a mandatory prerequisite to getting a driver's license reinstated. If costs are not alleviated for poor persons, many clients will choose to forego getting a license and may as a result remain perpetually unemployable, particularly in rural regions of the state where homes can be many miles away from the nearest available jobs.*

III. Provide protections for defendants from unreasonable practices by providers

**189A.500 Ignition interlock devices and licenses -- Certification of devices and device providers -- Provider contract provisions.**

(1) The Transportation Cabinet shall:

(a) Issue ignition interlock license application forms and other forms necessary for the implementation of ignition interlock licenses;

(b) Create a uniform certificate of installation to be provided to a defendant by an ignition interlock provider upon installation of a certified ignition interlock device;

(c) Create an ignition interlock license for issuance to any person granted authorization by the court to receive an ignition interlock license;

(d) Certify ignition interlock devices approved for use in the Commonwealth;

**(e) Create a process by which a person with an ignition interlock license may seek review by the Cabinet of fees, conditions, or terms required by an ignition interlock device provider;**

~~(e)~~**(f)** Publish and periodically update on the Transportation Cabinet Web site a list of contact information, including a link to the Web site of each certified ignition interlock device provider, with the entity appearing first on the list changing on a statistically random basis each time a unique visitor visits the list of the approved ignition interlock installers and the approved servicing and monitoring entities; and

~~(f)~~**(g)** Promulgate administrative regulations to carry out the provisions of this section.

\* \* \*

(4) Upon June 24, 2015, any contract between the cabinet and an ignition interlock device provider shall include the following:

- (a) A requirement that the provider accept reduced payments as a full payment for all purposes from persons determined to be indigent by a court authorizing the use of an ignition interlock device pursuant to KRS 189A.420(7);
- (b) A requirement that no unit of state or local government and no public officer or employee shall be liable for the cost of purchasing or installing the ignition interlock device or associated costs;
- (c) ~~A requirement that the provider agree to a price for the cost of~~ **A specific schedule of all fees to be assessed for** leasing or purchasing an ignition interlock device and any associated servicing or monitoring fees during the duration of the contract. ~~This price~~ **The fees** shall not be increased but may be reduced during the duration of the contract;

\* \* \*

*DPA Comments: 601 KAR 2:030E Section 5(1) provides that a provider may charge a defendant for commodities and services including standard IID installation, monthly rental of an IID, scheduled device calibrations and monitoring, required insurance in case of theft, loss or damage to the IID or its components, resets necessary “due to the fault of the defendant” [as determined solely by the vendor?], missed appointments without notice, service calls and mileage up to 100 miles at the current rate and device removal. There is no method for challenging the reasonableness of the fees, whether a reset is due to the fault of the defendant, or whether there was good cause for missing an appointment without notice (e.g., hospitalization due to an accident).*

IV. *Reduce the number of mandatory calibrations at cost to the defendant*

**189A.420 Required information for issuance of hardship license -- Prerequisite to court authorization for person seeking to operate motor vehicle or motorcycle equipped with ignition interlock device -- Fees and costs.**

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- (4) Whenever the court grants authorization to apply for an ignition interlock license pursuant to this section, the court through court order, shall:
  - (a) Prohibit the person from operating any motor vehicle or motorcycle without a functioning ignition interlock device;
  - (b) Require that within **every ninety (90) days** ~~the first thirty (30) days of installation of an ignition interlock device and every sixty (60) days thereafter~~, the person shall have the device serviced pursuant to the administrative regulations promulgated by the cabinet under KRS 189A.500; and

\* \* \*

*DPA Comments: Calibrations every 60 days can be expensive. The old reg (601 KAR 2:030) provided that calibration had to be done on an IID every ninety (90) days. Why did it change?*

*Absent some evidence or authority that results obtained between 60 and 90 days after calibration were suspect, the change seems only to serve the purpose of increasing the amount of fees collected for keeping the IID in service.*

V. *Legislatively fix the “Flege” issue: Flege v. Commonwealth, \_\_\_ S.W.3d \_\_\_, 2018 WL 3672354 (Ky. App. 2018)(opinion is not final and shall not be cited as authority in any courts of the Commonwealth of Kentucky).*

**189A.400 District Sentencing Court jurisdiction over issuance of hardship license -- County attorney's review of application and right to object.**

- (1) The District Court ***in which the applicant t was sentenced*** shall have exclusive jurisdiction over the issuance of hardship licenses.
- (2) The county attorney shall review applications submitted to the District Court and may object to the issuance of a hardship license.

*DPA Comments: Flege is the case which held that the circuit court lacks jurisdiction over the issuance of ignition interlock and hardship licenses, citing KRS 189A.400(1), which vests exclusive jurisdiction over issuance of hardship licenses in the district court. Thus, even though the convicting/sentencing court may be a circuit court (because either the DUI is a 4th or greater offense, or because a misdemeanor DUI was bound up to circuit court with a felony) the circuit court lacks jurisdiction to issue orders pertaining to ignition interlock, whether to issue an order granting an IID, or to modify it in any respect. This seems unnecessary, as the sentencing court – whether it be district or circuit – will have the most knowledge of the facts of the case and be in a better position to decide issues pertinent to IID applications.*