

CHAPTER 467

(HB 366)

AN ACT relating to crimes and punishments.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 189A.005 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) "Alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath;
- (2) "Refusal" means declining to submit to any test or tests pursuant to KRS 189A.103. Declining may be either by word or by the act of refusal. If the breath testing instrument for any reason shows an insufficient breath sample and the alcohol concentration cannot be measured by the breath testing instrument, the law enforcement officer shall then request the defendant to take a blood or urine test in lieu of the breath test. If the defendant then declines either by word or by the act of refusal, he shall then be deemed to have refused *if the refusal occurs at the site at which any alcohol concentration or substance test is to be administered*; ~~and~~
- (3) When age is a factor, it shall mean age at the time of the commission of the offense;
- (4) *Unless otherwise provided, license suspensions under this chapter shall be imposed by the court. The court shall impose the applicable period of license suspension enumerated by this chapter and shall include in its order or judgment the length and terms of any suspension imposed. The license suspension shall be deemed effective on the date of entry of the court's order or judgment. The role of the Transportation Cabinet shall be limited to administering the suspension period under the terms and for the duration enumerated by the court in its order or judgment;*
- (5) *"Limited access highway" has the same meaning as "limited access facility" does in KRS 177.220;*
- (6) *"License" means any driver's or operator's license or any other license or permit to operate a motor vehicle issued under or granted by the laws of this state including:*
 - (a) *Any temporary license or instruction permit;*
 - (b) *The privilege of any person to obtain a valid license or instruction permit, or to drive a motor vehicle whether or not the person holds a valid license; and* (c) *Any nonresident's operating privilege as defined in KRS Chapters 186 or 189.*

Section 2. KRS 189A.010 is amended to read as follows:

- (1) A person shall not operate or be in physical control of a motor vehicle anywhere in this state:
 - (a) *Having an alcohol concentration of 0.08 or more as measured by a scientifically reliable test or tests of a sample of the person's breath or blood taken within two (2) hours of cessation of operation or physical control of a motor vehicle* ~~[While the alcohol concentration in his blood or breath is 0.10 or more based on the definition of alcohol concentration in KRS 189A.005];~~
 - (b) While under the influence of alcohol;

- (c) While under the influence of any other substance or combination of substances which impairs one's driving ability;
 - (d) While under the combined influence of alcohol and any other substance which impairs one's driving ability; or
 - (e) ***Having an alcohol concentration of 0.02 or more as measured by a scientifically reliable test or tests of a sample of the person's breath or blood taken within two (2) hours of cessation of operation or physical control of a motor vehicle,*** ~~While the alcohol concentration in his blood or breath is 0.02 or more based on the definition of alcohol concentration in KRS 189A.005~~ if the person is under the age of twenty-one (21).
- (2) ***With the exception of the results of the tests administered pursuant to subsection (7) of Section 8 of this Act, if the sample of the person's blood or breath that is used to determine the alcohol concentration thereof was obtained more than two (2) hours after cessation of operation or physical control of a motor vehicle, the results of the test or tests shall be inadmissible as evidence in a prosecution under paragraphs (1)(a) and (1)(e) of this section. The results of the test or tests, however, may be admissible in a prosecution under paragraphs (1)(b) and (1)(d).***
- (3) In any prosecution for a violation of subsection (1)(b) or (d) of this section in which the defendant is charged with having operated or been in physical control of a motor vehicle while under the influence of alcohol, the alcohol concentration in the defendant's blood as determined at the time of making analysis of his blood or breath shall give rise to the following presumptions:
- (a) If there was an alcohol concentration of less than 0.05 based upon the definition of alcohol concentration in KRS 189A.005, it shall be presumed that the defendant was not under the influence of alcohol; and
 - (b) If there was an alcohol concentration of 0.05 or greater but less than ***0.08***~~0.10~~ based upon the definition of alcohol concentration in KRS 189A.005, that fact shall not constitute a presumption that the defendant either was or was not under the influence of alcohol, but that fact may be considered, together with other competent evidence, in determining the guilt or innocence of the defendant.

The provisions of this subsection shall not be construed as limiting the introduction of any other competent evidence bearing upon the questions of whether the defendant was under the influence of alcohol or other substances, in any prosecution for a violation of subsection (1)(b) or (d) of this section.

- ~~(4)(3)~~ The fact that any person charged with violation of subsection (1) of this section is legally entitled to use any substance, including alcohol, shall not constitute a defense against any charge of violation of subsection (1) of this section.
- ~~(5)(4)~~ —Any person who violates the provisions of paragraphs (a), (b), (c), or (d) of subsection (1) of this section shall:
- (a) For the first offense within a five (5) year period, be fined not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500) or be imprisoned in the county jail for not less than forty-eight (48) hours nor more than thirty (30) days or both. ~~If the person has a blood or breath alcohol concentration of 0.18 or higher, he or she shall be~~

~~sentenced to at least seven (7) days' imprisonment, but the court may probate five (5) of those days.~~ Following sentencing, the defendant may apply to the judge for permission to enter a community labor program for not less than forty-eight (48) hours nor more than thirty (30) days in lieu of fine or imprisonment, or both. ***If any of the aggravating circumstances listed in subsection (11) of this section are present while the person was operating or in physical control of a motor vehicle, the mandatory minimum term of imprisonment shall be four (4) days, which term shall not be suspended, probated, conditionally discharged, or subject to any other form of early release.***

- (b) For the second offense within a five (5) year period, be fined not less than three hundred fifty dollars (\$350) nor more than five hundred dollars (\$500) and shall be imprisoned in the county jail for not less than seven (7) days nor more than six (6) months and, in addition to fine and imprisonment, may be sentenced to community labor for not less than ten (10) days nor more than six (6) months. ***If any of the aggravating circumstances listed in subsection (11) of this section are present, the mandatory minimum term of imprisonment shall be fourteen (14) days, which term shall not be suspended, probated, conditionally discharged, or subject to any other form of early release.***
 - (c) ~~[(If the alcohol concentration is below 0.18,)]~~ For a third offense within a five (5) year period, be fined not less than five hundred dollars (\$500) nor more than one thousand (\$1,000) and shall be imprisoned in the county jail for not less than thirty (30) days nor more than twelve (12) months and may, in addition to fine and imprisonment, be sentenced to community labor for not less than ten (10) days nor more than twelve (12) months. ***If any of the aggravating circumstances listed in subsection (11) of this section are present, the mandatory minimum term of imprisonment shall be sixty (60) days, which term shall not be suspended, probated, conditionally discharged, or subject to any other form of early release.*** ~~[(If the alcohol concentration is 0.18 or above, he or she shall be guilty of a Class D felony).]~~
 - (d) For a fourth or subsequent offense within a five (5) year period, be guilty of a Class D felony. ***If any of the aggravating circumstances listed in subsection (11) of this section are present, the mandatory minimum term of imprisonment shall be two hundred forty (240) days, which term shall not be suspended, probated, conditionally discharged, or subject to any other form of release.***
 - (e) For purposes of this subsection, prior offenses shall include all convictions in this state, and any other state, or jurisdiction for operating or being in control of a motor vehicle while under the influence of alcohol or other substances that impair one's driving ability, or any combination of alcohol and such substances, or while having an unlawful alcohol concentration, or driving while intoxicated, but shall not include convictions for violating subsection (1)(e) of this section. A court shall receive as proof of a prior conviction a copy of that conviction, certified by the court ordering the conviction.
- ~~(6)(5)]~~ Any person who violates the provisions of subsection (1)(e) of this section shall have his driving privilege or operator's license suspended by the court for a period of no less than thirty (30) days but no longer than six (6) months, and the person shall be fined no less than one hundred dollars (\$100) and no more than five hundred dollars (\$500), or sentenced to twenty (20) hours of community service in lieu of a fine. A person subject to the penalties of this paragraph shall not be subject to the penalties established in subsection ~~(5)(4)]~~ of this section

or any other penalty established pursuant to KRS Chapter 189A, *except those established in subsection (1) of Section 3 of this Act.*

- (7)~~(6)~~ If the person is under the age of twenty-one (21) and there was an alcohol concentration of **0.08**~~0.10~~ or greater based on the definition of alcohol concentration in KRS 189A.005, the person shall be subject to the penalties established pursuant to subsection (5)~~(4)~~ of this section.
- (8)~~(7)~~ For a second or third offense within a five (5) year period, the minimum sentence of imprisonment or community labor shall not be suspended, probated, or subject to conditional discharge or other form of early release. For a fourth or subsequent offense under this section, the minimum term of imprisonment shall be one hundred twenty (120) days, and this term shall not be suspended, probated, or subject to conditional discharge or other form of early release. For a second or subsequent offense, at least forty-eight (48) hours of the mandatory sentence shall be served consecutively.
- (9)~~(8)~~ When sentencing persons under subsection (5)~~(4)~~(a) of this section at least one (1) of the penalties shall be assessed and that penalty shall not be suspended, probated, or subject to conditional discharge or other form of early release.
- (10)~~(9)~~ In determining the five (5) year period under this section, the period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered.
- (11) *For purposes of this section, aggravating circumstances are any one (1) or more of the following:*
- (a) *Operating a motor vehicle in excess of thirty (30) miles per hour above the speed limit;*
 - (b) *Operating a motor vehicle in the wrong direction on a limited access highway;*
 - (c) *Operating a motor vehicle that causes an accident resulting in death or serious physical injury as defined in KRS 500.080;*
 - (d) *Operating a motor vehicle while the alcohol concentration in the operator's blood or breath is 0.18 or more as measured by a test or tests of a sample of the operator's blood or breath taken within two (2) hours of cessation of operation of the motor vehicle;*
 - (e) *Refusing to submit to any test or tests of one's blood, breath, or urine requested by an officer having reasonable grounds to believe the person was operating or in physical control of a motor vehicle in violation of subsection (1) of this section; and*
 - (f) *Operating a motor vehicle that is transporting a passenger under the age of twelve (12) years old.*
- (12)~~(10)~~ Any person who violates the provisions of subsection (1) of this section shall be assessed twenty dollars (\$20) in addition to the fines imposed by subsections (5)~~(4)~~ and (6)~~(5)~~ of this section. Funds collected pursuant to this subsection shall be deposited in the traumatic brain injury trust fund, created pursuant to KRS 211.476, within fourteen (14) days after the end of each quarter, to be used for the purposes set forth in KRS 211.470 to 211.478.

Section 3. KRS 189A.040 is amended to read as follows:

- (1) In addition to any other penalty prescribed by subsection ~~(5)(4)~~(a) *or* (6) of KRS 189A.010, the court shall sentence the person to attend an alcohol or substance abuse education or treatment program subject to the following terms and conditions for a first offender *or a person convicted under subsection (1)(e) of Section 2 of this Act*:
 - (a) The treatment or education shall be for a period of ninety (90) days and the program shall provide an assessment of the defendant's alcohol or other substance abuse problems, which shall be performed at the start of the program.
 - (b) Each defendant shall pay the cost of the education or treatment program up to his ability to pay but no more than the actual cost of the treatment.
 - (c) Upon written report to the court by the administrator of the program that the defendant has completed the program recommended by the administrator based upon the assessment of the defendant, the defendant ~~shall~~*may* be released prior to the expiration of the ninety (90) day period.
 - (d) Failure to complete the education or treatment program or to pay the amount specified by the court for education or treatment shall constitute contempt, and the court shall, in addition to any other remedy for contempt, reinstitute all penalties which were previously imposed but suspended or delayed pending completion of the education or treatment program.
- (2) In addition to any other penalty prescribed by subsection ~~(5)(4)~~(b) of KRS 189A.010, the court shall sentence the person to an alcohol or substance abuse treatment program subject to the following terms and conditions for a second offender:
 - (a) The sentence shall be for a period of one (1) year and the program shall provide an assessment of the defendant's alcohol or other substance abuse problems, which shall be performed at the start of the program.
 - (b) Each defendant shall pay the cost of the treatment program up to his ability to pay but no more than the actual cost of the treatment.
 - (c) Upon written report to the court by the administrator of the program that the defendant has completed the program recommended by the administrator based upon the assessment of the defendant, the defendant may be released prior to the expiration of the one (1) year period.
 - (d) Failure to complete the treatment program or to pay the amount specified by the court for treatment shall constitute contempt of court and the court shall, in addition to any other remedy for contempt, reinstitute all penalties which were previously imposed but suspended or delayed pending the completion of the treatment program.
- (3) In addition to any other penalty prescribed by subsection ~~(5)(4)~~(c) or (d) of KRS 189A.010, the court shall sentence the person to an alcohol or substance abuse treatment program subject to the following terms and conditions for a third or subsequent offender:
 - (a) The sentence shall be for a period of one (1) year and the program shall provide an assessment of the defendant's alcohol or other substance abuse problems, which shall be performed at the start of the program. The program may be an inpatient or residential-type program.

- (b) Each defendant shall pay the cost of the treatment program up to his ability to pay but no more than the actual cost of the program.
 - (c) A defendant, upon written recommendation to the court by the administrator of the program, may be released from the inpatient or residential program prior to the expiration of one (1) year but shall be retained in the program on an outpatient basis for the remainder of the year period.
 - (d) Failure to complete the treatment program or to pay the amount specified by the court for treatment shall constitute contempt of court, and the court shall, in addition to any other remedy for contempt, reinstitute all penalties which were previously imposed but suspended or delayed pending completion of the treatment program.
- (4) Costs of treatment or education programs which are paid from the service fee established by KRS 189A.050, or from state or federal funds, or any combination thereof, shall be deducted from the amount which the defendant must pay.
 - (5) For the purposes of this section, "treatment" means service in an alcohol or substance abuse education or treatment program or facility licensed, regulated, and monitored by the Cabinet for Health Services for services as required under this section.
 - (6) The Cabinet for Health Services shall promulgate administrative regulations for the licensure of education and treatment facilities and programs for offenders receiving education or treatment under this section. The criteria developed by the Cabinet for Health Services shall include:
 - (a) Manner of assessment;
 - (b) Appropriate education and treatment plans; and (c) Referrals to other treatment providers.
 - (7) The participating facilities and programs shall be required to abide by these standards and shall report completion to the Transportation Cabinet. Upon request, the facility or program shall report to the courts regarding the progress of offenders being treated pursuant to this section.
 - (8) Administrative decisions regarding the licensure of education and treatment facilities and programs may be appealed, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 4. KRS 189A.050 is amended to read as follows:

- (1) All persons convicted of violation of KRS 189A.010(1)(a), (b), (c), or (d) shall be sentenced to pay a service fee of two hundred *fifty* dollars (**\$250**)[~~(\$200)~~], which shall be in addition to all other penalties authorized by law.
- (2) The fee shall be imposed in all cases but shall be subject to the provisions of KRS 534.020 relating to the method of imposition and KRS 534.060 as to remedies for nonpayment of the fee.
- (3) The *revenue collected from the* service fee *imposed by this section* shall be utilized~~[to fund enforcement of this chapter and for the support of jails, recordkeeping, treatment and education programs authorized by this chapter, and the Department of Public Advocacy.]~~ *as follows:*

- (a) ***Fifteen percent (15%) of the amount collected shall be transferred to the Kentucky State Police forensic laboratory for the acquisition, maintenance, testing, and calibration of alcohol concentration testing instruments and the training of laboratory personnel to perform these tasks;***
- (b) ~~[(4)]~~ Twenty-five percent (25%) of the service fee collected pursuant to this section shall be allocated to the Department of Public Advocacy; ~~[- These funds shall be placed in a special trust and agency account for the Department of Public Advocacy, and the funds]~~
- (c) ***One percent (1%) shall be transferred to the Prosecutor's Advisory Council for training of prosecutors for the prosecution of persons charged with violations of this chapter and for obtaining expert witnesses in cases involving the prosecution of persons charged with violations of this chapter or any other offense in which driving under the influence is a factor in the commission of the offense charged;***
- (d) ***Any amount specified by a specific statute shall be transferred as provided in that statute; and***
- (e) ***The remainder of the service fee shall be utilized to fund enforcement of this chapter and for the support of jails, recordkeeping, treatment, and educational programs authorized by this chapter and by the Department of Public Advocacy.***
- (4) ***The amounts specified in paragraphs (a), (b), and (c) of subsection (3) of this section shall be placed in trust and agency accounts that shall not lapse.***

Section 5. KRS 189A.070 is amended to read as follows:

- (1) Unless the person is under eighteen (18) years of age, in addition to the penalties specified in KRS 189A.010, a person convicted of violation of KRS 189A.010(1)(a), (b), (c), or (d) shall have his license to operate a motor vehicle or motorcycle revoked by the court as follows:
- (a) For the first offense within a five (5) year period, ***for a period of not less than thirty (30) days nor more than one hundred twenty (120)***~~[(ninety)]~~ days;
- (b) For the second offense within a five (5) year period, ***for a period of not less than twelve (12) months nor more than eighteen (18) months;***
- (c) For a third offense within a five (5) year period, ***for a period of not less than twentyfour (24) months nor more than thirty-six (36) months;*** and
- (d) For a fourth or subsequent offense within a five (5) year period, sixty (60) months.
- (e) For purposes of this section, "offense" shall have the same meaning as described in KRS 189A.010~~(5)~~~~[(4)]~~(e).
- (2) In determining the five (5) year period under this section, the period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered.
- (3) In addition to the period of license revocation set forth in subsection (1) of this section, no person shall be eligible for reinstatement of his privilege to operate a motor vehicle until he has completed the alcohol or substance abuse education or treatment program ordered pursuant to KRS 189A.040.
- (4) A person under the age of eighteen (18) who is convicted of violation of KRS 189A.010(1)(a), (b), (c), or (d) shall have his license revoked by the court until he reaches

the age of eighteen (18) or shall have his license revoked as provided in subsection (1) of this section, whichever penalty will result in the longer period of revocation.

- (5) Licenses revoked pursuant to this chapter shall forthwith be surrendered to the court upon conviction. The court shall transmit the conviction records, and other appropriate information to the Transportation Cabinet. A court shall not waive or stay this procedure.
- (6) Should a person convicted under this chapter whose license is revoked fail to surrender it to the court upon conviction, the court shall issue an order directing the sheriff or any other peace officer to seize the license forthwith and deliver it to the court.

Section 6. KRS 189A.080 is amended to read as follows:

~~[(1)]~~ All licenses suspended or revoked pursuant to **subsection (6) of Section 2 of this Act**, KRS~~[189A.060 or]~~ 189A.070~~[(1)]~~, **or Sections 10, 13, or 14 of this Act** shall be surrendered to the court **and forwarded to the Transportation Cabinet**.~~[Other revocations pursuant to this chapter shall be administered by the Transportation Cabinet.]~~

~~(2) The court shall retain control of the license until such time as the suspension or revocation imposed pursuant to KRS 189A.060 or 189A.070(1) is lifted and the court shall provide notification of the suspension and actions taken within five (5) days to the Transportation Cabinet.~~

~~(3) At the end of the period of license suspension or revocation, imposed pursuant to KRS 189A.060 or 189A.070(1), the person whose license was suspended or revoked may apply to the circuit clerk for reinstatement of the license. If all requirements of KRS Chapter 186 have been met and the license has not been suspended or revoked by the Transportation Cabinet for other reasons, the license shall be returned.]~~

Section 7. KRS 189A.090 is amended to read as follows:

- (1) No person shall operate ***or be in physical control of*** a motor vehicle while his license is revoked or suspended ***under Section 5 of this Act, subsection (6) of Section 2 of this Act, Sections 10, 13, or 14 of this Act, or operate or be in physical control of a motor vehicle without a functioning ignition interlock device in violation of subsection (1) of Section 28 of this Act***~~[for violation of KRS 189A.010, nor shall any person who has no motor vehicle or motorcycle operator's license operate a motor vehicle while his privilege to operate a motor vehicle has been revoked or suspended for a violation of KRS 189A.010].~~
- (2) ***In addition to any other penalty imposed by the court***, any person who violates subsection (1) of this section shall:
 - (a) For a first offense ***within a five (5) year period***, be guilty of a Class B misdemeanor ***and have his license revoked by the court for six (6) months, unless at the time of the offense the person was also operating or in physical control of a motor vehicle in violation of paragraphs (a), (b), (c), or (d) of subsection (1) of Section 2 of this Act, in which event he shall be guilty of a Class A misdemeanor and have his license revoked by the court for a period of one (1) year;***
 - (b) For a second offense ***within a five (5) year period***, be guilty of a Class A misdemeanor ***and have his license revoked by the court for one (1) year, unless at the time of the offense the person was also operating or in physical control of a motor vehicle in violation of paragraphs (a), (b), (c), or (d) of subsection (1) of Section 2 of this Act,***

in which event he shall be guilty of a Class D felony and have his license revoked by the court for a period of two (2) years;

- (c) For a third or subsequent offense *within a five (5) year period*, be guilty of a Class D felony *and have his license revoked by the court for two (2) years, unless at the time of the offense the person was also operating or in physical control of a motor vehicle in violation of paragraphs (a), (b), (c), or (d) of subsection (1) of Section 2 of this Act, in which event he shall be guilty of a Class D felony and have his license revoked by the court for a period of five (5) years.*

- (3) *The five (5) year period under this section shall be measured in the same manner as in Section 5 of this Act.* ~~In addition to the penalties above his operator's license shall be revoked for twice the original period of revocation.~~ Section 8. KRS 189A.103 is amended to read as follows:

The following provisions shall apply to any person who operates or is in physical control of a motor vehicle or a vehicle that is not a motor vehicle in this Commonwealth:

- (1) He ~~has [is deemed to have]~~ given his consent to one (1) or more tests of his blood, breath, and urine, or combination thereof, for the purpose of determining alcohol concentration or presence of a substance which may impair one's driving ability, if ***an officer has reasonable grounds to believe that*** ~~[arrested for any offense arising out of]~~ a violation of KRS 189A.010(1) or 189.520(1) ***has occurred.***
- (2) Any person who is dead, unconscious, or otherwise in a condition rendering him incapable of refusal is deemed not to have withdrawn the consent provided in subsection (1) of this section, and the test may be given.
- (3) The breath, blood, and urine tests administered pursuant to this section shall be administered at the direction of a peace officer having reasonable grounds to believe the person has committed a violation of KRS 189A.010(1) or 189.520(1).
 - (a) Tests of the person's breath, blood, or urine, to be valid pursuant to this section, shall have been performed according to the administrative regulations promulgated by the secretary of the Justice Cabinet, ***and shall have been performed, as to breath tests, only after a peace officer has had the person under personal observation at the location of the test for a minimum of twenty (20) minutes.***
 - (b) All breath tests shall be administered by a peace officer holding a certificate, as an operator of a breath analysis instrument, issued by the secretary of the Justice Cabinet or his designee.
- (4) A breath test shall consist of a test which is performed in accordance with the manufacturer's instructions for the use of the instrument. ***The secretary of the Justice Cabinet shall keep available for public inspection copies of these manufacturer's instructions for all models of breath testing devices in use by the Commonwealth of Kentucky.***
- (5) When the preliminary breath test, breath test, or other evidence gives the peace officer reasonable grounds to believe there is impairment by a substance which is not subject to testing by a breath test, then blood or urine tests, or both, may be required in addition to a breath test, or in lieu of a breath test.

- (6) Only a physician, registered nurse, phlebotomist, medical technician, or medical technologist not otherwise prohibited by law can withdraw any blood of any person submitting to a test under this section.
- (7) ***After the person has submitted to all alcohol concentration tests and substance tests requested by the officer*** the person tested shall be permitted to have a person listed in subsection (6) of this section of his own choosing administer a test or tests in addition to any tests administered at the direction of the peace officer. Tests conducted under this section shall be conducted within a reasonable length of time. Provided, however, the nonavailability of the person chosen to administer a test or tests in addition to those administered at the direction of the peace officer within a reasonable time shall not be grounds for rendering inadmissible as evidence the results of the test or tests administered at the direction of the peace officer.

Section 9. KRS 189A.105 is amended to read as follows:

- (1) ~~A person's~~[No person shall be compelled to submit to any test or tests specified in KRS 189A.103, but his] refusal to submit to~~[such]~~ tests ***under Section 8 of this Act*** shall result in revocation of his driving privilege as provided in this chapter.
- (2) (a) At the time a breath, blood, or urine test is requested, the person shall be informed:
1. That, if the person refuses to submit to such tests, ***the fact of this refusal may be used against him in court as evidence of violating Section 2 of this Act and will result in revocation of his driver's license, and if the person refuses to submit to the tests and is subsequently convicted of violating subsection (1) of Section 2 of this Act then he will be subject to a mandatory minimum jail sentence which is twice as long as the mandatory minimum jail sentence imposed if he submits to the tests, and that if the person refuses to submit to the tests he will be unable to obtain a hardship license***~~[person's privilege to drive shall be revoked for a period of six (6) months, or more, pursuant to this chapter];~~ and
 2. That, if a test is taken, ***the results of the test may be used against him in court as evidence of violating subsection (1) of Section 2 of this Act, and that if the results of the test are 0.18 or above and the person is subsequently convicted of violating subsection (1) of Section 2 of this Act, then he will be subject to a sentence that is twice as long as the mandatory minimum jail sentence imposed if the results are less than 0.18***~~[and the results indicate that the person has an alcohol concentration of 0.10 or greater, or, if the person is under the influence of alcohol or a substance that impairs one's driving ability or a combination of alcohol and such substance, the person shall be subject to criminal penalties and the person's driving license shall be revoked for a period of at least ninety (90) days];~~ and
 3. That ***if the person first submits to the requested alcohol and substance tests***, the person has the right to have a test or tests of his blood performed by a person of his choosing described in KRS 189A.103 within a reasonable time of his arrest at the expense of the person arrested.
- (b) Nothing in this subsection shall be construed to prohibit a judge of a court of competent jurisdiction from issuing a search warrant or other court order requiring a blood or urine test, or a combination thereof, of a defendant charged with a violation

of KRS 189A.010, or other statutory violation arising from the incident, when a person is killed or suffers physical injury, as defined in KRS 500.080, as a result of the incident in which the defendant has been charged.

- (3) *During the period immediately preceding the administration of any test, the person shall be afforded an opportunity of at least ten (10) minutes but not more than fifteen (15) minutes to attempt to contact and communicate with an attorney, and shall be informed of this right. Inability to communicate with an attorney during this period shall not be deemed to relieve the person of his obligation to submit to the tests and the penalties specified by Section 2 of this Act and Section 10 of this Act shall remain applicable to the person upon refusal. Nothing in this section shall be deemed to create a right to have an attorney present during the administration of the tests, but the person's attorney may be present if the attorney can physically appear at the location where the test is to be administered within the time period established in this section.*
- (4) *Immediately following the administration of the final test requested by the officer, the person shall again be informed of his right to have a test or tests of his blood performed by a person of his choosing described in Section 8 of this Act within a reasonable time of his arrest at the expense of the person arrested. He shall then be asked "Do you want such a test?" The officer shall make reasonable efforts to provide transportation to the tests.*

Section 10. KRS 189A.107 is amended to read as follows:

- (1) *A person who refuses to submit to an alcohol concentration or substance test requested by an officer having reasonable grounds to believe that the person violated subsection (1) of Section 2 of this Act shall have his driver's license suspended by the court during the pendency of the action under Section 13 of this Act*~~[Except as provided in KRS 189A.220(2), suspensions for refusal to take an alcohol concentration or substance test shall be as follows:~~
 - ~~(a) — For a first refusal in a five (5) year period, six (6) months;~~
 - ~~(b) — For a second refusal within a five (5) year period, eighteen (18) months;~~
 - ~~(c) — For a third refusal within a five (5) year period, thirty six (36) months; and~~
 - ~~(d) — For a fourth or subsequent offense within a five (5) year period, sixty (60) months].~~
- (2) *In the event a defendant is not convicted of a violation of KRS 189A.010(1) in a case in which it is alleged that he refused to take an alcohol concentration or substance test, upon motion of the attorney for the Commonwealth, the court shall conduct a hearing, without a jury, to determine by clear and convincing evidence if the person actually refused the testing. However, the hearing shall not be required if the court has made a previous determination of the issue at a hearing held under Sections 13 and 14 of this Act. If the court finds that the person did refuse to submit to the testing, the court shall suspend the person's driver's license for a period of time within the time range specified that the license would have been suspended upon conviction as set forth in subsection (1) of Section 5 of this Act*~~[the court's final judgment shall impose the penalty required by this section. Except as provided in KRS 189A.220(2), in the event a defendant is convicted of a violation of KRS 189A.010(1), the final judgment shall impose the license revocation penalty required by this section or the license penalty revocation required for the conviction, whichever is longer].~~

Section 11. KRS 189A.120 is amended to read as follows:

- (1) When an alcohol concentration for a person twenty-one (21) years of age or older in a prosecution for violation of KRS 189A.010 is ~~0.08[0.10]~~ or above, is 0.02 or above for a person under the age of twenty-one (21), or when the defendant, regardless of age, has refused to take an alcohol concentration or substance test, a prosecuting attorney shall not agree to the amendment of the charge to a lesser offense and shall oppose the amendment of the charge at trial, unless all prosecution witnesses are, and it is expected they will continue to be, unavailable for trial.
- (2) A prosecuting attorney shall not amend a blood alcohol concentration, and he shall oppose the amendment of the percentage, unless uncontroverted scientific evidence is presented that the test results were in error. In the cases the prosecutor shall state his reasons for agreeing with the amendment, and the scientific data upon which the amendment was made shall be made a part of the record in this case.
- (3) The record of charges and disposition thereof, including reasons for amending the charges, shall be transmitted by the court to the Justice Cabinet for inclusion in the centralized criminal history record information system under KRS 17.150.

Section 12. KRS 189.520 is amended to read as follows:

- (1) No person under the influence of intoxicating beverages or any substance which may impair one's driving ability shall operate a vehicle that is not a motor vehicle anywhere in this state.
- (2) No peace officer or State Police officer shall fail to enforce rigidly this section.
- (3) In any criminal prosecution for a violation of subsection (1) of this section, wherein the defendant is charged with having operated a vehicle which is not a motor vehicle while under the influence of intoxicating beverages, the alcohol concentration, as defined in KRS 189A.005, in the defendant's blood as determined at the time of making an analysis of his blood, urine, or breath, shall give rise to the following presumptions:
 - (a) If there was an alcohol concentration of less than 0.05, it shall be presumed that the defendant was not under the influence of alcohol;
 - (b) If there was an alcohol concentration of 0.05 or greater but less than ~~0.08[0.10]~~, such fact shall not constitute a presumption that the defendant either was or was not under the influence of alcohol, but such fact may be considered, together with other competent evidence, in determining the guilt or innocence of the defendant;
 - (c) If there was an alcohol concentration of ~~0.08[0.10]~~ or more, it shall be presumed that the defendant was under the influence of alcohol.
- (4) The provisions of subsection (3) of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether the defendant was under the influence of intoxicating beverages.

Section 13. KRS 189A.200 is amended to read as follows:

- (1) ~~[In addition to the pretrial suspension of a motor vehicle operator's license authorized by KRS 189A.060,]~~The court shall at the arraignment or as soon as such relevant information becomes available suspend the motor vehicle operator's license and motorcycle operator's license and driving privileges of any person charged with a violation of KRS 189A.010(1)~~[(a), (b), (c), or (d)]~~ who:

- (a) Has refused to take an alcohol concentration or substance test as reflected on the uniform citation form;~~[-or]~~
 - (b) Has been convicted of one (1) or more prior offenses as described in KRS 189A.010(5)~~[(4)]~~(e) or has had his operator's license revoked or suspended on one (1) or more occasions for refusing to take an alcohol concentration or substance test, in the five (5) year period immediately preceding his arrest; *or*
 - (c) ***Was involved in an accident that resulted in death or serious physical injury as defined in KRS 500.080 to a person other than the defendant.***
- (2) Persons whose licenses have been suspended pursuant to this section may file a motion for judicial review of the suspension, and the court shall conduct the review in accordance with this chapter within thirty (30) days after the filing of the motion. The court shall, at the time of the suspension, advise the defendant of his rights to the review.
 - (3) When the court orders the suspension of a license pursuant to this section, the defendant shall immediately surrender the license to the Circuit Court clerk, and the court shall retain the defendant in court or remand him into the custody of the sheriff until the license is produced and surrendered. If the defendant has lost his operator's license, other than due to a previous suspension or revocation, which is still in effect, the sheriff shall take him to the office of the circuit clerk so that a new license can be issued. If the license is currently under suspension or revocation, the provisions of this subsection shall not apply.
 - (4) The Circuit Court clerk shall ***forthwith transmit to the Transportation Cabinet***~~[-retain]~~ any license surrendered to him pursuant to this section~~[-until]~~:
 - (a) ~~The court enters an order directing the return of the license to the defendant;~~
 - (b) ~~In the event of a first offense charge not involving a refusal by the defendant to take an alcohol concentration or substance test, for a violation of KRS 189A.010(1)(a), (b), (c), or (d), ninety (90) days have elapsed since the surrender of the license and the case has not been concluded;~~
 - (c) ~~In the event of a second offense charge not involving a refusal by the defendant to take an alcohol concentration or substance test, for a violation of KRS 189A.010(1)(a), (b), (c), or (d), twelve (12) months have elapsed since the surrender of the license and the case has not been concluded;~~
 - (d) ~~In the event of a third offense charge not involving a refusal by the defendant to take an alcohol concentration or substance test, for a violation of KRS 189A.010(1)(a), (b), (c), or (d), twenty-four (24) months have elapsed since the surrender of the license and the case has not been concluded;~~
 - (e) ~~In the event of a fourth or subsequent offense charge not involving a refusal by the defendant to take an alcohol concentration or substance test, for a violation of KRS 189A.010(1)(a), (b), (c), or (d), sixty (60) months have elapsed since the surrender of the license and the case has not been concluded;~~
 - (f) ~~In the event of a charge involving a refusal by the defendant to take an alcohol concentration or substance test, for a violation of KRS 189A.010(1)(a), (b), (c), or (d), the period specified by KRS 189A.107 has elapsed since the surrender of the license and the case has not been concluded;~~

- (g) ~~A judgment of acquittal is entered in the case unless the applicable suspension period required by KRS 189A.107 has not expired; or~~
- (h) ~~A judgment of conviction for a violation of KRS 189A.010(1)(a), (b), (c), or (d) is entered in the case, whereupon the clerk shall transmit the license forthwith to the Department of Transportation].~~

- (5) *Licenses suspended under this section shall remain suspended until a judgment of conviction or acquittal is entered in the case or until the court enters an order terminating the suspension, but in no event for a period longer than the maximum license suspension period applicable to the person under Sections 5 and 10 of this Act*~~[The clerk shall promptly notify the Department of Transportation of all licenses surrendered pursuant to this section].~~
- (6) Any person whose operator's license has been suspended pursuant to this section shall be given credit for all pretrial suspension time against the period of revocation imposed. *Licenses suspended under this section shall remain suspended until a judgment of conviction or acquittal is entered in the case or until the court enters an order terminating the suspension, but in no event for a period longer than the maximum license suspension period applicable to the person under Sections 5 and 10 of this Act*~~[upon conviction].~~

Section 14. KRS 189A.220 is amended to read as follows:

~~{(1)—}~~In any judicial review of a pretrial suspension imposed for refusal to take an alcohol concentration or substance test, if the court determines, by the preponderance of the evidence, that:

- ~~(1){(a)}~~The person was charged and arrested by a peace officer with violation of KRS 189A.010(1);
- ~~(2){(b)}~~The officer had reasonable grounds to believe that the person was operating or in physical control of a motor vehicle in violation of KRS 189A.010(1);
- ~~(3){(c)}~~—The person was advised of the implied consent law pursuant to KRS 189A.103;
- ~~(4){(d)}~~The peace officer requested the person to take the test or tests pursuant to KRS 189A.103; and then
- ~~(5){(e)}~~The person refused to take a test requested by a peace officer pursuant to KRS 189A.103, then the court shall continue the suspension of the person's operator's license or privilege to operate a motor vehicle *during the pendency of the proceedings*.

~~{(2)—}~~If there is a conviction prior to a judicial review of a pretrial suspension for refusal to take an alcohol concentration or substance test, then the period of revocation applicable to the conviction shall apply.]

SECTION 15. A NEW SECTION OF KRS CHAPTER 189A IS CREATED TO READ AS FOLLOWS:

In any judicial review of a pretrial suspension imposed under subsection (1)(c) of Section 13 of this Act, if the court determines by a preponderance of the evidence that:

- (1) *The person was charged and arrested by a peace officer with violation of Section 2 of this Act;*
- (2) *The officer had reasonable grounds to believe that the person was operating or in physical control of a motor vehicle in violation of Section 2 of this Act;*
- (3) *There is probable cause to believe that the person committed the violation of subsection (1) of Section 2 of this Act as charged; and*

- (4) *There is probable cause to believe that the person was involved in an accident that resulted in death or serious physical injury as defined in KRS 500.080 to a person other than the defendant;*

then the court shall continue the suspension of the person's operator's license or privilege to operate a motor vehicle during the pendency of the proceedings.

Section 16. KRS 189A.310 is amended to read as follows:

- (1) A court may, upon application of the defendant, *or attorney for the Commonwealth or upon its own motion*~~[and with notice to the Transportation Cabinet, which shall be a party]~~, and if the facts of the case so indicate, order that a prior conviction *not meeting applicable case law regarding admissibility of a prior conviction* cannot be used to enhance *criminal* penalties *including*~~[or]~~ license suspensions or revocations, or for other purposes for which such a conviction might be used.
- (2)~~[~~Determinations pursuant to this section shall be made in strict conformity to the requirements of *Boykin v. Alabama*, 395 U.S. 238 (1969), and the requirements of that case shall not be expanded upon unless later applicable case law so dictates.
- (3)~~]~~ The provisions of this section shall not apply to a case in which the prior conviction has not been subject to final judgment, or is under appeal at the time the defendant makes his application pursuant to subsection (1).
- (4)~~]~~ The Transportation Cabinet shall give full faith and credit to any court decision meeting the requirements of this section.

Section 17. KRS 189A.410 is amended to read as follows:

- (1) At any time following *the expiration of the minimum license suspension periods enumerated in subsection (6) of Section 2 of this Act and Sections 5 and 10 of this Act*~~[conviction for a first offense violation of KRS 189A.010]~~ the court *may*~~[shall]~~ grant the person hardship driving privileges for the *balance of the suspension period imposed by the court*~~[final sixty (60) days of his initial ninety (90) day revocation]~~, upon written petition of the defendant, if it finds reasonable cause to believe that revocation would hinder the person's ability to:
- (a) Continue his employment;
 - (b) Continue attending school or an educational institution;
 - (c) Obtain necessary medical care;
 - (d) Attend driver improvement, alcohol, or substance abuse education programs; or (e) Attend court-ordered counseling or other programs.
- (2) *Whenever the court grants a person hardship driving privileges under subsection (1) of this section, the court through court order, may:*
- (a) *Prohibit the person from operating any motor vehicle or motorcycle without a functioning ignition interlock device, as defined in subsection (1) of Section 27 of this Act;*
 - (b) *Require that the person comply with all of the requirements of Section 27 of this Act, except for the requirements found in subsection (2) of Section 27 of this Act; and*

(c) ***Require the person to install an ignition interlock device on every vehicle owned or leased by the person who is permitted to operate a motor vehicle under this section.***

- (3) The court shall not issue a hardship license to a person who has refused to take an alcohol concentration or substance test or tests offered by a law enforcement officer.

Section 18. KRS 189.530 is amended to read as follows:

- (1) No person shall provide a motor vehicle to another to operate upon a highway, knowing that the other person is in an intoxicated condition, or under the influence of any substance which may impair one's driving ability.

- (2) ***A person is guilty of possession of an open alcoholic beverage container in a motor vehicle, when he or she has in his or her possession an open alcoholic beverage container in the passenger area of a motor vehicle located on a public highway or on the right-of-way of a public highway. However, nothing in this section shall prohibit the possession of an open alcoholic beverage container by an individual who is strictly a passenger and not the driver, in the passenger area of a motor vehicle maintained or used primarily for the transportation of persons for compensation, such as buses, taxis, and limousines, or in a recreational vehicle, motor home, or motor coach.***

- (3) ***For purposes of this section, "alcoholic beverage" means:***

- (a) ***Beer, ale, porter, stout, and other similar fermented beverages including sake or similar products of any name or description containing one-half of one percent (0.5%) or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor;***
- (b) ***Wine of not less than one-half of one percent (0.5%) of alcohol by volume; or***
- (c) ***Distilled spirits which is that substance known as ethyl alcohol, ethanol, or spirits of wine in any form including all dilutions and mixtures thereof from whatever source or by whatever process produced.***

- (4) ***For the purposes of this section "open alcoholic beverage container" means any bottle, can, or other receptacle that contains any amount of alcoholic beverage, and***

(a) ***Is open or has a broken seal; or***

(b) ***The contents of which are partially removed.***

- (5) ***For the purposes of this section "passenger area" means the area designed to seat the driver and the passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including the glove compartment. Passenger area does not include possession of an open alcoholic beverage container in a locked glove compartment, or behind the last upright seat or in an area not normally occupied by the driver or a passenger in a motor vehicle that is not equipped with a trunk.***

- (6) ***For the purpose of this section "public highway" or "right-of-way of a public highway" means the entire width between and immediately adjacent to the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.***

- (7) ***No person shall, as a result of a single course of conduct, be tried for or convicted of a violation of this section and a violation of KRS 222.202 or KRS 525.100. The attorney for***

the Commonwealth shall elect under which statute to proceed. A conviction, decision not to prosecute, or dismissal of charges under any of these statutes shall operate as a bar to prosecution under any other of these statutes for offenses arising out of the same course of conduct.

SECTION 19. A NEW SECTION OF KRS CHAPTER 189A IS CREATED TO READ AS FOLLOWS:

- (1) *Unless the court orders installation of an ignition interlock device under Section 27 of this Act, upon the conviction of a second or subsequent offense of Section 2 of this Act, a person shall have the license plate or plates on all of the motor vehicles owned by him or her, either solely or jointly, impounded by the court of competent jurisdiction in accordance with the following procedures:*
 - (a) *At the final sentencing hearing, the person who has been convicted of a second or subsequent offense of subsection (1)(a), (b), (c), or (d) of Section 2 of this Act, shall physically surrender any and all license plate or plates currently in force on any motor vehicle owned either individually or jointly by him or her to the court. The order of the court suspending the license plate or plates shall not exceed the time for the suspension of the motor vehicle operator's license of the second or subsequent offender as specified in KRS 189A.070.*
 - (b) *The clerk of the court shall retain any surrendered plate or plates and transmit all surrendered plate or plates to the Transportation Cabinet in the manner set forth by the Transportation Cabinet in administrative regulations promulgated by the Transportation Cabinet.*
- (2) *Upon application, the court may grant hardship exceptions to family members or other individuals affected by the surrender of any license plate or plates of any vehicle owned by the second or subsequent offender. Hardship exceptions may be granted by the court to the second or subsequent offender's family members or other affected individuals only if the family members or other affected individuals prove to the court's satisfaction that their inability to utilize the surrendered vehicles would pose an undue hardship upon the family members or affected other individuals. Upon the court's granting of hardship exceptions, the clerk or the Transportation Cabinet as appropriate, shall return to the family members or other affected individuals the license plate or plates of the vehicles of the second or subsequent offender for their utilization. The second or subsequent offender shall not be permitted to operate a vehicle for which the license plate has been suspended or for which a hardship exception has been granted under any circumstances.*
- (3) *If the license plate of a jointly owned vehicle is impounded, this vehicle may be transferred to a joint owner of the vehicle who was not the violator.*
- (4) *If the license plate of a motor vehicle is impounded, the vehicle may be transferred.*

Section 20. KRS 186.018 is amended to read as follows:

- (1) For purposes of maintaining driving history records of operators of motor vehicles of the Commonwealth, the files of the Transportation Cabinet shall be used to ascertain the driving history record of each person who is licensed to operate a motor vehicle within the Commonwealth. Except as provided in subsection (2) of this section, the Transportation Cabinet shall destroy, and shall not maintain records of moving traffic convictions that are more than five (5) years old. Notwithstanding, for any licensee who now holds, who has

applied for, or has ever held a Class A, B, or C license issued pursuant to KRS 281A.170, the cabinet shall keep conviction records indefinitely.

- (2) The Transportation Cabinet shall not release information on the driving history record of a person under the age of twenty-one (21) whose operator license has been suspended pursuant to KRS 189A.010(6)~~(5)~~. The cabinet shall destroy, and shall not maintain, the record of the suspension of a person's operator's license if the license was suspended pursuant to KRS 189A.010(6)~~(5)~~, within five (5) working days of the person's operator's license being reinstated.
- (3) The cabinet shall charge a fee of three dollars (\$3) for any driving history record, ten cents (\$0.10) of which shall be deposited in a special account within the road fund to be used exclusively by the Transportation Cabinet for the state driver education program as designated in KRS 186.535.

Section 21. KRS 189A.240 is amended to read as follows:

In any judicial review of a pretrial suspension imposed under KRS 189A.200(1)(b), if the court determines by a preponderance of the evidence that:

- (1) The person was charged and arrested by a peace officer with a violation of KRS 189A.010(1)(a), (b), (c), or (d);
 - (2) The peace officer had reasonable grounds to believe that the person was operating a motor vehicle in violation of KRS 189A.010(1)(a), (b), (c), or (d);
 - (3) There is probable cause to believe that the person committed the violation of KRS 189A.010(1)(a), (b), (c), or (d) as charged; and
 - (4) The person has been convicted of one (1) or more prior offenses as described in KRS 189A.010(5)~~(4)~~(e) or has had his motor vehicle operator's license suspended or revoked on one (1) or more occasions for refusing to take an alcohol concentration or substance test, in the five (5) year period immediately preceding his arrest, then the court shall continue to suspend the person's operator's license or privilege to operate a motor vehicle. The provisions of this section shall not be construed as limiting the person's ability to challenge any prior convictions or license suspensions or refusals.
- Section 22. KRS 235.240 is amended to read as follows:

- (1) A person shall not operate any motorboat or vessel, or manipulate any water skis, surfboard, or similar device in a reckless or negligent manner so as to endanger the life or property of any person.
- (2) A person shall not operate any motorboat or vessel, or manipulate any water skis, surfboard, or similar device while intoxicated or under the influence of any other substance which impairs one's driving ability.
- (3) Any person who operates a vessel upon the waters of the Commonwealth shall be deemed to have given consent to a test or tests as accepted by the state's evidentiary mandate for the purpose of determining the operator's alcohol concentration or the presence of other drugs. The test or tests shall be administered at the direction of a law enforcement officer who has probable cause to believe that the operator may have been violating this section.

- (4) For the purposes of enforcing this section, the elements of the offense are those established in KRS 189A.010(1) to ~~(4)~~~~(3)~~, except that the penalties for this offense are set forth in KRS 235.990.

Section 23. KRS 281A.2102 is amended to read as follows:

In addition to the penalties established by this chapter for driving a commercial motor vehicle under the influence of alcohol:

- (1) Any person convicted of driving a commercial motor vehicle while the alcohol concentration of the person's blood or breath is four hundredths (0.04) to eight hundredths (0.08) shall be fined not less than twenty dollars (\$20) and not more than fifty dollars (\$50).
- (2) Any person convicted of driving a commercial motor vehicle while the alcohol concentration of the person's blood or breath is greater than eight hundredths (0.08) shall be fined under the provisions of KRS 189A.010~~(5)~~~~(4)~~(a) to (d).

Section 24. KRS 189A.100 is amended to read as follows:

- (1) Law enforcement agencies may administer preliminary breath tests using devices or equipment which will ensure an accurate determination of blood alcohol content. Such tests may be administered in the field to a person suspected of violation of KRS 189A.010 before the person is arrested. This test may be administered in addition to any other blood alcohol level test authorized by law. A person's refusal to take a preliminary breath test shall not be used against him in a court of law or in any administrative proceeding.
- (2) Law enforcement agencies may record on film or video tape or by other visual and audible means *the pursuit of a violator or suspected violator, the traffic stop, or* field sobriety tests administered at the scene of an arrest for violation of KRS 189A.010 or such tests at a police station, jail, or other suitable facility subject to the following conditions:
 - (a) The testing is recorded in its entirety (except for blood alcohol analysis testing); and
 - (b) The entire recording *of the field sobriety tests and the entire recording of such portions of the pursuit and traffic stop as were recorded* is shown in court unless the defendant waives the showing of any portions not offered by the prosecution; and
 - (c) The entire recording is available to be shown by the defense at trial if the defendant so desires regardless of whether it was introduced by the Commonwealth; and
 - (d) The defendant or his counsel is afforded an opportunity to view the entire recording a reasonable time before the trial in order to prepare an adequate defense; and (e) Recordings shall be used for official purposes only, *which shall include:*
 1. *Viewing in court;*
 2. *Viewing by the prosecution and defense in preparation for a trial; and*
 3. *Viewing for purposes of administrative reviews and official administrative proceedings*~~[and shall be shown only in court, to the prosecution and defense in preparation for a trial, or upon the order of a court].~~ Recordings shall otherwise be considered as confidential records; and
 - (g) *The videotape or film taken in accordance with this section shall, upon order of the District Court, be destroyed after the later of the following:*

1. *Fourteen (14) months, if there is no appeal of any criminal or traffic case filed as a result of the videotape or film, or if the videotape or film does not record the actual happening of an accident involving a motor vehicle;*
 2. *Fourteen (14) months after a decision has been made not to prosecute any case upon which an arrest has been made or a citation issued as a result of the videotape or film, if the videotape does not record the actual happening of an accident involving a motor vehicle;*
 3. *Twenty-six (26) months, if there is no appeal of any criminal or traffic case filed as a result of the videotape or film, if the videotape or film records the actual happening of an accident involving a motor vehicle;*
 4. *After all appeals have been exhausted arising from any criminal or traffic case filed as a result of the videotape;*
 5. *At the conclusion of any civil case arising from events depicted on the videotape or film; or*
 6. *At the conclusion of the exhaustion of all appeals arising from any law enforcement agency administrative proceedings arising from events depicted on the videotape or film; and*~~*After all appeals have been exhausted the recordings shall, upon the order of a District Court, be destroyed; and*~~
- (h) Public officials or employees utilizing or showing recordings other than as permitted in this chapter or permitting others to do so shall be guilty of official misconduct in the first degree.
- (3) *When a peace officer makes a videotape or film recording of any transaction covered by subsection (2) of this section and a citation is issued or an arrest is made the peace officer shall note on the uniform citation that a videotape has been made of the transaction.*

Section 25. KRS 189.990 is amended to read as follows:

- (1) Any person who violates any of the provisions of KRS 189.020 to 189.040, subsections (1), (2), and (5) of KRS 189.050, KRS 189.060 to 189.080, subsections (1) to (3) of KRS 189.090, KRS 189.100, 189.110, 189.130 to 189.160, subsections (2) to (4) of KRS 189.190, KRS 189.200, 189.290, 189.300 to 189.360, KRS 189.380, KRS 189.400 to 189.430, 189.450 to 189.480, subsection (1) of KRS 189.520, KRS 189.540, KRS 189.570 to 189.630, except subsection (1) of KRS 189.580, KRS 189.345, subsection (4) of KRS 189.456, and 189.960 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense. Any person who violates subsection (1) of KRS 189.580 shall be fined not less than twenty dollars (\$20) nor more than two thousand dollars (\$2,000) or imprisoned in the county jail for not more than one (1) year, or both. Any person who violates paragraph (c) of subsection (5) of KRS 189.390 shall be fined not less than eleven dollars (\$11) nor more than thirty dollars (\$30). Neither court costs nor fees shall be taxed against any person violating paragraph (c) of subsection (5) of KRS 189.390.
- (2) (a) Any person who violates the weight provisions of KRS 189.212, 189.221, 189.222, 189.226, 189.230, 189.270, or 189.271 shall be fined two cents (\$0.02) per pound for each pound of excess load when the excess is two thousand (2,000) pounds or less, three cents (\$0.03) per pound when the excess exceeds two thousand (2,000) pounds

and is three thousand (3,000) pounds or less, five cents (\$0.05) per pound when the excess exceeds three thousand (3,000) pounds and is four thousand (4,000) pounds or less, seven cents (\$0.07) per pound when the excess exceeds four thousand (4,000) pounds and is five thousand (5,000) pounds or less, and nine cents (\$0.09) per pound when the excess exceeds five thousand (5,000) pounds, but in no case shall the fine be less than sixty dollars (\$60).

- (b) Any person who violates any provision of subsections (3) and (4) of KRS 189.050, subsection (4) of KRS 189.090, KRS 189.221 to 189.230, 189.270, 189.280, 189.490, or the dimension provisions of KRS 189.212, for which another penalty is not specifically provided, shall be guilty of a misdemeanor and shall be fined not less than ten dollars (\$10) nor more than five hundred dollars (\$500).
 - (c) Nothing in this subsection or in KRS 189.221 to 189.228 shall be deemed to prejudice or affect the authority of the Department of Vehicle Regulation to suspend or revoke certificates of common carriers, permits of contract carriers, or drivers' or chauffeurs' licenses, for any violation of KRS 189.221 to 189.228 or any other act applicable to motor vehicles, as provided by law.
- (3) (a) Any person who violates subsection (1) of KRS 189.190 shall be fined not more than fifteen dollars (\$15).
 - (b) Any person who violates subsection (5) of KRS 189.190 shall be fined not less than thirty-five dollars (\$35) nor more than two hundred dollars (\$200).
- (4) (a) Any person who violates subsection (1) of KRS 189.210 shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100).
 - (b) Any peace officer who fails, when properly informed, to enforce KRS 189.210 shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100).
 - (c) All fines collected under this subsection, after payment of commissions to officers entitled thereto, shall go to the county road fund if the offense is committed in the county, or to the city street fund if committed in the city.
- (5) Any person who violates KRS 189.370 shall for the first offense be fined not less than one hundred dollars (\$100) nor more than two hundred dollars (\$200) or imprisoned not less than thirty (30) days nor more than sixty (60) days, or both. For each subsequent offense occurring within three (3) years, the person shall be fined not less than three hundred dollars (\$300) nor more than five hundred dollars (\$500) or imprisoned not less than sixty (60) days nor more than six (6) months, or both. The minimum fine for this violation shall not be subject to suspension. A minimum of six (6) points shall be assessed against the driving record of any person convicted.
- (6) Any person who violates KRS 189.500 shall be fined not more than fifteen dollars (\$15) in excess of the cost of the repair of the road.
 - (7) Any person who violates KRS 189.510 or KRS 189.515 shall be fined not less than twenty dollars (\$20) nor more than fifty dollars (\$50).
 - (8) Any peace officer who violates subsection (2) of KRS 189.520 shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100).

- (9) (a) Any person who violates KRS 189.530(1) shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100), or imprisoned not less than thirty (30) days nor more than twelve (12) months, or both.
- (b) *Any person who violates subsection (2) of Section 18 of this Act shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100).*
- (10) Any person who violates any of the provisions of KRS 189.550 shall be guilty of a Class B misdemeanor.
- (11) Any person who violates subsection (2) of KRS 189.560 shall be fined not less than thirty dollars (\$30) nor more than one hundred dollars (\$100) for each offense.
- (12) The fines imposed by paragraph (a) of subsection (3) and subsections (6) and (7) of this section shall, in the case of a public highway, be paid into the county road fund, and, in the case of a privately owned road or bridge, be paid to the owner. These fines shall not bar an action for damages for breach of contract.
- (13) Any person who violates any of the provisions of KRS 189.120 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense.
- (14) Any person who violates any provision of KRS 189.575 shall be fined not less than twenty dollars (\$20) nor more than twenty-five dollars (\$25).
- (15) Any person who violates subsection (2) of KRS 189.231 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense.
- (16) Any person who violates restrictions or regulations established by the secretary of transportation pursuant to subsection (3) of KRS 189.231 shall, upon first offense, be fined one hundred dollars (\$100) and, upon subsequent convictions, be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisoned for thirty (30) days, or both.
- (17) (a) Any person who violates any of the provisions of KRS 189.565 shall be guilty of a Class B misdemeanor.
- (b) In addition to the penalties prescribed in paragraph (a) of this subsection, in case of violation by any person in whose name the vehicle used in the transportation of inflammable liquids or explosives is licensed, the person shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). Each violation shall constitute a separate offense.
- (18) Any person who abandons a vehicle upon the right-of-way of a state highway for three (3) consecutive days shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100), or imprisoned for not less than ten (10) days nor more than thirty (30) days.
- (19) Every person violating KRS 189.393 shall be guilty of a Class B misdemeanor, unless the offense is being committed by a defendant fleeing the commission of a felony offense which the defendant was also charged with violating and was subsequently convicted of that felony, in which case it is a Class A misdemeanor.
- (20) Any law enforcement agency which fails or refuses to forward the reports required by KRS 189.635 shall be subject to the penalties prescribed in KRS 17.157.

- (21) A person who elects to operate a bicycle in accordance with any regulations adopted pursuant to KRS 189.287 and who willfully violates a provision of a regulation shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100). A person who operates a bicycle without complying with any regulations adopted pursuant to KRS 189.287 or vehicle safety statutes shall be prosecuted for violation of the latter.
- (22) Any person who violates KRS 189.860 shall be fined not more than five hundred dollars (\$500) or imprisoned for not more than six (6) months, or both.
- (23) Any person who violates KRS 189.754 shall be fined not less than twenty-five dollars (\$25) nor more than three hundred dollars (\$300).
- (24) Any person who violates the provisions of KRS 189.125(3) shall be fined fifty dollars (\$50).
- (25) Any person who violates the provisions of KRS 189.125(6) shall be fined an amount not to exceed twenty-five dollars (\$25).
- (26) Any person who violates any of the provisions of KRS 189.125(3), KRS 189.290, KRS 189.300, KRS 189.340, KRS 189.345, KRS 189.370, KRS 189.393, or KRS 189.505, shall, in addition to any other fine imposed by this chapter, pay an additional fee of ten dollars (\$10). Funds collected pursuant to this subsection shall be deposited in the traumatic brain injury trust fund, created pursuant to KRS 211.476, within fourteen (14) days after the end of each quarter, to be used for the purposes set forth in KRS 211.470 to 211.478.
- (27) Fines levied pursuant to this chapter shall be assessed in the manner required by KRS 534.020, in amounts consistent with this chapter. Nonpayment of fines shall be governed by KRS 534.060.
- (28) A licensed driver under the age of eighteen (18) charged with a moving violation pursuant to this chapter as the driver of a motor vehicle may be referred, prior to trial, by the court to a diversionary program. The diversionary program under this subsection shall consist of one (1) or both of the following:
 - (a) Execution of a diversion agreement which prohibits the driver from operating a vehicle for a period not to exceed forty-five (45) days and which allows the court to retain the driver's operator's license during this period; and
 - (b) Attendance at a driver improvement clinic established pursuant to KRS 186.574. If the person completes the terms of this diversionary program satisfactorily the violation shall be dismissed.
- (29) Any person who violates the provisions of KRS 189.285 shall have his or her operator's license suspended for a period of ninety (90) days and be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). Section 26. KRS 186.560 is amended to read as follows:
 - (1) The cabinet shall forthwith revoke the license of any operator of a motor vehicle upon receiving record of his conviction of any of the following offenses:
 - (a) Murder or manslaughter resulting from the operation of a motor vehicle;
 - (b) Driving a vehicle which is not a motor vehicle while under the influence of alcohol or any other substance which may impair one's driving ability;

- (c) Perjury or the making of a false affidavit under KRS 186.400 to 186.640 or any law requiring the registration of motor vehicles or regulating their operation on highways;
 - (d) Any felony in the commission of which a motor vehicle is used;
 - (e) Conviction or forfeiture of bail upon three (3) charges of reckless driving within the preceding twelve (12) months;
 - (f) Conviction of driving a motor vehicle involved in an accident and failing to stop and disclose his identity at the scene of the accident;
 - (g) Conviction of theft of a motor vehicle or any of its parts, including the conviction of any person under the age of eighteen (18) years;
 - (h) Failure to have in full force and effect the security required by Subtitle 39 of KRS Chapter 304 upon conviction of a second and each subsequent offense within any five (5) year period;
 - (i) Conviction for fraudulent use of a driver's license or use of a fraudulent driver's license to purchase or attempt to purchase alcoholic beverages, as defined in KRS 241.010, in violation of KRS 244.085; and
 - (j) Conviction of operating a motor vehicle, motorcycle, or moped without an operator's license as required by KRS 186.410.
- (2) If the person convicted of any offense named in subsection (1) of this section is not the holder of a license, the cabinet shall deny the person so convicted a license for the same period of time as though he had possessed a license which had been revoked. If through an inadvertence the defendant should be issued a license, the cabinet shall forthwith cancel it.
- (3) The cabinet upon receiving a record of the conviction of any person upon a charge of operating a motor vehicle while the license of that person is denied or suspended, or revoked, or while his privilege to operate a motor vehicle is withdrawn, shall immediately extend the period of the first denial, suspension, revocation, or withdrawal for an additional like period.
- (4) The revocation or denial of a license or the withdrawal of the privilege of operating a motor vehicle for a violation of subsection (1)(a) of this section shall be for a period of not less than five (5) years. Revocations or denials under this section shall not be subject to any lessening of penalties authorized under any other provision of this section or any other statute.
- (5) Except as provided in subsections (3), (4), and (8) of this section, in all other cases, the revocation or denial of a license or the withdrawal of the privilege of operating a motor vehicle under this section shall be for a period of six (6) months, except that, if the same person has had one (1) previous conviction of any offense enumerated in subsection (1) of this section, regardless of whether the person's license was revoked because of the previous conviction, the period of the revocation, denial, or withdrawal shall be one (1) year; if the person has had more than one (1) previous conviction of the offenses considered collectively as enumerated in subsection (1) of this section, regardless of whether the person's license was revoked for any previous conviction, the period of revocation, denial, or withdrawal shall be for not less than two (2) years. If the cabinet, upon receipt of the written recommendation of the court in which any person has been convicted of violating KRS 189.520(1) or KRS 244.085(5) as relates to instances in which a driver's license or fraudulent driver's license was the identification used or attempted to be used in the commission of the offense, who has had no

previous conviction of said offense, the person's operator's license shall not be revoked, but the person's operator's license shall be restricted

to any terms and conditions the secretary in his discretion may require, provided the person has enrolled in an alcohol or substance abuse education or treatment program as the cabinet shall require. If the person fails to satisfactorily complete the education or treatment program or violates the restrictions on his operator's license, the cabinet shall immediately revoke his operator's license for a period of six (6) months.

- (6) In order to secure the reinstatement of a license to operate a motor vehicle or motorcycle restored following a period of suspension or revocation pursuant to KRS~~[189A.060,]~~ 189A.070 ~~or~~ and 189A.080, the person whose license is suspended or revoked shall comply with the fees and other procedures of the Transportation Cabinet with regard to the reinstatement of suspended or revoked licenses.
- (7) The cabinet shall revoke the license of any operator of a motor vehicle upon receiving notification that the person is under age eighteen (18) and has dropped out of school or is academically deficient, as defined in KRS 159.051(1).
- (8) A person under the age of eighteen (18) who is convicted of the offenses of subsections (1) or (3) of this section, except for subsection (1)(h) of this section, shall have his license revoked until he reaches the age of eighteen (18) or shall have his license revoked as provided in this section, whichever penalty will result in the longer period of revocation.

SECTION 27. A NEW SECTION OF KRS CHAPTER 189A IS CREATED TO READ AS FOLLOWS:

- (1) *For the purposes of this section and Sections 17 and 28 of this Act, "ignition interlock device" means a device that connects a motor vehicle ignition system or motorcycle ignition system to a breath alcohol analyzer and prevents a motor vehicle ignition or motorcycle ignition from starting if a driver's breath alcohol concentration, as defined in Section 1 of this Act, exceeds 0.02, as measured by the device.*
- (2) *In lieu of ordering license plate impoundment under Section 19 of this Act of a person convicted of a second or subsequent violation of Section 2 of this Act, the court may order installation of an ignition interlock device as provided in this section as follows:*
 - (a) *Except as provided in paragraph (d) of this subsection, at the time that the court revokes a person's license under any provision of Section 5 of this Act other than subsection (1)(a) of Section 5 of this Act, the court shall also order that at the conclusion of the license revocation the person shall be prohibited from operating any motor vehicle or motorcycle without a functioning ignition interlock device.*
 - (b) *1. The first time in a five (5) year period that a person is penalized under this section, a functioning ignition interlock device shall be installed for a period of six (6) months.*
 2. *The second time in a five (5) year period that a person is penalized under this section, a functioning ignition interlock device shall be installed for a period of twelve (12) months.*
 3. *The third or subsequent time in a five (5) year period that a person is penalized under this section, a functioning ignition interlock device shall be installed for a period of thirty (30) months.*

4. *The person whose license has been suspended for a second or subsequent violation of Section 2 of this Act shall not be able to apply to the court for permission to install an ignition interlock device until the person has completed one (1) year of license suspension without any subsequent conviction for a violation of Section 2 or 7 of this Act. If the court grants permission to install an ignition interlock device, an ignition interlock device shall be installed on all vehicles owned or leased by the person whose license has been suspended.*
- (c) *In determining the five (5) year period under paragraph (b) of this subsection, the period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered, resulting in the license revocations described in Section 5 of this Act.*
- (d) *If the court finds that a person is required to operate a motor vehicle or motorcycle in the course and scope of the person's employment and the motor vehicle or motorcycle is owned by the employer, then the court shall order that the person may operate that motor vehicle or motorcycle during regular working hours for the purposes of his or her employment without installation of a functioning ignition interlock device on that motor vehicle or motorcycle if the employer has been notified of the prohibition established under paragraphs (a), (b), and (c) of this subsection.*
- (3) *Upon ordering the installation of a functioning ignition interlock device, the court, without a waiver or a stay of the following procedure, shall:*
- (a) *Transmit its order and other appropriate information to the Transportation Cabinet;*
- (b) *Direct that the Transportation Cabinet records reflect:*
1. *That the person shall not operate a motor vehicle or motorcycle without a functioning ignition interlock device, except as provided in paragraph (d) of subsection (2) of this section; and*
 2. *Whether the court has expressly permitted the person to operate a motor vehicle or motorcycle without a functioning ignition interlock device, as provided in paragraph (d) of subsection (2) of this section;*
- (c) *Direct the Transportation Cabinet to attach or imprint a notation on the driver's license of any person restricted under this section stating that the person shall operate only a motor vehicle or motorcycle equipped with a functioning ignition interlock device. However, if the exception provided for in paragraph (d) of subsection (2) of this section applies, the notation shall indicate the exception;*
- (d) *Require proof of the installation of the functioning ignition interlock device and periodic reporting by the person for the verification of the proper functioning of the device;*
- (e) *Require the person to have the device serviced and monitored at least every ninety (90) days for proper functioning by an entity approved by the Transportation Cabinet; and*
- (f) *Require the person to pay the reasonable cost of leasing or buying, installing, servicing, and monitoring the device. The court may establish a payment schedule for the person to follow in paying the cost.*

- (4) *The Transportation Cabinet shall:*
- (a) *Certify ignition interlock devices for use in this Commonwealth;*
 - (b) *Approve ignition interlock device installers who install functioning ignition interlock devices under the requirements of this section;*
 - (c) *Approve servicing and monitoring entities identified in paragraph (e) of subsection (3) of this section;*
 - (d) *Publish and periodically update on the Transportation Cabinet web site a list of the certified ignition interlock devices, the approved ignition interlock installers, and the approved servicing and monitoring entities;*
 - (e) *Develop a warning label that an ignition interlock device installer shall place on a functioning ignition interlock device before installing that device. The warning label shall warn of the penalties established in Section 28 of this Act; and*
 - (f) *Promulgate administrative regulations to carry out the provisions of this subsection.*

SECTION 28. A NEW SECTION OF KRS CHAPTER 189A IS CREATED TO READ AS FOLLOWS:

- (1) *No person shall operate a motor vehicle or motorcycle without a functioning ignition interlock device when prohibited to do so under subsection (2) of Section 27 of this Act or under subsection (2) of Section 17 of this Act.*
- (2) (a) *No person shall start a motor vehicle or motorcycle equipped with an ignition interlock device for the purpose of providing an operable motor vehicle or motorcycle to a person subject to the prohibition established in subsection (2) of Section 27 of this Act or under subsection (2)(b) of Section 17 of this Act.*
 - (b) *Any person who violates paragraph (a) of this subsection shall:*
 - 1. *For a first offense, be guilty of a Class B misdemeanor; and*
 - 2. *For a second or subsequent offense, be guilty of a Class A misdemeanor.*
- (3) (a) *No person shall:*
 - 1. *Knowingly install a defective ignition interlock device on a motor vehicle or motorcycle; or*
 - 2. *Tamper with an installed ignition interlock device with the intent of rendering it defective.*
 - (b) *Any person who violates paragraph (a) of this subsection shall:*
 - 1. *For a first offense, be guilty of a Class B misdemeanor; and*
 - 2. *For a second or subsequent offense, be guilty of a Class A misdemeanor and be prohibited from installing ignition interlock devices or directing others in the installation of ignition interlock devices.*
- (4) (a) *No person shall direct another person to install a defective ignition interlock device on a motor vehicle or motorcycle when the person giving the direction knows that the ignition interlock device is defective.*
 - (b) *Any person who violates paragraph (a) of this subsection shall:*

1. *For a first offense, be guilty of a Class B misdemeanor; and*
2. *For a second or subsequent offense, be guilty of a Class A misdemeanor and be prohibited from directing others in the installation of ignition interlock devices or installing ignition interlock devices.*

Section 29. KRS 186.560 is amended to read as follows:

- (1) The cabinet shall forthwith revoke the license of any operator of a motor vehicle upon receiving record of his conviction of any of the following offenses:
 - (a) Murder or manslaughter resulting from the operation of a motor vehicle;
 - (b) Driving a vehicle which is not a motor vehicle while under the influence of alcohol or any other substance which may impair one's driving ability;
 - (c) Perjury or the making of a false affidavit under KRS 186.400 to 186.640 or any law requiring the registration of motor vehicles or regulating their operation on highways;
 - (d) Any felony in the commission of which a motor vehicle is used;
 - (e) Conviction or forfeiture of bail upon three (3) charges of reckless driving within the preceding twelve (12) months;
 - (f) Conviction of driving a motor vehicle involved in an accident and failing to stop and disclose his identity at the scene of the accident;
 - (g) Conviction of theft of a motor vehicle or any of its parts, including the conviction of any person under the age of eighteen (18) years;
 - (h) Failure to have in full force and effect the security required by Subtitle 39 of KRS Chapter 304 upon conviction of a second and each subsequent offense within any five (5) year period;
 - (i) Conviction for fraudulent use of a driver's license or use of a fraudulent driver's license to purchase or attempt to purchase alcoholic beverages, as defined in KRS 241.010, in violation of KRS 244.085; and
 - (j) Conviction of operating a motor vehicle, motorcycle, or moped without an operator's license as required by KRS 186.410.
- (2) If the person convicted of any offense named in subsection (1) of this section is not the holder of a license, the cabinet shall deny the person so convicted a license for the same period of time as though he had possessed a license which had been revoked. If through an inadvertence the defendant should be issued a license, the cabinet shall forthwith cancel it.
- (3) The cabinet upon receiving a record of the conviction of any person upon a charge of operating a motor vehicle while the license of that person is denied or suspended, or revoked, or while his privilege to operate a motor vehicle is withdrawn, shall immediately extend the period of the first denial, suspension, revocation, or withdrawal for an additional like period.
- (4) The revocation or denial of a license or the withdrawal of the privilege of operating a motor vehicle for a violation of subsection (1)(a) of this section shall be for a period of not less than five (5) years. Revocations or denials under this section shall not be subject to any lessening of penalties authorized under any other provision of this section or any other statute.

- (5) Except as provided in subsections (3), (4), and (8) of this section, in all other cases, the revocation or denial of a license or the withdrawal of the privilege of operating a motor vehicle under this section shall be for a period of six (6) months, except that, if the same person has had one (1) previous conviction of any offense enumerated in subsection (1) of this section, regardless of whether the person's license was revoked because of the previous conviction, the period of the revocation, denial, or withdrawal shall be one (1) year; if the person has had more than one (1) previous conviction of the offenses considered collectively as enumerated in subsection (1) of this section, regardless of whether the person's license was revoked for any previous conviction, the period of revocation, denial, or withdrawal shall be for not less than two (2) years. If the cabinet, upon receipt of the written recommendation of the court in which any person has been convicted of violating KRS 189.520(1) or KRS 244.085(5) as relates to instances in which a driver's license or fraudulent driver's license was the identification used or attempted to be used in the commission of the offense, who has had no previous conviction of said offense, the person's operator's license shall not be revoked, but the person's operator's license shall be restricted to any terms and conditions the secretary in his discretion may require, provided the person has enrolled in an alcohol or substance abuse education or treatment program as the cabinet shall require. If the person fails to satisfactorily complete the education or treatment program or violates the restrictions on his operator's license, the cabinet shall immediately revoke his operator's license for a period of six (6) months.
- (6) In order to secure the reinstatement of a license to operate a motor vehicle or motorcycle restored following a period of suspension or revocation pursuant to KRS 189A.060, 189A.070, ~~and~~ 189A.080, **and Section 7 of this Act**, the person whose license is suspended or revoked shall comply with the fees and other procedures of the Transportation Cabinet with regard to the reinstatement of suspended or revoked licenses.
- (7) The cabinet shall revoke the license of any operator of a motor vehicle upon receiving notification that the person is under age eighteen (18) and has dropped out of school or is academically deficient, as defined in KRS 159.051(1).
- (8) A person under the age of eighteen (18) who is convicted of the offenses of subsections (1) or (3) of this section, except for subsection (1)(h) of this section, shall have his license revoked until he reaches the age of eighteen (18) or shall have his license revoked as provided in this section, whichever penalty will result in the longer period of revocation.

SECTION 30. A NEW SECTION OF KRS CHAPTER 189A IS CREATED TO READ AS FOLLOWS:

- (1) ***The only alcohol or substance testing that is subject to refusal or enhancement of penalties provided for in this chapter is:***
- (a) ***Breath analysis testing by a machine installed, tested, and maintained by the Commonwealth for that specific purpose at a police station or detention facility;***
 - (b) ***Blood or urine testing at the request of the officer at a police station, detention facility, or medical facility; or***
 - (c) ***Combination of tests required in paragraphs (a) or (b) of this subsection.***
- (2) ***The results of any breath analysis by an instrument other than one specified in subsection (1) of this section shall be inadmissible in court.***

Section 31. The following KRS sections are repealed:

186.642 "Habitual violator" defined.

186.643 Information to be filed by county attorney.

186.644 Hearing.

186.645 Findings of court.

186.646 License not to be issued to habitual violator.

186.647 Restoration of license.

186.648 Appeal.

186.649 Law not to affect existing laws or ordinances of political subdivisions.

186.992 Penalty.

189A.015 Offenses committed prior to July 13, 1984.

189A.060 Pretrial suspension of operator's license.

Section 32. This Act shall become effective October 1, 2000.

Approved April 21, 2000