

AN ACT relating to driving under the influence and declaring an emergency.

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

➔Section 1. 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;
 - (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 the presence of a controlled substance listed in subsection (12) of this section is detected in the blood, as measured by a scientifically reliable test, or tests, taken within two (2) hours of cessation of operation or physical control of a motor vehicle;
 - (e) While under the combined influence of alcohol and any other substance which impairs one's driving ability; or
 - (f) 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, if the person is under the age of twenty-one (21).
- (2) With the exception of the results of the tests administered pursuant to KRS 189A.103(7), 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 subsection (1)(a) or

(f) of this section. The results of the test or tests, however, may be admissible in a prosecution under subsection (1)(b) or (e) of this section.

(3) In any prosecution for a violation of subsection (1)(b) or (e) 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 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 (e) of this section.

- (4) (a) Except as provided in paragraph (b) of this subsection, 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.
- (b) A laboratory test or tests for a controlled substance shall be inadmissible as evidence in a prosecution under subsection (1)(d) of this section upon a finding by the court that the defendant consumed the substance under a valid

prescription from a practitioner, as defined in KRS 218A.010, acting in the course of his or her professional practice.

(5) Any person who violates the provisions of paragraph (a), (b), (c), (d), or (e) of subsection (1) of this section shall:

- (a) For the first offense within a ten (10)~~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. 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 ten (10)~~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) For a third offense within a ten (10)~~five (5)~~ year period, be fined not less

than five hundred dollars (\$500) nor more than one thousand dollars (\$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;

- (d) For a fourth or subsequent offense within a ten (10)~~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; and
- (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)(f) 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) Any person who violates the provisions of subsection (1)(f) 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 subsection shall not be subject to the penalties established in subsection (5) of this section or any other penalty established pursuant to KRS Chapter 189A, except those established in KRS 189A.040(1).

- (7) If the person is under the age of twenty-one (21) and there was an alcohol concentration of 0.08 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) of this section.
- (8) For a second or third offense within a ten (10)~~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) When sentencing persons under subsection (5)(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) In determining the ten (10)~~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 0.15 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) The substances applicable to a prosecution under subsection (1)(d) of this section are:
- (a) Any Schedule I controlled substance except marijuana;
 - (b) Alprazolam;
 - (c) Amphetamine;
 - (d) Buprenorphine;
 - (e) Butalbital;
 - (f) Carisoprodol;
 - (g) Cocaine;
 - (h) Diazepam;
 - (i) Hydrocodone;
 - (j) Meprobamate;
 - (k) Methadone;
 - (l) Methamphetamine;

- (m) Oxycodone;
- (n) Promethazine;
- (o) Propoxyphene; and
- (p) Zolpidem.

➔Section 2. 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), (d), or (e) shall have his license to operate a motor vehicle or motorcycle revoked by the court as follows:
 - (a) For the first offense within a ten (10)~~five (5)~~ year period, for a period of not less than thirty (30) days nor more than one hundred twenty (120) days;
 - (b) For the second offense within a ten (10)~~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 ten (10)~~five (5)~~ year period, for a period of not less than twenty-four (24) months nor more than thirty-six (36) months; and
 - (d) For a fourth or subsequent offense within a ten (10)~~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)(e).
- (2) In determining the ten (10)~~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) or (7) 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), (d), or (e) 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) or (7) of this section, whichever penalty will result in the longer period of revocation or court-ordered driving conditions.

- (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.
- (7) A person whose license has been revoked pursuant to subsection (1)(b), (c), or (d) of this section may move the court to reduce the applicable minimum period of revocation by one-half (1/2), but in no case less than twelve (12) months. The court may, upon a written finding in the record for good cause shown, order such a period to be reduced by one-half (1/2), but in no case less than twelve (12) months, if the following conditions are satisfied:
 - (a) The person shall not operate a motor vehicle or motorcycle without an ignition interlock device as provided for in KRS 189A.340(2);
 - (b) The person shall not operate a motor vehicle or motorcycle at any other time and for any other purposes than those specified by the court; and
 - (c) The ignition interlock device shall be installed on the motor vehicle or motorcycle for a period of time not less than the applicable minimum period of revocation provided for under subsection (1)(b), (c), or (d) of this section nor for more than the respective maximum period of revocation provided for under subsection (1)(b), (c), or (d) of this section.

- (8) Upon a finding of a violation of any of the conditions specified in subsection (7) of this section or of the order permitting any reduction in a minimum period of revocation that is issued pursuant thereto, the court shall dissolve such an order and the person shall receive no credit toward the minimum period of revocation required under subsection (1)(b), (c), or (d) of this section.

➔Section 3. 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 KRS 189A.010(6), 189A.070, 189A.107, 189A.200, or 189A.220, or operate or be in physical control of a motor vehicle without a functioning ignition interlock device in violation of KRS 189A.345(1).
- (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 **ten (10)**~~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 KRS 189A.010(1)(a), (b), (c), (d), or (e), 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 **ten (10)**~~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 KRS 189A.010(1)(a), (b), (c), (d), or (e), 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 **ten (10)**~~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 KRS 189A.010(1)(a), (b), (c), (d), or (e), 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 ~~ten (10)~~five (5) year period under this section shall be measured in the same manner as in KRS 189A.070.
- (4) After one (1) year of the period of revocation provided for in subsection (2)(b) or (c) of this section has elapsed, a person whose license has been revoked pursuant to either of those subsections may move the court to have an ignition interlock device installed for the remaining portion of the period of revocation. The court may, upon a written finding in the record for good cause shown, order an ignition interlock device installed if the following conditions are satisfied:
 - (a) The person shall not operate a motor vehicle or motorcycle without an ignition interlock device as provided for in KRS 189A.340(2);
 - (b) The person shall not operate a motor vehicle or motorcycle at any other time and for any other purposes than those specified by the court; and
 - (c) The ignition interlock device shall be installed on the motor vehicle or motorcycle for a period of time not less than the period of revocation required for the person under subsection (2)(b) or (c) of this section.
- (5) Upon a finding of a violation of any of the conditions specified in subsection (4) of this section or of the order permitting the installation of an ignition interlock device in lieu of the remaining period of revocation that is issued pursuant thereto, the court shall dissolve such an order and the person shall receive no credit toward the remaining period of revocation required under subsection (2)(b) or (c) of this section.

➔Section 4. KRS 189A.200 is amended to read as follows:

- (1) 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) who:

- (a) Has refused to take an alcohol concentration or substance test as reflected on the uniform citation form;
 - (b) Has been convicted of one (1) or more prior offenses as described in KRS 189A.010(5)(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 ten (10)~~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 any license surrendered to him pursuant to this section.
- (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 KRS 189A.070 and 189A.107.

- (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 KRS 189A.070 and 189A.107.

➔Section 5. 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), (d), or (e);
- (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), (d), or (e);
- (3) There is probable cause to believe that the person committed the violation of KRS 189A.010(1)(a), (b), (c), (d), or (e) as charged; and
- (4) The person has been convicted of one (1) or more prior offenses as described in KRS 189A.010(5)(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 ten (10)~~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 6. KRS 189A.330 is amended to read as follows:

- (1) The clerk of the court in which hearings for violation of KRS 189A.010 are heard shall report to the Administrative Office of the Courts on or within five (5) working days of January 1, April 1, July 1, and October 1 of each year the cases involving violations of KRS 189A.010 which have not resulted in a final ruling by the court within one hundred and eighty (180)~~ninety (90)~~ days of the date upon which the person was charged with a violation of KRS 189A.010.
- (2) The Administrative Office of the Courts shall forward a copy of the lists of these cases to the Chief Justice and the Office of the Attorney General.
- (3) Upon a determination that there is sufficient cause, the Office of the Attorney General may appoint a special prosecutor or prosecutors to assist in the disposition of these cases within a reasonable time period.
- (4) The Chief Justice may take actions deemed necessary and reasonable to facilitate the resolution of these cases within a reasonable time period.

➔Section 7. KRS 189A.340 is amended to read as follows:

- (1) In lieu of ordering license plate impoundment under KRS 189A.085 of a person convicted of a second or subsequent violation of KRS 189A.010, 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 KRS 189A.070 other than KRS 189A.070(1)(a), 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 ten (10)~~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 ten (10)~~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 ten (10)~~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 KRS 189A.010 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 KRS 189A.010 or 189A.090. 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 ten (10)~~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 KRS 189A.070.
- (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.

- (2) 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 (1) 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 (1) 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 (1) 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 thirty (30) 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.
- (3) 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 (2) of this section and require those entities to report on driving activity within seven (7) days of servicing and monitoring each ignition interlock device to the respective court, prosecuting attorney, and defendant;
- (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 KRS 189A.345; and
- (f) Promulgate administrative regulations to carry out the provisions of this subsection.

➔Section 8. This Act shall be known as the Brianna Taylor Act.

➔Section 9. Whereas all instances of driving under the influence pose an immediate danger to the health, safety, and welfare of the citizens of the Commonwealth, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.