

AN ACT relating to driving under the influence.

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

➔Section 1. KRS 186.570 is amended to read as follows:

- (1) The cabinet or its agent designated in writing for that purpose may deny any person an operator's license or may suspend the operator's license of any person, or, in the case of a nonresident, withdraw the privilege of operating a motor vehicle in this state, subject to a hearing and with or without receiving a record of conviction of that person of a crime, if the cabinet has reason to believe that:
 - (a) That person has committed any offenses for the conviction of which mandatory revocation of a license is provided by KRS 186.560.
 - (b) That person has, by reckless or unlawful operation of a motor vehicle, caused, or contributed to an accident resulting in death or injury or serious property damage.
 - (c) That person has a mental or physical disability that makes it unsafe for him to drive upon the highways. The Transportation Cabinet shall, by administrative regulations promulgated pursuant to KRS Chapter 13A, establish a medical review board to provide technical assistance in the review of the driving ability of these persons. The board shall consist of licensed medical and rehabilitation specialists.
 - (d) That person is an habitually reckless or negligent driver of a motor vehicle or has committed a serious violation of the motor vehicle laws.
 - (e) That person has been issued a license without making proper application for it, as provided in KRS 186.412 and administrative regulations promulgated pursuant to KRS Chapter 13A.
 - (f) That person has presented false or misleading information as to the person's residency, citizenship, religious convictions, or immigration status.
 - (g) A person required by KRS 186.480 to take an examination has been issued a

license without first having passed the examination.

- (h) That person has been convicted of assault and battery resulting from the operation of a motor vehicle.
 - (i) That person has failed to appear pursuant to a citation or summons issued by a law enforcement officer of this Commonwealth or any other jurisdiction.
 - (j) That person has failed to appear pursuant to an order by the court to produce proof of security required by KRS 304.39-010 and a receipt showing that a premium for a minimum policy period of six (6) months has been paid.
 - (k) That person is a habitual violator of KRS 304.39-080. For purposes of this section, a "habitual violator" shall mean any person who has operated a motor vehicle without security on the motor vehicle as required by Subtitle 39 of this chapter three (3) or more times within a five (5) year period, in violation of KRS 304.99-060(2).
- (2) The cabinet shall deny any person a license or shall suspend the license of an operator of a motor vehicle upon receiving written notification from the Cabinet for Health and Family Services that the person has a child support arrearage which equals or exceeds the cumulative amount which would be owed after six (6) months of nonpayment or failure, after receiving appropriate notice, to comply with a subpoena or warrant relating to paternity or child support proceedings, as provided by 42 U.S.C. secs. 651 et seq.; except that any child support arrearage which exists prior to January 1, 1994, shall not be included in the calculation to determine whether the license of an operator of a motor vehicle shall be denied or suspended. The denial or suspension shall continue until the arrearage has been eliminated, payments on the child support arrearage are being made in accordance with a court or administrative order, or the person complies with the subpoena or warrant relating to paternity or child support. Before the license may be reinstated, proof of elimination of the child support arrearage or proof of compliance with the subpoena

or warrant relating to paternity or child support proceedings as provided by 42 U.S.C. sec. 666(a)(16) from the court where the action is pending or the Cabinet for Health and Family Services shall be received by the Transportation Cabinet as prescribed by administrative regulations promulgated by the Cabinet for Health and Family Services and the Transportation Cabinet.

(3) The cabinet or its agent designated in writing for that purpose shall deny any person an operator's license or shall suspend the operator's license or ignition interlock license of any person, or, in the case of a nonresident, withdraw the privilege of operating a motor vehicle in this state:

(a) Where the person has been declared ineligible to operate a motor vehicle under KRS 532.356 for the duration of the ineligibility, upon notification of the court's judgment;~~[-or]~~

(b) Upon receiving written notification from the Finance and Administration Cabinet, Department of Revenue, that the person is a delinquent taxpayer as provided in KRS 131.1817. The denial or suspension shall continue until a written tax clearance has been received by the cabinet from the Finance and Administration Cabinet, Department of Revenue. Notwithstanding the provisions of subsection (4) of this section, a person whose license is denied or suspended under this paragraph shall have thirty (30) days from the date the cabinet mails the notice to request a hearing~~[-~~

~~];~~ or

(c) During the suspension or revocation period of a person's operator's license

if the person:

1. Was issued an ignition interlock license during the applicable suspension or revocation period; and

2. Failed to have an ignition interlock device installed into his or her vehicle or vehicles as required under Sections 3 and 6 of this Act.

- (4) The cabinet or its agent designated in writing for that purpose shall provide any person subject to the suspension, revocation, or withdrawal of their driving privileges, under provisions of this section, an informal hearing. Upon determining that the action is warranted, the cabinet shall notify the person in writing by mailing the notice to the person by United States Postal Service ~~first-class mail~~ to the last known address of the person. The hearing shall be automatically waived if not requested within twenty (20) days after the cabinet mails the notice. The hearing shall be scheduled as early as practical within twenty (20) days after receipt of the request at a time and place designated by the cabinet. An aggrieved party may appeal a decision rendered as a result of an informal hearing, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.
- (5) (a) The cabinet may suspend the operator's license of any resident upon receiving notice of the conviction of that person in another state of an offense there which, if committed in this state, would be grounds for the suspension or revocation of an operator's license. The cabinet shall not suspend an operator's license under this paragraph if:
1. The conviction causing the suspension or revocation is more than five (5) years old;
 2. The conviction is for a traffic offense other than a felony traffic offense or a habitual violator offense; and
 3. The license holder complies with the provisions of KRS 186.442.
- (b) If, at the time of application for an initial Kentucky operator's license, a person's license is suspended or revoked in another state for a conviction that is less than five (5) years old, the cabinet shall deny the person a license until the person resolves the matter in the other state and complies with the provisions of this chapter.
- (c) The cabinet may, upon receiving a record of the conviction in this state of a

nonresident driver of a motor vehicle of any offense under the motor vehicle laws, forward a notice of that person's conviction to the proper officer in the state of which the convicted person is a resident.

(d) This subsection shall not apply to a commercial driver's license.

(6) The Transportation Cabinet is forbidden from suspending or revoking an operator's license or assessing points or any other form of penalty against the license holder for speeding violations or speeding convictions from other states. This subsection shall apply only to speeding violations. This section shall not apply to a person who holds or is required to hold a commercial driver's license.

~~[(7) Each operator's license which has been canceled, suspended, or revoked shall be surrendered to and retained by the cabinet. At the end of the period of cancellation, suspension, or revocation, the license may be returned to the licensee after he has complied with all requirements for the issuance or reinstatement of his driving privilege.]~~

~~(Z) [(8)]~~ Insurance companies issuing motor vehicle policies in the Commonwealth shall be prohibited from raising a policyholder's rates solely because the policyholder's driving privilege has been suspended or denied pursuant to subsection (2) of this section.

➔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 or her 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) 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 twenty-four (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)(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) or (7) of~~ this section, no person shall be eligible for reinstatement of his or her full privilege to operate a motor vehicle until he or she 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 or her 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) ~~After a minimum of twelve (12) months from the effective date of the revocation,~~

~~]~~A person whose license has been revoked pursuant to subsection (1)~~(a),~~ (b), (c), or (d) of this section shall have ~~may move the court to reduce]~~the period of revocation reduced on a day-for-day basis by the Transportation Cabinet for each day the person held a valid ignition interlock license and fulfilled the ignition interlock device requirement under Section 3 of this Act~~[KRS 189A.420], if:~~

- ~~(a) The person maintained a valid ignition interlock license and did not operate a motor vehicle or motorcycle without a functioning ignition interlock device as provided for in Sections 3 and 6 of this Act; and~~
- ~~(b) The person did not operate a motor vehicle or motorcycle in violation of any restrictions specified by the court or Section 7 of this Act;~~

but in no case shall the reduction reduce the period of ignition interlock use to less than twelve (12) months for a conviction under subsection (1)(b), (c), or (d) of this section.~~[The court may, upon a written finding in the record for good cause shown, order such a period to be reduced to not less than twelve (12) months, if:~~

- ~~(a) The person maintained a valid ignition interlock license and did not operate a motor vehicle or motorcycle without a functioning ignition interlock device as provided for in KRS 189A.420;~~
- ~~(b) The person did not operate a motor vehicle or motorcycle in violation of any restrictions specified by the court; and~~
- ~~(c) The functioning ignition interlock device was installed on the motor vehicle or motorcycle for a period of time not less than twelve (12) months 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)(a), (b), (c), or (d) of this section.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 189A IS CREATED TO READ AS FOLLOWS:

- (1) Unless the conditions of subsection (2) of this section are met, at any time after arraignment, a person who is charged with violating KRS 189A.010(1)(a), (b), (e), or (f) may apply to the Transportation Cabinet for an ignition interlock license.
- (2) At arraignment, or any time thereafter, a person may request authorization from the court to apply to the cabinet for an ignition interlock license for use during the duration of his or her operator's license suspension under Section 10 of this Act for a violation of KRS 189A.010(1)(a), (b), (e), or (f), if either of the following requirements are met:

 - (a) For any offense under KRS 189A.010, if, at the time of the alleged offense, any of the aggravating circumstances provided under KRS 189A.010(11) were present while the person was operating or in physical control of a motor vehicle; or
 - (b) If the person refused to submit to a breath, blood, or urine test after filing a motion waiving the right to judicial review of a license suspension pursuant to Sections 9 and 10 of this Act.
- (3) The court may issue an order authorizing the person to immediately apply for an ignition interlock license following arraignment, if the person:

 - (a) Signs an affidavit averring to the court that he or she plans to enroll in, is enrolled in, or has completed, alcohol or substance abuse treatment; and
 - (b) Provides the court with proof of vehicle motor insurance and registration.
- (4) Upon issuance of a court order authorizing the issuance of an ignition interlock license pursuant to subsection (3) of this section, the person may apply for an ignition interlock license at the cabinet.
- (5) The cabinet shall verify that the person applying for an ignition interlock license

has not had his or her operator's license suspended or revoked due to a separate incident or occurrence.

(6) A person shall not be issued an ignition interlock license unless the person provides to the cabinet:

(a) The court order authorizing issuance of an ignition interlock license, if required pursuant to subsection (2) of this section;

(b) The person's current operator's license, which shall be surrendered to the cabinet;

(c) Proof of valid insurance and vehicle registration; and

(d) A signed affidavit on a form prescribed by the cabinet averring that within thirty (30) days of issuance of an ignition interlock license, he or she will have an ignition interlock device installed in his or her motor vehicle or vehicles by a provider certified by the cabinet to operate within the state.

(7) If the person meets the requirements of subsections (5) and (6) of this section and the person's operator's license has not been suspended or revoked for a separate incident or occurrence, the cabinet shall issue an ignition interlock license to the person.

(8) During the applicable suspension or revocation period or the thirty (30) day period following the issuance of an ignition interlock license pursuant to this section, no person issued an ignition interlock license shall operate a motor vehicle that is not equipped with a functioning ignition interlock device unless granted an employee exception under Section 4 of this Act or a hardship license under Section 14 of this Act.

(9) Any person who intends to apply for the issuance of an ignition interlock license may request a reduction in the cost associated with the lease, purchase, installation, servicing, and monitoring of an ignition interlock device by averring to the cabinet that he or she is indigent. The cabinet shall, based on the sliding

scale established by the Supreme Court of Kentucky by rule to determine indigency, require the person to pay the costs imposed under this section in an amount that is less than the full amount of costs associated with the lease, purchase, or installation of an ignition interlock device and associated servicing and monitoring fees.

(10) Notwithstanding the guidelines established in subsection (9) of this section, no reduction in cost shall reduce monitoring or servicing fees associated with an ignition interlock device to less than twenty dollars (\$20) a month.

(11) Any person granted a reduction in cost associated with the lease, purchase, installation, and servicing and monitoring of an ignition interlock device pursuant to subsection (9) of this section shall pay to a provider the amount determined by the cabinet. The provider shall accept the determined amount as payment in full. No unit of state or local government shall be responsible to the provider for payment or costs associated with an ignition interlock device.

(12) Any person applying for an ignition interlock license, who is determined by the cabinet to be eligible to receive the license shall pay a nonrefundable application fee to the cabinet in an amount not to exceed two hundred dollars (\$200).

(13) The Transportation Cabinet and the Administrative Office of the Courts shall promulgate administrative regulations and issue application forms and other forms necessary:

(a) To implement the provisions of this section; and

(b) To review and regulate ignition interlock driving privileges and ignition interlock devices of any nonresident issued an ignition interlock license outside of the state of Kentucky.

➔Section 4. KRS 189A.085 is amended to read as follows:

(1) ~~Unless,~~At the final sentencing hearing of a person who has been convicted of a second or subsequent offense under KRS 189A.010,~~the person provides proof that~~

~~the requirements of KRS 189A.420 have been met for issuance of an ignition interlock license,~~ the 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, **unless the person provides proof that he or she has been issued an ignition interlock license pursuant to Section 3 of this Act and fulfilled the requirements for installation of an ignition interlock device as provided in Section 6 of this Act. Any license plate or plates impounded under this section shall be impounded** in accordance with the following procedures:

- (a) At the final sentencing hearing, the person 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 5. A NEW SECTION OF KRS CHAPTER 189A IS CREATED TO READ AS FOLLOWS:

(1) At the time of arraignment or any time thereafter, any person issued an ignition interlock license may request the court's permission to drive his or her employer's nonignition interlock equipped vehicle for work-related purposes.

(2) No court shall issue an order allowing a person to drive a nonignition interlock equipped vehicle unless the person provides the court with a sworn statement from his or her employer, on a form provided by the Administrative Office of the Courts. The statement shall:

(a) Detail the necessity for the person to use the employer's vehicle in his or her work at the direction of the employer during working hours; and

(b) Acknowledge that the person is restricted from using an employer's nonignition interlock equipped vehicle until the expiration of thirty (30) days from the date of issuance of the court order suspending the person's operator's license for a first offense under KRS 189A.010 or twelve (12) months from the date of the issuance of the court order suspending the person's operator's license for a second or subsequent offense under KRS 189A.010.

The statement shall also include any additional information as required by the court or administrative regulation promulgated by the cabinet.

(3) If the court grants the person's request to drive an employer's nonignition interlock equipped vehicle pursuant to the restrictions provided in subsection (2) of this section, the person shall:

(a) Provide a copy of the court order to his or her employer; and

(b) Keep a copy of the court order in the nonignition interlock equipped vehicle at all times.

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 189A IS CREATED TO READ AS FOLLOWS:

(1) Within thirty (30) days of issuance of an ignition interlock license pursuant to the provisions of Section 3 of this Act, a person shall have an ignition interlock device installed into his or her vehicle or vehicles by a provider certified by the cabinet.

(2) Notwithstanding any other penalty provided under the law, failure to install an ignition interlock device into the person's vehicle or vehicles within thirty (30) days of issuance of the applicable license shall be deemed reason for revocation of the person's ignition interlock license pursuant to subsection (3) of Section 1 of this Act.

(3) An ignition interlock provider certified by the cabinet to operate within the Commonwealth shall provide to the cabinet notice of persons who have completed installation of an ignition interlock device. Providers shall be required to transmit the names of persons who have installed ignition interlock devices into their vehicle or vehicles to the cabinet every thirty (30) days.

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 or her license is revoked or suspended under this chapter~~[, or upon the conclusion of a license revocation period pursuant to KRS 189A.5]~~ unless:

(a) The person has his or her valid ignition interlock license in the person's

possession and the motor vehicle or motorcycle is equipped with a functioning ignition interlock device as required by Section 3 of this Act~~[KRS 189A.420]~~;

(b) The person has been granted an employer vehicle exception pursuant to Section 5 of this Act and has a copy of the court order granting the exception in his or her possession; or

(c) The person has been granted a hardship driver's license under Section 14 of this Act and has his or her hardship license and a copy of the court order granting a hardship driver's license exception in his or her possession.

(2) No person who is issued an ignition interlock license under Section 3 of this Act or a hardship license under Section 14 of this Act shall operate a motor vehicle at any time, place, or for any purpose, other than those provided in this chapter or by court order.

(3)~~(2)~~ In addition to any other penalty imposed by the court, any person who violates **subsection (1) or (2) of this** ~~[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 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 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 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; and
- (d) At the sole discretion of the court, in the interest of public safety and upon a written finding in the record for good cause shown, the court may order that, following any period of incarceration required for the conviction of an offense under paragraph (a), (b), or (c) of this subsection, the~~eligible~~ person, **if eligible, may reapply for an** ~~is authorized to apply for and the cabinet shall issue to the person an~~ ignition interlock license **pursuant to Section 3 of this Act or a hardship driver's license under Section 14 of this Act**, for the remainder of the original period of suspension or revocation and for the entire period of the new revocation if the person is and remains otherwise eligible for such license.
- ~~(4)(3)~~ The five (5) year period under this section shall be measured in the same manner as in KRS 189A.070.
- ~~(5)(4)~~ Upon a finding of a **second or subsequent** violation of any of the requirements of an ignition interlock license, the court shall dissolve such an order. **If the person held an ignition interlock license prior to the second or subsequent violation,** ~~and~~ the person shall receive no credit toward the remaining period of revocation ~~required under subsection (2)(b) or (c) of this section~~.
- (6) The court, upon notice from the Transportation Cabinet, prosecutor's office, law enforcement agency, or from any agency of the state, that a person currently holding an ignition interlock or hardship driver's license has been:**
- (a) Charged or convicted of a violation, misdemeanor, or offense, other than**

those provided in subsections (1) and (2) of this section; or

(b) Violated restrictions imposed by a court order relating to probation or parole;

may, at the court's discretion or upon motion by the prosecutor, order the person to show cause as to why he or she should not have the ignition interlock license or hardship license revoked. If after a hearing, the court finds by a preponderance of the evidence that the person has violated paragraphs (a) or (b) of this subsection, the court may revoke the person's ignition interlock license for a period to be determined by the court.

(7) A person shall not 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 prohibitions established in Section 3 of this Act. Any person who violates this subsection shall:

(a) For a first offense, be guilty of a Class B misdemeanor; and

(b) For a second or subsequent offense, be guilty of a Class A misdemeanor.

(8) No person shall knowingly install a defective ignition interlock device on a motor vehicle or motorcycle or tamper with an installed ignition interlock device with the intent of rendering it defective. Any person who violates the provisions of this subsection shall:

(a) For a first offense, be guilty of a Class B misdemeanor; and

(b) 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.

(9) 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. Any person who violates the provisions of this subsection shall:

(a) For a first offense, be guilty of a Class B misdemeanor; and

(b) 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.

(10) The Transportation Cabinet shall promulgate administrative regulations necessary to implement the provisions of this section.

➔Section 8. KRS 189A.105 is amended to read as follows:

(1) A person's refusal to submit to tests under KRS 189A.103 shall result in revocation of his or her driving privileges~~[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 or her in court as evidence of violating KRS 189A.010 and will result in revocation of his or her driver's license, and if the person refuses to submit to the tests and is subsequently convicted of violating KRS 189A.010(1) then he or she will be subject to a mandatory minimum jail sentence which is twice as long as the mandatory minimum jail sentence imposed if he or she submits to the tests, and that if the person refuses to submit to the tests his or her license will be suspended by the court at the time of arraignment~~[, and he or she will be unable to obtain an ignition interlock license during the suspension period]~~, although he or she will have the ability to request an ignition interlock license, but the court may deny the request and prohibit the person from operating a motor vehicle; and

2. That, if a test is taken, the results of the test may be used against him or her in court as evidence of violating KRS 189A.010(1), and that although his or her license will be suspended if he or she is convicted,

he or she may be eligible immediately for an ignition interlock license allowing him or her to drive during the period of suspension and, if he or she is convicted, he or she will receive a credit toward any other ignition interlock requirement arising from this arrest; 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. However, if the incident involves a motor vehicle accident in which there was a fatality, the investigating peace officer shall seek such a search warrant for blood, breath, or urine testing unless the testing has already been done by consent. If testing done pursuant to a warrant reveals the presence of alcohol or any other substance that impaired the driving ability of a person who is charged with and convicted of an offense arising from the accident, the sentencing court shall require, in addition to any other sentencing provision, that the defendant make restitution to the state for the cost of the testing.
- (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 KRS 189A.010 and 189A.107 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 KRS 189A.103 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 9. 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 KRS 189A.010(1) shall have his driver's license suspended by the court during the pendency of the action under KRS 189A.200 unless, at the time of arraignment ***or any time thereafter***, the person files a motion with the court waiving the right to judicial review of the suspension, after which the court, in its discretion, may authorize the person to apply to the cabinet for issuance of an ignition interlock license under ***Section 3 of this Act***~~[KRS 189A.420]~~ for the period of the suspension. If the person complies with the requirements of ***Section 3 of this Act***~~[KRS 189A.420]~~ and is otherwise eligible, the cabinet shall issue the person an ignition interlock license for the remainder of the suspension period and ***the cabinet shall*** apply ~~a~~***shall*** apply ~~at the court determined~~ credit on a day-for-day basis for any subsequent ignition interlock requirement arising from the same incident.

- (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 KRS 189A.200 and 189A.220. 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 KRS 189A.070(1), except that the court, in its discretion, may authorize the person to apply to the cabinet for issuance of an ignition interlock license under Section 3 of this Act ~~[KRS 189A.420]~~ for the period of the suspension. If the person complies with the requirements of Section 3 of this Act ~~[KRS 189A.420]~~ and is otherwise eligible, the cabinet shall issue the person an ignition interlock license for the remainder of the suspension period and the cabinet shall apply a ~~[grant the person]~~ day-for-day credit for any subsequent ignition interlock requirement arising from the same incident.

➔Section 10. 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 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. If the person files a motion with the court waiving the right to judicial review of the suspension, the court, in its discretion, may authorize the person to apply to the cabinet for issuance of an ignition interlock license under **Section 3 of this Act**~~[KRS 189A.420]~~ for the period of the suspension. If the person complies with **Sections 3 and 6 of this Act**~~[KRS 189A.420]~~ and is otherwise eligible, the cabinet shall issue the person an ignition interlock license for the remainder of the suspension period and **the cabinet shall** apply ~~a~~a~~[the court determined]~~ credit on a day-for-day basis for any subsequent ignition interlock requirement arising from the same incident.
- (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. Nothing in this subsection shall prevent the person from filing a motion for, the court from granting, or the cabinet from issuing an ignition interlock license under subsection (2) of 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 KRS 189A.070 and 189A.107.

➔Section 11. KRS 189A.240 is amended to read as follows:

In any judicial review of a pretrial suspension imposed under KRS 189A.200(1)(a), 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 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, *or at the court's discretion, an eligible person may waive judicial review of a suspension and be granted an ignition interlock license under Section 3 of this Act.*

➔Section 12. KRS 189A.320 is amended to read as follows:

Each court shall report to the Transportation Cabinet the convictions of persons and license revocations imposed by the court for *violations*~~[violation]~~ of KRS 189A.010(1) and 189A.103.

➔Section 13. KRS 189A.400 is amended to read as follows:

- (1) The District Court shall have~~[exclusive]~~ jurisdiction over the issuance of ignition interlock and hardship licenses.
- (2) The county attorney shall review applications submitted to the District Court and may object to the issuance of ignition interlock and hardship licenses.

➔Section 14. KRS 189A.410 is amended to read as follows:

- (1) At any time *during*~~[following the expiration of]~~ the minimum license suspension periods enumerated in:

~~{(a)}~~ KRS 189A.010(6); or

~~{(b)}~~ KRS 189A.070~~[for a violation of:~~

~~1. KRS 189A.010(1)(c) or (d); or~~

~~2. KRS 189A.010(1)(a), (b), or (e) for a first offense within a five (5) year period if, at the time of the offense, none of the aggravating circumstances enumerated under KRS 189A.010(11) were present while the person was operating or in control of a motor vehicle];~~

the court may grant the person hardship driving privileges for the balance of the suspension period imposed by the court, upon written petition of the defendant, if the court finds reasonable cause to believe that revocation would

hinder the person's ability to continue his employment; continue attending school or an educational institution; obtain necessary medical care; attend driver improvement, alcohol, or substance abuse education programs; or attend court-ordered counseling or other programs.

- (2) Before granting hardship driving privileges, the court shall order the person to:
- (a) Provide the court with proof of motor vehicle insurance;
 - (b) If necessary, provide the court with a written, sworn statement from his or her employer, on a form provided by the cabinet, detailing his or her job, hours of employment, and the necessity for the person to use the employer's motor vehicle either in his or her work at the direction of the employer during working hours, or in travel to and from work if the license is sought for employment purposes; and
 - (c) If the person is self-employed, to provide the information required in paragraph (b) of this subsection together with a sworn statement as to its truth;
 - (d) Provide the court with a written, sworn statement from the school or educational institution which he attends, of his or her class schedule, courses being undertaken, and the necessity for the person to use a motor vehicle in his travel to and from school or other educational institution if the license is sought for educational purposes. Licenses for educational purposes shall not include participation in sports, social, extracurricular, fraternal, or other noneducational activities;
 - (e) Provide the court with a written, sworn statement from a physician, or other medical professional licensed but not certified under the laws of Kentucky, attesting to the person's normal hours of treatment, and the necessity to use a motor vehicle to travel to and from the treatment if the license is sought for medical purposes;
 - (f) Provide the court with a written, sworn statement from the director of any

alcohol or substance abuse education or treatment program as to the hours in which the person is expected to participate in the program, the nature of the program, and the necessity for the person to use a motor vehicle to travel to and from the program if the license is sought for alcohol or substance abuse education or treatment purposes;

- (g) Provide the court with a copy of any court order relating to treatment, participation in driver improvement programs, or other terms and conditions ordered by the court relating to the person which require him or her to use a motor vehicle in traveling to and from the court-ordered program. The judge shall include in the order the necessity for the use of the motor vehicle; and
 - (h) Provide to the court any information as may be required by administrative regulation of the Transportation Cabinet.
- (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 15. KRS 189A.440 is amended to read as follows:
- (1) No person who is issued~~[an ignition interlock license under KRS 189A.420 or]~~ a hardship license shall operate a motor vehicle at any time, place, or for any purpose other than those authorized upon the face of the~~[ignition interlock or]~~ hardship license issued under ***Section 14 of this Act***~~[KRS 189A.410].~~
 - (2) Any defendant who violates the provisions of subsection (1) of this section is guilty of a Class A misdemeanor, and shall have his license revoked for the initial period of revocation plus an additional six (6) months.
 - (3) Any defendant or any other person who knowingly assists the defendant in making a false application statement is guilty of a Class A misdemeanor and shall have his motor vehicle or motorcycle operator's license revoked for six (6) months.

➔Section 16. KRS 189A.500 is amended to read as follows:

- (1) The Transportation Cabinet shall:

- (a) Issue ignition interlock license application forms and other forms necessary for the implementation of ignition interlock licenses;
 - (b) Create a uniform certificate of installation to be provided to a defendant by an ignition interlock provider upon installation of a certified ignition interlock device;
 - (c) Create an ignition interlock license for issuance to any person granted authorization by the court to receive an ignition interlock license;
 - (d) Certify ignition interlock devices approved for use in the Commonwealth;
 - (e) *Create a process by which any person issued an ignition interlock license pursuant to Section 3 of this Act may seek administrative review by the cabinet of fees, conditions, or terms required for the installation, use, maintenance, or monitoring by an ignition interlock provider certified by the cabinet;*
 - (f) Publish and periodically update on the Transportation Cabinet Web site a list of contact information, including a link to the Web site of each certified ignition interlock device provider, with the entity appearing first on the list changing on a statistically random basis each time a unique visitor visits the list of the approved ignition interlock installers and the approved servicing and monitoring entities; and
 - ~~(g)~~~~(f)~~ Promulgate administrative regulations to carry out the provisions of this section.
- (2) No model of ignition interlock device shall be certified for use in the Commonwealth unless it meets or exceeds standards promulgated by the Transportation Cabinet pursuant to this section.
- (3) In bidding for the contract with the Transportation Cabinet to provide ignition interlock devices and servicing or monitoring or both, the ignition interlock provider shall take into account that some defendants will not be able to pay the full

cost of the ignition interlock device or servicing and monitoring fees.

- (4) ~~Upon June 24, 2015,~~ Any contract between the cabinet and an ignition interlock device provider shall include the following:
- (a) A requirement that the provider accept reduced payments as a full payment for all purposes from persons determined to be indigent by a court authorizing the use of an ignition interlock device pursuant to **Section 3 of this Act** ~~[KRS 189A.420(7)]~~;
 - (b) A requirement that no unit of state or local government and no public officer or employee shall be liable for the cost of purchasing or installing the ignition interlock device or associated costs;
 - (c) **A specific schedule of any fees to be assessed** ~~[A requirement that the provider agree to a price]~~ for ~~[the cost of]~~ leasing or purchasing an ignition interlock device and any associated servicing or monitoring fees during the duration of the contract. **These fees** ~~[This price]~~ shall not be increased but may be reduced during the duration of the contract;
 - (d) Requirements and standards for the servicing, inspection, and monitoring of the ignition interlock device;
 - (e) Provisions for training for service center technicians and clients;
 - (f) A requirement that the provider electronically transmit reports on driving activity within seven (7) days of servicing an ignition interlock device to the respective court, prosecuting attorney, and defendant;
 - (g) Requirements for a transition plan for the ignition interlock device provider before the provider leaves the state to ensure that continuous monitoring is achieved and to provide a minimum forty-five (45) day notice to the cabinet of any material change to the design of the ignition interlock device, or any changes to the vendor's installation, servicing, or monitoring capabilities;
 - (h) A requirement that, before beginning work, the ignition interlock device

provider have and maintain insurance as approved by the cabinet, including vendor's public liability and property damage insurance, in an amount determined by the cabinet, that covers the cost of defects or problems with product design, materials, workmanship during manufacture, calibration, installation, device removal, or any use thereof;

- (i) A provision requiring that an ignition interlock provider agree to hold harmless and indemnify any unit of state or local government, public officer, or employee from all claims, demands, and actions, as a result of damage or injury to persons or property which may arise, directly or indirectly, out of any action or omission by the ignition interlock provider relating to the installation, service, repair, use, or removal of an ignition interlock device;
- (j) A requirement that a warning label to be affixed to each ignition interlock device upon installation. The label shall contain a warning that any person who tampers with, circumvents, or otherwise misuse the device commits a violation of law under Section 7 of this Act ~~KRS 189A.345~~; and
- (k) A requirement that a provider will remove an ignition interlock device without cost, if the device is found to be defective.

➔Section 17. The following KRS sections are repealed:

189A.340 Ignition interlock devices and licenses.

189A.345 Penalties for violation of KRS 189A.420 governing ignition interlock devices.

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