

1 AN ACT relating to driving under the influence.

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

3 ➔Section 1. KRS 189A.010 is amended to read as follows:

- 4 (1) A person shall not operate or be in physical control of a motor vehicle anywhere in
5 this state:
- 6 (a) Having an alcohol concentration of 0.08 or more as measured by a
7 scientifically reliable test or tests of a sample of the person's breath or blood
8 taken within two (2) hours of cessation of operation or physical control of a
9 motor vehicle;
 - 10 (b) While under the influence of alcohol;
 - 11 (c) While under the influence of any other substance or combination of
12 substances which impairs one's driving ability;
 - 13 (d) While the presence of a controlled substance listed in subsection (11)~~[(12)]~~ of
14 this section is detected in the blood, as measured by a scientifically reliable
15 test, or tests, taken within two (2) hours of cessation of operation or physical
16 control of a motor vehicle;
 - 17 (e) While under the combined influence of alcohol and any other substance which
18 impairs one's driving ability; or
 - 19 (f) Having an alcohol concentration of 0.02 or more as measured by a
20 scientifically reliable test or tests of a sample of the person's breath or blood
21 taken within two (2) hours of cessation of operation or physical control of a
22 motor vehicle, if the person is under the age of twenty-one (21).
- 23 (2) With the exception of the results of the tests administered pursuant to KRS
24 189A.103(7), if the sample of the person's blood or breath that is used to determine
25 the alcohol concentration thereof was obtained more than two (2) hours after
26 cessation of operation or physical control of a motor vehicle, the results of the test
27 or tests shall be inadmissible as evidence in a prosecution under subsection (1)(a) or

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

3 (3) In any prosecution for a violation of subsection (1)(b) or (e) of this section in which
4 the defendant is charged with having operated or been in physical control of a motor
5 vehicle while under the influence of alcohol, the alcohol concentration in the
6 defendant's blood as determined at the time of making analysis of his blood or
7 breath shall give rise to the following presumptions:

8 (a) If there was an alcohol concentration of less than 0.05 based upon the
9 definition of alcohol concentration in KRS 189A.005, it shall be presumed
10 that the defendant was not under the influence of alcohol; and

11 (b) If there was an alcohol concentration of 0.05 or greater but less than 0.08
12 based upon the definition of alcohol concentration in KRS 189A.005, that fact
13 shall not constitute a presumption that the defendant either was or was not
14 under the influence of alcohol, but that fact may be considered, together with
15 other competent evidence, in determining the guilt or innocence of the
16 defendant.

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

21 (4) (a) Except as provided in paragraph (b) of this subsection, the fact that any person
22 charged with violation of subsection (1) of this section is legally entitled to
23 use any substance, including alcohol, shall not constitute a defense against any
24 charge of violation of subsection (1) of this section.

25 (b) A laboratory test or tests for a controlled substance shall be inadmissible as
26 evidence in a prosecution under subsection (1)(d) of this section upon a
27 finding by the court that the defendant consumed the substance under a valid

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

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

5 (a) For the first offense~~[within a ten (10) year period]~~, be fined not less than two
6 hundred dollars (\$200) nor more than five hundred dollars (\$500), or be
7 imprisoned in the county jail for not less than forty-eight (48) hours nor more
8 than thirty (30) days, or both. Following sentencing, the defendant may apply
9 to the judge for permission to enter a community labor program for not less
10 than forty-eight (48) hours nor more than thirty (30) days in lieu of fine or
11 imprisonment, or both. If any of the aggravating circumstances listed in
12 subsection (10)~~[(11)]~~ of this section are present while the person was
13 operating or in physical control of a motor vehicle, the mandatory minimum
14 term of imprisonment shall be four (4) days, which term shall not be
15 suspended, probated, conditionally discharged, or subject to any other form of
16 early release;

17 (b) For the second offense~~[within a ten (10) year period]~~, be fined not less than
18 three hundred fifty dollars (\$350) nor more than five hundred dollars (\$500)
19 and shall be imprisoned in the county jail for not less than seven (7) days nor
20 more than six (6) months and, in addition to fine and imprisonment, may be
21 sentenced to community labor for not less than ten (10) days nor more than six
22 (6) months. If any of the aggravating circumstances listed in subsection
23 (10)~~[(11)]~~ of this section are present, the mandatory minimum term of
24 imprisonment shall be fourteen (14) days, which term shall not be suspended,
25 probated, conditionally discharged, or subject to any other form of early
26 release;

27 (c) For a third offense~~[within a ten (10) year period]~~, be fined not less than five

1 hundred dollars (\$500) nor more than one thousand dollars (\$1,000) and shall
 2 be imprisoned in the county jail for not less than thirty (30) days nor more
 3 than twelve (12) months and may, in addition to fine and imprisonment, be
 4 sentenced to community labor for not less than ten (10) days nor more than
 5 twelve (12) months. If any of the aggravating circumstances listed in
 6 subsection (10)~~[(11)]~~ of this section are present, the mandatory minimum term
 7 of imprisonment shall be sixty (60) days, which term shall not be suspended,
 8 probated, conditionally discharged, or subject to any other form of early
 9 release;

10 (d) For a fourth or subsequent offense~~[within a ten (10) year period]~~, be guilty of
 11 a Class D felony. If any of the aggravating circumstances listed in subsection
 12 (10)~~[(11)]~~ of this section are present, the mandatory minimum term of
 13 imprisonment shall be two hundred forty (240) days, which term shall not be
 14 suspended, probated, conditionally discharged, or subject to any other form of
 15 release; and

16 (e) 1. For purposes of this subsection, prior offenses shall include all
 17 convictions, in this state~~[,]~~ and any other state or jurisdiction, **resulting**
 18 **from:**~~[,]~~

19 **a. All first offenses, regardless of when the offense was committed;**

20 **b. All offenses committed with any of the aggravating**
 21 **circumstances listed in subsection (10) of this section regardless**
 22 **of time; and**

23 **c. All offenses committed within a ten (10) year period;**

24 for operating or being in control of a motor vehicle while under the
 25 influence of alcohol or other substances that impair one's driving ability,
 26 or any combination of alcohol and such substances, or while having an
 27 unlawful alcohol concentration, or driving while intoxicated, but shall

1 not include convictions for violating subsection (1)(f) of this section.

2 2. In determining the ten (10) year period under subparagraph 1. of this
3 paragraph, the period shall be measured from the dates on which the
4 offenses occurred for which the judgments of conviction were entered.

5 3. A court shall receive as proof of a prior conviction a copy of that
6 conviction, certified by the court ordering the conviction.

7 4. A first offense conviction under subparagraph 1. of this paragraph
8 may be sealed ten (10) years after the date of the offense upon motion
9 of the defendant. An offense which has been sealed subject to this
10 subparagraph shall not appear on official state-performed
11 background checks, but shall remain for purposes of this paragraph a
12 first offense, and shall be available to an office of the
13 Commonwealth's attorney or county attorney for purposes of
14 determining the charging level of a subsequent violation of this
15 chapter.

16 5. Pursuant to KRS 446.080(3), this paragraph shall not be construed to
17 apply retroactively.

18 (6) Any person who violates the provisions of subsection (1)(f) of this section shall
19 have his driving privilege or operator's license suspended by the court for a period
20 of no less than thirty (30) days but no longer than six (6) months, and the person
21 shall be fined no less than one hundred dollars (\$100) and no more than five
22 hundred dollars (\$500), or sentenced to twenty (20) hours of community service in
23 lieu of a fine. A person subject to the penalties of this subsection shall not be
24 subject to the penalties established in subsection (5) of this section or any other
25 penalty established pursuant to KRS Chapter 189A, except those established in
26 KRS 189A.040(1).

27 (7) If the person is under the age of twenty-one (21) and there was an alcohol

1 concentration of 0.08 or greater based on the definition of alcohol concentration in
2 KRS 189A.005, the person shall be subject to the penalties established pursuant to
3 subsection (5) of this section.

4 (8) For a second or third offense~~[within a ten (10) year period]~~, the minimum sentence
5 of imprisonment or community labor shall not be suspended, probated, or subject to
6 conditional discharge or other form of early release. For a fourth or subsequent
7 offense under this section, the minimum term of imprisonment shall be one hundred
8 twenty (120) days, and this term shall not be suspended, probated, or subject to
9 conditional discharge or other form of early release. For a second or subsequent
10 offense, at least forty-eight (48) hours of the mandatory sentence shall be served
11 consecutively.

12 (9) When sentencing persons under subsection (5)(a) of this section, at least one (1) of
13 the penalties shall be assessed and that penalty shall not be suspended, probated, or
14 subject to conditional discharge or other form of early release.

15 (10) ~~[In determining the ten (10) year period under this section, the period shall be~~
16 ~~measured from the dates on which the offenses occurred for which the judgments of~~
17 ~~conviction were entered.~~

18 ~~(11)~~ For purposes of this section, aggravating circumstances are any one (1) or more of
19 the following:

- 20 (a) Operating a motor vehicle in excess of thirty (30) miles per hour above the
21 speed limit;
- 22 (b) Operating a motor vehicle in the wrong direction on a limited access highway;
- 23 (c) Operating a motor vehicle that causes an accident resulting in death or serious
24 physical injury as defined in KRS 500.080;
- 25 (d) Operating a motor vehicle while the alcohol concentration in the operator's
26 blood or breath is 0.15 or more as measured by a test or tests of a sample of
27 the operator's blood or breath taken within two (2) hours of cessation of

1 operation of the motor vehicle;

2 (e) Refusing to submit to any test or tests of one's blood, breath, or urine
3 requested by an officer having reasonable grounds to believe the person was
4 operating or in physical control of a motor vehicle in violation of subsection
5 (1) of this section; and

6 (f) Operating a motor vehicle that is transporting a passenger under the age of
7 twelve (12) years old.

8 ~~(11)~~~~(12)~~ The substances applicable to a prosecution under subsection (1)(d) of this
9 section are:

10 (a) Any Schedule I controlled substance except marijuana;

11 (b) Alprazolam;

12 (c) Amphetamine;

13 (d) Buprenorphine;

14 (e) Butalbital;

15 (f) Carisoprodol;

16 (g) Cocaine;

17 (h) Diazepam;

18 (i) Hydrocodone;

19 (j) Meprobamate;

20 (k) Methadone;

21 (l) Methamphetamine;

22 (m) Oxycodone;

23 (n) Promethazine;

24 (o) Propoxyphene; and

25 (p) Zolpidem.

26 ➔Section 2. KRS 189A.070 is amended to read as follows:

27 (1) Unless the person is under eighteen (18) years of age, in addition to the penalties

1 specified in KRS 189A.010, a person convicted of violation of KRS
2 189A.010(1)(a), (b), (c), (d), or (e) shall have his or her license to operate a motor
3 vehicle or motorcycle revoked by the court as follows:

- 4 (a) For the first offense~~[within a ten (10) year period]~~, for a period of not less
5 than thirty (30) days nor more than one hundred twenty (120) days;
- 6 (b) For the second offense~~[within a ten (10) year period]~~, for a period of not less
7 than twelve (12) months nor more than eighteen (18) months;
- 8 (c) For a third offense~~[within a ten (10) year period]~~, for a period of not less than
9 twenty-four (24) months nor more than thirty-six (36) months; and
- 10 (d) For a fourth or subsequent offense~~[within a ten (10) year period]~~, sixty (60)
11 months.
- 12 (e) For purposes of this section, "offense" shall have the same meaning as
13 described in KRS 189A.010(5)(e).

14 ~~(2) [In determining the ten (10) year period under this section, the period shall be~~
15 ~~measured from the dates on which the offenses occurred for which the judgments of~~
16 ~~conviction were entered.]~~

17 ~~(3)]~~ In addition to the period of license revocation set forth in subsection (1) or (6)~~[(7)]~~
18 of this section, no person shall be eligible for reinstatement of his or her full
19 privilege to operate a motor vehicle until he has completed the alcohol or substance
20 abuse education or treatment program ordered pursuant to KRS 189A.040.

21 (3)~~[(4)]~~ A person under the age of eighteen (18) who is convicted of violation of KRS
22 189A.010(1)(a), (b), (c), (d), or (e) shall have his license revoked by the court until
23 he reaches the age of eighteen (18) or shall have his license revoked as provided in
24 subsection (1) or (6)~~[(7)]~~ of this section, whichever penalty will result in the longer
25 period of revocation or court-ordered driving conditions.

26 (4)~~[(5)]~~ Licenses revoked pursuant to this chapter shall forthwith be surrendered to the
27 court upon conviction. The court shall transmit the conviction records, and other

1 appropriate information to the Transportation Cabinet. A court shall not waive or
2 stay this procedure.

3 ~~(5)~~~~(6)~~ Should a person convicted under this chapter whose license is revoked fail to
4 surrender it to the court upon conviction, the court shall issue an order directing the
5 sheriff or any other peace officer to seize the license forthwith and deliver it to the
6 court.

7 ~~(6)~~~~(7)~~ After a minimum of twelve (12) months from the effective date of the
8 revocation, a person whose license has been revoked pursuant to subsection (1)(b),
9 (c), or (d) of this section may move the court to reduce the period of revocation on a
10 day-for-day basis for each day the person held a valid ignition interlock license
11 under KRS 189A.420, but in no case shall the reduction reduce the period of
12 ignition interlock use to less than twelve (12) months. The court may, upon a
13 written finding in the record for good cause shown, order such a period to be
14 reduced to not less than twelve (12) months, if:

- 15 (a) The person maintained a valid ignition interlock license and did not operate a
16 motor vehicle or motorcycle without a functioning ignition interlock device as
17 provided for in KRS 189A.420;
- 18 (b) The person did not operate a motor vehicle or motorcycle in violation of any
19 restrictions specified by the court; and
- 20 (c) The functioning ignition interlock device was installed on the motor vehicle or
21 motorcycle for a period of time not less than twelve (12) months under
22 subsection (1)(b), (c), or (d) of this section.

23 ~~(7)~~~~(8)~~ Upon a finding of a violation of any of the conditions specified in subsection
24 ~~(6)~~~~(7)~~ of this section or of the order permitting any reduction in a minimum period
25 of revocation that is issued pursuant thereto, the court shall dissolve such an order
26 and the person shall receive no credit toward the minimum period of revocation
27 required under subsection (1)(b), (c), or (d) of this section.

1 ➔Section 3. KRS 189A.090 is amended to read as follows:

- 2 (1) No person shall operate or be in physical control of a motor vehicle while his or her
3 license is revoked or suspended under this chapter, or upon the conclusion of a
4 license revocation period pursuant to KRS 189A.340 unless the person has his or
5 her valid ignition interlock license in the person's possession and the motor vehicle
6 or motorcycle is equipped with a functioning ignition interlock device as required
7 by KRS 189A.420.
- 8 (2) In addition to any other penalty imposed by the court, any person who violates
9 subsection (1) of this section shall:
- 10 (a) For a first offense~~[within a ten (10) year period]~~, be guilty of a Class B
11 misdemeanor and have his license revoked by the court for six (6) months,
12 unless at the time of the offense the person was also operating or in physical
13 control of a motor vehicle in violation of KRS 189A.010(1)(a), (b), (c), (d), or
14 (e), in which event he shall be guilty of a Class A misdemeanor and have his
15 license revoked by the court for a period of one (1) year;
- 16 (b) For a second offense~~[within a ten (10) year period]~~, be guilty of a Class A
17 misdemeanor and have his license revoked by the court for one (1) year,
18 unless at the time of the offense the person was also operating or in physical
19 control of a motor vehicle in violation of KRS 189A.010(1)(a), (b), (c), (d), or
20 (e), in which event he shall be guilty of a Class D felony and have his license
21 revoked by the court for a period of two (2) years;
- 22 (c) For a third or subsequent offense~~[within a ten (10) year period]~~, be guilty of a
23 Class D felony and have his license revoked by the court for two (2) years,
24 unless at the time of the offense the person was also operating or in physical
25 control of a motor vehicle in violation of KRS 189A.010(1)(a), (b), (c), (d), or
26 (e), in which event he shall be guilty of a Class D felony and have his license
27 revoked by the court for a period of five (5) years; and

1 (d) At the sole discretion of the court, in the interest of public safety and upon a
 2 written finding in the record for good cause shown, the court may order that,
 3 following any period of incarceration required for the conviction of an offense
 4 under paragraph (a), (b), or (c) of this subsection, the eligible person is
 5 authorized to apply for and the cabinet shall issue to the person an ignition
 6 interlock license for the remainder of the original period of suspension or
 7 revocation and for the entire period of the new revocation if the person is and
 8 remains otherwise eligible for such license.

9 (3) *For purposes of this section, "offense" has the same meaning as described in*
 10 *subsection (5)(e) of Section 1 of this Act*~~[The ten (10) year period under this~~
 11 ~~section shall be measured in the same manner as in KRS 189A.070].~~

12 (4) Upon a finding of a violation of any of the requirements of an ignition interlock
 13 license, the court shall dissolve such an order and the person shall receive no credit
 14 toward the remaining period of revocation required under subsection (2)(b) or (c) of
 15 this section.

16 ➔Section 4. KRS 189A.340 is amended to read as follows:

17 (1) (a) Except as provided in KRS 189A.420(4), at the time that the court revokes a
 18 person's license under any provision of KRS 189A.070, for an offense in
 19 violation of KRS 189A.010(1)(a), (b), (e), or (f), the court shall also order
 20 that, at the conclusion of the license revocation, any license the person shall be
 21 issued shall restrict the person to operating only a motor vehicle or motorcycle
 22 equipped with a functioning ignition interlock device.

23 (b) The ignition interlock periods shall be as follows:

24 1. *For* the first *offense*~~[time in a ten (10) year period]~~, a functioning
 25 ignition interlock device shall be installed for a period of six (6) months,
 26 if at the time of offense, any of the aggravating circumstances listed
 27 under *subsection (10) of Section 1 of this Act*~~[KRS 189A.010(11)]~~ were

1 present while the person was operating or in physical control of a motor
2 vehicle.

3 2. ***For*** the second ***offense***~~[time in a ten (10) year period]~~, a functioning
4 ignition interlock device shall be installed for a period of twelve (12)
5 months.

6 3. ***For*** the third or subsequent ***offense***~~[time in a ten (10) year period]~~, a
7 functioning ignition interlock device shall be installed for a period of
8 thirty (30) months.

9 (c) ***For purposes of this section, "offense" has the same meaning as described***
10 ***in subsection (5)(e) of Section 1 of this Act***~~[In determining the ten (10) year~~
11 ~~period under paragraph (b) of this subsection, the period shall be measured~~
12 ~~from the dates on which the offenses occurred for which the judgments of~~
13 ~~conviction were entered, resulting in the license revocations described in KRS~~
14 ~~189A.070].~~

15 (2) Nothing in this section limits:

16 (a) The person's right to apply for an ignition interlock license during any period
17 of suspension or revocation arising from the same incident;

18 (b) The cabinet's authority to issue an ignition interlock license during any period
19 of suspension or revocation arising from the same incident if the person meets
20 all application requirements and is otherwise eligible for such license; or

21 (c) The person from receiving credit on a day-for-day basis toward any ignition
22 interlock requirement in paragraph (a) of this subsection for any period the
23 person held a valid ignition interlock license during any period of suspension
24 or revocation arising from the same incident. A person prohibited from
25 operating any motor vehicle or motorcycle without a functioning ignition
26 interlock device under paragraph (a) of subsection (1) of this section shall
27 receive any court-determined credit on a day-for-day basis toward any such

1 ignition interlock requirement for any period the person holds a valid ignition
 2 interlock license during any period of suspension or revocation arising from
 3 the same incident.

4 ➔Section 5. KRS 189A.410 is amended to read as follows:

5 (1) At any time following the expiration of the minimum license suspension periods
 6 enumerated in:

7 (a) KRS 189A.010(6); or

8 (b) KRS 189A.070 for a violation of:

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

10 2. KRS 189A.010(1)(a), (b), or (e) for a first offense~~[within a ten (10) year~~
 11 ~~period]~~ if, at the time of the offense, none of the aggravating

12 circumstances enumerated under subsection (10) of Section 1 of this

13 Act~~[KRS 189A.010(11)]~~ were present while the person was operating or
 14 in control of a motor vehicle;

15 the court may grant the person hardship driving privileges for the balance of
 16 the suspension period imposed by the court, upon written petition of the
 17 defendant, if the court finds reasonable cause to believe that revocation would
 18 hinder the person's ability to continue his employment; continue attending
 19 school or an educational institution; obtain necessary medical care; attend
 20 driver improvement, alcohol, or substance abuse education programs; or
 21 attend court-ordered counseling or other programs.

22 (2) Before granting hardship driving privileges, the court shall order the person to:

23 (a) Provide the court with proof of motor vehicle insurance;

24 (b) If necessary, provide the court with a written, sworn statement from his or her
 25 employer, on a form provided by the cabinet, detailing his or her job, hours of
 26 employment, and the necessity for the person to use the employer's motor
 27 vehicle either in his or her work at the direction of the employer during

- 1 working hours, or in travel to and from work if the license is sought for
2 employment purposes; and
- 3 (c) If the person is self-employed, to provide the information required in
4 paragraph (b) of this subsection together with a sworn statement as to its truth;
- 5 (d) Provide the court with a written, sworn statement from the school or
6 educational institution which he attends, of his or her class schedule, courses
7 being undertaken, and the necessity for the person to use a motor vehicle in
8 his travel to and from school or other educational institution if the license is
9 sought for educational purposes. Licenses for educational purposes shall not
10 include participation in sports, social, extracurricular, fraternal, or other
11 noneducational activities;
- 12 (e) Provide the court with a written, sworn statement from a physician, or other
13 medical professional licensed but not certified under the laws of Kentucky,
14 attesting to the person's normal hours of treatment, and the necessity to use a
15 motor vehicle to travel to and from the treatment if the license is sought for
16 medical purposes;
- 17 (f) Provide the court with a written, sworn statement from the director of any
18 alcohol or substance abuse education or treatment program as to the hours in
19 which the person is expected to participate in the program, the nature of the
20 program, and the necessity for the person to use a motor vehicle to travel to
21 and from the program if the license is sought for alcohol or substance abuse
22 education or treatment purposes;
- 23 (g) Provide the court with a copy of any court order relating to treatment,
24 participation in driver improvement programs, or other terms and conditions
25 ordered by the court relating to the person which require him or her to use a
26 motor vehicle in traveling to and from the court-ordered program. The judge
27 shall include in the order the necessity for the use of the motor vehicle; and

- 1 (h) Provide to the court any information as may be required by administrative
2 regulation of the Transportation Cabinet.
- 3 (3) The court shall not issue a hardship license to a person who has refused to take an
4 alcohol concentration or substance test or tests offered by a law enforcement officer.