

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 (12) of this
14 section is detected in the blood, as measured by a scientifically reliable test, or
15 tests, taken within two (2) hours of cessation of operation or physical control
16 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 (11) of this section are present while the person was operating or in
13 physical control of a motor vehicle, the mandatory minimum term of
14 imprisonment shall be four (4) days, which term shall not be suspended,
15 probated, conditionally discharged, or subject to any other form of early
16 release;

17 (b) For the second offense within a ten (10) year period **or for any repeat first**
18 **offense in one's lifetime**, be fined not less than three hundred fifty dollars
19 (\$350) nor more than five hundred dollars (\$500) and shall be imprisoned in
20 the county jail for not less than seven (7) days nor more than six (6) months
21 and, in addition to fine and imprisonment, may be sentenced to community
22 labor for not less than ten (10) days nor more than six (6) months. If any of the
23 aggravating circumstances listed in subsection (11) of this section are present,
24 the mandatory minimum term of imprisonment shall be fourteen (14) days,
25 which term shall not be suspended, probated, conditionally discharged, or
26 subject to any other form of early 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 (11) of this section are present, the mandatory minimum term of
7 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 a
11 Class D felony. If any of the aggravating circumstances listed in subsection
12 (11) of this section are present, the mandatory minimum term of imprisonment
13 shall be two hundred forty (240) days, which term shall not be suspended,
14 probated, conditionally discharged, or subject to any other form of release;
15 and

16 (e) For purposes of this subsection, prior offenses shall include all convictions in
17 this state, and any other state or jurisdiction, for operating or being in control
18 of a motor vehicle while under the influence of alcohol or other substances
19 that impair one's driving ability, or any combination of alcohol and such
20 substances, or while having an unlawful alcohol concentration, or driving
21 while intoxicated, but shall not include convictions for violating subsection
22 (1)(f) of this section. A court shall receive as proof of a prior conviction a
23 copy of that conviction, certified by the court ordering the conviction.

24 (6) Any person who violates the provisions of subsection (1)(f) of this section shall
25 have his driving privilege or operator's license suspended by the court for a period
26 of no less than thirty (30) days but no longer than six (6) months, and the person
27 shall be fined no less than one hundred dollars (\$100) and no more than five

1 hundred dollars (\$500), or sentenced to twenty (20) hours of community service in
2 lieu of a fine. A person subject to the penalties of this subsection shall not be
3 subject to the penalties established in subsection (5) of this section or any other
4 penalty established pursuant to KRS Chapter 189A, except those established in
5 KRS 189A.040(1).

6 (7) If the person is under the age of twenty-one (21) and there was an alcohol
7 concentration of 0.08 or greater based on the definition of alcohol concentration in
8 KRS 189A.005, the person shall be subject to the penalties established pursuant to
9 subsection (5) of this section.

10 (8) For a second offense in a ten (10) year period, for any repeat first offense in one's
11 lifetime, or a third offense within a ten (10) year period, the minimum sentence of
12 imprisonment or community labor shall not be suspended, probated, or subject to
13 conditional discharge or other form of early release. For a fourth or subsequent
14 offense under this section, the minimum term of imprisonment shall be one hundred
15 twenty (120) days, and this term shall not be suspended, probated, or subject to
16 conditional discharge or other form of early release. For a second or subsequent
17 offense, at least forty-eight (48) hours of the mandatory sentence shall be served
18 consecutively.

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

22 (10) In determining the ten (10) year period under this section, the period shall be
23 measured from the dates on which the offenses occurred for which the judgments of
24 conviction were entered.

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

27 (a) Operating a motor vehicle in excess of thirty (30) miles per hour above the

- 1 speed limit;
- 2 (b) Operating a motor vehicle in the wrong direction on a limited access highway;
- 3 (c) Operating a motor vehicle that causes an accident resulting in death or serious
4 physical injury as defined in KRS 500.080;
- 5 (d) Operating a motor vehicle while the alcohol concentration in the operator's
6 blood or breath is 0.15 or more as measured by a test or tests of a sample of
7 the operator's blood or breath taken within two (2) hours of cessation of
8 operation of the motor vehicle;
- 9 (e) Refusing to submit to any test or tests of one's blood, breath, or urine
10 requested by an officer having reasonable grounds to believe the person was
11 operating or in physical control of a motor vehicle in violation of subsection
12 (1) of this section; and
- 13 (f) Operating a motor vehicle that is transporting a passenger under the age of
14 twelve (12) years old.
- 15 (12) The substances applicable to a prosecution under subsection (1)(d) of this section
16 are:
- 17 (a) Any Schedule I controlled substance except marijuana;
- 18 (b) Alprazolam;
- 19 (c) Amphetamine;
- 20 (d) Buprenorphine;
- 21 (e) Butalbital;
- 22 (f) Carisoprodol;
- 23 (g) Cocaine;
- 24 (h) Diazepam;
- 25 (i) Hydrocodone;
- 26 (j) Meprobamate;
- 27 (k) Methadone;

- 1 (l) Methamphetamine;
- 2 (m) Oxycodone;
- 3 (n) Promethazine;
- 4 (o) Propoxyphene; and
- 5 (p) Zolpidem.

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

- 7 (1) Unless the person is under eighteen (18) years of age, in addition to the penalties
8 specified in KRS 189A.010, a person convicted of violation of KRS
9 189A.010(1)(a), (b), (c), (d), or (e) shall have his or her license to operate a motor
10 vehicle or motorcycle revoked by the court as follows:
 - 11 (a) For the first offense within a ten (10) year period, for a period of not less than
12 thirty (30) days nor more than one hundred twenty (120) days;
 - 13 (b) For the second offense within a ten (10) year period **or for any repeat first**
14 **offense in one's lifetime**, for a period of not less than twelve (12) months nor
15 more than eighteen (18) months;
 - 16 (c) For a third offense within a ten (10) year period, for a period of not less than
17 twenty-four (24) months nor more than thirty-six (36) months; and
 - 18 (d) For a fourth or subsequent offense within a ten (10) year period, sixty (60)
19 months.
 - 20 (e) For purposes of this section, "offense" shall have the same meaning as
21 described in KRS 189A.010(5)(e).
- 22 (2) In determining the ten (10) year period under this section, the period shall be
23 measured from the dates on which the offenses occurred for which the judgments of
24 conviction were entered.
- 25 (3) In addition to the period of license revocation set forth in subsection (1) or (7) of
26 this section, no person shall be eligible for reinstatement of his or her full privilege
27 to operate a motor vehicle until he has completed the alcohol or substance abuse

- 1 education or treatment program ordered pursuant to KRS 189A.040.
- 2 (4) A person under the age of eighteen (18) who is convicted of violation of KRS
3 189A.010(1)(a), (b), (c), (d), or (e) shall have his license revoked by the court until
4 he reaches the age of eighteen (18) or shall have his license revoked as provided in
5 subsection (1) or (7) of this section, whichever penalty will result in the longer
6 period of revocation or court-ordered driving conditions.
- 7 (5) Licenses revoked pursuant to this chapter shall forthwith be surrendered to the court
8 upon conviction. The court shall transmit the conviction records, and other
9 appropriate information to the Transportation Cabinet. A court shall not waive or
10 stay this procedure.
- 11 (6) Should a person convicted under this chapter whose license is revoked fail to
12 surrender it to the court upon conviction, the court shall issue an order directing the
13 sheriff or any other peace officer to seize the license forthwith and deliver it to the
14 court.
- 15 (7) After a minimum of twelve (12) months from the effective date of the revocation, a
16 person whose license has been revoked pursuant to subsection (1)(b), (c), or (d) of
17 this section may move the court to reduce the period of revocation on a day-for-day
18 basis for each day the person held a valid ignition interlock license under KRS
19 189A.420, but in no case shall the reduction reduce the period of ignition interlock
20 use to less than twelve (12) months. The court may, upon a written finding in the
21 record for good cause shown, order such a period to be reduced to not less than
22 twelve (12) months, if:
- 23 (a) The person maintained a valid ignition interlock license and did not operate a
24 motor vehicle or motorcycle without a functioning ignition interlock device as
25 provided for in KRS 189A.420;
- 26 (b) The person did not operate a motor vehicle or motorcycle in violation of any
27 restrictions specified by the court; and

1 (c) The functioning ignition interlock device was installed on the motor vehicle or
2 motorcycle for a period of time not less than twelve (12) months under
3 subsection (1)(b), (c), or (d) of this section.

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

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

10 (1) No person shall operate or be in physical control of a motor vehicle while his or her
11 license is revoked or suspended under this chapter, or upon the conclusion of a
12 license revocation period pursuant to KRS 189A.340 unless the person has his or
13 her valid ignition interlock license in the person's possession and the motor vehicle
14 or motorcycle is equipped with a functioning ignition interlock device as required
15 by KRS 189A.420.

16 (2) In addition to any other penalty imposed by the court, any person who violates
17 subsection (1) of this section shall:

18 (a) For a first offense within a ten (10) year period, be guilty of a Class B
19 misdemeanor and have his license revoked by the court for six (6) months,
20 unless at the time of the offense the person was also operating or in physical
21 control of a motor vehicle in violation of KRS 189A.010(1)(a), (b), (c), (d), or
22 (e), in which event he shall be guilty of a Class A misdemeanor and have his
23 license revoked by the court for a period of one (1) year;

24 (b) For a second offense within a ten (10) year period **or for any repeat first**
25 **offense in one's lifetime**, be guilty of a Class A misdemeanor and have his
26 license revoked by the court for one (1) year, unless at the time of the offense
27 the person was also operating or in physical control of a motor vehicle in

1 violation of KRS 189A.010(1)(a), (b), (c), (d), or (e), in which event he shall
2 be guilty of a Class D felony and have his license revoked by the court for a
3 period of two (2) years;

4 (c) For a third or subsequent offense within a ten (10) year period, be guilty of a
5 Class D felony and have his license revoked by the court for two (2) years,
6 unless at the time of the offense the person was also operating or in physical
7 control of a motor vehicle in violation of KRS 189A.010(1)(a), (b), (c), (d), or
8 (e), in which event he shall be guilty of a Class D felony and have his license
9 revoked by the court for a period of five (5) years; and

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

18 (3) The ten (10) year period under this section shall be measured in the same manner as
19 in KRS 189A.070.

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

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

25 (1) (a) Except as provided in KRS 189A.420(4), at the time that the court revokes a
26 person's license under any provision of KRS 189A.070, for an offense in
27 violation of KRS 189A.010(1)(a), (b), (e), or (f), the court shall also order

1 that, at the conclusion of the license revocation, any license the person shall be
2 issued shall restrict the person to operating only a motor vehicle or motorcycle
3 equipped with a functioning ignition interlock device.

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

- 5 1. The first time~~[in a ten (10) year period]~~, a functioning ignition interlock
6 device shall be installed for a period of six (6) months, if at the time of
7 offense, any of the aggravating circumstances listed under KRS
8 189A.010(11) were present while the person was operating or in
9 physical control of a motor vehicle.
- 10 2. The second time in a ten (10) year period **or for any repeat first offense**
11 **in one's lifetime**, a functioning ignition interlock device shall be
12 installed for a period of twelve (12) months.
- 13 3. The third or subsequent time in a ten (10) year period, a functioning
14 ignition interlock device shall be installed for a period of thirty (30)
15 months.

16 (c) In determining the ten (10) year period under paragraph (b) of this subsection,
17 the period shall be measured from the dates on which the offenses occurred
18 for which the judgments of conviction were entered, resulting in the license
19 revocations described in KRS 189A.070.

20 (2) Nothing in this section limits:

- 21 (a) The person's right to apply for an ignition interlock license during any period
22 of suspension or revocation arising from the same incident;
- 23 (b) The cabinet's authority to issue an ignition interlock license during any period
24 of suspension or revocation arising from the same incident if the person meets
25 all application requirements and is otherwise eligible for such license; or
- 26 (c) The person from receiving credit on a day-for-day basis toward any ignition
27 interlock requirement in paragraph (a) of this subsection for any period the

1 person held a valid ignition interlock license during any period of suspension
2 or revocation arising from the same incident. A person prohibited from
3 operating any motor vehicle or motorcycle without a functioning ignition
4 interlock device under paragraph (a) of subsection (1) of this section shall
5 receive any court-determined credit on a day-for-day basis toward any such
6 ignition interlock requirement for any period the person holds a valid ignition
7 interlock license during any period of suspension or revocation arising from
8 the same incident.