

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.105 (Effective July 1, 2020) is amended to read as
4 follows:

5 (1) A person's refusal to submit to tests under KRS 189A.103 shall result in suspension
6 of his or her driving privilege as provided in this chapter.

7 (2) (a) At the time a breath, blood, or urine test is requested, the person shall be
8 informed:

9 1. That, if the person refuses to submit to such tests:

10 a. The fact of this refusal may be used against him or her in court as
11 evidence of violating KRS 189A.010 and will result in suspension
12 of his or her driver's license by the court at the time of
13 arraignment; and

14 b. Is subsequently convicted of violating KRS 189A.010(1):

15 i. For a second or third time within a ten (10) year period, he or
16 she will be subject to a mandatory minimum jail sentence
17 which is twice as long as the mandatory minimum jail
18 sentence imposed if he or she submits to the tests, ***unless his***
19 ***or her blood was withdrawn or urine obtained pursuant to***
20 ***a search warrant or other court order requiring a blood or***
21 ***urine test in accordance with paragraph (b) of this***
22 ***subsection***; and

23 ii. His or her license will be suspended by the Transportation
24 Cabinet;

25 2. That, if a test is taken:

26 a. The results of the test may be used against the person in court as
27 evidence of violating KRS 189A.010(1); and

- 1 b. The person has the right to have a test or tests of his or her blood
2 performed by a person of his or her choosing described in KRS
3 189A.103 within a reasonable time of his or her arrest at the
4 expense of the person arrested; and
- 5 3. That although his or her license will be suspended, he or she may be
6 eligible immediately for an ignition interlock license allowing him or her
7 to drive during the period of suspension and, if he or she is convicted, he
8 or she will receive a credit toward any other ignition interlock
9 requirement arising from this arrest.
- 10 (b) Nothing in this subsection shall be construed to prohibit a judge of a court of
11 competent jurisdiction from issuing a search warrant or other court order
12 requiring a blood or urine test, or a combination thereof, of a defendant
13 charged with a violation of KRS 189A.010, or other statutory violation arising
14 from the incident~~[, when a person is killed or suffers physical injury, as~~
15 ~~defined in KRS 500.080, as a result of the incident in which the defendant has~~
16 ~~been charged]. [However,] If the incident involves a motor vehicle accident in~~
17 which there was a fatality, the investigating peace officer shall seek such a
18 search warrant for blood, breath, or urine testing unless the testing has already
19 been done by consent. If testing done pursuant to a warrant reveals the
20 presence of alcohol or any other substance that impaired the driving ability of
21 a person who is charged and convicted of a violation of KRS 189A.010(1), the
22 sentencing court shall require, in addition to any other sentencing provision,
23 that the defendant make restitution to the state for the cost of the testing.
- 24 (3) During the period immediately preceding the administration of any test, the person
25 shall be afforded an opportunity of at least ten (10) minutes but not more than
26 fifteen (15) minutes to attempt to contact and communicate with an attorney and
27 shall be informed of this right. Inability to communicate with an attorney during this

1 period shall not be deemed to relieve the person of his obligation to submit to the
2 tests and the penalties specified by KRS 189A.010 and 189A.107 shall remain
3 applicable to the person upon refusal. Nothing in this section shall be deemed to
4 create a right to have an attorney present during the administration of the tests, but
5 the person's attorney may be present if the attorney can physically appear at the
6 location where the test is to be administered within the time period established in
7 this section.

8 (4) Immediately following the administration of the final test requested by the officer,
9 the person shall again be informed of his or her right to have a test or tests of his or
10 her blood performed by a person of his or her choosing described in KRS 189A.103
11 within a reasonable time of his or her arrest at the expense of the person arrested.
12 He or she shall then be asked "Do you want such a test?" The officer shall make
13 reasonable efforts to provide transportation to the tests.

14 ➔Section 2. KRS 189A.010 (Effective July 1, 2020) is amended to read as
15 follows:

16 (1) A person shall not operate or be in physical control of a motor vehicle anywhere in
17 this state:

18 (a) Having an alcohol concentration of 0.08 or more as measured by a
19 scientifically reliable test or tests of a sample of the person's breath or blood
20 taken within two (2) hours of cessation of operation or physical control of a
21 motor vehicle;

22 (b) While under the influence of alcohol;

23 (c) While under the influence of any other substance or combination of
24 substances which impairs one's driving ability;

25 (d) While the presence of a controlled substance listed in subsection (12) of this
26 section is detected in the blood, as measured by a scientifically reliable test, or
27 tests, taken within two (2) hours of cessation of operation or physical control

- 1 of a motor vehicle;
- 2 (e) While under the combined influence of alcohol and any other substance which
3 impairs one's driving ability; or
- 4 (f) Having an alcohol concentration of 0.02 or more as measured by a
5 scientifically reliable test or tests of a sample of the person's breath or blood
6 taken within two (2) hours of cessation of operation or physical control of a
7 motor vehicle, if the person is under the age of twenty-one (21).
- 8 (2) With the exception of the results of the tests administered pursuant to KRS
9 189A.103(7):
- 10 (a) If the sample of the person's blood or breath that is used to determine the
11 alcohol concentration thereof was obtained more than two (2) hours after
12 cessation of operation or physical control of a motor vehicle, the results of the
13 test or tests shall be inadmissible as evidence in a prosecution under
14 subsection (1)(a) or (f) of this section. The results of the test or tests, however,
15 may be admissible in a prosecution under subsection (1)(b) or (e) of this
16 section; or
- 17 (b) If the sample of the person's blood that is used to determine the presence of a
18 controlled substance was obtained more than two (2) hours after cessation of
19 operation or physical control of a motor vehicle, the results of the test or tests
20 shall be inadmissible as evidence in a prosecution under subsection (1)(d) of
21 this section. The results of the test or tests, however, may be admissible in a
22 prosecution under subsection (1)(c) or (e) of this section.
- 23 (3) In any prosecution for a violation of subsection (1)(b) or (e) of this section in which
24 the defendant is charged with having operated or been in physical control of a motor
25 vehicle while under the influence of alcohol, the alcohol concentration in the
26 defendant's blood as determined at the time of making analysis of his blood or
27 breath shall give rise to the following presumptions:

1 (a) If there was an alcohol concentration of less than 0.04 based upon the
2 definition of alcohol concentration in KRS 189A.005, it shall be presumed
3 that the defendant was not under the influence of alcohol; and

4 (b) If there was an alcohol concentration of 0.04 or greater but less than 0.08
5 based upon the definition of alcohol concentration in KRS 189A.005, that fact
6 shall not constitute a presumption that the defendant either was or was not
7 under the influence of alcohol, but that fact may be considered, together with
8 other competent evidence, in determining the guilt or innocence of the
9 defendant.

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

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

18 (b) A laboratory test or tests for a controlled substance shall be inadmissible as
19 evidence in a prosecution under subsection (1)(d) of this section upon a
20 finding by the court that the defendant consumed the substance under a valid
21 prescription from a practitioner, as defined in KRS 218A.010, acting in the
22 course of his or her professional practice. However, a laboratory test for a
23 controlled substance may be admissible as evidence in a prosecution under
24 subsection (1)(c) or (e) of this section.

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

27 (a) For the first offense within a ten (10) year period, be fined not less than two

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

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

21 (c) For a third offense within a ten (10) year period, be fined not less than five
22 hundred dollars (\$500) nor more than one thousand dollars (\$1,000) and shall
23 be imprisoned in the county jail for not less than thirty (30) days nor more
24 than twelve (12) months and may, in addition to fine and imprisonment, be
25 sentenced to community labor for not less than thirty (30) days nor more than
26 twelve (12) months. If any of the aggravating circumstances listed in
27 subsection (11) of this section are present, the mandatory minimum term of

1 imprisonment shall be sixty (60) days, which term shall not be suspended,
2 probated, conditionally discharged, or subject to any other form of early
3 release;

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

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

18 (6) Any person who violates the provisions of subsection (1)(f) of this section shall be
19 fined no less than one hundred dollars (\$100) and no more than five hundred dollars
20 (\$500), or sentenced to twenty (20) hours of community service in lieu of a fine. A
21 person subject to the penalties of this subsection shall not be subject to the penalties
22 established in subsection (5) of this section or any other penalty established
23 pursuant to KRS Chapter 189A, except those established in KRS 189A.040(1) and
24 KRS 189A.070.

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

1 subsection (5) of this section.

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

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

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

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

18 (a) Operating a motor vehicle in excess of thirty (30) miles per hour above the
19 speed limit;

20 (b) Operating a motor vehicle in the wrong direction on a limited access highway;

21 (c) Operating a motor vehicle that causes an accident resulting in death or serious
22 physical injury as defined in KRS 500.080;

23 (d) Operating a motor vehicle while the alcohol concentration in the operator's
24 blood or breath is 0.15 or more as measured by a test or tests of a sample of
25 the operator's blood or breath taken within two (2) hours of cessation of
26 operation of the motor vehicle;

27 (e) Refusing to submit to any test or tests of one's blood, breath, or urine

1 requested by an officer having reasonable grounds to believe the person was
2 operating or in physical control of a motor vehicle in violation of subsection
3 (1) of this section, except it shall not be considered an aggravating
4 circumstance for:

5 1. A first offense under subsection (5)(a) of this section; or

6 2. Any offense under subsection (5) of this section if the person's blood
7 was withdrawn or urine obtained pursuant to a search warrant or
8 other court order requiring a blood or urine test in accordance with
9 subsection (2)(b) of Section 1 of this Act; and

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

12 (12) The substances applicable to a prosecution under subsection (1)(d) of this section
13 are:

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

15 (b) Alprazolam;

16 (c) Amphetamine;

17 (d) Buprenorphine;

18 (e) Butalbital;

19 (f) Carisoprodol;

20 (g) Cocaine;

21 (h) Diazepam;

22 (i) Hydrocodone;

23 (j) Meprobamate;

24 (k) Methadone;

25 (l) Methamphetamine;

26 (m) Oxycodone;

27 (n) Promethazine;

- 1 (o) Propoxyphene; and
- 2 (p) Zolpidem.