

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):
- 25 (a) If the sample of the person's blood or breath that is used to determine the
26 alcohol concentration thereof was obtained more than two (2) hours after
27 cessation of operation or physical control of a motor vehicle, the results of the

1 test or tests shall be inadmissible as evidence in a prosecution under
2 subsection (1)(a) or (f) of this section. The results of the test or tests, however,
3 may be admissible in a prosecution under subsection (1)(b) or (e) of this
4 section; or

5 (b) If the sample of the person's blood that is used to determine the presence of a
6 controlled substance was obtained more than two (2) hours after cessation of
7 operation or physical control of a motor vehicle, the results of the test or tests
8 shall be inadmissible as evidence in a prosecution under subsection (1)(d) of
9 this section. The results of the test or tests, however, may be admissible in a
10 prosecution under subsection (1)(c) or (e) of this section.

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

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

19 (b) If there was an alcohol concentration of 0.04 or greater but less than 0.08~~]~~
20 ~~based upon the definition of alcohol concentration in KRS 189A.005],~~ that
21 fact shall not constitute a presumption that the defendant either was or was not
22 under the influence of alcohol, but that fact may be considered, together with
23 other competent evidence, in determining the guilt or innocence of the
24 defendant.

25 The provisions of this subsection shall not be construed as limiting the introduction
26 of any other competent evidence bearing upon the questions of whether the
27 defendant was under the influence of alcohol or other substances, in any

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

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

6 (b) A laboratory test or tests for a controlled substance shall be inadmissible as
7 evidence in a prosecution under subsection (1)(d) of this section upon a
8 finding by the court that the defendant consumed the substance under a valid
9 prescription from a practitioner, as defined in KRS 218A.010, acting in the
10 course of his or her professional practice. However, a laboratory test for a
11 controlled substance may be admissible as evidence in a prosecution under
12 subsection (1)(c) or (e) of this section.

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

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

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

1 three hundred fifty dollars (\$350) nor more than five hundred dollars (\$500)
2 and shall be imprisoned in the county jail for not less than seven (7) days nor
3 more than six (6) months and, in addition to fine and imprisonment, may be
4 sentenced to community labor for not less than ten (10) days nor more than
5 six (6) months. If any of the aggravating circumstances listed in subsection
6 (11) of this section are present, the mandatory minimum term of
7 imprisonment shall be fourteen (14) days, which term shall not be suspended,
8 probated, conditionally discharged, or subject to any other form of early
9 release;

10 (c) ~~For a third offense within a ten (10) year period, be fined not less than five~~
11 ~~hundred dollars (\$500) nor more than one thousand dollars (\$1,000) and shall~~
12 ~~be imprisoned in the county jail for not less than thirty (30) days nor more~~
13 ~~than twelve (12) months and may, in addition to fine and imprisonment, be~~
14 ~~sentenced to community labor for not less than thirty (30) days nor more than~~
15 ~~twelve (12) months. If any of the aggravating circumstances listed in~~
16 ~~subsection (11) of this section are present, the mandatory minimum term of~~
17 ~~imprisonment shall be sixty (60) days, which term shall not be suspended,~~
18 ~~probated, conditionally discharged, or subject to any other form of early~~
19 ~~release;~~

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

26 (~~d~~)(e) For purposes of this subsection, prior offenses shall include all
27 convictions in this state, and any other state or jurisdiction, for operating or

1 being in control of a motor vehicle while under the influence of alcohol or
2 other substances that impair one's driving ability, or any combination of
3 alcohol and such substances, or while having an unlawful alcohol
4 concentration, or driving while intoxicated, but shall not include convictions
5 for violating subsection (1)(f) of this section. A court shall receive as proof of
6 a prior conviction a copy of that conviction, certified by the court ordering the
7 conviction.

8 (6) **(a)** Any person who violates the provisions of subsection (1)(f) of this section
9 shall:

10 **1. For the first offense,** be fined no less than **two hundred dollars**
11 **(\$200)**~~one hundred dollars (\$100)]~~ and no more than five hundred
12 dollars (\$500), or sentenced to twenty (20) hours of community service
13 in lieu of a fine;~~[-]~~

14 **2. For the second offense, be fined no less than three hundred fifty**
15 **dollars (\$350) and no more than five hundred dollars (\$500) and shall**
16 **be sentenced to twenty (20) hours of community service; and**

17 **3. For the third or subsequent offense, be fined no less than five hundred**
18 **dollars (\$500) and no more than one thousand dollars (\$1,000) and**
19 **shall be sentenced to forty (40) hours of community service.**

20 **(b)** A person subject to the penalties of this subsection shall not be subject to the
21 penalties established in subsection (5) of this section or any other penalty
22 established pursuant to KRS Chapter 189A, except those established in KRS
23 189A.040(1) and ~~[KRS]~~189A.070.

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

- 1 (8) (a) For a second or third offense under subsection (5) of this section within a ten
2 (10) year period, the minimum sentence of imprisonment or community labor
3 shall not be suspended, probated, or subject to conditional discharge or other
4 form of early release.
- 5 (b) For a ~~third~~^{fourth} or subsequent offense under subsection (5) of this section,
6 the minimum term of imprisonment shall be one hundred twenty (120) days,
7 and this term shall not be suspended, probated, or subject to conditional
8 discharge or other form of early release.
- 9 (c) For a second or subsequent offense under subsection (5) of this section, at
10 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, except it shall not be considered an aggravating
6 circumstance for a first offense under subsection (5)(a) of this section; and

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

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

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

12 (b) Alprazolam;

13 (c) Amphetamine;

14 (d) Buprenorphine;

15 (e) Butalbital;

16 (f) Carisoprodol;

17 (g) Cocaine;

18 (h) Diazepam;

19 (i) Hydrocodone;

20 (j) Meprobamate;

21 (k) Methadone;

22 (l) Methamphetamine;

23 (m) Oxycodone;

24 (n) Promethazine;

25 (o) Propoxyphene; and

26 (p) Zolpidem.

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

- 1 (1) (a) 1. Unless the person is under eighteen (18) years of age, in addition to the
2 penalties specified in KRS 189A.010, the Transportation Cabinet shall
3 suspend a person's license to operate a motor vehicle or motorcycle
4 upon conviction of KRS 189A.010(1).
- 5 2. Upon conviction of KRS 189A.010(1)(a), (b), (c), (d), or (e), the
6 Transportation Cabinet shall suspend a person's license to operate a
7 motor vehicle or motorcycle as follows:
- 8 a. For the first offense within a ten (10) year period:
- 9 i. For a person who is issued an ignition interlock license under
10 KRS 189A.340 and who meets the ninety (90) consecutive
11 day requirement within the first four (4) months of the
12 issuance of the ignition interlock license, four (4) months;
- 13 ii. For a person who is issued an ignition interlock license under
14 KRS 189A.340 but does not meet the ninety (90)
15 consecutive day requirement within the first four (4) months
16 of the issuance of the ignition interlock license, until the
17 person meets the ninety (90) consecutive day requirement or
18 six (6) months, whichever is shorter; or
- 19 iii. For all others, six (6) months;
- 20 b. For the second offense within a ten (10) year period:
- 21 i. For a person who is issued an ignition interlock license under
22 KRS 189A.340 and who meets the one hundred twenty (120)
23 consecutive day requirement within the first twelve (12)
24 months of the issuance of the ignition interlock license,
25 twelve (12) months;
- 26 ii. For a person who is issued an ignition interlock license under
27 KRS 189A.340 but does not meet the one hundred twenty

- 1 (120) consecutive day requirement within the first twelve
2 (12) months of the issuance of the ignition interlock license,
3 until the person meets the one hundred twenty (120)
4 consecutive day requirement or eighteen (18) months,
5 whichever is shorter; or
- 6 iii. For all others, eighteen (18) months;
- 7 c. For a third offense within a ten (10) year period:
- 8 i. For a person who is issued an ignition interlock license under
9 KRS 189A.340 and who meets the one hundred twenty (120)
10 consecutive day requirement within the first eighteen (18)
11 months of the issuance of the ignition interlock license,
12 eighteen (18) months;
- 13 ii. For a person who is issued an ignition interlock license under
14 KRS 189A.340 but does not meet the one hundred twenty
15 (120) consecutive day requirement within the first eighteen
16 (18) months of the issuance of the ignition interlock license,
17 until the person meets the one hundred twenty (120)
18 consecutive day requirement or thirty-six (36) months,
19 whichever is shorter; or
- 20 iii. For all others, thirty-six (36) months;
- 21 d. For a fourth or subsequent offense within a ten (10) year period:
- 22 i. For a person who is issued an ignition interlock license under
23 KRS 189A.340 and who meets the one hundred twenty (120)
24 consecutive day requirement within the first thirty (30)
25 months of the issuance of the ignition interlock license, thirty
26 (30) months;
- 27 ii. For a person who is issued an ignition interlock license under

- 1 KRS 189A.340 but does not meet the one hundred twenty
2 (120) consecutive day requirement within the first thirty (30)
3 months of the issuance of the ignition interlock license, until
4 the person meets the one hundred twenty (120) consecutive
5 day requirement or sixty (60) months, whichever is shorter;
6 or
7 iii. For all others, sixty (60) months;
- 8 e. If the conviction records transmitted to the Transportation Cabinet
9 pursuant to subsection (3) of this section show that a person was
10 convicted of a:
- 11 i. First offense of KRS 189A.010, the person's license shall be
12 suspended as provided in subdivision a. of this subparagraph;
- 13 ii. Second offense of KRS 189A.010, the person's license shall
14 be suspended as provided in subdivision b. of this
15 subparagraph;
- 16 iii. Third offense of KRS 189A.010, the person's license shall be
17 suspended as provided in subdivision c. of this subparagraph;
18 and
- 19 iv. Fourth or subsequent offense of KRS 189A.010, the person's
20 license shall be suspended as provided in subdivision d. of
21 this subparagraph; and
- 22 f. The license suspension shall be deemed effective on the date of
23 entry of the court's order or judgement for a conviction of KRS
24 189A.010.
- 25 3. Upon conviction of KRS 189A.010(1)(f), the Transportation Cabinet
26 shall suspend a person's license to operate a motor vehicle or motorcycle
27 as follows:

- 1 a. **For the first offense:**
- 2 **i.** For a person who is issued an ignition interlock license under
- 3 KRS 189A.340 and who meets the ninety (90) consecutive
- 4 day requirement within the first four (4) months of the
- 5 issuance of the ignition interlock license, four (4) months;
- 6 **ii.**~~b.~~ For a person who is issued an ignition interlock license under
- 7 KRS 189A.340 but does not meet the ninety (90)
- 8 consecutive day requirement within the first four (4) months
- 9 of the issuance of the ignition interlock license, until the
- 10 person meets the ninety (90) consecutive day requirement or
- 11 six (6) months, whichever is shorter; or
- 12 **iii.**~~c.~~ For all others, six (6) months;
- 13 **b. For the second offense:**
- 14 **i. For a person who is issued an ignition interlock license**
- 15 **under Section 6 of this Act and who meets the one hundred**
- 16 **twenty (120) consecutive day requirement within the first**
- 17 **twelve (12) months of the issuance of the ignition interlock**
- 18 **license, twelve (12) months;**
- 19 **ii. For a person who is issued an ignition interlock license**
- 20 **under Section 6 of this Act but does not meet the one**
- 21 **hundred twenty (120) consecutive day requirement within**
- 22 **the first twelve (12) months of the issuance of the ignition**
- 23 **interlock license, until the person meets the one hundred**
- 24 **twenty (120) consecutive day requirement or eighteen (18)**
- 25 **months, whichever is shorter; or**
- 26 **iii. For all others, eighteen (18) months;**
- 27 **c. For a third or subsequent offense:**

1 *i. For a person who is issued an ignition interlock license*
2 *under Section 6 of this Act and who meets the one hundred*
3 *twenty (120) consecutive day requirement within the first*
4 *eighteen (18) months of the issuance of the ignition*
5 *interlock license, eighteen (18) months;*

6 *ii. For a person who is issued an ignition interlock license*
7 *under Section 6 of this Act but does not meet the one*
8 *hundred twenty (120) consecutive day requirement within*
9 *the first eighteen (18) months of the issuance of the*
10 *ignition interlock license, until the person meets the one*
11 *hundred twenty (120) consecutive day requirement or*
12 *thirty-six (36) months, whichever is shorter; or*

13 *iii. For all others, thirty-six (36) months.*

14 4. For purposes of this paragraph, "ninety (90) consecutive day
15 requirement" and "one hundred twenty (120) consecutive day
16 requirement" mean the requirements established in KRS
17 189A.340(4)(b)2.

18 (b) For a person under the age of eighteen (18), in addition to the penalties
19 specified in KRS 189A.010, the Transportation Cabinet shall suspend the
20 person's license to operate a motor vehicle or motorcycle upon conviction of
21 KRS 189A.010(1). The person shall have his or her license suspended until he
22 or she reaches the age of eighteen (18) or as provided in paragraph (a) of this
23 subsection, whichever penalty will result in the longer period of suspension.

24 (2) In addition to the period of license suspension set forth in subsection (1) of this
25 section, no person shall be eligible for reinstatement of his or her full privilege to
26 operate a motor vehicle or motorcycle until he or she has completed the alcohol or
27 substance abuse education or treatment program ordered pursuant to KRS

1 189A.040.

2 (3) Upon conviction of KRS 189A.010(1):

3 (a) A person shall surrender his or her license to operate a motor vehicle or
4 motorcycle to the court. Should the person fail to surrender his or her license
5 to the court, the court shall issue an order directing the sheriff or any other
6 peace officer to seize the license ~~forthwith~~ and deliver it to the court. The
7 court shall then forward the license to the Transportation Cabinet. This
8 paragraph shall not apply to a person who has previously surrendered his or
9 her license pursuant to KRS 189A.200; and

10 (b) The court shall immediately transmit the conviction records and other
11 appropriate information to the Transportation Cabinet. A court shall not waive
12 or stay this procedure.

13 (4) 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 ➔Section 3. KRS 189A.040 is amended to read as follows:

17 (1) In addition to any other penalty prescribed by KRS 189A.010(5)(a) or (6), the court
18 shall sentence the person to attend an alcohol or substance abuse education or
19 treatment program subject to the following terms and conditions for a first offender
20 or a person convicted under KRS 189A.010(1)(f):

21 (a) The treatment or education shall be for a period of ninety (90) days and the
22 program shall provide an assessment of the defendant's alcohol or other
23 substance abuse problems, which shall be performed at the start of the
24 program;

25 (b) Each defendant shall pay the cost of the education or treatment program up to
26 his or her ability to pay but no more than the actual cost of the treatment;

27 (c) Upon written report to the court by the administrator of the program that the

1 defendant has completed the program recommended by the administrator
2 based upon the assessment of the defendant, the defendant shall be released
3 prior to the expiration of the ninety (90) day period; and

4 (d) Failure to complete the education or treatment program or to pay the amount
5 specified by the court for education or treatment shall constitute contempt,
6 and the court shall, in addition to any other remedy for contempt, reinstitute
7 all penalties which were previously imposed but suspended or delayed
8 pending completion of the education or treatment program.

9 (2) In addition to any other penalty prescribed by KRS 189A.010(5)(b), the court shall
10 sentence the person to an alcohol or substance abuse treatment program subject to
11 the following terms and conditions for a second offender:

12 (a) The sentence shall be for a period of one (1) year and the program shall
13 provide an assessment of the defendant's alcohol or other substance abuse
14 problems, which shall be performed at the start of the program;

15 (b) Each defendant shall pay the cost of the treatment program up to his or her
16 ability to pay but no more than the actual cost of the treatment;

17 (c) Upon written report to the court by the administrator of the program that the
18 defendant has completed the program recommended by the administrator
19 based upon the assessment of the defendant, the defendant may be released
20 prior to the expiration of the one (1) year period; and

21 (d) Failure to complete the treatment program or to pay the amount specified by
22 the court for treatment shall constitute contempt of court and the court shall,
23 in addition to any other remedy for contempt, reinstitute all penalties which
24 were previously imposed but suspended or delayed pending the completion of
25 the treatment program.

26 (3) In addition to any other penalty prescribed by KRS 189A.010(5)(c)~~[-or (d)]~~, the
27 court shall sentence the person to an alcohol or substance abuse treatment program

1 subject to the following terms and conditions for a third or subsequent offender:

2 (a) The sentence shall be for a period of one (1) year and the program shall
3 provide an assessment of the defendant's alcohol or other substance abuse
4 problems, which shall be performed at the start of the program. The program
5 may be an inpatient or residential-type program;

6 (b) Each defendant shall pay the cost of the treatment program up to his or her
7 ability to pay but no more than the actual cost of the program;

8 (c) A defendant, upon written recommendation to the court by the administrator
9 of the program, may be released from the inpatient or residential program
10 prior to the expiration of one (1) year but shall be retained in the program on
11 an outpatient basis for the remainder of the year period; and

12 (d) Failure to complete the treatment program or to pay the amount specified by
13 the court for treatment shall constitute contempt of court, and the court shall,
14 in addition to any other remedy for contempt, reinstitute all penalties which
15 were previously imposed but suspended or delayed pending completion of the
16 treatment program.

17 (4) Costs of treatment or education programs which are paid from the service fee
18 established by KRS 189A.050, or from state or federal funds, or any combination
19 thereof, shall be deducted from the amount which the defendant must pay.

20 (5) For defendants who are Medicaid-eligible, alcohol or substance abuse treatment
21 under this section shall be authorized by the Department for Medicaid Services and
22 its contractors as Medicaid-eligible services and shall be subject to the same
23 medical necessity criteria and reimbursement methodology as for all other covered
24 behavioral health services.

25 (6) For the purposes of this section, "treatment" means service in an alcohol or
26 substance abuse education or treatment program or facility licensed, regulated, and
27 monitored by the Cabinet for Health and Family Services for services as required

1 under this section.

2 (7) The Cabinet for Health and Family Services shall promulgate administrative
3 regulations for the licensure of education and treatment facilities and programs for
4 offenders receiving education or treatment under this section. The criteria
5 developed by the Cabinet for Health and Family Services shall include:

- 6 (a) Manner of assessment;
- 7 (b) Appropriate education and treatment plans; and
- 8 (c) Referrals to other treatment providers.

9 (8) The participating facilities and programs shall be required to abide by these
10 standards and shall report completion to the Transportation Cabinet. Upon request,
11 the facility or program shall report to the courts regarding the progress of offenders
12 being treated pursuant to this section.

13 (9) Administrative decisions regarding the licensure of education and treatment
14 facilities and programs may be appealed, and upon appeal an administrative hearing
15 shall be conducted in accordance with KRS Chapter 13B.

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

17 (1) The court shall at the arraignment or as soon as such relevant information becomes
18 available suspend the motor vehicle operator's license and motorcycle operator's
19 license and driving privileges of any person charged with a violation of KRS
20 189A.010(1) who:

- 21 (a) Has refused to take an alcohol concentration or substance test as reflected on
22 the uniform citation form;
- 23 (b) Has been convicted of one (1) or more prior offenses as described in KRS
24 189A.010(5)(d)(~~e~~) or has had his or her operator's license suspended on one
25 (1) or more occasions for refusing to take an alcohol concentration or
26 substance test, in the ten (10) year period immediately preceding his or her
27 arrest; or

- 1 (c) Was involved in an accident that resulted in death or serious physical injury as
2 defined in KRS 500.080 to a person other than the defendant.
- 3 (2) Persons whose licenses have been suspended pursuant to this section may file a
4 motion for judicial review of the suspension, and the court shall conduct the review
5 in accordance with this chapter within thirty (30) days after the filing of the motion.
6 The court shall, at the time of the suspension, advise the defendant of his or her
7 rights to the review.
- 8 (3) When the court orders the suspension of a license pursuant to:
- 9 (a) Subsection (1)(a) of this section, the court may, in addition to any other
10 conditions the court may order, require that the person apply to the
11 Transportation Cabinet for issuance of an ignition interlock license under
12 KRS 189A.340 for the period of the suspension;
- 13 (b) Subsection (1)(b) or (c) of this section, the court shall, in addition to any other
14 conditions the court may order, require that the person apply to the
15 Transportation Cabinet for issuance of an ignition interlock license under
16 KRS 189A.340 for the period of suspension; and
- 17 (c) Subsection (1) of this section and the person is required to apply for an
18 ignition interlock license pursuant to paragraph (a) or (b) of this subsection,
19 the person shall present the completed ignition interlock license application to
20 the court.
- 21 (4) When the court orders the suspension of a license pursuant to this section, the
22 defendant shall immediately surrender his or her license to operate a motor vehicle
23 or motorcycle to the court. Should the defendant fail to surrender his or her license
24 to the court, the court shall issue an order directing the sheriff or any other peace
25 officer to seize the license forthwith and deliver it to the court. If the license is
26 currently under suspension, the provisions of this subsection shall not apply.
- 27 (5) The Circuit Court Clerk shall forthwith transmit to the Transportation Cabinet:

- 1 (a) Any license surrendered pursuant to this section; and
- 2 (b) If the court ordered a person to apply for an ignition interlock device under
- 3 subsection (3) of this section, notification of the order.
- 4 (6) Licenses suspended under this section shall remain suspended until:
- 5 (a) The person is acquitted;
- 6 (b) All pending or current charges relating to a violation of KRS 189A.010
- 7 have been dismissed; or
- 8 (c) The person is convicted and the Transportation Cabinet has suspended
- 9 his or her license pursuant to KRS 189A.070;
- 10 but in no event for a period longer than the license suspension period
- 11 applicable to the person under KRS 189A.070 or 189A.107.
- 12 (7) Any person whose operator's license has been suspended pursuant to this section
- 13 shall be given credit for all pretrial suspension time against the period of suspension
- 14 imposed under KRS 189A.070.
- 15 ➔Section 5. KRS 189A.240 is amended to read as follows:
- 16 In any judicial review of a pretrial suspension imposed under KRS 189A.200(1)(b), if the
- 17 court determines by a preponderance of the evidence that:
- 18 (1) The person was charged and arrested by a peace officer with a violation of KRS
- 19 189A.010(1)(a), (b), (c), (d), or (e);
- 20 (2) The peace officer had reasonable grounds to believe that the person was operating a
- 21 motor vehicle in violation of KRS 189A.010(1)(a), (b), (c), (d), or (e);
- 22 (3) There is probable cause to believe that the person committed the violation of KRS
- 23 189A.010(1)(a), (b), (c), (d), or (e) as charged; and
- 24 (4) The person has been convicted of one (1) or more prior offenses as described in
- 25 KRS 189A.010(5)(d)(~~e~~) or has had his or her motor vehicle operator's license
- 26 suspended on one (1) or more occasions for refusing to take an alcohol
- 27 concentration or substance test, in the ten (10) year period immediately preceding

1 his or her arrest;

2 then the court shall continue to suspend the person's operator's license or privilege to
3 operate a motor vehicle, but in no event for a period longer than the license suspension
4 period applicable to the person under KRS 189A.070 and 189A.107. The provisions of
5 this section shall not be construed as limiting the person's ability to challenge any prior
6 convictions or license suspensions or refusals.

7 ➔Section 6. KRS 189A.340 is amended to read as follows:

8 (1) (a) If a person's license is suspended pursuant to this chapter and the initial
9 suspension was for a violation of KRS 189A.010(1)(a), (b), (e), or (f), the sole
10 license the person shall be eligible for is an ignition interlock license pursuant
11 to this section.

12 (b) If a person's license is suspended pursuant to this chapter and the initial
13 suspension was for a violation of KRS 189A.010(1)(c) or (d), the person shall
14 be eligible for an ignition interlock license pursuant to this section and may be
15 eligible for a hardship license pursuant to KRS 189A.410.

16 (2) (a) A person may apply for an ignition interlock license anytime, including after
17 receiving the notices under KRS 189A.105 or after his or her license has been
18 suspended pursuant to this chapter.

19 (b) If at the time the person applies for an ignition interlock license, the person's
20 license has been suspended pursuant to this chapter, the person shall be
21 authorized to drive to:

- 22 1. An ignition interlock device provider to have a functioning ignition
23 interlock device installed in his or her motor vehicle or motorcycle; and
- 24 2. The Transportation Cabinet to obtain an ignition interlock license;

25 This paragraph shall only apply within fourteen (14) days of the date printed
26 on the ignition interlock approval letter issued by the Transportation Cabinet
27 and if the person has the ignition interlock approval letter in the motor vehicle

1 or motorcycle.

2 (3) Before the Transportation Cabinet shall issue an ignition interlock license, the
3 person shall:

4 (a) Submit an application for an ignition interlock license;

5 (b) Provide proof of motor vehicle insurance;

6 (c) Provide an ignition interlock certificate of installation issued by an ignition
7 interlock device provider; and

8 (d) Provide any other information required by administrative regulations
9 promulgated by the Transportation Cabinet under KRS 189A.350.

10 (4) An ignition interlock license shall restrict the person to operating only a motor
11 vehicle or motorcycle equipped with a functioning ignition interlock device, unless
12 the person qualifies for an employer exemption under subsection (6) of this section.

13 This restriction shall remain in place for:

14 (a) If a person's license was suspended pretrial pursuant to KRS 189A.200, the
15 required suspension period under KRS 189A.200(6);

16 (b) If a person's license was suspended pursuant to KRS 189A.070 or 189A.107:

17 1. The required suspension period under KRS 189A.070(1); and

18 2. a. If the maximum suspension period under KRS 189A.070(1)(a) has
19 not yet been met, until the Transportation Cabinet has received a
20 declaration from the person's ignition interlock device provider, in
21 a form provided or approved by the cabinet, certifying that none of
22 the violations outlined in subdivision b. of this subparagraph has
23 occurred:

24 i. For a first offense within a ten (10) year period of KRS
25 189A.010(1)(a), (b), (c), (d), or (e) or for the first~~any~~
26 offense of KRS 189A.010(1)(f), in the ninety (90)
27 consecutive days; and

- 1 ii. For all subsequent offenses within a ten (10) year period of
2 KRS 189A.010(1)(a), (b), (c), (d), or (e) or for all
3 subsequent offenses of subsection (1)(f) of Section 1 of this
4 Act, one hundred twenty (120) consecutive days;
5 prior to the date of releasing the ignition interlock device
6 restriction.
- 7 b. If any of the following occur, it shall be a violation of the ninety
8 (90) or one hundred twenty (120) consecutive day requirement:
- 9 i. Failure to take any random breath alcohol concentration test
10 unless a review of the digital image confirms that the motor
11 vehicle or motorcycle was not occupied by a driver at the
12 time of the missed test;
- 13 ii. Failure to pass any random retest with a breath alcohol
14 concentration of 0.02 or lower unless a subsequent test
15 performed within ten (10) minutes registers a breath alcohol
16 concentration lower than 0.02, and the digital image
17 confirms the same person provided both samples;
- 18 iii. Failure of the person, or his or her designee, to appear at the
19 ignition interlock device provider when required for
20 maintenance, repair, calibration, monitoring, inspection, or
21 replacement of the device;
- 22 iv. Failure of the person to pay fees established pursuant to
23 subsection (7) of this section;
- 24 v. Tampering with an installed ignition interlock device with
25 the intent of rendering it defective; or
- 26 vi. Altering, concealing, hiding, or attempting to alter, conceal,
27 or hide, the person's identity from the ignition interlock

- 1 device's camera while providing a breath sample;
- 2 (c) If a person's license was suspended pursuant to KRS 189A.090, for the
3 required suspension period under KRS 189A.090(2); or
- 4 (d) If a person's license suspension was extended pursuant to KRS 189A.345, the
5 required suspension period under KRS 189A.345(1).
- 6 (5) (a) The time period a person:
- 7 1. Holds a valid ignition interlock license pursuant to this section; or
8 2. Receives alcohol or substance abuse treatment in an inpatient residential
9 facility;
- 10 shall apply on a day-for-day basis toward satisfying the suspension periods
11 detailed in subsection (4) of this section.
- 12 (b) Except as provided in paragraph (c) of this subsection, the Transportation
13 Cabinet shall give the person a day-for-day credit for any time period the
14 person:
- 15 1. Held a valid ignition interlock license; or
16 2. Received alcohol or substance abuse treatment in an inpatient residential
17 facility.
- 18 (c) A person shall not receive day-for-day credit for days the person utilized the
19 employer exemption in accordance with subsection (6) of this section and
20 drove an employer's motor vehicle or motorcycle not equipped with a
21 functioning ignition interlock device.
- 22 (6) (a) A person with an ignition interlock license may operate a motor vehicle or
23 motorcycle not equipped with a functioning ignition interlock device if:
- 24 1. The person is required to operate an employer's motor vehicle or
25 motorcycle in the course and scope of employment; and
26 2. The business entity that owns the motor vehicle or motorcycle is not
27 owned or controlled by the person.

1 (b) To qualify for the employer exemption, the person shall provide the
2 Transportation Cabinet with a sworn statement from his or her employer
3 stating that the person and business entity meet the requirements of paragraph
4 (a) of this subsection.

5 (7) (a) Except as provided in paragraph (c) of this subsection, an ignition interlock
6 device provider may charge the following fees:

- 7 1. An installation fee for an alternative fuel vehicle or a vehicle with a
8 push button starter not to exceed one hundred thirty dollars (\$130), an
9 installation fee for all other vehicles not to exceed one hundred dollars
10 (\$100);
- 11 2. A monthly fee not to exceed one hundred dollars (\$100);
- 12 3. A removal fee not to exceed thirty dollars (\$30);
- 13 4. A reset fee not to exceed fifty dollars (\$50); or
- 14 5. A missed appointment fee not to exceed thirty-five dollars (\$35).

15 (b) A person who is issued an ignition interlock license shall pay fees as
16 established in his or her lease agreement with the ignition interlock device
17 provider for any ignition interlock device installed in his or her motor vehicle
18 or motorcycle. However, the fees shall never be more than allowed under
19 paragraph (a) of this subsection and are subject to paragraph (c) of this
20 subsection.

21 (c) Any person who has an income:

- 22 1. At or below two hundred percent (200%) but above one hundred fifty
23 percent (150%) of the federal poverty guidelines, shall pay only
24 seventy-five percent (75%) of fees established pursuant to paragraph (a)
25 of this subsection;
- 26 2. At or below one hundred fifty percent (150%) but above one hundred
27 percent (100%) of the federal poverty guidelines, shall pay only fifty

1 percent (50%) of fees established pursuant to paragraph (a) of this
2 subsection; or

3 3. At or below one hundred percent (100%) of the federal poverty
4 guidelines, shall pay only twenty-five percent (25%) of fees established
5 pursuant to paragraph (a) of this subsection;

6 As used in this paragraph, "federal poverty guidelines" has the same meaning
7 as in KRS 205.5621. The Transportation Cabinet shall determine the person's
8 income and where that income places the person on the federal poverty
9 guidelines.

10 (d) Neither the Commonwealth, the Transportation Cabinet, nor any unit of state
11 or local government shall be responsible for payment of any costs associated
12 with an ignition interlock device.

13 (8) For a person issued an ignition interlock license under this section who is residing
14 outside of Kentucky, the Transportation Cabinet may accept an ignition interlock
15 certificate of installation from an ignition interlock device provider authorized to do
16 business in the state where the person resides if the ignition interlock device meets
17 the requirements of that state.

18 ➔Section 7. KRS 281A.2102 is amended to read as follows:

19 In addition to the penalties established by this chapter for driving a commercial motor
20 vehicle under the influence of alcohol:

21 (1) Any person convicted of driving a commercial motor vehicle while the alcohol
22 concentration of the person's blood or breath is four hundredths (0.04) to eight
23 hundredths (0.08) shall be fined not less than twenty dollars (\$20) and not more
24 than fifty dollars (\$50).

25 (2) Any person convicted of driving a commercial motor vehicle while the alcohol
26 concentration of the person's blood or breath is greater than eight hundredths (0.08)
27 shall be fined under the provisions of KRS 189A.010(5)(a) to (c)~~[(d)]~~.