

**Local Mandate Fiscal Impact Estimate
Kentucky Legislative Research Commission
2017 Regular Session**

Part I: Measure Information

Bill Request #: 952

Bill #: HB 261 SCS 1

Bill Subject/Title: AN ACT relating to driving under the influence

Sponsor: Representative Jim DuPlessis

Unit of Government: City County Urban-County
 Charter County Consolidated Local Unified Local Government

Office(s) Impacted: Jailer

Requirement: Mandatory Optional

Effect on

Powers & Duties: Modifies Existing Adds New Eliminates Existing

Part II: Purpose and Mechanics

KRS Chapter 189A prohibits operation of a motor vehicle while under the influence of alcohol or drugs (DUI). Under current law the legal consequences (fines, jail time, license revocation, etc.) for violation of this and other DUI-related statutes are increased for each offense that occurs within a 10 year period (the “look back” period). The purpose of HB 261 SCS is to establish that a person may be charged with DUI first offense, and subject to the more lenient statutory consequences for a first offense, only once in a lifetime, even if the previous DUI were more than 10 years before the subject DUI. A DUI first offense, no matter how long ago it occurred, would always enhance the consequences for a subsequent DUI conviction.

HB 261 SCS, **Section 1** would amend KRS 189A.010 (5)(a)-(e) to delete the language describing DUI first, second, third and fourth as those occurring “within a ten (10) year period” for the purpose of enhancing consequences on conviction. **Section 1** would amend KRS 189A.010 to define “prior offense” for the purpose of enhancing consequences for subsequent DUI convictions as:

1. All first offenses no matter when the offense was committed
2. All offenses committed with any aggravating circumstance listed in subsection (10) of KRS 189A.010; and

3. All offenses committed within a ten (10) year period.

Under **Section 1** of the bill, a new **subsection (5)(e)4.a.** would establish that a person would not be required to disclose an arrest for DUI after the record of the arrest has been sealed unless required to do so by state or federal law. New **subsection (5)(e)4.b.** would establish that the Kentucky Administrative Office of the Courts would be required to provide forms for a prosecuting attorney to petition a court to order a file that has been sealed, unsealed so the prosecutor may get a certified copy of the conviction to use in determining the charging level for a subsequent DUI.

Since, pursuant to KRS 446.080(3) statutes are not to be considered retroactive unless expressly made so, HB 261 SCS 1 eliminates **subsection (5)(e)5** of Section 1 from the General Assembly version of HB 261.

Sections 3 and 4 of HB 261 GA would also limit to one first offense in a person's lifetime failure to have and use a functioning ignition interlock device on his or her car when ordered to have such device and would identify as prior offenses those identified in Section 1, above. That offender's next failure to have and use an ignition interlock device, no matter when it occurred, would be punishable as a Class A misdemeanor including license revocation for one (1) year. Third and subsequent offenses of when the person who failed to use an ignition interlock device was also driving under the influence of alcohol or drugs at the time, would be punished for a Class D felony.

Section 6 is added to the SCS version of the bill and would amend KRS 186.018 to require that the Kentucky Transportation Cabinet permanently maintain the record of a person's conviction for a first offense DUI, and only make the information available to law enforcement and to the office of the Commonwealth Attorney and the county attorney for purposes of determining a charging level.

Part III: Fiscal Explanation, Bill Provisions, and Estimated Cost

The fiscal impact of HB 261 SCS 1 on local governments is expected to be minimal.

DUI first offense has no mandatory jail time, unless an aggravating circumstance listed in KRS 189A.010 (11)(subsection (11) would be re-numbered subsection (10) under the bill) is present while the person was operating or in physical control of a motor vehicle. It is likely that the bill would result in more DUI second offense convictions and local jails would house some additional DUI defendants who, under current law, would have spent no time in jail because their prior offense occurred more than 10 years before.

Individuals with an ignition interlock device, and violate subsection (1) of Section 3, are charged with a Class B misdemeanor for a first offense, a Class A misdemeanor for a second offense, and a Class D felony for the third or subsequent offenses.

A person convicted of a Class B misdemeanor may be incarcerated for up to 90 days. A person convicted of a Class A misdemeanor may be incarcerated for up to one year.

Misdemeanants are housed in one of Kentucky's 76 full service jails or five life safety jails. While the expense of housing inmates varies by jail, this estimated impact will be based on \$31.34 per day, which equals the per diem and medical that Department of Corrections pays jails to house felony offenders. While the majority of misdemeanor defendants are granted bail, those who do not will also cost local jails an average of \$31.34 per day. Therefore, one DUI second offense offender will cost a local jail a minimum \$219.38 for seven (7) days to a maximum \$5641.20 for 180 days (6 months) in jail.

When a court denies bail to a Class D felony defendant, the local government is responsible for incarcerating the defendant until disposition of the case in one of Kentucky's 76 full service jails or five life safety jails. While the expense of housing inmates varies by jail, each additional inmate increases facility costs by an estimated average of \$31.34 per day. Upon sentencing, a Class D felon is housed in one of Kentucky's full service jails for the duration of his or her sentence. The Department of Corrections pays a jail \$31.34 per day to house a D felon. Since the per diem pays for the estimated average cost of housing a Class D felon, the per diem may be less than, equal to, or greater than the actual housing cost.

Data Sources: Department of Corrections

Preparer: Mary Stephens **Reviewer:** KHC **Date:** 3/14/17