

CORRECTIONS IMPACT STATEMENT

SESSION: 19RS BILL # SB 85 HCS 1 BR # 10 DOC ID #: SB008530.100- 10 - 5864v

BILL SPONSOR(S): Sen. W. Westerfield, D. Carroll, S. Meredith, R. Thomas

AMENDMENT SPONSOR(S): Sen. W. Westerfield

SUBJECT: AN ACT relating to driving under the influence and making an appropriation therefor.

SUMMARY OF LEGISLATION: Amend KRS 189A.005 to provide a definition for "cabinet" and to clarify the definitions of "ignition interlock device", "ignition interlock certificate of installation", "ignition interlock device provider", and "ignition interlock license"; amend KRS 189A.010 to clarify that laboratory tests for controlled substances are admissible for DUI prosecutions under (1)(c) or (e); amend KRS 189A.040 to provide that alcohol or substance abuse treatment pursuant to this statute shall be authorized as Medicaid-eligible services for defendants who are Medicaid-eligible; amend KRS 189A.045 to clarify that if a defendant enrolls in an education alcohol or substance abuse treatment program before conviction that the education or treatment completed prior to conviction counts towards the education or treatment requirement imposed by KRS 189A.040; amend KRS 189A.050 to raise the DUI service fee from \$375 to \$425 and appropriate the additional \$50 to the Transportation Cabinet for administrative costs associated with ignition interlock; repeal and reenact KRS 189A.070 to provide that the Transportation Cabinet shall suspend the driver's license of a person convicted of a DUI; specify that any person issued an ignition interlock license may have a shorter suspension period; amend KRS 189A.085 to provide that a person convicted of any DUI shall surrender his or her license plate unless the person or family qualifies for an exemption; amend KRS 189A.090, operating a motor vehicle while driver's license is suspended for a DUI, to conform and to raise the third or subsequent offense of this statute for a person who was driving impaired to a Class C felony; amend KRS 189A.100 to clarify that the sentencing court can order a videotape or film of a DUI destroyed; amend KRS 189A.200 to provide that the court may require an ignition interlock license as a pretrial condition of release for those charged with violating (1)(a) but shall require an ignition interlock license as a pretrial condition of release for those charged with violating (1)(b) or (c); repeal and reenact KRS 189A.340 to provide the requirements for and restrictions of an ignition interlock license; amend KRS 189A.345 to make penalties for ignition interlock license and device violations; repeal, reenact, amend, and renumber KRS 189A.500 to clarify the Transportation Cabinet's regulatory authority for ignition interlock; create a new section of KRS Chapter 189A to provide an administrative appeals process for ignition interlock licenses; amend KRS 189A.410 to specify that only those charged with violations of KRS 189A.010(1)(c) or (d) are eligible for hardship licenses; amend KRS 189A.107, 189A.400, 189A.440, and 186.560 to conform; amend KRS 189A.105, 189A.220, 189A.240, and 189A.250 to make technical corrections; repeal 189A.080, 189A.320, 189A.420, 189A.430, and 189A.450; EFFECTIVE January 1, 2020.

AMENDMENT: Amend KRS 189A.010 to provide that the results of a blood sample obtained more than two hours after driving shall not be admissible for DUI prosecutions under (1)(d) but may be admissible for DUI prosecutions under (1)(c) or (e); adjust the presumption in DUI prosecutions under (1)(b) or (e) from 0.05 to 0.04; amend KRS 189A.070 to adjust the maximum license suspension period for those convicted of a DUI; provide that license suspension periods shall be based on whether the person was convicted of a first, second, third, or fourth DUI; amend KRS 189A.200 to require a person ordered to apply for an ignition interlock license during his or her pretrial license suspension to present a completed application to the court; amend KRS 189A.340 to allow a person whose license has been suspended for a DUI to drive to an ignition interlock device provider to have an ignition interlock device installed in his or her motor vehicle or motorcycle; lower the cap on the ignition interlock monthly fee from \$130 to \$100; amend KRS 189A.500 to require an ignition interlock device provider to have a service location in each Transportation Cabinet highway district; allow the Transportation Cabinet to establish ignition interlock provider fees; create an ignition interlock administration fund; amend KRS 186.550 to conform.

AMENDMENT: Amend 189A.070 to provide that a person's license suspension for a DUI conviction shall be deemed effective on the date of entry of the court's order or judgment; amend KRS 189A.105 to clarify that if a person refuses to submit to tests under KRS 189A.103, and has been convicted for a second or third time of a DUI within 10 years, he or she shall be subject to a mandatory minimum jail sentence that is twice as long; amend KRS 189A.200 to provide that the court, in addition to ordering a person to apply for an ignition interlock license, may order other conditions; amend KRS 189A.340 to allow a person whose license has been suspended for a DUI to drive to the circuit clerk's office in the person's county of residence to obtain an ignition interlock license.

AMENDMENT: Amend KRS 189A.010 to clarify that refusal is not an aggravating circumstance for a first offense of DUI.

AMENDMENT: Keep original provisions; amend KRS 189A.340 to provide that a person whose license has been suspended for a DUI has 14 days from the date of the ignition interlock approval letter to drive himself or herself to a provider to have an ignition interlock device installed in his or her motor vehicle or motorcycle; clarify the employer exemption; amend KRS 189A.345 to provide that a person who is issued an ignition interlock license and requests, permits, or allows another person to provide a sample on his or her behalf is guilty of a Class B misdemeanor for the first offense and a Class A misdemeanor for the second or subsequent offense; amend KRS 189A.500 to require the Transportation Cabinet to monitor ignition interlock service locations and to create a process to require providers to provide ignition interlocks services in underserved areas; EFFECTIVE January 1, 2020.

This bill amendment committee substitute is expected to:

Have the following Corrections impact Have no Corrections impact

- | | |
|---|--|
| <input checked="" type="checkbox"/> Creates new crime(s) | <input type="checkbox"/> Repeals existing crime(s) |
| <input checked="" type="checkbox"/> Increases penalty for existing crime(s) | <input type="checkbox"/> Decreases penalty for existing crime(s) |
| <input type="checkbox"/> Increases incarceration | <input type="checkbox"/> Decreases incarceration |
| <input type="checkbox"/> Reduces inmate/offender services | <input type="checkbox"/> Increases inmate/offender services |
| <input type="checkbox"/> Increases staff time or positions | <input type="checkbox"/> Reduces staff time or positions |

Changes elements of offense for existing crime(s)

Otherwise impacts incarceration (Explain) .

STATE IMPACT: Class A, B & C felonies are based on an average daily prison rate of \$71.10. Most Class D felons are housed in one of 76 full service jails for up to 5 years. DOC's cost to incarcerate a felony inmate in a jail is \$32.78 per day (includes jail per diem, medical & central office costs), not including substance abuse treatment. Projections are based on the daily rate x 365 x number of years.

Projected Impact: NONE MINIMAL to MODERATE (< \$1 million) SIGNIFICANT (> \$1 million)

Section 1 of SB 85 (KRS 189A.005) provides definitions. Added to ignition interlock devices is a requirement for a camera to date, time stamp, and photograph persons providing breath samples. Under the legislation, ignition interlock device providers require certification by the Transportation Cabinet. Language on the role of the Court and the Transportation Cabinet in regards to license suspensions is removed.

Section 2 (KRS 189A.010) clarifies laboratory testing and legal presumptions for controlled substances as admissible evidence for prosecution. Also modified under the Driving Under the Influence statute, 3rd Offenses within a ten (10) year period under KRS 189A.010(1)(a)-(e), will have an increased number of community service hours from ten (10) to thirty (30).

The period of operator's license suspension is removed from this KRS for individuals under KRS 189A.010(1)(f) with an alcohol concentration of .02 or more but under the age of twenty-one (21).

AOC records reflect 20,575 DUI offenses in FY2018, including 1,307 convictions for DUI 3rd Offenses. The Department currently has 272 inmates and 1,777 community offenders for DUI convictions. Of these, 103 are DUI 3rd Offenses, which if convicted under the current legislation, would carry increased community service hours. (Note: offenders may be in custody for other charges.)

Section 3 (KRS 189A.040) authorizes alcohol or substance abuse treatment for Medicaid eligible individuals through the Department of Medicaid Services.

Section 4 (KRS 189A.045) allows alcohol or substance abuse treatment obtained prior to conviction to fulfill statutory treatment requirements.

Section 5 (KRS 189A.050) raises the DUI fee from \$375 to \$425, with \$50 paid to the Transportation Cabinet for administrative costs associated with ignition interlock.

Section 6 (KRS 189A.070) outlines operator license suspension by the Transportation Cabinet.

For a first offense, an offender with an ignition interlock meeting the 120 consecutive day requirement within six (6) months shall have a license suspended for six (6) months. For a 1st Offense offender with an ignition interlock who does not meet the consecutive day requirement, the license will be suspended until he or she meets the 120 day requirement or nine (9) months, whichever is shorter. For non-ignition interlock first time offenders, the license suspension period will be nine (9) months.

For a second offense, an offender with an ignition interlock meeting the 120 consecutive day requirement within twelve (12) months shall have a license suspended for twelve (12) months. For a 2nd Offense offender with an ignition interlock who does not meet the consecutive day requirement, the license will be suspended until he or she meets the 120 day requirement or eighteen (18) months, whichever is shorter. For non-ignition interlock second time offenders, the license suspension period will be eighteen (18) months.

For a third offense, an offender with an ignition interlock meeting the 120 consecutive day requirement within eighteen (18) months shall have a license suspended for eighteen (18) months. For a 3rd Offense offender with an ignition interlock who does not meet the consecutive day requirement, the license will be suspended until he or she meets the 120 day requirement or thirty-six (36) months, whichever is shorter. For non-ignition interlock third time offenders, the license suspension period will be thirty-six (36) months.

For a fourth offense, an offender with an ignition interlock meeting the 120 consecutive day requirement within thirty (30) months shall have a license suspended for thirty (30) months. For a 4th Offense offender with an ignition

interlock who does not meet the consecutive day requirement, the license will be suspended until he or she meets the 120 day requirement or sixty (60) months, whichever is shorter. For non-ignition interlock fourth time offenders, the license suspension period will be sixty (60) months.

For persons under the age of twenty-one (21) with an alcohol concentration greater than .02, an offender with an ignition interlock meeting the 120 consecutive day requirement within four (4) months shall have a license suspended for four (4) months. For an individual under the age of twenty-one (21) with an ignition interlock who does not meet the consecutive day requirement, the license will be suspended until he or she meets the 120 day requirement or six (6) months, whichever is shorter. For non-ignition interlock offenders under the age of twenty-one (21), the license suspension period will be six (6) months. For persons under the age of eighteen (18), the license shall be suspended until age eighteen (18) or according to the penalties set for the respective offense level in Subsection (1)(a), whichever is longer.

Offenders are also required to complete an alcohol or substance abuse education or treatment program prior to license reinstatement. The legislation provides directives specific to surrendering of an operator's license. The ten (10) year look back period is measured from the offense dates.

Section 7 (KRS 189A.085) states that unless the offender has an ignition interlock device or a hardship license, he or she shall surrender all license plates within forty-five (45) days of sentencing.

Section 8 (KRS 189A.090) prohibits operation of a motor vehicle while under a DUI suspended license. The penalty under a 3rd or Subsequent Offense is increased from a Class D to a Class C felony if at the time of operating a motor vehicle on a 3rd DUI suspended license, the individual is arrested on a new DUI.

AOC records reflect 1,474 Driving on DUI Suspended License convictions in FY2018, including forty-seven (47) convictions for Driving on a DUI Suspended License 3rd or Subsequent Offense. The Department of Corrections currently has 127 inmates incarcerated for Driving on a DUI Suspended License, with seventy-five (75) specifically for a 3rd Offense. (Note: offenders may be in custody for other charges.) Additionally, there are 299 offenders on supervision for Driving on a DUI Suspended License, with ninety-seven (97) specifically for a 3rd Offense. It is not known how many of these 3rd Offenses would involve a new DUI arrest while the operator's license is suspended.

Section 9 (KRS 189A.100) modifies language for recording refusal to submit to tests and destruction of video evidence of the offense.

Section 10 (KRS 189A.105) speaks to refusal of breath, blood, or urine testing. The individual shall be informed that refusal will result in suspension of operator's license by the court at arraignment. Refusal to submit to tests for a 2nd or 3rd DUI offender doubles the mandatory minimum jail sentence.

AOC records for FY2018 reflect, 6,332 offenders with 2nd or 3rd DUI Offenses.

Section 11 (KRS 189A.107) speaks to surrendering of the license. Language related to ignition interlock is deleted.

Section 12 (KRS 189A.200) requires an ignition interlock. If an individual has refused breath or blood test, the court may order an ignition interlock as a condition of release. If an individual has prior offenses, had his or her license suspended for refusing to take a breath or blood test in the prior ten (10) years, or was involved in an accident that resulted in death or serious physical injury to another party, the court shall require an ignition interlock device as a condition of release. The offender is required to provide application documentation to the court.

Section 13 (KRS 189A.220) conforms. Sections 14 & 15 (KRS 189A.240 & KRS 189A.250) continue pretrial license suspension with modified statute references.

Section 16 (KRS 189A.340) outlines the eligibility requirements for an ignition interlock license and a hardship license. Offenders may apply for an ignition interlock prior to conviction, with directions for installation provided. Authorized providers and certification of installation are outlined. Violations of the ignition interlock device are listed: failure to take a breath alcohol concentration test, failure to pass a test, failure to maintain equipment or pay fees, tampering with the equipment, or concealing/altering the identity. Time in inpatient residential alcohol or substance abuse treatment applies toward the license suspension period. Provisions for an employer exemption are included. Fees shall not exceed \$130 for installation and \$100 monthly fee, with other fees for removal, reset, and missed appointments. A sliding fee is included.

Section 17 (KRS 189A.345) establishes violations for operating a motor vehicle without a functioning ignition interlock device as a Class A misdemeanor with an additional six months license suspension. A Class B misdemeanor is established for requesting or soliciting another individual to start a motor vehicle or take a breath alcohol concentration test to bypass the ignition interlock device. A 2nd or Subsequent Offense is a Class A misdemeanor. A misdemeanor is applied (Class B for a 1st Offense and a Class A for a Subsequent Offense) for altering or concealing the identify from the device's camera or installing a defective device. A Class A misdemeanor and license suspension is established for knowingly assisting an offender subject to ignition interlock in making a false statement to qualify for an employer exemption.

The Department currently has one (1) offender on misdemeanor supervision under KRS 189A.345. AOC records reflect two (2) misdemeanor convictions under this statute in FY2018.

Section 18 (KRS 189A.500) regulates administration of the ignition interlock program under the Transportation Cabinet. Wording related to court administration is removed. Offenders are required to have motor vehicle insurance for the duration of the program. Location requirements and fees for ignition interlock device providers are outlined.

Section 19 discusses provision of information to the defendant and an appeal process.

Section 20 establishes an ignition interlock administration fund.

Section 21 (KRS 189A.400) conforms and removes objections to an ignition interlock device by the county or Commonwealth's attorney.

Section 22 (KRS 189A.410) clarifies eligibility for hardship licenses under KRS 189A.010(1)(c) or (d).

Section 23 (KRS 189A.440) holds a Class A misdemeanor and license suspension for operating a motor vehicle for purposes other than authorized under a hardship license. Wording related to the ignition interlock license is removed from this section.

The Department currently has zero (0) offenders on supervision for offenses under KRS 189A.440. AOC records reflect sixteen (16) misdemeanor convictions under this statute in FY2018.

Section 24 (KRS 186.550) and Section 25 (KRS 186.560) conforms. Section 26 repeals KRS 189A.080, 189A.320, 189A.420, 189A.430, and 189A.450. Section 27 sets an effective date of January 1, 2020.

SB 85 raises the penalty for committing a DUI while driving on a DUI Suspended License 3rd or Subsequent Offense. It is unknown how often this enhancing circumstance would occur.

A Class D felony is also applied for a 2nd or Subsequent Offense for soliciting another individual to start a motor vehicle to bypass the ignition interlock device.

Class D offenders are housed in a county jail detention facility at a cost to the state of \$31.34. Class C offenders may qualify for community custody and housing at the county jail, depending on classification. If not eligible for community custody, offenders would be housed at a prison facility at a cost of \$71.10 per day.

The occurrence of felony convictions stemming from these two statutes would not be expected to be significant in number. Overall, the expected fiscal impact to the Department under this bill would be fairly minimal.

A Class C Felony sentence is 5 to 10 years.
1 Class C Felon costs KY \$129,753.06 to \$259,506.11

10 Class C Felons cost KY \$1,297,530.56 to \$2,595,061.12
100 Class C Felons cost KY \$12,975,305.58 to \$25,950,611.17

A Class D Felony sentence is 1 to 5 years.
1 Class D Felon costs KY \$11,965.87 to \$59,824.36

10 Class D Felons cost KY \$119,648.71 to \$598,243.56
100 Class D Felons cost KY \$1,196,487.11 to \$5,982,435.57

LOCAL IMPACT: Local governments are responsible for the cost of incarcerating individuals charged with Class A or B misdemeanors and felony defendants until disposition of the case. While the expense varies by jail, this estimated impact will be based on \$31.34 per day, which equals the per diem and medical that DOC pays jails to house felony offenders.

Projected Impact: NONE MINIMAL to MODERATE (< \$1 million) SIGNIFICANT (> \$1 million)

Under the legislation, a Class D felony is established for specific violations related to ignition interlock devices. The Class D felony for a 3rd offense Operating on a DUI Suspended Licensed with a DUI is increased to a Class C level. Some of these Class C offenders may not be eligible for housing at a county jail facility, resulting in a potential loss of revenue for the jail.

The legislation establishes Class A and Class B misdemeanors for violations associated with ignition interlock devices.

While the number associated with these specific offenses are not expected to be significant in number, due to limited capacity, any number of additional offenders does impact local jail populations.

A Class A misdemeanor is 90 days to 1 year in jail.	10 Class A misdemeanants: \$28,206.00 to \$114,391.00
1 Class A misdemeanant: \$2,820.60 to \$11,439.10	100 Class A misdemeanants: \$282,060.00 to \$1,143,910.00
A Class B misdemeanor is up to 90 days in jail.	10 Class B misdemeanants: up to \$28,206.00
1 Class B misdemeanant: up to \$2,820.60	100 Class B misdemeanants: up to \$282,060.00

CORRECTIONS IMPACT FROM AMENDMENTS:

Senate Committee Substitute: For a 1st DUI offense, the license suspension period for non-ignition device users and those non-compliance with the ignition device is shortened from twelve (12) to nine (9) months. For 3rd and 4th offense violators, the license suspension period for non-ignition device users and those non-compliance with the ignition device is increased from twenty-four (24) to thirty-six (36) months and thirty-six (36) to sixty (60) months, respectively. The timeframe for surrendering license plates is increased from fourteen (14) to forty-five (45) days. The monthly ignition interlock device fee is lowered from \$130 to \$100. Under Section 17, requesting another person to take the breath test to start the motor vehicle is added to the offense for bypassing an ignition device. Fees and location requirements are established for device providers and an ignition interlock administration fund is established.

Senate Floor Amendment(s): If an individual refuses to submit to intoxication testing and is a 2nd or 3rd DUI offender, the mandatory minimum jail sentence is doubled. Refusal for a 1st DUI offense is removed as an aggravator. Clarification for additional court ordered conditions is provided, as well as instructions for effective date of license suspension and obtaining an ignition interlock license.

Under the Floor Amendments, there would be additional incarceration days. It is not known how many 2nd or 3rd DUI offenders would refuse to submit to tests.


House Committee Substitute: Modifies instructions for obtaining an ignition interlock license, employer exemptions, and ignition interlock service providers. The penalty for violation of an ignition interlock device is lowered from prior versions of the legislation from a Class A misdemeanor and Class D felony, to a Class B and Class A misdemeanor, for the 1st and 2nd or Subsequent Offenses, respectively.

Under the House Committee Substitute, the impact to incarceration is reduced but remains in the minimal to moderate range.

The following offices contributed to this Corrections Impact Statement:

Dept. of Corrections Dept. of Kentucky State Police Administrative Office of the Courts Parole Board Other

NOTE: Consideration should be given to the cumulative impact of all bills that increase the felon population or that impose new obligations on state or local governments. The Department of Corrections and local jails continue to operate over capacity. Without steps to reduce the population, any legislation that increases population or lengthens the term of incarceration will have a significant impact on correctional operations.

APPROVED BY:  3/7/2019
Deputy Commissioner, Kentucky Department of Corrections Date