

**Local Government Mandate Statement
Kentucky Legislative Research Commission
2019 Regular Session**

Part I: Measure Information

Bill Request #: 10

Bill #: SB 85 HCS

Document ID #: 5864

Bill Subject/Title: AN ACT relating to driving under the influence and making an appropriation therefor.

Sponsor: Senator Whitney H. Westerfield

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

Office(s) Impacted: Law Enforcement, Jails

Requirement: Mandatory Optional

Effect on

Powers & Duties: Modifies Existing Adds New Eliminates Existing

Part II: Bill Provisions and the Estimated Fiscal Impact Relating to Local Government

Note: All references to "motor vehicle" are amended by SB 85 HCS to read "motor vehicle or motorcycle".

SB 85 HCS makes the following changes to existing law:

Section 1 clarifies definitions and expands the definition of an ignition interlock device as one that prevents a motor vehicle ignition from starting if the driver's alcohol concentration exceeds .02 **and** has a fully functional camera capable of recording date, time, and photo of all persons providing breath samples to the device.

Section 2 amends KRS 189A.010 to state that a laboratory test for a controlled substance may be admissible as evidence in a prosecution of being under the influence of a nonalcoholic substance or any substance which impairs one's driving ability, or combination thereof. If the blood sample is obtained beyond two hours of operating a

motor vehicle, the sample is inadmissible as evidence regarding controlled substances. However, it may be used as evidence regarding nonalcoholic substances or when alcohol and nonalcoholic substances are combined.

SB 85 HCS lowers the blood alcohol concentration from .05 to .04 for making the presumption the defendant was not under the influence of alcohol. Likewise, the concentration is lowered from .05 to .04, but not greater than .08 for consideration with other evidence in determining the guilt or innocence of the defendant. The refusal to submit to any test requested shall not be considered an aggravating circumstance for a first offense.

SB 85 HCS changes the amount of community labor time required when convicted of a third offense from 10 days to 30 days.

Section 6 repeals and reenact KRS 189A.070. The table below details the penalties for driving under the influence for defendants 18 years of age or older:

Offenses within a 10-year period*	Length of Suspension if the 120 Day Requirement has been met **	Length of Suspension if the 120 day requirement not been met **	For all Others
First	6 months	Shorter of meeting the 120 days requirement or 9 months	9 months
Second	12 months	Shorter of meeting the 120 days requirement or 18 months	18 months
Third	18 months	Shorter of meeting the 120 days requirement or 36 months	36 months
Fourth	30 months	Shorter of meeting the 120 days requirement or 60 months	60 months

* The ten year period is measured from the date on which the offense occurred.

** The 120 day requirement is defined in Section 16.

The defendant shall also have his license suspended for the first, second, third, and fourth offenses for the time periods as provided in the chart above. License suspension is effective on the date of the court ordered or judgement for conviction is entered.

Section 7 It also extends the time frame for which a person shall surrender any and all license plate or plates from 14 days to 45 days.

Section 8 amends KRS 189A.090 to provide conforming language that relates to operating a motor vehicle while license is suspended due to a DUI. The section replaces all references to “revocation” with “suspension.” Section 8 also increases the penalty for individuals convicted of a third or subsequent DUI under violation of KRS 189A.010(1)(a), (b), (c), (d), or (e) from a Class D felony to a Class C felony.

Section 9 allows law enforcement agencies to visually or audibly record the refusal of a violator to submit to blood, breath, and urine test to determine alcohol concentration. It also clarifies that any videotape or film of the DUI shall be destroyed upon order of the sentencing court upon the established timeline.

Section 12 amends KRS 189A.200 to state that when a court orders the suspension of a license that:

- A court *may* require a person who has refused an alcohol concentration or substance test to apply for an ignition interlock license as a condition of release.
- A court shall *require* a person who has been convicted of one or more prior DUIs or was in an accident resulting in death or serious physical injury to a person other than the defendant, to apply to the Transportation Cabinet for an ignition interlock license as a condition of release. This application shall be presented to the court.
- A court shall issue an order directing the sheriff **or** other peace officer to seize the license of the defendant in the event that the defendant has failed to surrender it.
- The court is allowed to enforce other conditions when a license is suspended.

Section 16 repeals and reenacts KRS 189A.340 to provide the requirements and restrictions for an ignition interlock system.

- Defines the 120 day period as the period prior to the date of releasing the ignition interlock device restrictions, during which the person has not violated any of the following ignition interlock device restrictions:
 - o random breath alcohol concentration tests;
 - o appearing at the ignition interlock device provider when required to do so for maintenance, repairing, calibration, monitoring, inspection, or replacement of the ignition interlock device;
 - o paying all relevant fees charged by an ignition interlock provider including a monthly fee not to exceed \$100; detailed guidelines are provided regarding fees and how federal poverty guidelines affect fees
 - o tampering with an installed ignition interlock device with the intent of rendering it defective; or
 - o attempting to alter, conceal, or hide the person's identity from the device's camera while providing a breath sample.

When a license is suspended an individual may drive to an ignition interlock provider to have the unit installed and to the circuit clerk's officer in the person's county of residence to obtain an ignition interlock license. If an individual has a completed ignition interlock application within 14 days of the date of approval letter and if the approval letter is in the vehicle or motorcycle.

Allows for a person with an ignition interlock license to operate a vehicle or motorcycle not equipped with an ignition interlock device if in the course and scope of employment.

Section 17 amends KRS 189A.345 to designate penalties for various violations with ignition interlock devices.

- Any person who is issued an ignition interlock license and operates a motor vehicle without a functioning ignition interlock device or at a time, place, or purpose not authorized will be guilty of a Class A misdemeanor and shall have their license suspended for an additional 6 months.
- Any person who has been issued an ignition interlock license shall not request, permit or allow another person to start a motor vehicle in an effort to bypass the ignition interlock device or to take a subsequent breath alcohol concentration test will be guilty of a Class A misdemeanor (first offense) and a Class D felony for a second and subsequent offense.
- Any person who alters, conceals, hides, or attempt to alter, conceal, or hide, the person's identity from the ignition interlock device's camera while providing a breath sample, shall be guilty of a Class B misdemeanor for the first offense and a Class A misdemeanor for second or subsequent offenses.
- No person shall knowingly assist a person who is issued an ignition interlock license in making a false statement in order to qualify for the employer exemption. They shall be guilty of a Class A misdemeanor and have their license suspended for 6 months.

Section 18 clarifies the Transportation Cabinet has regulatory authority over ignition interlock and further clarifies that all ignition interlock license and device violations are statutory, none appearing within administrative regulations. It also requires the provider have a service location in each Transportation Cabinet highway district and to pay the following fees:

- An application fee not to exceed \$500;
- An annual renewal fee not to exceed \$200;
- An annual service inspection fee not to exceed \$100; and
- A revisit fee for a failed inspection not to exceed \$150.

The above fees shall be paid to the ignition interlock administration fund.

Requires the Transportation Cabinet to monitor ignition interlock device service locations and to have a random or designated selection process in place to service any area of the Commonwealth.

Section 19 creates a new section of KRS Chapter 189A.005 to 189A.350 detailing the administrative appeals process in every instance the Transportation Cabinet takes action related to ignition interlock licenses. The Cabinet shall inform the person by letter that they may appeal within 20 days of receiving the notice. The decision shall be made by the Commissioner of the Office of Vehicle Regulation. An aggrieved party may appeal this decision within 20 days to the Office of Legal Services who shall respond within 20 days. The aggrieved person may at this time request an administrative hearing in accordance to KRS Chapter 13B.

Section 20 establishes a new Section of KRS Chapter 189A to provide the following create the ignition interlock administration fund to be administered by the Transportation Cabinet. The deposited funds shall be appropriated to the Department of Vehicle Regulation and the Office of Highway Safety for administrative cost related to the ignition interlock program. Any year-end remaining funds including interest earned on moneys in the fund shall be carried forward into the succeeding fiscal year.

Section 24 requires the clerk of any court to report any non-DUI convictions, pleas or forfeiture of bond arising under motor vehicle laws to the Transportation Cabinet within 15 days. The clerk shall revoke the motor vehicle operator's license certificate of the convicted individual and immediately forward it along with the conviction report to the Cabinet.

The fiscal impact of SB 85 HCS on local governments is minimal.

Most of the program oversight and administration is through the Transportation Cabinet. There will be reimbursements to local jails from the Department of Corrections resulting from Sections 8 and 17 as detailed below:

A person convicted of a Class A misdemeanor may be incarcerated for up to twelve months. Misdemeanants are housed in one of Kentucky's 76 full service jails or four 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 expenses that the 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.

Class D and Class C felons:

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 four 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, which equals the per diem and medical expenses that the Department of Corrections pays jails to house felony offenders. 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.

When a court denies bail to a Class C 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 four 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, which equals the per diem and medical expenses that the Department of Corrections pays jails to house felony offenders. Class C felons are ineligible for placement in local jails until they are classified at the lowest custody level with 24 months or less to their minimum

expiration date or parole eligibility date. The Department of Corrections pays local jails \$31.34 per day to house these Class C felons. Since the per diem pays for the estimated average cost of housing a Class C felon, the per diem may be less than, equal to, or greater than the actual housing cost.

Part III: Differences to Local Government Mandate Statement from Prior Versions

Part II pertains to SB 85 HSC 1. SB 85 HCS 1 keeps the provisions of SB 65 GA and makes the following changes:

Section 16: Allows a person to drive to an ignition interlock installer and to the circuit clerk's office only if that person has a completed ignition interlock application dated within 14 days of the Transportation Cabinet's approval letter in the vehicle.

Allows for a person with an ignition interlock license to operate a vehicle or motorcycle not equipped with an ignition interlock device if in the course and scope of employment and the business owner is not owned or controlled by the person.

Section 18: Requires the Transportation Cabinet to monitor ignition interlock device service locations and to have a random or designated selection process in place to service any area of the Commonwealth.

SB 65 GA by keeps the provisions of SB 85 SCS 1 and adding the following through floor amendments:

- **Section 2:** The refusal to submit to any test requested shall not be considered an aggravating circumstance for a first offense.
- **Section 6:** License suspension is effective on the date the court ordered or judgement for conviction is entered.
- **Section 12:** The court is allowed to enforce other conditions when a license is suspended.
- **Section 16:** When a license is suspended and in addition to driving to an ignition interlock provider to have the unit installed, the person may also drive to the circuit clerk's officer in the person's county of residence to obtain an ignition interlock license.

SB 85 SCS 1 keeps the major components of SB 85 as introduced and makes the following changes and additions:

- Imposes a two hour limit regarding the time after the offense for which a blood alcohol test may be taken and used in court regarding controlled substances.
- Changes the length of license suspension for first, second, third, and fourth convictions within a ten year period.
- Allows for the video and audio recording of refusals to submit to an alcohol concentration test.
- Extends from 14 to 45 days for the time to relinquish all license plates after a DUI conviction.

- Requires the application for an ignition interlock license to be submitted to the court.
- Lowers the monthly fee payable to ignition interlock providers from \$130 to \$100.
- Clarifies that the attempt to alter, conceal, or hide the person's identity from the device's camera while providing a breath sample as grounds for being unable to participate in the ignition interlock program.
- Provides guidance regarding the amount of fees an ignition interlock provider is entitled to.
- Provides for how the funds deposited into the ignition interlock administration fund shall be allocated.
- Requires the court clerk to forward conviction report and the revoked license of non-DUI convictions to the Transportation Cabinet within 15 days of conviction.

Data Source(s): Transportation Cabinet, Department of Corrections, LRC Staff

Preparer: Wendell F. Butler **Reviewer:** KHC **Date:** 3/7/19