

1 AN ACT relating to penalties for driving under the influence and declaring an
2 emergency.

3 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

4 ➔Section 1. KRS 189A.010 is amended to read as follows:

- 5 (1) A person shall not operate or be in physical control of a motor vehicle anywhere in
6 this state:
- 7 (a) Having an alcohol concentration of 0.08 or more as measured by a
8 scientifically reliable test or tests of a sample of the person's breath or blood
9 taken within two (2) hours of cessation of operation or physical control of a
10 motor vehicle;
 - 11 (b) While under the influence of alcohol;
 - 12 (c) While under the influence of any other substance or combination of
13 substances which impairs one's driving ability;
 - 14 (d) While the presence of a controlled substance listed in subsection (12) of this
15 section is detected in the blood, as measured by a scientifically reliable test, or
16 tests, taken within two (2) hours of cessation of operation or physical control
17 of a motor vehicle;
 - 18 (e) While under the combined influence of alcohol and any other substance which
19 impairs one's driving ability; or
 - 20 (f) Having an alcohol concentration of 0.02 or more as measured by a
21 scientifically reliable test or tests of a sample of the person's breath or blood
22 taken within two (2) hours of cessation of operation or physical control of a
23 motor vehicle, if the person is under the age of twenty-one (21).
- 24 (2) With the exception of the results of the tests administered pursuant to KRS
25 189A.103(7), if the sample of the person's blood or breath that is used to determine
26 the 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 test

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

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

9 (a) If there was an alcohol concentration of less than 0.05 based upon the
10 definition of alcohol concentration in KRS 189A.005, it shall be presumed
11 that the defendant was not under the influence of alcohol; and

12 (b) If there was an alcohol concentration of 0.05 or greater but less than 0.08
13 based upon the definition of alcohol concentration in KRS 189A.005, that fact
14 shall not constitute a presumption that the defendant either was or was not
15 under the influence of alcohol, but that fact may be considered, together with
16 other competent evidence, in determining the guilt or innocence of the
17 defendant.

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

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

26 (b) A laboratory test or tests for a controlled substance shall be inadmissible as
27 evidence in a prosecution under subsection (1)(d) of this section upon a

1 finding by the court that the defendant consumed the substance under a valid
2 prescription from a practitioner, as defined in KRS 218A.010, acting in the
3 course of his or her professional practice.

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

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

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

27 (c) For a third offense within a ten (10) year period, be fined not less than five

1 hundred dollars (\$500) nor more than one thousand dollars (\$1,000) and shall
2 be imprisoned in the county jail for not less than thirty (30) days nor more
3 than twelve (12) months and may, in addition to fine and imprisonment, be
4 sentenced to community labor for not less than ten (10) days nor more than
5 twelve (12) months. If any of the aggravating circumstances listed in
6 subsection (11) of this section are present, the mandatory minimum term of
7 imprisonment shall be sixty (60) days, which term shall not be suspended,
8 probated, conditionally discharged, or subject to any other form of early
9 release;

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

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

24 (6) Any person who violates the provisions of subsection (1)(f) of this section shall
25 have his driving privilege or operator's license suspended by the court for a period
26 of no less than thirty (30) days but no longer than six (6) months, and the person
27 shall be fined no less than one hundred dollars (\$100) and no more than five

1 hundred dollars (\$500), or sentenced to twenty (20) hours of community service in
2 lieu of a fine. A person subject to the penalties of this subsection shall not be
3 subject to the penalties established in subsection (5) of this section or any other
4 penalty established pursuant to KRS Chapter 189A, except those established in
5 KRS 189A.040(1).

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

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

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

21 (10) (a) In determining the ten (10) year period under this section, the period shall be
22 measured from the dates after April 9, 2016, on which the offenses occurred
23 for which the judgments of conviction were entered.

24 (b) For the purpose of determining the number of years in a time period under
25 subsection (5) or (8) of this section, offenses occurring on or before April 9,
26 2016, shall be governed by this section as it existed at the time of the
27 commission of the offense.

- 1 (11) For purposes of this section, aggravating circumstances are any one (1) or more of
2 the following:
- 3 (a) Operating a motor vehicle in excess of thirty (30) miles per hour above the
4 speed limit;
 - 5 (b) Operating a motor vehicle in the wrong direction on a limited access highway;
 - 6 (c) Operating a motor vehicle that causes an accident resulting in death or serious
7 physical injury as defined in KRS 500.080;
 - 8 (d) Operating a motor vehicle while the alcohol concentration in the operator's
9 blood or breath is 0.15 or more as measured by a test or tests of a sample of
10 the operator's blood or breath taken within two (2) hours of cessation of
11 operation of the motor vehicle;
 - 12 (e) Refusing to submit to any test or tests of one's blood, breath, or urine
13 requested by an officer having reasonable grounds to believe the person was
14 operating or in physical control of a motor vehicle in violation of subsection
15 (1) of this section; and
 - 16 (f) Operating a motor vehicle that is transporting a passenger under the age of
17 twelve (12) years old.
- 18 (12) The substances applicable to a prosecution under subsection (1)(d) of this section
19 are:
- 20 (a) Any Schedule I controlled substance except marijuana;
 - 21 (b) Alprazolam;
 - 22 (c) Amphetamine;
 - 23 (d) Buprenorphine;
 - 24 (e) Butalbital;
 - 25 (f) Carisoprodol;
 - 26 (g) Cocaine;
 - 27 (h) Diazepam;

- 1 (i) Hydrocodone;
- 2 (j) Meprobamate;
- 3 (k) Methadone;
- 4 (l) Methamphetamine;
- 5 (m) Oxycodone;
- 6 (n) Promethazine;
- 7 (o) Propoxyphene; and
- 8 (p) Zolpidem.

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

10 (1) Unless the person is under eighteen (18) years of age, in addition to the penalties
 11 specified in KRS 189A.010, a person convicted of violation of KRS
 12 189A.010(1)(a), (b), (c), (d), or (e) shall have his or her license to operate a motor
 13 vehicle or motorcycle revoked by the court as follows:

- 14 (a) For the first offense within a ten (10) year period, for a period of not less than
 15 thirty (30) days nor more than one hundred twenty (120) days;
- 16 (b) For the second offense within a ten (10) year period, for a period of not less
 17 than twelve (12) months nor more than eighteen (18) months;
- 18 (c) For a third offense within a ten (10) year period, for a period of not less than
 19 twenty-four (24) months nor more than thirty-six (36) months; and
- 20 (d) For a fourth or subsequent offense within a ten (10) year period, sixty (60)
 21 months.
- 22 (e) For purposes of this section, "offense" shall have the same meaning as
 23 described in KRS 189A.010(5)(e).

24 (2) (a) In determining the ten (10) year period under this section, the period shall be
 25 measured from the dates after April 9, 2016, on which the offenses occurred
 26 for which the judgments of conviction were entered.

27 (b) For the purpose of determining the number of years in a time period under

1 *this section, offenses occurring on or before April 9, 2016, shall be*
2 *governed by this section as it existed at the time of the commission of the*
3 *offense.*

- 4 (3) In addition to the period of license revocation set forth in subsection (1) or (7) of
5 this section, no person shall be eligible for reinstatement of his or her full privilege
6 to operate a motor vehicle until he has completed the alcohol or substance abuse
7 education or treatment program ordered pursuant to KRS 189A.040.
- 8 (4) A person under the age of eighteen (18) who is convicted of violation of KRS
9 189A.010(1)(a), (b), (c), (d), or (e) shall have his license revoked by the court until
10 he reaches the age of eighteen (18) or shall have his license revoked as provided in
11 subsection (1) or (7) of this section, whichever penalty will result in the longer
12 period of revocation or court-ordered driving conditions.
- 13 (5) Licenses revoked pursuant to this chapter shall forthwith be surrendered to the court
14 upon conviction. The court shall transmit the conviction records, and other
15 appropriate information to the Transportation Cabinet. A court shall not waive or
16 stay this procedure.
- 17 (6) Should a person convicted under this chapter whose license is revoked fail to
18 surrender it to the court upon conviction, the court shall issue an order directing the
19 sheriff or any other peace officer to seize the license forthwith and deliver it to the
20 court.
- 21 (7) After a minimum of twelve (12) months from the effective date of the revocation, a
22 person whose license has been revoked pursuant to subsection (1)(b), (c), or (d) of
23 this section may move the court to reduce the period of revocation on a day-for-day
24 basis for each day the person held a valid ignition interlock license under KRS
25 189A.420, but in no case shall the reduction reduce the period of ignition interlock
26 use to less than twelve (12) months. The court may, upon a written finding in the
27 record for good cause shown, order such a period to be reduced to not less than

1 twelve (12) months, if:

2 (a) The person maintained a valid ignition interlock license and did not operate a
3 motor vehicle or motorcycle without a functioning ignition interlock device as
4 provided for in KRS 189A.420;

5 (b) The person did not operate a motor vehicle or motorcycle in violation of any
6 restrictions specified by the court; and

7 (c) The functioning ignition interlock device was installed on the motor vehicle or
8 motorcycle for a period of time not less than twelve (12) months under
9 subsection (1)(b), (c), or (d) of this section.

10 (8) Upon a finding of a violation of any of the conditions specified in subsection (7) of
11 this section or of the order permitting any reduction in a minimum period of
12 revocation that is issued pursuant thereto, the court shall dissolve such an order and
13 the person shall receive no credit toward the minimum period of revocation required
14 under subsection (1)(b), (c), or (d) of this section.

15 ➔Section 3. Whereas the penalties for prior offenses currently differ for similar
16 defendants across jurisdictions, an emergency is declared to exist, and this Act takes
17 effect upon its passage and approval by the Governor or upon its otherwise becoming a
18 law.