

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 fact  
21 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) Any person who violates the provisions of subsection (1)(f) of this section shall be  
9 fined no less than one hundred dollars (\$100) and no more than five hundred dollars  
10 (\$500), or sentenced to twenty (20) hours of community service in lieu of a fine. A  
11 person subject to the penalties of this subsection shall not be subject to the penalties  
12 established in subsection (5) of this section or any other penalty established  
13 pursuant to KRS Chapter 189A, except those established in KRS 189A.040(1) and  
14 KRS 189A.070.

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

19 (8) For a second or third offense within a ten (10) year period, the minimum sentence  
20 of imprisonment or community labor shall not be suspended, probated, or subject to  
21 conditional discharge or other form of early release. For a ~~third~~<sup>fourth</sup> or  
22 subsequent offense under this section, the minimum term of imprisonment shall be  
23 one hundred twenty (120) days, and this term shall not be suspended, probated, or  
24 subject to conditional discharge or other form of early release. For a second or  
25 subsequent offense, at least forty-eight (48) hours of the mandatory sentence shall  
26 be served consecutively.

27 (9) When sentencing persons under subsection (5)(a) of this section, at least one (1) of

1 the penalties shall be assessed and that penalty shall not be suspended, probated, or  
2 subject to conditional discharge or other form of early release.

3 (10) In determining the ten (10) year period under this section, the period shall be  
4 measured from the dates on which the offenses occurred for which the judgments of  
5 conviction were entered.

6 (11) For purposes of this section, aggravating circumstances are any one (1) or more of  
7 the following:

8 (a) Operating a motor vehicle in excess of thirty (30) miles per hour above the  
9 speed limit;

10 (b) Operating a motor vehicle in the wrong direction on a limited access highway;

11 (c) Operating a motor vehicle that causes an accident resulting in death or serious  
12 physical injury as defined in KRS 500.080;

13 (d) Operating a motor vehicle while the alcohol concentration in the operator's  
14 blood or breath is 0.15 or more as measured by a test or tests of a sample of  
15 the operator's blood or breath taken within two (2) hours of cessation of  
16 operation of the motor vehicle;

17 (e) Refusing to submit to any test or tests of one's blood, breath, or urine  
18 requested by an officer having reasonable grounds to believe the person was  
19 operating or in physical control of a motor vehicle in violation of subsection  
20 (1) of this section, except it shall not be considered an aggravating  
21 circumstance for a first offense under subsection (5)(a) of this section; and

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

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

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

27 (b) Alprazolam;

- 1 (c) Amphetamine;
- 2 (d) Buprenorphine;
- 3 (e) Butalbital;
- 4 (f) Carisoprodol;
- 5 (g) Cocaine;
- 6 (h) Diazepam;
- 7 (i) Hydrocodone;
- 8 (j) Meprobamate;
- 9 (k) Methadone;
- 10 (l) Methamphetamine;
- 11 (m) Oxycodone;
- 12 (n) Promethazine;
- 13 (o) Propoxyphene; and
- 14 (p) Zolpidem.

15 ➔Section 2. KRS 189A.110 is amended to read as follows:

16 Any person who is arrested for a violation of KRS 189A.010 ~~and who, upon breath~~  
17 ~~analysis testing, shows an alcohol concentration reading of .15 percent or more~~ shall be  
18 detained in custody at least **eight (8)**~~four (4)~~ hours following his or her arrest.

19 ➔Section 3. KRS 189A.040 is amended to read as follows:

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

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

- 1 (b) Each defendant shall pay the cost of the education or treatment program up to  
2 his or her ability to pay but no more than the actual cost of the treatment;
- 3 (c) Upon written report to the court by the administrator of the program that the  
4 defendant has completed the program recommended by the administrator  
5 based upon the assessment of the defendant, the defendant shall be released  
6 prior to the expiration of the ninety (90) day period; and
- 7 (d) Failure to complete the education or treatment program or to pay the amount  
8 specified by the court for education or treatment shall constitute contempt,  
9 and the court shall, in addition to any other remedy for contempt, reinstitute  
10 all penalties which were previously imposed but suspended or delayed  
11 pending completion of the education or treatment program.
- 12 (2) In addition to any other penalty prescribed by KRS 189A.010(5)(b), the court shall  
13 sentence the person to an alcohol or substance abuse treatment program subject to  
14 the following terms and conditions for a second offender:
- 15 (a) The sentence shall be for a period of one (1) year and the program shall  
16 provide an assessment of the defendant's alcohol or other substance abuse  
17 problems, which shall be performed at the start of the program;
- 18 (b) Each defendant shall pay the cost of the treatment program up to his or her  
19 ability to pay but no more than the actual cost of the treatment;
- 20 (c) Upon written report to the court by the administrator of the program that the  
21 defendant has completed the program recommended by the administrator  
22 based upon the assessment of the defendant, the defendant may be released  
23 prior to the expiration of the one (1) year period; and
- 24 (d) Failure to complete the treatment program or to pay the amount specified by  
25 the court for treatment shall constitute contempt of court and the court shall,  
26 in addition to any other remedy for contempt, reinstitute all penalties which  
27 were previously imposed but suspended or delayed pending the completion of



1 the treatment program.

2 (3) In addition to any other penalty prescribed by KRS 189A.010(5)(c)~~[-or (d)]~~, the  
3 court shall sentence the person to an alcohol or substance abuse treatment program  
4 subject to the following terms and conditions for a third or subsequent offender:

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

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

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

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

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

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

- 1 (6) For the purposes of this section, "treatment" means service in an alcohol or  
2 substance abuse education or treatment program or facility licensed, regulated, and  
3 monitored by the Cabinet for Health and Family Services for services as required  
4 under this section.
- 5 (7) The Cabinet for Health and Family Services shall promulgate administrative  
6 regulations for the licensure of education and treatment facilities and programs for  
7 offenders receiving education or treatment under this section. The criteria  
8 developed by the Cabinet for Health and Family Services shall include:
- 9 (a) Manner of assessment;  
10 (b) Appropriate education and treatment plans; and  
11 (c) Referrals to other treatment providers.
- 12 (8) The participating facilities and programs shall be required to abide by these  
13 standards and shall report completion to the Transportation Cabinet. Upon request,  
14 the facility or program shall report to the courts regarding the progress of offenders  
15 being treated pursuant to this section.
- 16 (9) Administrative decisions regarding the licensure of education and treatment  
17 facilities and programs may be appealed, and upon appeal an administrative hearing  
18 shall be conducted in accordance with KRS Chapter 13B.
- 19 ➔Section 4. KRS 189A.200 is amended to read as follows:
- 20 (1) The court shall at the arraignment or as soon as such relevant information becomes  
21 available suspend the motor vehicle operator's license and motorcycle operator's  
22 license and driving privileges of any person charged with a violation of KRS  
23 189A.010(1) who:
- 24 (a) Has refused to take an alcohol concentration or substance test as reflected on  
25 the uniform citation form;
- 26 (b) Has been convicted of one (1) or more prior offenses as described in KRS  
27 189A.010(5)(d)(~~e~~) or has had his or her operator's license suspended on one

- 1 (1) or more occasions for refusing to take an alcohol concentration or  
2 substance test, in the ten (10) year period immediately preceding his or her  
3 arrest; or
- 4 (c) Was involved in an accident that resulted in death or serious physical injury as  
5 defined in KRS 500.080 to a person other than the defendant.
- 6 (2) Persons whose licenses have been suspended pursuant to this section may file a  
7 motion for judicial review of the suspension, and the court shall conduct the review  
8 in accordance with this chapter within thirty (30) days after the filing of the motion.  
9 The court shall, at the time of the suspension, advise the defendant of his or her  
10 rights to the review.
- 11 (3) When the court orders the suspension of a license pursuant to:
- 12 (a) Subsection (1)(a) of this section, the court may, in addition to any other  
13 conditions the court may order, require that the person apply to the  
14 Transportation Cabinet for issuance of an ignition interlock license under  
15 KRS 189A.340 for the period of the suspension;
- 16 (b) Subsection (1)(b) or (c) of this section, the court shall, in addition to any other  
17 conditions the court may order, require that the person apply to the  
18 Transportation Cabinet for issuance of an ignition interlock license under  
19 KRS 189A.340 for the period of suspension; and
- 20 (c) Subsection (1) of this section and the person is required to apply for an  
21 ignition interlock license pursuant to paragraph (a) or (b) of this subsection,  
22 the person shall present the completed ignition interlock license application to  
23 the court.
- 24 (4) When the court orders the suspension of a license pursuant to this section, the  
25 defendant shall immediately surrender his or her license to operate a motor vehicle  
26 or motorcycle to the court. Should the defendant fail to surrender his or her license  
27 to the court, the court shall issue an order directing the sheriff or any other peace

1 officer to seize the license forthwith and deliver it to the court. If the license is  
2 currently under suspension, the provisions of this subsection shall not apply.

3 (5) The Circuit Court Clerk shall forthwith transmit to the Transportation Cabinet:

4 (a) Any license surrendered pursuant to this section; and

5 (b) If the court ordered a person to apply for an ignition interlock device under  
6 subsection (3) of this section, notification of the order.

7 (6) Licenses suspended under this section shall remain suspended until:

8 (a) The person is acquitted;

9 (b) All pending or current charges relating to a violation of KRS 189A.010  
10 have been dismissed; or

11 (c) The person is convicted and the Transportation Cabinet has suspended  
12 his or her license pursuant to KRS 189A.070;

13 but in no event for a period longer than the license suspension period  
14 applicable to the person under KRS 189A.070 or 189A.107.

15 (7) Any person whose operator's license has been suspended pursuant to this section  
16 shall be given credit for all pretrial suspension time against the period of suspension  
17 imposed under KRS 189A.070.

18 ➔Section 5. KRS 189A.240 is amended to read as follows:

19 In any judicial review of a pretrial suspension imposed under KRS 189A.200(1)(b), if the  
20 court determines by a preponderance of the evidence that:

21 (1) The person was charged and arrested by a peace officer with a violation of KRS  
22 189A.010(1)(a), (b), (c), (d), or (e);

23 (2) The peace officer had reasonable grounds to believe that the person was operating a  
24 motor vehicle in violation of KRS 189A.010(1)(a), (b), (c), (d), or (e);

25 (3) There is probable cause to believe that the person committed the violation of KRS  
26 189A.010(1)(a), (b), (c), (d), or (e) as charged; and

27 (4) The person has been convicted of one (1) or more prior offenses as described in

1 KRS 189A.010(5)~~(d)~~~~(e)~~ or has had his or her motor vehicle operator's license  
2 suspended on one (1) or more occasions for refusing to take an alcohol  
3 concentration or substance test, in the ten (10) year period immediately preceding  
4 his or her arrest;

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

10 ➔Section 6. KRS 281A.2102 is amended to read as follows:

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

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

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