

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 motor
13 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 blood or
15 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 prosecution

1 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 any
5 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) ***and shall***~~,~~
17 ~~or~~ be imprisoned in the county jail for not less than forty-eight (48) hours nor
18 more than thirty (30) days~~, or both~~. Following sentencing, the defendant may
19 apply to the judge for permission to enter a community labor program for not
20 less 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 six
5 (6) months. If any of the aggravating circumstances listed in subsection (11)
6 of this section are present, the mandatory minimum term of imprisonment
7 shall be fourteen (14) days, which term shall not be suspended, probated,
8 conditionally discharged, or subject to any other form of early release;

9 (c) ~~[For a third offense within a ten (10) year period, be fined not less than five~~
10 ~~hundred dollars (\$500) nor more than one thousand dollars (\$1,000) and shall~~
11 ~~be imprisoned in the county jail for not less than thirty (30) days nor more~~
12 ~~than twelve (12) months and may, in addition to fine and imprisonment, be~~
13 ~~sentenced to community labor for not less than thirty (30) days nor more than~~
14 ~~twelve (12) months. If any of the aggravating circumstances listed in~~
15 ~~subsection (11) of this section are present, the mandatory minimum term of~~
16 ~~imprisonment shall be sixty (60) days, which term shall not be suspended,~~
17 ~~probated, conditionally discharged, or subject to any other form of early~~
18 ~~release;~~

19 (d) ~~—~~ For a third~~[fourth]~~ or subsequent offense within a ten (10) year period, be
20 guilty of a Class D felony. If any of the aggravating circumstances listed in
21 subsection (11) of this section are present, the mandatory minimum term of
22 imprisonment shall be two hundred forty (240) days, which term shall not be
23 suspended, probated, conditionally discharged, or subject to any other form of
24 release; and

25 ~~(d)~~~~(e)~~ For purposes of this subsection, prior offenses shall include all
26 convictions in this state, and any other state or jurisdiction, for operating or
27 being in control of a motor vehicle while under the influence of alcohol or

1 other substances that impair one's driving ability, or any combination of
2 alcohol and such substances, or while having an unlawful alcohol
3 concentration, or driving while intoxicated, but shall not include convictions
4 for violating subsection (1)(f) of this section. A court shall receive as proof of
5 a prior conviction a copy of that conviction, certified by the court ordering the
6 conviction.

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

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

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

26 (9) When sentencing persons under subsection (5)(a) of this section, ~~at least one (1) of~~
27 ~~the penalties shall be assessed and~~ that penalty shall not be suspended, probated, or

1 subject to conditional discharge or other form of early release.

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

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

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

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

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

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

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

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

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

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

26 (b) Alprazolam;

27 (c) Amphetamine;

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

14 ➔Section 2. KRS 189A.040 is amended to read as follows:

- 15 (1) In addition to any other penalty prescribed by KRS 189A.010(5)(a) or (6), the court
- 16 shall sentence the person to attend an alcohol or substance abuse education or
- 17 treatment program subject to the following terms and conditions for a first offender
- 18 or a person convicted under KRS 189A.010(1)(f):
 - 19 (a) The treatment or education shall be for a period of ninety (90) days and the
 - 20 program shall provide an assessment of the defendant's alcohol or other
 - 21 substance abuse problems, which shall be performed at the start of the
 - 22 program;
 - 23 (b) Each defendant shall pay the cost of the education or treatment program up to
 - 24 his ability to pay but no more than the actual cost of the treatment;
 - 25 (c) Upon written report to the court by the administrator of the program that the
 - 26 defendant has completed the program recommended by the administrator
 - 27 based upon the assessment of the defendant, the defendant shall be released

1 prior to the expiration of the ninety (90) day period; and

2 (d) Failure to complete the education or treatment program or to pay the amount
3 specified by the court for education or treatment shall constitute contempt, and
4 the court shall, in addition to any other remedy for contempt, reinstitute all
5 penalties which were previously imposed but suspended or delayed pending
6 completion of the education or treatment program.

7 (2) In addition to any other penalty prescribed by KRS 189A.010(5)(b), the court shall
8 sentence the person to an alcohol or substance abuse treatment program subject to
9 the following terms and conditions for a second offender:

10 (a) The sentence shall be for a period of one (1) year and the program shall
11 provide an assessment of the defendant's alcohol or other substance abuse
12 problems, which shall be performed at the start of the program;

13 (b) Each defendant shall pay the cost of the treatment program up to his ability to
14 pay but no more than the actual cost of the treatment;

15 (c) Upon written report to the court by the administrator of the program that the
16 defendant has completed the program recommended by the administrator
17 based upon the assessment of the defendant, the defendant may be released
18 prior to the expiration of the one (1) year period; and

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

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

27 (a) The sentence shall be for a period of one (1) year and the program shall

- 1 provide an assessment of the defendant's alcohol or other substance abuse
2 problems, which shall be performed at the start of the program. The program
3 may be an inpatient or residential-type program;
- 4 (b) Each defendant shall pay the cost of the treatment program up to his ability to
5 pay but no more than the actual cost of the program;
- 6 (c) A defendant, upon written recommendation to the court by the administrator
7 of the program, may be released from the inpatient or residential program
8 prior to the expiration of one (1) year but shall be retained in the program on
9 an outpatient basis for the remainder of the year period; and
- 10 (d) Failure to complete the treatment program or to pay the amount specified by
11 the court for treatment shall constitute contempt of court, and the court shall,
12 in addition to any other remedy for contempt, reinstitute all penalties which
13 were previously imposed but suspended or delayed pending completion of the
14 treatment program.
- 15 (4) Costs of treatment or education programs which are paid from the service fee
16 established by KRS 189A.050, or from state or federal funds, or any combination
17 thereof, shall be deducted from the amount which the defendant must pay.
- 18 (5) For defendants who are Medicaid-eligible, alcohol or substance abuse treatment
19 under this section shall be authorized by the Department for Medicaid Services and
20 its contractors as Medicaid-eligible services and shall be subject to the same
21 medical necessity criteria and reimbursement methodology as for all other covered
22 behavioral health services.
- 23 (6) For the purposes of this section, "treatment" means service in an alcohol or
24 substance abuse education or treatment program or facility licensed, regulated, and
25 monitored by the Cabinet for Health and Family Services for services as required
26 under this section.
- 27 (7) The Cabinet for Health and Family Services shall promulgate administrative

1 regulations for the licensure of education and treatment facilities and programs for
2 offenders receiving education or treatment under this section. The criteria developed
3 by the Cabinet for Health and Family Services shall include:

- 4 (a) Manner of assessment;
- 5 (b) Appropriate education and treatment plans; and
- 6 (c) Referrals to other treatment providers.

7 (8) The participating facilities and programs shall be required to abide by these
8 standards and shall report completion to the Transportation Cabinet. Upon request,
9 the facility or program shall report to the courts regarding the progress of offenders
10 being treated pursuant to this section.

11 (9) Administrative decisions regarding the licensure of education and treatment
12 facilities and programs may be appealed, and upon appeal an administrative hearing
13 shall be conducted in accordance with KRS Chapter 13B.

14 ➔Section 3. KRS 189A.200 is amended to read as follows:

15 (1) The court shall at the arraignment or as soon as such relevant information becomes
16 available suspend the motor vehicle operator's license and motorcycle operator's
17 license and driving privileges of any person charged with a violation of KRS
18 189A.010(1) who:

- 19 (a) Has refused to take an alcohol concentration or substance test as reflected on
20 the uniform citation form;
- 21 (b) Has been convicted of one (1) or more prior offenses as described in KRS
22 189A.010(5)(d)(~~e~~) or has had his or her operator's license suspended on one
23 (1) or more occasions for refusing to take an alcohol concentration or
24 substance test, in the ten (10) year period immediately preceding his or her
25 arrest; or
- 26 (c) Was involved in an accident that resulted in death or serious physical injury as
27 defined in KRS 500.080 to a person other than the defendant.

- 1 (2) Persons whose licenses have been suspended pursuant to this section may file a
2 motion for judicial review of the suspension, and the court shall conduct the review
3 in accordance with this chapter within thirty (30) days after the filing of the motion.
4 The court shall, at the time of the suspension, advise the defendant of his rights to
5 the review.
- 6 (3) When the court orders the suspension of a license pursuant to:
- 7 (a) Subsection (1)(a) of this section, the court may, in addition to any other
8 conditions the court may order, require that the person apply to the
9 Transportation Cabinet for issuance of an ignition interlock license under
10 KRS 189A.340 for the period of the suspension;
- 11 (b) Subsection (1)(b) or (c) of this section, the court shall, in addition to any other
12 conditions the court may order, require that the person apply to the
13 Transportation Cabinet for issuance of an ignition interlock license under
14 KRS 189A.340 for the period of suspension; and
- 15 (c) Subsection (1) of this section and the person is required to apply for an
16 ignition interlock license pursuant to paragraph (a) or (b) of this subsection,
17 the person shall present the completed ignition interlock license application to
18 the court.
- 19 (4) When the court orders the suspension of a license pursuant to this section, the
20 defendant shall immediately surrender his or her license to operate a motor vehicle
21 or motorcycle to the court. Should the defendant fail to surrender his or her license
22 to the court, the court shall issue an order directing the sheriff or any other peace
23 officer to seize the license forthwith and deliver it to the court. If the license is
24 currently under suspension, the provisions of this subsection shall not apply.
- 25 (5) The Circuit Court Clerk shall forthwith transmit to the Transportation Cabinet:
- 26 (a) Any license surrendered pursuant to this section; and
- 27 (b) If the court ordered a person to apply for an ignition interlock device under

1 subsection (3) of this section, notification of the order.

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

3 (a) The person is acquitted;

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

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

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

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

13 ➔Section 4. KRS 189A.240 is amended to read as follows:

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

16 (1) The person was charged and arrested by a peace officer with a violation of KRS
17 189A.010(1)(a), (b), (c), (d), or (e);

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

20 (3) There is probable cause to believe that the person committed the violation of KRS
21 189A.010(1)(a), (b), (c), (d), or (e) as charged; and

22 (4) The person has been convicted of one (1) or more prior offenses as described in
23 KRS 189A.010(5)(d)(~~e~~) or has had his or her motor vehicle operator's license
24 suspended on one (1) or more occasions for refusing to take an alcohol
25 concentration or substance test, in the ten (10) year period immediately preceding
26 his or her arrest;

27 then the court shall continue to suspend the person's operator's license or privilege to

1 operate a motor vehicle, but in no event for a period longer than the license suspension
2 period applicable to the person under KRS 189A.070 and 189A.107. The provisions of
3 this section shall not be construed as limiting the person's ability to challenge any prior
4 convictions or license suspensions or refusals.

5 →Section 5. KRS 281A.2102 is amended to read as follows:

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

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

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

15 →Section 6. This Act shall be known and may be cited as Lily's Law.

16 →Section 7. Whereas driving under the influence of alcohol or any substance
17 which impairs one's ability to drive a motor vehicle presents a danger to public safety, an
18 emergency is declared to exist, and this Act takes effect upon passage and approval by the
19 Governor or upon its otherwise becoming law.