

State DUI Laws: Kentucky

Legal Blood Alcohol Content Level: .08

Automatic Suspension of License for Failure of Blood Alcohol Test or Refusal to Submit to Test: Yes

Ignition Interlock Requirement upon Conviction: Yes

Felony Conviction for Repeat Offenses: Yes

§ 186.560. Mandatory revocation or denial of license -- Causes -- Period of revocation or denial -- Prohibition against reductions of certain revocations or denials -- Limited exception relating to enrollment in alcohol or substance abuse education or treatment programs

(1) The cabinet shall forthwith revoke the license of any operator of a motor vehicle upon receiving record of his conviction of any of the following offenses:

- (a) Murder or manslaughter resulting from the operation of a motor vehicle;
- (b) Driving a vehicle which is not a motor vehicle while under the influence of alcohol or any other substance which may impair one's driving ability;
- (c) Perjury or the making of a false affidavit under KRS 186.400 to 186.640 or any law requiring the registration of motor vehicles or regulating their operation on highways;
- (d) Any felony in the commission of which a motor vehicle is used;
- (e) Conviction or forfeiture of bail upon three (3) charges of reckless driving within the preceding twelve (12) months;
- (f) Conviction of driving a motor vehicle involved in an accident and failing to stop and disclose his identity at the scene of the accident;
- (g) Conviction of theft of a motor vehicle or any of its parts, including the conviction of any person under the age of eighteen (18) years;
- (h) Failure to have in full force and effect the security required by Subtitle 39 of KRS Chapter 304 upon conviction of a second and each subsequent offense within any five (5) year period;
- (i) Conviction for fraudulent use of a driver's license or use of a fraudulent driver's license to purchase or attempt to purchase alcoholic beverages, as defined in KRS 241.010, in violation of KRS 244.085; and
- (j) Conviction of operating a motor vehicle, motorcycle, or moped without an operator's license as required by KRS 186.410.

(2) If the person convicted of any offense named in subsection (1) of this section is not the holder of a license, the cabinet shall deny the person so convicted a license for the same period of time as though he had possessed a license which had been revoked. If through an inadvertence the defendant should be issued a license, the cabinet shall forthwith cancel it.

(3) The cabinet upon receiving a record of the conviction of any person upon a charge of operating a motor vehicle while the license of that person is denied or suspended, or revoked, or while his privilege to operate a motor vehicle is withdrawn, shall immediately extend the period of the first denial, suspension, revocation, or withdrawal for an additional like period.

(4) The revocation or denial of a license or the withdrawal of the privilege of operating a motor vehicle for a violation of subsection (1)(a) of this section shall be for a period of not less than five (5) years. Revocations or denials under this section shall not be subject to any lessening of penalties authorized under any other provision of this section or any other statute.

(5) Except as provided in subsections (3), (4), and (8) of this section, in all other cases, the revocation or denial of a license or the withdrawal of the privilege of operating a motor vehicle under this section shall be for a period of six (6) months, except that, if the same person has had one (1) previous conviction of any offense enumerated in subsection (1) of this section, regardless of whether the person's license was revoked because of the previous conviction, the period of the revocation, denial, or withdrawal shall be one (1) year; if the person has had more than one (1) previous conviction of the offenses considered collectively as enumerated in subsection (1) of this section, regardless of whether the person's license was revoked for any previous conviction, the period of revocation, denial, or withdrawal shall be for not less than two (2) years. If the cabinet, upon receipt of the written recommendation of the court in which any person has been convicted of violating KRS 189.520(1) or 244.085(5) as relates to instances in which a driver's license or fraudulent driver's license was the identification used or attempted to be used in the commission of the offense, who has had no previous conviction of said offense, the person's operator's license shall not be revoked, but the person's operator's license shall be restricted to any terms and conditions the secretary in his discretion may require, provided the person has enrolled in an alcohol or substance abuse education or treatment program as the cabinet shall require. If the person fails to satisfactorily complete the education or treatment program or violates the restrictions on his operator's license, the cabinet shall immediately revoke his operator's license for a period of six (6) months.

(6) In order to secure the reinstatement of a license to operate a motor vehicle or motorcycle restored following a period of suspension or revocation pursuant to KRS 189A.070, 189A.080, and 189A.090, the person whose license is suspended or revoked shall comply with the fees and other procedures of the Transportation Cabinet with regard to the reinstatement of suspended or revoked licenses.

(7) The cabinet shall revoke the license of any operator of a motor vehicle upon receiving notification that the person is under age eighteen (18) and has dropped out of school or is academically deficient, as defined in KRS 159.051(1).

(8) A person under the age of eighteen (18) who is convicted of the offenses of subsections (1) or (3) of this section, except for subsection (1)(h) of this section, shall have his license revoked until he reaches the age of eighteen (18) or shall have his license revoked as provided in this section, whichever penalty will result in the longer period of revocation.

§ 186.570. Denial or suspension of license -- Informal hearing -- Appeal -- Surrender of certificate -- Medical review board -- Prohibition against raising insurance on basis of denial or suspension for child support arrearage

(1) The cabinet or its agent designated in writing for that purpose may deny any person an operator's license or may suspend the operator's license of any person, or, in the case of a nonresident, withdraw the privilege of operating a motor vehicle in this state, subject to a hearing and with or without receiving a record of conviction of that person of a crime, if the cabinet has reason to believe that:

(a) That person has committed any offenses for the conviction of which mandatory revocation of a license is provided by KRS 186.560.

(b) That person has, by reckless or unlawful operation of a motor vehicle, caused, or contributed to an accident resulting in death or injury or serious property damage.

(c) That person has a mental or physical disability that makes it unsafe for him to drive upon the highways. The Transportation Cabinet shall, by administrative regulations promulgated pursuant to KRS Chapter 13A, establish a medical review board to provide technical assistance in the review of the driving ability of these persons. The board shall consist of licensed medical and rehabilitation specialists.

(d) That person is an habitually reckless or negligent driver of a motor vehicle or has committed a serious violation of the motor vehicle laws.

(e) That person has been issued a license without making proper application for it, as provided in KRS 186.412 and administrative regulations promulgated pursuant to KRS Chapter 13A.

(f) That person has presented false or misleading information as to the person's residency, citizenship, religious convictions, or immigration status.

(g) A person required by KRS 186.480 to take an examination has been issued a license without first having passed the examination.

(h) That person has been convicted of assault and battery resulting from the operation of a motor vehicle.

(i) That person has failed to appear pursuant to a citation or summons issued by a law enforcement officer of this Commonwealth or any other jurisdiction.

(j) That person has failed to appear pursuant to an order by the court to produce proof of security required by KRS 304.39-010 and a receipt showing that a premium for a minimum policy period of six (6) months has been paid.

(2) The cabinet shall deny any person a license or shall suspend the license of an operator of a motor vehicle upon receiving written notification from the Cabinet for Families and Children that the person has a child support arrearage which equals or exceeds the cumulative amount which would be owed after one (1) year of nonpayment or failure, after receiving appropriate notice, to comply with a subpoena or warrant relating to paternity or child support proceedings, as provided by 42 U.S.C. secs. 651 et seq.; except that any child support arrearage which exists prior to January 1, 1994, shall not be included in the calculation to determine whether the license of an operator of a motor vehicle shall be denied

or suspended. The denial or suspension shall continue until the arrearage has been eliminated, payments on the child support arrearage are being made in accordance with a court or administrative order, or the person complies with the subpoena or warrant relating to paternity or child support. Before the license may be reinstated, proof of elimination of the child support arrearage or proof of compliance with the subpoena or warrant relating to paternity or child support proceedings as provided by 42 U.S.C. sec. 666(a)(16) from the court where the action is pending or the Cabinet for Families and Children shall be received by the Transportation Cabinet as prescribed by administrative regulations promulgated by the Cabinet for Families and Children and the Transportation Cabinet.

(3) The cabinet or its agent designated in writing for that purpose shall deny any person an operator's license or shall suspend the operator's license of any person, or, in the case of a nonresident, withdraw the privilege of operating a motor vehicle in this state, where the person has been declared ineligible to operate a motor vehicle under KRS 532.356 for the duration of the ineligibility, upon notification of the court's judgment.

(4) The cabinet or its agent designated in writing for that purpose shall provide any person subject to the suspension, revocation, or withdrawal of their driving privileges, under provisions of this section, an informal hearing. Upon determining that the action is warranted, the cabinet shall notify the person in writing by mailing the notice to the person by first-class mail to the last known address of the person. The hearing shall be automatically waived if not requested within twenty (20) days after the cabinet mails the notice. The hearing shall be scheduled as early as practical within twenty (20) days after receipt of the request at a time and place designated by the cabinet. An aggrieved party may appeal a decision rendered as a result of an informal hearing, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.

(5) (a) The cabinet may suspend the operator's license of any resident upon receiving notice of the conviction of that person in another state of an offense there which, if committed in this state, would be grounds for the suspension or revocation of an operator's license. The cabinet shall not suspend an operator's license under this paragraph if:

1. The conviction causing the suspension or revocation is more than five (5) years old;
2. The conviction is for a traffic offense other than a felony traffic offense or a habitual violator offense; and
3. The license holder complies with the provisions of KRS 186.442.

(b) If, at the time of application for an initial Kentucky operator's license, a person's license is suspended or revoked in another state for a conviction that is less than five (5) years old, the cabinet shall deny the person a license until the person resolves the matter in the other state and complies with the provisions of this chapter.

(c) The cabinet may, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws, forward a notice of that person's conviction to the proper officer in the state of which the convicted person is a resident.

(d) This subsection shall not apply to a commercial driver's license.

(6) The Transportation Cabinet is forbidden from suspending or revoking an operator's license or assessing points or any other form of penalty against the license holder for speeding violations or speeding convictions from other states. This subsection shall apply only to speeding violations. This section shall not apply to a commercial driver's license.

(7) Each operator's license which has been canceled, suspended, or revoked shall be surrendered to and retained by the cabinet. At the end of the period of cancellation, suspension, or revocation, the license may be returned to the licensee after he has complied with all requirements for the issuance or reinstatement of his driving privilege.

(8) Insurance companies issuing motor vehicle policies in the Commonwealth shall be prohibited from raising a policyholder's rates solely because the policyholder's driving privilege has been suspended or denied pursuant to subsection (2) of this section.

§ 189.520. Operating vehicle not a motor vehicle while under influence of intoxicants or substance which may impair driving ability prohibited -- Presumptions concerning intoxication

(1) No person under the influence of intoxicating beverages or any substance which may impair one's driving ability shall operate a vehicle that is not a motor vehicle anywhere in this state.

(2) No peace officer or State Police officer shall fail to enforce rigidly this section.

(3) In any criminal prosecution for a violation of subsection (1) of this section, wherein the defendant is charged with having operated a vehicle which is not a motor vehicle while under the influence of intoxicating beverages, the alcohol concentration, as defined in KRS 189A.005, in the defendant's blood as determined at the time of making an analysis of his blood, urine, or breath, shall give rise to the following presumptions:

(a) If there was an alcohol concentration of less than 0.05, it shall be presumed that the defendant was not under the influence of alcohol;

(b) If there was an alcohol concentration of 0.05 or greater but less than 0.08, such fact shall not constitute a presumption that the defendant either was or was not under the influence of alcohol, but such fact may be considered, together with other competent evidence, in determining the guilt or innocence of the defendant; and

(c) If there was an alcohol concentration of 0.08 or more, it shall be presumed that the defendant was under the influence of alcohol.

(4) The provisions of subsection (3) of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether the defendant was under the influence of intoxicating beverages.

§ 189.530. Providing motor vehicle to person intoxicated or under influence of substance which may impair driving ability -- Possession of open alcoholic beverage container in a motor vehicle prohibited -- Exceptions -- Definitions -- Election of offenses to prosecute

(1) No person shall provide a motor vehicle to another to operate upon a highway, knowing that the other person is in an intoxicated condition, or under the influence of any substance which may impair one's driving ability.

(2) A person is guilty of possession of an open alcoholic beverage container in a motor vehicle, when he or she has in his or her possession an open alcoholic beverage container in the passenger area of a motor vehicle located on a public highway or on the right-of-way of a public highway. However, nothing in this section shall prohibit the possession of an open alcoholic beverage container by an individual who is strictly a passenger and not the driver, in the passenger area of

a motor vehicle maintained or used primarily for the transportation of persons for compensation, such as buses, taxis, and limousines, or in a recreational vehicle, motor home, or motor coach.

(3) For purposes of this section, "alcoholic beverage" means:

(a) Beer, ale, porter, stout, and other similar fermented beverages including sake or similar products of any name or description containing one-half of one percent (0.5%) or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor;

(b) Wine of not less than one-half of one percent (0.5%) of alcohol by volume; or

(c) Distilled spirits which is that substance known as ethyl alcohol, ethanol, or spirits of wine in any form including all dilutions and mixtures thereof from whatever source or by whatever process produced.

(4) For the purposes of this section, "open alcoholic beverage container" means any bottle, can, or other receptacle that contains any amount of alcoholic beverage, and:

(a) Is open or has a broken seal; or

(b) The contents of which are partially removed.

(5) For the purposes of this section, "passenger area" means the area designed to seat the driver and the passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including the glove compartment. Passenger area does not include possession of an open alcoholic beverage container in a locked glove compartment, or behind the last upright seat or in an area not normally occupied by the driver or a passenger in a motor vehicle that is not equipped with a trunk.

(6) For the purpose of this section, "public highway" or "right-of-way of a public highway" means the entire width between and immediately adjacent to the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

(7) No person shall, as a result of a single course of conduct, be tried for or convicted of a violation of this section and a violation of KRS 222.202 or 525.100. The attorney for the Commonwealth shall elect under which statute to proceed. A conviction, decision not to prosecute, or dismissal of charges under any of these statutes shall operate as a bar to prosecution under any other of these statutes for offenses arising out of the same course of conduct.

§ 189A.005. Definitions for chapter -- License suspensions

As used in this chapter, unless the context requires otherwise:

(1) "Alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath;

(2) "Ignition interlock device" means a device that connects a motor vehicle ignition system or motorcycle ignition system to a breath alcohol analyzer and prevents a motor vehicle ignition or motorcycle ignition from starting, and from

continuing to operate, if a driver's breath alcohol concentration exceeds 0.02, as measured by the device;

(3) "License" means any driver's or operator's license or any other license or permit to operate a motor vehicle issued under or granted by the laws of this state including:

(a) Any temporary license or instruction permit;

(b) The privilege of any person to obtain a valid license or instruction permit, or to drive a motor vehicle whether or not the person holds a valid license; and

(c) Any nonresident's operating privilege as defined in KRS Chapter 186 or 189;

(4) "Limited access highway" has the same meaning as "limited access facility" does in KRS 177.220;

(5) "Refusal" means declining to submit to any test or tests pursuant to KRS 189A.103. Declining may be either by word or by the act of refusal. If the breath testing instrument for any reason shows an insufficient breath sample and the alcohol concentration cannot be measured by the breath testing instrument, the law enforcement officer shall then request the defendant to take a blood or urine test in lieu of the breath test. If the defendant then declines either by word or by the act of refusal, he shall then be deemed to have refused if the refusal occurs at the site at which any alcohol concentration or substance test is to be administered;

(6) When age is a factor, it shall mean age at the time of the commission of the offense; and

(7) Unless otherwise provided, license suspensions under this chapter shall be imposed by the court. The court shall impose the applicable period of license suspension enumerated by this chapter and shall include in its order or judgment the length and terms of any suspension imposed. The license suspension shall be deemed effective on the date of entry of the court's order or judgment. The role of the Transportation Cabinet shall be limited to administering the suspension period under the terms and for the duration enumerated by the court in its order or judgment.

§ 189A.010. Operating motor vehicle with alcohol concentration of or above 0.08, or of or above 0.02 for persons under age twenty-one, or while under the influence of alcohol or other substance which impairs driving ability prohibited -- Admissibility of alcohol concentration test results -- Presumptions -- Penalties -- Aggravating circumstances

(1) A person shall not operate or be in physical control of a motor vehicle anywhere in this state:

(a) Having an alcohol concentration of 0.08 or more as measured by a scientifically reliable test or tests of a sample of the person's breath or blood taken within two (2) hours of cessation of operation or physical control of a motor vehicle;

(b) While under the influence of alcohol;

(c) While under the influence of any other substance or combination of substances which impairs one's driving ability;

(d) While under the combined influence of alcohol and any other substance which impairs one's driving ability; or

(e) Having an alcohol concentration of 0.02 or more as measured by a scientifically reliable test or tests of a sample of

the person's breath or blood taken within two (2) hours of cessation of operation or physical control of a motor vehicle, if the person is under the age of twenty-one (21).

(2) With the exception of the results of the tests administered pursuant to KRS 189A.103(7), if the sample of the person's blood or breath that is used to determine the alcohol concentration thereof was obtained more than two (2) hours after cessation of operation or physical control of a motor vehicle, the results of the test or tests shall be inadmissible as evidence in a prosecution under subsection (1)(a) or (e) of this section. The results of the test or tests, however, may be admissible in a prosecution under subsection (1)(b) or (d) of this section.

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

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

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

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

(4) The fact that any person charged with violation of subsection (1) of this section is legally entitled to use any substance, including alcohol, shall not constitute a defense against any charge of violation of subsection (1) of this section.

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

(a) For the first offense within a five (5) year period, be fined not less than two hundred dollars (\$ 200) nor more than five hundred dollars (\$ 500), or be imprisoned in the county jail for not less than forty-eight (48) hours nor more than thirty (30) days, or both. Following sentencing, the defendant may apply to the judge for permission to enter a community labor program for not less than forty-eight (48) hours nor more than thirty (30) days in lieu of fine or imprisonment, or both. If any of the aggravating circumstances listed in subsection (11) of this section are present while the person was operating or in physical control of a motor vehicle, the mandatory minimum term of imprisonment shall be four (4) days, which term shall not be suspended, probated, conditionally discharged, or subject to any other form of early release.

(b) For the second offense within a five (5) year period, be fined not less than three hundred fifty dollars (\$ 350) nor more than five hundred dollars (\$ 500) and shall be imprisoned in the county jail for not less than seven (7) days nor more than six (6) months and, in addition to fine and imprisonment, may be sentenced to community labor for not less than ten (10) days nor more than six (6) months. If any of the aggravating circumstances listed in subsection (11) of this section are present, the mandatory minimum term of imprisonment shall be fourteen (14) days, which term shall not be

suspended, probated, conditionally discharged, or subject to any other form of early release.

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

(d) For a fourth or subsequent offense within a five (5) year period, be guilty of a Class D felony. If any of the aggravating circumstances listed in subsection (11) of this section are present, the mandatory minimum term of imprisonment shall be two hundred forty (240) days, which term shall not be suspended, probated, conditionally discharged, or subject to any other form of release.

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

(6) Any person who violates the provisions of subsection (1)(e) of this section shall have his driving privilege or operator's license suspended by the court for a period of no less than thirty (30) days but no longer than six (6) months, and the person shall be fined no less than one hundred dollars (\$ 100) and no more than five hundred dollars (\$ 500), or sentenced to twenty (20) hours of community service in lieu of a fine. A person subject to the penalties of this subsection shall not be subject to the penalties established in subsection (5) of this section or any other penalty established pursuant to KRS Chapter 189A, except those established in KRS 189A.040(1).

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

(8) For a second or third offense within a five (5) year period, the minimum sentence of imprisonment or community labor shall not be suspended, probated, or subject to conditional discharge or other form of early release. For a fourth or subsequent offense under this section, the minimum term of imprisonment shall be one hundred twenty (120) days, and this term shall not be suspended, probated, or subject to conditional discharge or other form of early release. For a second or subsequent offense, at least forty-eight (48) hours of the mandatory sentence shall be served consecutively.

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

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

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

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

- (b) Operating a motor vehicle in the wrong direction on a limited access highway;
- (c) Operating a motor vehicle that causes an accident resulting in death or serious physical injury as defined in KRS 500.080;
- (d) Operating a motor vehicle while the alcohol concentration in the operator's blood or breath is 0.18 or more as measured by a test or tests of a sample of the operator's blood or breath taken within two (2) hours of cessation of operation of the motor vehicle;
- (e) Refusing to submit to any test or tests of one's blood, breath, or urine requested by an officer having reasonable grounds to believe the person was operating or in physical control of a motor vehicle in violation of subsection (1) of this section; and
- (f) Operating a motor vehicle that is transporting a passenger under the age of twelve (12) years old.

§ 189A.020. Community labor program -- Terms and conditions

All community labor shall be under the supervision of the court and subject to the following:

- (1) (a) No period of labor shall be less than four (4) hours to qualify for satisfaction of a sentence;
 - (b) A "day" shall mean eight (8) hours of labor;
 - (c) A "month" shall mean twenty (20) days of labor;
 - (d) Periods of labor four (4) hours or longer may be cumulated to meet the requirements under this section;
- (2) Labor shall be done for public agencies, nonprofit corporations or eleemosynary institutions only;
- (3) Any agency for whom a person works shall agree to supervise such person and report to the court:
 - (a) The hours worked,
 - (b) The quality of the work,
 - (c) The nature of the work;
- (4) An agency may refuse to accept persons under this program or to accept any particular person or persons sent by the court;
- (5) The court shall maintain a list of agencies willing to accept and supervise persons sentenced under this program;
- (6) The court may contract, at no cost to the state or participant, with any public agency or nonprofit corporation or eleemosynary institution for the supervision of persons in the program;

(7) No work performed under this program shall be deemed employment for any purpose nor shall the person performing such work be considered an employee;

(8) Failure to complete the community labor ordered by the court, to perform diligently at that labor, or to pay the fee required shall constitute contempt of court and the court shall, in addition to any other remedy for contempt, reinstitute all penalties which were previously imposed but suspended or delayed pending completion of the community labor.

§ 189A.030. Terms of imprisonment for first and second offenders

(1) Terms of imprisonment for first and second offenders under KRS 189A.010 shall, at the order of the court, be served on weekends or such other times as may preserve the employment or education of the offender, provided that no individual period of incarceration shall be less than twenty-four (24) hours.

(2) Children shall be detained pursuant to the applicable provisions of KRS Chapters 600 to 645.

§ 189A.040. Alcohol or substance abuse treatment and education programs -- Sentencing offenders to programs -- Regulation of programs -- Appeals of decisions regarding licensure of education and treatment facilities and programs

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

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

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

(c) Upon written report to the court by the administrator of the program that the defendant has completed the program recommended by the administrator based upon the assessment of the defendant, the defendant shall be released prior to the expiration of the ninety (90) day period; and

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

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

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

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

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

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

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

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

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

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

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

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

(5) For the purposes of this section, "treatment" means service in an alcohol or substance abuse education or treatment program or facility licensed, regulated, and monitored by the Cabinet for Health Services for services as required under this section.

(6) The Cabinet for Health Services shall promulgate administrative regulations for the licensure of education and treatment facilities and programs for offenders receiving education or treatment under this section. The criteria developed by the Cabinet for Health Services shall include:

(a) Manner of assessment;

(b) Appropriate education and treatment plans; and

(c) Referrals to other treatment providers.

(7) The participating facilities and programs shall be required to abide by these standards and shall report completion to

the Transportation Cabinet. Upon request, the facility or program shall report to the courts regarding the progress of offenders being treated pursuant to this section.

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

§ 189A.045. Enrollment in alcohol or drug education or treatment programs -- Attendance -- Reporting and effect of failure to attend -- Reporting of completion of program

(1) When a court requires a defendant to enroll in an alcohol or drug education or treatment program pursuant to this chapter, it shall require the defendant to accomplish the enrollment within ten (10) days of the entry of judgment of conviction.

(2) When a defendant enrolls in the program ordered by the court, the administrator of the program or his authorized representative shall transmit to the court a certificate of enrollment within five (5) working days of the enrollment.

(3) If the court does not receive a certificate of enrollment from the administrator of a program to which the defendant has been assigned within twenty (20) days of the entry of judgment of conviction, the court shall hold a hearing requiring the defendant to show cause why he did not enroll.

(4) If a defendant enrolled in a drug or alcohol education or treatment program drops out of the program or does not maintain satisfactory attendance at the program, the administrator of the program or his authorized representative shall transmit to the court a notice describing the defendant's failure to attend.

(5) Upon receipt of a notice of failure to attend a required alcohol or drug education or treatment program, the court shall hold a hearing requiring the defendant to show cause why he should not be held in contempt of court and be subject to the reinstatement of any penalties which may have been withheld pending completion of treatment.

(6) When a defendant completes the required alcohol or drug education or treatment program, the administrator of the program shall notify the court and the Transportation Cabinet of the defendant's completion of the program.

§ 189A.050. Service fee -- Amount -- Payment -- Remedies for nonpayment -- Use of revenue from fees collected

(1) All persons convicted of violation of KRS 189A.010(1)(a), (b), (c), or (d) shall be sentenced to pay a service fee of three hundred twenty-five dollars (\$ 325), which shall be in addition to all other penalties authorized by law.

(2) The fee shall be imposed in all cases but shall be subject to the provisions of KRS 534.020 relating to the method of imposition and KRS 534.060 as to remedies for nonpayment of the fee.

(3) The revenue collected from the service fee imposed by this section shall be utilized as follows:

(a) Twelve percent (12%) of the amount collected shall be transferred to the Kentucky State Police forensic laboratory for the acquisition, maintenance, testing, and calibration of alcohol concentration testing instruments and the training of laboratory personnel to perform these tasks;

(b) Twenty percent (20%) of the service fee collected pursuant to this section shall be allocated to the Department of Public Advocacy;

(c) One percent (1%) shall be transferred to the Prosecutor's Advisory Council for training of prosecutors for the prosecution of persons charged with violations of this chapter and for obtaining expert witnesses in cases involving the prosecution of persons charged with violations of this chapter or any other offense in which driving under the influence is a factor in the commission of the offense charged;

(d) Sixteen percent (16%) of the amount collected shall be transferred as follows:

1. Fifty percent (50%) shall be credited to the traumatic brain injury trust fund established under KRS 211.476; and

2. Fifty percent (50%) shall be credited to the Cabinet for Health Services, Department for Mental Health and Mental Retardation Services, for the purposes of providing direct services to individuals with brain injuries that may include long-term supportive services and training and consultation to professionals working with individuals with brain injuries. As funding becomes available under this subparagraph, the cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A to implement the services permitted by this subparagraph.

(e) Any amount specified by a specific statute shall be transferred as provided in that statute;

(f) Forty-six percent (46%) of the amount collected shall be transferred to be utilized to fund enforcement of this chapter and for the support of jails, recordkeeping, treatment, and educational programs authorized by this chapter and by the Department of Public Advocacy; and

(g) The remainder of the amount collected shall be transferred to the general fund.

(4) The amounts specified in subsection (3)(a), (b), (c), and (d) of this section shall be placed in trust and agency accounts that shall not lapse.

§ 189A.070. License revocations -- Time period -- Completion of alcohol or substance treatment or education program required before reinstatement

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

(a) For the first offense within a five (5) year period, for a period of not less than thirty (30) days nor more than one hundred twenty (120) days;

(b) For the second offense within a five (5) year period, for a period of not less than twelve (12) months nor more than eighteen (18) months;

(c) For a third offense within a five (5) year period, for a period of not less than twenty-four (24) months nor more than thirty-six (36) months; and

(d) For a fourth or subsequent offense within a five (5) year period, sixty (60) months.

- (e) For purposes of this section, "offense" shall have the same meaning as described in KRS 189A.010(5)(e).
- (2) In determining the five (5) year period under this section, the period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered.
- (3) In addition to the period of license revocation set forth in subsection (1) or (7) of this section, no person shall be eligible for reinstatement of his privilege to operate a motor vehicle until he has completed the alcohol or substance abuse education or treatment program ordered pursuant to KRS 189A.040.
- (4) A person under the age of eighteen (18) who is convicted of violation of KRS 189A.010(1)(a), (b), (c), or (d) shall have his license revoked by the court until he reaches the age of eighteen (18) or shall have his license revoked as provided in subsection (1) or (7) of this section, whichever penalty will result in the longer period of revocation or court-ordered driving conditions.
- (5) Licenses revoked pursuant to this chapter shall forthwith be surrendered to the court upon conviction. The court shall transmit the conviction records, and other appropriate information to the Transportation Cabinet. A court shall not waive or stay this procedure.
- (6) Should a person convicted under this chapter whose license is revoked fail to surrender it to the court upon conviction, the court shall issue an order directing the sheriff or any other peace officer to seize the license forthwith and deliver it to the court.
- (7) A person whose license has been revoked pursuant to subsection (1)(b), (c), or (d) of this section may move the court to reduce the applicable minimum period of revocation by one-half (1/2), but in no case less than twelve (12) months. The court may, upon a written finding in the record for good cause shown, order such a period to be reduced by one-half (1/2), but in no case less than twelve (12) months, if the following conditions are satisfied:
- (a) The person shall not operate a motor vehicle or motorcycle without an ignition interlock device as provided for in KRS 189A.340(2);
 - (b) The person shall not operate a motor vehicle or motorcycle at any other time and for any other purposes than those specified by the court; and
 - (c) The ignition interlock device shall be installed on the motor vehicle or motorcycle for a period of time not less than the applicable minimum period of revocation provided for under subsection (1)(b), (c), or (d) of this section nor for more than the respective maximum period of revocation provided for under subsection (1)(b), (c), or (d) of this section.
- (8) Upon a finding of a violation of any of the conditions specified in subsection (7) of this section or of the order permitting any reduction in a minimum period of revocation that is issued pursuant thereto, the court shall dissolve such an order and the person shall receive no credit toward the minimum period of revocation required under subsection (1)(b), (c), or (d) of this section.

§ 189A.080. Surrender and forwarding of suspended or revoked licenses

All licenses suspended or revoked pursuant to KRS 189A.010(6), 189A.070, 189A.107, 189A.200, or 189A.220 shall be surrendered to the court and forwarded to the Transportation Cabinet.

§ 189A.085. Surrender and impoundment of motor vehicle license plates -- Hardship exception for affected individuals other than offender

(1) Unless the court orders installation of an ignition interlock device under KRS 189A.340, upon the conviction of a second or subsequent offense of KRS 189A.010, a person shall have the license plate or plates on all of the motor vehicles owned by him or her, either solely or jointly, impounded by the court of competent jurisdiction in accordance with the following procedures:

(a) At the final sentencing hearing, the person who has been convicted of a second or subsequent offense of KRS 189A.010(1)(a), (b), (c), or (d), shall physically surrender any and all license plate or plates currently in force on any motor vehicle owned either individually or jointly by him or her to the court. The order of the court suspending the license plate or plates shall not exceed the time for the suspension of the motor vehicle operator's license of the second or subsequent offender as specified in KRS 189A.070.

(b) The clerk of the court shall retain any surrendered plate or plates and transmit all surrendered plate or plates to the Transportation Cabinet in the manner set forth by the Transportation Cabinet in administrative regulations promulgated by the Transportation Cabinet.

(2) Upon application, the court may grant hardship exceptions to family members or other individuals affected by the surrender of any license plate or plates of any vehicle owned by the second or subsequent offender. Hardship exceptions may be granted by the court to the second or subsequent offender's family members or other affected individuals only if the family members or other affected individuals prove to the court's satisfaction that their inability to utilize the surrendered vehicles would pose an undue hardship upon the family members or affected other individuals. Upon the court's granting of hardship exceptions, the clerk or the Transportation Cabinet as appropriate, shall return to the family members or other affected individuals the license plate or plates of the vehicles of the second or subsequent offender for their utilization. The second or subsequent offender shall not be permitted to operate a vehicle for which the license plate has been suspended or for which a hardship exception has been granted under any circumstances.

(3) If the license plate of a jointly owned vehicle is impounded, this vehicle may be transferred to a joint owner of the vehicle who was not the violator.

(4) If the license plate of a motor vehicle is impounded, the vehicle may be transferred.

§ 189A.090. Operating motor vehicle while license is revoked or suspended for driving under the influence prohibited -- Operating motor vehicle without required ignition interlock device prohibited -- Penalties

(1) No person shall operate or be in physical control of a motor vehicle while his license is revoked or suspended under KRS 189A.010(6), 189A.070, 189A.107, 189A.200, or 189A.220, or operate or be in physical control of a motor vehicle

without a functioning ignition interlock device in violation of KRS 189A.345(1).

(2) In addition to any other penalty imposed by the court, any person who violates subsection (1) of this section shall:

(a) For a first offense within a five (5) year period, be guilty of a Class B misdemeanor and have his license revoked by the court for six (6) months, unless at the time of the offense the person was also operating or in physical control of a motor vehicle in violation of KRS 189A.010(1)(a), (b), (c), or (d), in which event he shall be guilty of a Class A misdemeanor and have his license revoked by the court for a period of one (1) year;

(b) For a second offense within a five (5) year period, be guilty of a Class A misdemeanor and have his license revoked by the court for one (1) year, unless at the time of the offense the person was also operating or in physical control of a motor vehicle in violation of KRS 189A.010(1)(a), (b), (c), or (d), in which event he shall be guilty of a Class D felony and have his license revoked by the court for a period of two (2) years;

(c) For a third or subsequent offense within a five (5) year period, be guilty of a Class D felony and have his license revoked by the court for two (2) years, unless at the time of the offense the person was also operating or in physical control of a motor vehicle in violation of KRS 189A.010(1)(a), (b), (c), or (d), in which event he shall be guilty of a Class D felony and have his license revoked by the court for a period of five (5) years.

(3) The five (5) year period under this section shall be measured in the same manner as in KRS 189A.070.

(4) After one (1) year of the period of revocation provided for in subsection (2)(b) or (c) of this section has elapsed, a person whose license has been revoked pursuant to either of those subsections may move the court to have an ignition interlock device installed for the remaining portion of the period of revocation. The court may, upon a written finding in the record for good cause shown, order an ignition interlock device installed if the following conditions are satisfied:

(a) The person shall not operate a motor vehicle or motorcycle without an ignition interlock device as provided for in KRS 189A.340(2);

(b) The person shall not operate a motor vehicle or motorcycle at any other time and for any other purposes than those specified by the court; and

(c) The ignition interlock device shall be installed on the motor vehicle or motorcycle for a period of time not less than the period of revocation required for the person under subsection (2)(b) or (c) of this section.

(5) Upon a finding of a violation of any of the conditions specified in subsection (4) of this section or of the order permitting the installation of an ignition interlock device in lieu of the remaining period of revocation that is issued pursuant thereto, the court shall dissolve such an order and the person shall receive no credit toward the remaining period of revocation required under subsection (2)(b) or (c) of this section.

§ 189A.100. Administration of preliminary breath tests -- Visual recording of vehicle pursuits, traffic stops, and field sobriety tests -- Conditions of recording -- Use and destruction of recordings

(1) Law enforcement agencies may administer preliminary breath tests using devices or equipment which will ensure an accurate determination of blood alcohol content. Such tests may be administered in the field to a person suspected of violation of KRS 189A.010 before the person is arrested. This test may be administered in addition to any other blood

alcohol level test authorized by law. A person's refusal to take a preliminary breath test shall not be used against him in a court of law or in any administrative proceeding.

(2) Law enforcement agencies may record on film or videotape or by other visual and audible means the pursuit of a violator or suspected violator, the traffic stop, or field sobriety tests administered at the scene of an arrest for violation of KRS 189A.010 or such tests at a police station, jail, or other suitable facility subject to the following conditions:

(a) The testing is recorded in its entirety (except for blood alcohol analysis testing); and

(b) The entire recording of the field sobriety tests and the entire recording of such portions of the pursuit and traffic stop as were recorded is shown in court unless the defendant waives the showing of any portions not offered by the prosecution; and

(c) The entire recording is available to be shown by the defense at trial if the defendant so desires regardless of whether it was introduced by the Commonwealth; and

(d) The defendant or his counsel is afforded an opportunity to view the entire recording a reasonable time before the trial in order to prepare an adequate defense; and

(e) Recordings shall be used for official purposes only, which shall include:

1. Viewing in court;

2. Viewing by the prosecution and defense in preparation for a trial; and

3. Viewing for purposes of administrative reviews and official administrative proceedings. Recordings shall otherwise be considered as confidential records; and

(f) The videotape or film taken in accordance with this section shall, upon order of the District Court, be destroyed after the later of the following:

1. Fourteen (14) months, if there is no appeal of any criminal or traffic case filed as a result of the videotape or film, or if the videotape or film does not record the actual happening of an accident involving a motor vehicle;

2. Fourteen (14) months after a decision has been made not to prosecute any case upon which an arrest has been made or a citation issued as a result of the videotape or film, if the videotape does not record the actual happening of an accident involving a motor vehicle;

3. Twenty-six (26) months, if there is no appeal of any criminal or traffic case filed as a result of the videotape or film, if the videotape or film records the actual happening of an accident involving a motor vehicle;

4. After all appeals have been exhausted arising from any criminal or traffic case filed as a result of the videotape;

5. At the conclusion of any civil case arising from events depicted on the videotape or film; or

6. At the conclusion of the exhaustion of all appeals arising from any law enforcement agency administrative

proceedings arising from events depicted on the videotape or film; and

(g) Public officials or employees utilizing or showing recordings other than as permitted in this chapter or permitting others to do so shall be guilty of official misconduct in the first degree.

(3) When a peace officer makes a videotape or film recording of any transaction covered by subsection (2) of this section and a citation is issued or an arrest is made, the peace officer shall note on the uniform citation that a videotape has been made of the transaction.

§ 189A.103. Consent to tests for alcohol concentration or substance which may impair driving ability -- Test procedures -- Who may administer -- Personal testing

The following provisions shall apply to any person who operates or is in physical control of a motor vehicle or a vehicle that is not a motor vehicle in this Commonwealth:

(1) He has given his consent to one (1) or more tests of his blood, breath, and urine, or combination thereof, for the purpose of determining alcohol concentration or presence of a substance which may impair one's driving ability, if an officer has reasonable grounds to believe that a violation of KRS 189A.010(1) or 189.520(1) has occurred.

(2) Any person who is dead, unconscious, or otherwise in a condition rendering him incapable of refusal is deemed not to have withdrawn the consent provided in subsection (1) of this section, and the test may be given.

(3) The breath, blood, and urine tests administered pursuant to this section shall be administered at the direction of a peace officer having reasonable grounds to believe the person has committed a violation of KRS 189A.010(1) or 189.520(1).

(a) Tests of the person's breath, blood, or urine, to be valid pursuant to this section, shall have been performed according to the administrative regulations promulgated by the secretary of the Justice Cabinet, and shall have been performed, as to breath tests, only after a peace officer has had the person under personal observation at the location of the test for a minimum of twenty (20) minutes.

(b) All breath tests shall be administered by a peace officer holding a certificate as an operator of a breath analysis instrument, issued by the secretary of the Justice Cabinet or his designee.

(4) A breath test shall consist of a test which is performed in accordance with the manufacturer's instructions for the use of the instrument. The secretary of the Justice Cabinet shall keep available for public inspection copies of these manufacturer's instructions for all models of breath testing devices in use by the Commonwealth of Kentucky.

(5) When the preliminary breath test, breath test, or other evidence gives the peace officer reasonable grounds to believe there is impairment by a substance which is not subject to testing by a breath test, then blood or urine tests, or both, may be required in addition to a breath test, or in lieu of a breath test.

(6) Only a physician, registered nurse, phlebotomist, medical technician, or medical technologist not otherwise prohibited by law can withdraw any blood of any person submitting to a test under this section.

(7) After the person has submitted to all alcohol concentration tests and substance tests requested by the officer, the

person tested shall be permitted to have a person listed in subsection (6) of this section of his own choosing administer a test or tests in addition to any tests administered at the direction of the peace officer. Tests conducted under this section shall be conducted within a reasonable length of time. Provided, however, the nonavailability of the person chosen to administer a test or tests in addition to those administered at the direction of the peace officer within a reasonable time shall not be grounds for rendering inadmissible as evidence the results of the test or tests administered at the direction of the peace officer.

189A.104. Alcohol or substance testing subject to refusal or enhancement of penalties under KRS Chapter 189A

(1) The only alcohol or substance testing that is subject to refusal or enhancement of penalties provided for in this chapter is:

- (a) Breath analysis testing by a machine installed, tested, and maintained by the Commonwealth for that specific purpose at a police station or detention facility;
- (b) Blood or urine testing at the request of the officer at a police station, detention facility, or medical facility; or
- (c) Combination of tests required in paragraphs (a) or (b) of this subsection.

(2) The results of any breath analysis by an instrument other than one specified in subsection (1) of this section shall be inadmissible in court.

§ 189A.105. Effect of refusal to submit to tests -- Information required to be provided when tests requested -- Court-ordered testing -- Right to consult attorney before submitting to tests -- Personal testing option

(1) A person's refusal to submit to tests under KRS 189A.103 shall result in revocation of his driving privilege as provided in this chapter.

(2) (a) At the time a breath, blood, or urine test is requested, the person shall be informed:

1. That, if the person refuses to submit to such tests, the fact of this refusal may be used against him in court as evidence of violating KRS 189A.010 and will result in revocation of his driver's license, and if the person refuses to submit to the tests and is subsequently convicted of violating KRS 189A.010(1) then he will be subject to a mandatory minimum jail sentence which is twice as long as the mandatory minimum jail sentence imposed if he submits to the tests, and that if the person refuses to submit to the tests he will be unable to obtain a hardship license; and

2. That, if a test is taken, the results of the test may be used against him in court as evidence of violating KRS 189A.010(1), and that if the results of the test are 0.18 or above and the person is subsequently convicted of violating KRS 189A.010(1), then he will be subject to a sentence that is twice as long as the mandatory minimum jail sentence imposed if the results are less than 0.18; and

3. That if the person first submits to the requested alcohol and substance tests, the person has the right to have a test or tests of his blood performed by a person of his choosing described in KRS 189A.103 within a reasonable time of his arrest at the expense of the person arrested.

(b) Nothing in this subsection shall be construed to prohibit a judge of a court of competent jurisdiction from issuing a search warrant or other court order requiring a blood or urine test, or a combination thereof, of a defendant charged with a violation of KRS 189A.010, or other statutory violation arising from the incident, when a person is killed or suffers physical injury, as defined in KRS 500.080, as a result of the incident in which the defendant has been charged.

(3) During the period immediately preceding the administration of any test, the person shall be afforded an opportunity of at least ten (10) minutes but not more than fifteen (15) minutes to attempt to contact and communicate with an attorney and shall be informed of this right. Inability to communicate with an attorney during this period shall not be deemed to relieve the person of his obligation to submit to the tests and the penalties specified by KRS 189A.010 and 189A.107 shall remain applicable to the person upon refusal. Nothing in this section shall be deemed to create a right to have an attorney present during the administration of the tests, but the person's attorney may be present if the attorney can physically appear at the location where the test is to be administered within the time period established in this section.

(4) Immediately following the administration of the final test requested by the officer, the person shall again be informed of his right to have a test or tests of his blood performed by a person of his choosing described in KRS 189A.103 within a reasonable time of his arrest at the expense of the person arrested. He shall then be asked "Do you want such a test?" The officer shall make reasonable efforts to provide transportation to the tests.

§ 189A.107. License suspension for refusal to take alcohol or substance tests -- Hearing on alleged refusal -- Time period for suspension

(1) A person who refuses to submit to an alcohol concentration or substance test requested by an officer having reasonable grounds to believe that the person violated KRS 189A.010(1) shall have his driver's license suspended by the court during the pendency of the action under KRS 189A.200.

(2) In the event a defendant is not convicted of a violation of KRS 189A.010(1) in a case in which it is alleged that he refused to take an alcohol concentration or substance test, upon motion of the attorney for the Commonwealth, the court shall conduct a hearing, without a jury, to determine by clear and convincing evidence if the person actually refused the testing. However, the hearing shall not be required if the court has made a previous determination of the issue at a hearing held under KRS 189A.200 and 189A.220. If the court finds that the person did refuse to submit to the testing, the court shall suspend the person's driver's license for a period of time within the time range specified that the license would have been suspended upon conviction as set forth in KRS 189A.070(1).

189A.110. Minimum detention in custody when blood alcohol reading exceeds .15 percent

Any person who is arrested for a violation of KRS 189A.010 and who, upon blood alcohol testing, shows a blood alcohol reading above .15 percent shall be detained in custody at least four (4) hours following his arrest.

§ 189A.120. Prosecutor's duties with regard to amendment of charges -- Amendment of blood alcohol concentration -- Record of charges and amendments

(1) When an alcohol concentration for a person twenty-one (21) years of age or older in a prosecution for violation of KRS 189A.010 is 0.08 or above, is 0.02 or above for a person under the age of twenty-one (21), or when the defendant, regardless of age, has refused to take an alcohol concentration or substance test, a prosecuting attorney shall not agree to the amendment of the charge to a lesser offense and shall oppose the amendment of the charge at trial, unless all

prosecution witnesses are, and it is expected they will continue to be, unavailable for trial.

(2) A prosecuting attorney shall not amend a blood alcohol concentration, and he shall oppose the amendment of the percentage, unless uncontroverted scientific evidence is presented that the test results were in error. In those cases, the prosecutor shall state his reasons for agreeing with the amendment, and the scientific data upon which the amendment was made shall be made a part of the record in this case.

(3) The record of charges and disposition thereof, including reasons for amending the charges, shall be transmitted by the court to the Justice Cabinet for inclusion in the centralized criminal history record information system under KRS 17.150.

§ 189A.130. Assessment of fines -- Response to nonpayment

Fines levied pursuant to this chapter shall be assessed in the manner required by KRS 534.020 (but in amounts consistent with this chapter) and the response to nonpayment of fines shall be governed by KRS 534.060.

§ 189A.200. Pretrial suspension of license of person charged with driving under the influence for refusing to take test, for being a repeat offender, and for causing accident resulting in death or serious physical injury to another person for being a repeat offender -- Hearing -- Length of suspension

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

(a) Has refused to take an alcohol concentration or substance test as reflected on the uniform citation form;

(b) Has been convicted of one (1) or more prior offenses as described in KRS 189A.010(5)(e) or has had his operator's license revoked or suspended on one (1) or more occasions for refusing to take an alcohol concentration or substance test, in the five (5) year period immediately preceding his arrest; or

(c) Was involved in an accident that resulted in death or serious physical injury as defined in KRS 500.080 to a person other than the defendant.

(2) Persons whose licenses have been suspended pursuant to this section may file a motion for judicial review of the suspension, and the court shall conduct the review in accordance with this chapter within thirty (30) days after the filing of the motion. The court shall, at the time of the suspension, advise the defendant of his rights to the review.

(3) When the court orders the suspension of a license pursuant to this section, the defendant shall immediately surrender the license to the Circuit Court Clerk, and the court shall retain the defendant in court or remand him into the custody of the sheriff until the license is produced and surrendered. If the defendant has lost his operator's license, other than due to a previous suspension or revocation, which is still in effect, the sheriff shall take him to the office of the circuit clerk so that a new license can be issued. If the license is currently under suspension or revocation, the provisions of this subsection shall not apply.

(4) The Circuit Court Clerk shall forthwith transmit to the Transportation Cabinet any license surrendered to him pursuant to this section.

(5) Licenses suspended under this section shall remain suspended until a judgment of conviction or acquittal is entered in the case or until the court enters an order terminating the suspension, but in no event for a period longer than the maximum license suspension period applicable to the person under KRS 189A.070 and 189A.107.

(6) Any person whose operator's license has been suspended pursuant to this section shall be given credit for all pretrial suspension time against the period of revocation imposed. Licenses suspended under this section shall remain suspended until a judgment of conviction or acquittal is entered in the case or until the court enters an order terminating the suspension, but in no event for a period longer than the maximum license suspension period applicable to the person under KRS 189A.070 and 189A.107.

§ 189A.210. Duty of court clerk to obtain defendant's driving history record upon arrest for driving while impaired

When a defendant is arrested upon a charge of violating KRS 189A.010(1), the court clerk shall obtain forthwith the information from the defendant's driving history record and make it a part of the record of the case.

§ 189A.220. Judicial review of pretrial license suspension for test refusal

In any judicial review of a pretrial suspension imposed for refusal to take an alcohol concentration or substance test, if the court determines, by the preponderance of the evidence, that:

- (1) The person was charged and arrested by a peace officer with violation of KRS 189A.010(1);
- (2) The officer had reasonable grounds to believe that the person was operating or in physical control of a motor vehicle in violation of KRS 189A.010(1);
- (3) The person was advised of the implied consent law pursuant to KRS 189A.103;
- (4) The peace officer requested the person to take the test or tests pursuant to KRS 189A.103; and then
- (5) The person refused to take a test requested by a peace officer pursuant to KRS 189A.103,

then the court shall continue the suspension of the person's operator's license or privilege to operate a motor vehicle during the pendency of the proceedings.

§ 189A.240. Judicial review of pretrial license suspension for repeat offender

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

- (1) The person was charged and arrested by a peace officer with a violation of KRS 189A.010(1)(a), (b), (c), or (d);
- (2) The peace officer had reasonable grounds to believe that the person was operating a motor vehicle in violation of KRS 189A.010(1)(a), (b), (c), or (d);

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

(4) The person has been convicted of one (1) or more prior offenses as described in KRS 189A.010(5)(e) or has had his motor vehicle operator's license suspended or revoked on one (1) or more occasions for refusing to take an alcohol concentration or substance test, in the five (5) year period immediately preceding his arrest, then the court shall continue to suspend the person's operator's license or privilege to operate a motor vehicle. The provisions of this section shall not be construed as limiting the person's ability to challenge any prior convictions or license suspensions or refusals.

§ 189A.250. Judicial review of pretrial suspension imposed under KRS 189A.200(1)(c)

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

(1) The person was charged and arrested by a peace officer with violation of KRS 189A.010;

(2) The officer had reasonable grounds to believe that the person was operating or in physical control of a motor vehicle in violation of KRS 189A.010;

(3) There is probable cause to believe that the person committed the violation of KRS 189A.010(1) as charged; and

(4) There is probable cause to believe that the person was involved in an accident that resulted in death or serious physical injury as defined in KRS 500.080 to a person other than the defendant;

then the court shall continue the suspension of the person's operator's license or privilege to operate a motor vehicle during the pendency of the proceedings.

§ 189A.300. Provision of alcohol test instruments to counties

The Commonwealth shall provide at least one (1) breath alcohol analysis and simulating unit for each county, paid for by state funds received pursuant to the service fee levied in KRS 189A.050. All units shall be approved by the secretary of the Justice Cabinet or his designee.

§ 189A.310. Attacking admissibility of prior convictions to enhance penalties -- Procedure -- Standard

(1) A court may, upon application of the defendant or attorney for the Commonwealth or upon its own motion, and if the facts of the case so indicate, order that a prior conviction not meeting applicable case law regarding admissibility of a prior conviction cannot be used to enhance criminal penalties including license suspensions or revocations, or for other purposes for which such a conviction might be used.

(2) The Transportation Cabinet shall give full faith and credit to any court decision meeting the requirements of this section.

§ 189A.320. Court reporting of convictions and license revocations to Transportation Cabinet

Each court shall report to the Transportation Cabinet the convictions of persons and license revocations imposed by the court for violation of KRS 189A.010(1) and 189A.103.

§ 189A.330. Reporting by clerk of cases pending more than ninety days -- Actions by Attorney General and Chief Justice

(1) The clerk of the court in which hearings for violation of KRS 189A.010 are heard shall report to the Administrative Office of the Courts on or within five (5) working days of January 1, April 1, July 1, and October 1 of each year the cases involving violations of KRS 189A.010 which have not resulted in a final ruling by the court within ninety (90) days of the date upon which the person was charged with a violation of KRS 189A.010.

(2) The Administrative Office of the Courts shall forward a copy of the lists of these cases to the Chief Justice and the Office of the Attorney General.

(3) Upon a determination that there is sufficient cause, the Office of the Attorney General may appoint a special prosecutor or prosecutors to assist in the disposition of these cases within a reasonable time period.

(4) The Chief Justice may take actions deemed necessary and reasonable to facilitate the resolution of these cases within a reasonable time period.

§ 189A.340. Ignition interlock devices

(1) In lieu of ordering license plate impoundment under KRS 189A.085 of a person convicted of a second or subsequent violation of KRS 189A.010, the court may order installation of an ignition interlock device as provided in this section as follows:

(a) Except as provided in paragraph (d) of this subsection, at the time that the court revokes a person's license under any provision of KRS 189A.070 other than KRS 189A.070(1)(a), the court shall also order that, at the conclusion of the license revocation, the person shall be prohibited from operating any motor vehicle or motorcycle without a functioning ignition interlock device.

(b) 1. The first time in a five (5) year period that a person is penalized under this section, a functioning ignition interlock device shall be installed for a period of six (6) months.

2. The second time in a five (5) year period that a person is penalized under this section, a functioning ignition interlock device shall be installed for a period of twelve (12) months.

3. The third or subsequent time in a five (5) year period that a person is penalized under this section, a functioning ignition interlock device shall be installed for a period of thirty (30) months.

4. The person whose license has been suspended for a second or subsequent violation of KRS 189A.010 shall not be able to apply to the court for permission to install an ignition interlock device until the person has completed one (1) year of license suspension without any subsequent conviction for a violation of KRS 189A.010 or 189A.090. If the court grants permission to install an ignition interlock device, an ignition interlock device shall be installed on all vehicles owned or leased by the person whose license has been suspended.

(c) In determining the five (5) year period under paragraph (b) of this subsection, the period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered, resulting in the license revocations described in KRS 189A.070.

(d) If the court finds that a person is required to operate a motor vehicle or motorcycle in the course and scope of the person's employment and the motor vehicle or motorcycle is owned by the employer, then the court shall order that the person may operate that motor vehicle or motorcycle during regular working hours for the purposes of his or her employment without installation of a functioning ignition interlock device on that motor vehicle or motorcycle if the employer has been notified of the prohibition established under paragraphs (a), (b), and (c) of this subsection.

(2) Upon ordering the installation of a functioning ignition interlock device, the court, without a waiver or a stay of the following procedure, shall:

(a) Transmit its order and other appropriate information to the Transportation Cabinet;

(b) Direct that the Transportation Cabinet records reflect:

1. That the person shall not operate a motor vehicle or motorcycle without a functioning ignition interlock device, except as provided in paragraph (d) of subsection (1) of this section; and

2. Whether the court has expressly permitted the person to operate a motor vehicle or motorcycle without a functioning ignition interlock device, as provided in paragraph (d) of subsection (1) of this section;

(c) Direct the Transportation Cabinet to attach or imprint a notation on the driver's license of any person restricted under this section stating that the person shall operate only a motor vehicle or motorcycle equipped with a functioning ignition interlock device. However, if the exception provided for in paragraph (d) of subsection (1) of this section applies, the notation shall indicate the exception;

(d) Require proof of the installation of the functioning ignition interlock device and periodic reporting by the person for the verification of the proper functioning of the device;

(e) Require the person to have the device serviced and monitored at least every thirty (30) days for proper functioning by an entity approved by the Transportation Cabinet; and

(f) Require the person to pay the reasonable cost of leasing or buying, installing, servicing, and monitoring the device. The court may establish a payment schedule for the person to follow in paying the cost.

(3) The Transportation Cabinet shall:

(a) Certify ignition interlock devices for use in this Commonwealth;

(b) Approve ignition interlock device installers who install functioning ignition interlock devices under the requirements of this section;

(c) Approve servicing and monitoring entities identified in paragraph (e) of subsection (2) of this section and require those entities to report on driving activity within seven (7) days of servicing and monitoring each ignition interlock device

to the respective court, prosecuting attorney, and defendant;

(d) Publish and periodically update on the Transportation Cabinet web site a list of the certified ignition interlock devices, the approved ignition interlock installers, and the approved servicing and monitoring entities;

(e) Develop a warning label that an ignition interlock device installer shall place on a functioning ignition interlock device before installing that device. The warning label shall warn of the penalties established in KRS 189A.345; and

(f) Promulgate administrative regulations to carry out the provisions of this subsection.

§ 189A.345. Penalties for violation of KRS 189A.410 and 189A.340 governing ignition interlock devices

(1) No person shall operate a motor vehicle or motorcycle without a functioning ignition interlock device when prohibited to do so under KRS 189A.340(1) or under KRS 189A.410(2).

(2) (a) No person shall start a motor vehicle or motorcycle equipped with an ignition interlock device for the purpose of providing an operable motor vehicle or motorcycle to a person subject to the prohibition established in KRS 189A.340(1) or under KRS 189A.440(2)(b).

(b) Any person who violates paragraph (a) of this subsection shall:

1. For a first offense, be guilty of a Class B misdemeanor; and
2. For a second or subsequent offense, be guilty of a Class A misdemeanor.

(3) (a) No person shall:

1. Knowingly install a defective ignition interlock device on a motor vehicle or motorcycle; or
2. Tamper with an installed ignition interlock device with the intent of rendering it defective.

(b) Any person who violates paragraph (a) of this subsection shall:

1. For a first offense, be guilty of a Class B misdemeanor; and
2. For a second or subsequent offense, be guilty of a Class A misdemeanor and be prohibited from installing ignition interlock devices or directing others in the installation of ignition interlock devices.

(4) (a) No person shall direct another person to install a defective ignition interlock device on a motor vehicle or motorcycle when the person giving the direction knows that the ignition interlock device is defective.

(b) Any person who violates paragraph (a) of this subsection shall:

1. For a first offense, be guilty of a Class B misdemeanor; and

2. For a second or subsequent offense, be guilty of a Class A misdemeanor and be prohibited from directing others in the installation of ignition interlock devices or installing ignition interlock devices.

§ 189A.410. Purposes for issuance of hardship license -- Use of ignition interlock device may be required -- Prohibition against issuance when alcohol or substance test was refused

(1) At any time following the expiration of the minimum license suspension periods enumerated in KRS 189A.010(6), 189A.070, and 189A.107, the court may grant the person hardship driving privileges for the balance of the suspension period imposed by the court, upon written petition of the defendant, if it finds reasonable cause to believe that revocation would hinder the person's ability to:

- (a) Continue his employment;
- (b) Continue attending school or an educational institution;
- (c) Obtain necessary medical care;
- (d) Attend driver improvement, alcohol, or substance abuse education programs; or
- (e) Attend court-ordered counseling or other programs.

(2) Whenever the court grants a person hardship driving privileges under subsection (1) of this section, the court through court order, may:

- (a) Prohibit the person from operating any motor vehicle or motorcycle without a functioning ignition interlock device;
- (b) Require that the person comply with all of the requirements of KRS 189A.340, except for the requirements found in KRS 189A.340(1); and
- (c) Require the person to install an ignition interlock device on every vehicle owned or leased by the person who is permitted to operate a motor vehicle under this section.

(3) The court shall not issue a hardship license to a person who has refused to take an alcohol concentration or substance test or tests offered by a law enforcement officer.

§ 189A.420. Required information for issuance of hardship license

Before granting hardship driving privileges, the court shall order the defendant to:

- (1) Provide the court with proof of motor vehicle insurance;
- (2) Provide the court with a written, sworn statement from his employer detailing his job, hours of employment, and the necessity for the defendant to use a motor vehicle either in his work or in travel to and from work (if the license is sought for employment purposes);
- (3) If the defendant is self-employed, to provide the information required in subsection (2) together with a sworn and

notarized statement (under the penalties of false swearing) as to its truth;

(4) Provide the court with a written, sworn statement from the school or educational institution which he attends, of his class schedule, courses being undertaken, and the necessity for the defendant to use a motor vehicle in his travel to and from school or other educational institution (if the license is sought for educational purposes). Licenses for educational purposes shall not include participation in sports, social, extracurricular, fraternal, or other noneducational activities;

(5) Provide the court with a written, sworn statement from a physician, or other medical professional licensed (but not certified) under the laws of Kentucky, attesting to the defendant's normal hours of treatment, and the necessity to use a motor vehicle to travel to and from the treatment (if the license is sought for medical purposes);

(6) Provide the court with a written, sworn statement from the director of any alcohol or substance abuse education or treatment program as to the hours in which the defendant is expected to participate in the program, the nature of the program, and the necessity for the defendant to use a motor vehicle to travel to and from the program (if the license is sought for alcohol or substance abuse education or treatment purposes);

(7) Provide the court with a copy of any court order relating to treatment, participation in driver improvement programs, or other terms and conditions ordered by the court relating to the defendant which require the defendant to use a motor vehicle in traveling to and from the court-ordered program. The judge shall include in the order the necessity for the use of the motor vehicle; and

(8) Provide to the court such other information as may be required by administrative regulation of the Transportation Cabinet.

§ 189A.430. Permit card and window decal for hardship driving privileges -- Requirement to carry permit -- Penalty for failure to display decal

(1) The cabinet, upon written order of the District Court, shall deliver to the defendant a permit card setting forth the times, places, purposes, and other conditions limiting the defendant's use of a motor vehicle. These terms and conditions shall be set forth in specific terms which identify permitted activity and specify that all other activity is prohibited.

(2) The grant of hardship driving privileges shall be conditioned upon the defendant having the permit in his possession at all times during which he is operating, or authorized to operate, a motor vehicle.

(3) The cabinet shall issue a decal, two (2) inches by three (3) inches, to be placed on the rear window of the vehicle to be operated by the defendant. Failure to display the decal shall be a Class B misdemeanor.

§ 189A.440. Prohibition against use of vehicle other than for purpose authorized by hardship license -- Penalty -- Penalty for false application statement

(1) No defendant who is permitted to have a hardship license shall operate a motor vehicle at any time, place, or for any purpose other than those authorized upon the face of the hardship license.

(2) Any defendant who violates the provisions of subsection (1) of this section is guilty of a Class A misdemeanor, and shall have his license revoked for the initial period of revocation plus an additional six (6) months.

(3) Any defendant or any other person who knowingly assists the defendant in making a false application statement is guilty of a Class A misdemeanor and shall have his motor vehicle or motorcycle operator's license revoked for six (6) months.

§ 189A.450. Service fee for hardship driving privileges

All persons granted hardship driving privileges shall pay a service fee to the Transportation Cabinet an amount not to exceed the actual cost to the Cabinet for issuing the permit card and decal, but not to exceed two hundred dollars (\$ 200).

§ 189A.460. Transportation Cabinet's responsibility as to administrative regulations and forms relating to hardship licenses

The Transportation Cabinet shall promulgate administrative regulations and shall issue hardship license application forms and other forms necessary for the implementation of KRS 189A.400 to 189A.460.