

Table of Contents

CHAPTER 1. ELEMENTS OF THE OFFENSE

- § 1:1 Historical background
- § 1:2 Elements of KRS 189A.010
- § 1:3 Operation or physical control—General statutory definition
- § 1:4 —Conduct constituting “operation”
- § 1:5 —Operability of vehicle
- § 1:6 Vehicle—Statutory definition
- § 1:7 —Unconventional vehicles
- § 1:8 “Anywhere in this state”
- § 1:9 Under the influence and driving impairment
- § 1:10 —“Under the influence” defined
- § 1:11 —Driving impairment
- § 1:12 —Subjectivity of standard
- § 1:13 Other substances impairing driving ability: the “Kentucky stewed prune rule”
- § 1:14 Prohibited alcohol levels
- § 1:15 —Commercial drivers
- § 1:16 — —Refusing to take test
- § 1:17 Per se—Prohibited drugs
- § 1:18 Constitutional challenges
- § 1:19 Culpability—Strict liability offense
- § 1:20 —Voluntariness—Intoxication
- § 1:21 — —Ignorance or mistake
- § 1:22 — —Duress
- § 1:23 — —Choice of evils
- § 1:24 — —Mental illness or retardation
- § 1:25 — —Entrapment
- § 1:26 — —Medications
- § 1:27 Boating under the influence—Prohibited conduct
- § 1:28 —History and scope of law
- § 1:29 —Elements of offense
- § 1:30 —Implied consent ramifications

CHAPTER 2. CHARGING THE OFFENSE

- § 2:1 Method of charging
- § 2:2 Sufficiency of citation—Criminal matters generally
- § 2:3 —Application to DUI
- § 2:4 —Charging prohibited alcohol concentration offenses
- § 2:5 Amendment of citation
- § 2:6 Service of citation
- § 2:7 Election of charges
- § 2:8 Election of remedies and double jeopardy
- § 2:9 Uniform citation—Form
- § 2:10 Criminal complaint—Form
- § 2:11 Electronic complaint—Form—Summons and warrant
- § 2:12 Alcohol and drug influence report—Form

CHAPTER 3. EVALUATING THE CASE

- § 3:1 Introduction
- § 3:2 Legal issues
- § 3:3 Operating under the influence of alcohol and/or drugs or
any other substance impairing driving ability—Impaired
vehicle operation
- § 3:4 —Accidents
- § 3:5 —Statements by defendant
- § 3:6 —Number and nature of drinks consumed
- § 3:7 —Physical tests
- § 3:8 —Horizontal gaze nystagmus test
- § 3:9 —Other physical symptoms of intoxication
- § 3:10 —Human factor
- § 3:11 —Alcohol and drug test results
- § 3:12 —Videotapes
- § 3:13 Under the influence of alcohol in combination with drugs—
Drugs generally
- § 3:14 —Lay perspective
- § 3:15 —Proof of offense
- § 3:16 Per se drugs
- § 3:17 Refusal to submit to testing
- § 3:18 Discovery
- § 3:19 Reviewing documents—Checklist
- § 3:20 Multiple pending DUI cases
- § 3:21 Officers training records request
- § 3:22 DOCJT Records Request Form
- § 3:23 DUI evaluation worksheet

CHAPTER 4. PRETRIAL LICENSE SEIZURE AND SUSPENSION, ARRAIGNMENT

- § 4:1 Arraignment—Motions
- § 4:2 —Appearance before court
- § 4:3 Pretrial license seizure and suspension
- § 4:4 —Hearing under KRS 189A.200
- § 4:5 — —Period of suspension
- § 4:6 — —Nature of hearing at arraignment
- § 4:7 —Constitutionality of suspension
- § 4:8 —Judicial review—Suspension for test refusal under KRS
189A.220
- § 4:9 — —Suspension for repeat offender under KRS 189A.240
- § 4:10 — —Suspension for causing death or serious physical injury
as result of DUI accident
- § 4:11 Pretrial suspension order—Form
- § 4:12 Confiscation order for operator's license or license plate(s)—
Form
- § 4:13 DUI (guilty plea)—Form
- § 4:14 Kentucky Interlock Program Application
- § 4:15 Ignition Interlock License Approval Letter
- § 4:16 Certificate of Installation for Ignition Interlock Device
- § 4:17 Procedure to obtain pretrial Ignition Interlock

CHAPTER 5. ALCOHOL TESTING EQUIPMENT

- § 5:1 Testing equipment in general
- § 5:2 Calibration of testing equipment
- § 5:3 Machine error messages
- § 5:4 Source code-machine interference—Mouth alcohol
- § 5:5 Mouth alcohol
- § 5:6 Machine interference
- § 5:7 5000EN and 8000 instrument records
- § 5:8 5000 and 8000 Instrument data records

CHAPTER 6. TESTING REGULATIONS

- § 6:1 Introduction
- § 6:2 “Substantial compliance” rule as standard of admissibility
- § 6:3 —Critique
- § 6:4 Time requirement for sample collection
- § 6:5 Qualified personnel—Breath testing
- § 6:6 —Blood testing
- § 6:7 —Urine testing
- § 6:8 Specific testing methods—Breath, blood, and urine testing
- § 6:9 —Breath-testing equipment
- § 6:10 —Preliminary breath-testing equipment
- § 6:11 Breath-testing requirements—General standards
- § 6:12 —Twenty-minute observation
- § 6:13 —Calibration of equipment—Time interval requirement
- § 6:14 — —Process
- § 6:15 — — —Solution
- § 6:16 —Radio frequency interference
- § 6:17 Blood and urine tests
- § 6:18 —Techniques
- § 6:19 —Chain of custody of specimen

CHAPTER 7. MOTION TO SUPPRESS

- § 7:1 Rationale for defense counsel
- § 7:2 —Determining admissibility of crucial evidence
- § 7:3 —Motion as discovery device
- § 7:4 Mandatory nature of motion
- § 7:5 Drafting motion
- § 7:6 —Evidence forming object of motion
- § 7:7 —Grounds
- § 7:8 Filing motion
- § 7:9 Burden of proof
- § 7:10 —Warrant requirement
- § 7:11 —DUI cases—Type of evidence test
- § 7:12 — —Illegal stop and arrest
- § 7:13 — —Noncompliance with alcohol test regulations
- § 7:14 Ruling on motion
- § 7:15 Appellate review—Direct appeal
- § 7:16 —Commonwealth’s appeal
- § 7:17 Basis for motion to suppress
- § 7:18 —Illegal stop

- § 7:19 —Reports or tips—Citizen tips and police broadcasts
- § 7:20 — —Police broadcasts or bulletins
- § 7:21 — —Informers’ tips
- § 7:22 —Stationary vehicles
- § 7:23 —Roadblocks
- § 7:24 Probable cause for arrest
- § 7:25 Arrest—Elements
- § 7:26 —Application to DUI cases
- § 7:27 Fifth Amendment protections—Miranda rights
- § 7:28 —Application to DUI
- § 7:29 —Custodial interrogation
- § 7:30 —Nontestimonial evidence
- § 7:31 —Videos
- § 7:32 Right to counsel
- § 7:33 Alcohol and drug testing—Admissibility of test results—
Chain of custody
- § 7:34 —Alcohol testing as seizure
- § 7:35 —Compliance with testing regulations
- § 7:36 — —Breath-testing administrative regulations
- § 7:37 — —Certified operators
- § 7:38 — —Blood and urine testing
- § 7:39 —Drug analysis
- § 7:40 —Time of test
- § 7:41 —Implied consent, KRS 189A.103
- § 7:42 — —Applications
- § 7:43 — —Prerequisite of arrest
- § 7:44 Due process
- § 7:45 —Preservation of test sample
- § 7:46 —Right to additional test
- § 7:47 Attacking prior DUIs under new DUI law
- § 7:48 Motion to suppress—Form
- § 7:49 Motion to set aside prior conviction—Form
- § 7:50 Kentucky State Police guidelines for roadblocks—Form
- § 7:51 Kentucky State Police guidelines for traffic checkpoints—
Form
- § 7:52 Kentucky State Police guidelines for impoundment of
vehicles—Form
- § 7:53 Kentucky State Police Guidelines for use of in-car video/
audio equipment—Form
- § 7:54 Evans factors worksheet

CHAPTER 8. DOCUMENTARY EVIDENCE

- § 8:1 Introduction
- § 8:2 General challenges to admissibility—Hearsay
- § 8:3 —Right to confront witnesses
- § 8:4 Alcohol- and drug-testing records
- § 8:5 —Hospital records and right of confrontation
- § 8:6 —Physician-patient privilege
- § 8:7 —“Totem pole hearsay”
- § 8:8 —Admissibility of alcohol influence report

TABLE OF CONTENTS

- § 8:9 Authentication or identification of records
- § 8:10 —Self-authentication
- § 8:11 Prior convictions
- § 8:12 Jail Records

CHAPTER 9. MOTION TO DISMISS AND MOTION IN LIMINE

- § 9:1 Motion to dismiss—Grounds
- § 9:2 —Use
- § 9:3 Failure to state offense
- § 9:4 Speedy trial and due process
- § 9:5 Jurisdiction to stop, detain, and arrest—Existence of jurisdiction
- § 9:6 —Extraterritorial detention and arrest
- § 9:7 Motion in limine—Definition
- § 9:8 —Preserving issue for appeal
- § 9:9 Motion in limine applied to DUI
- § 9:10 Prior convictions
- § 9:11 Post-*Miranda* silence
- § 9:12 Refusal to submit to alcohol testing
- § 9:13 Horizontal and vertical gaze nystagmus test—Definition
- § 9:14 Horizontal gaze nystagmus test—Traditional evidentiary standard for admission of novel scientific techniques
- § 9:15 —Kentucky case law
- § 9:16 —Out-of-state authority
- § 9:17 —Critique
- § 9:18 Field sobriety testing
- § 9:19 Motion in limine

CHAPTER 10. FIELD SOBRIETY TESTING

- § 10:1 Field sobriety testing—Generally
- § 10:2 —One leg stand
- § 10:3 —Walk and turn
- § 10:4 —HGN
- § 10:5 —Miscellaneous tests

CHAPTER 11. TRIAL

- § 11:1 Introduction
- § 11:2 Alcohol and drug test results at trial
- § 11:3 Correlation of alcohol test results to prohibited alcohol level offense
- § 11:4 Challenges to weight of evidence
- § 11:5 —Alcohol test results in KRS 189A.010(1)(b) and KRS 189A.010(1)(e)
- § 11:6 —Testing equipment defects
- § 11:7 —Preliminary breath tests
- § 11:8 —Marginal test results
- § 11:9 Witnesses—Expert witnesses
- § 11:10 — —Police officers as experts
- § 11:11 —Lay opinion

- § 11:12 Motion for directed verdict of acquittal
- § 11:13 Aggravating circumstances
- § 11:14 Bifurcated trials
- § 11:15 Jury instructions
- § 11:16 —Objections
- § 11:17 —DUI cases
- § 11:18 —Further deliberations
- § 11:19 —Sample
- § 11:20 Verdict—Form
- § 11:21 Sentencing instructions—First offense—Form
- § 11:22 Verdict—First offense—Form
- § 11:23 Sentencing instructions—Second offense—Form
- § 11:24 Verdict—Second offense—Form
- § 11:25 Sample instruction on operation and working order of
intoxilyzer

CHAPTER 12. SENTENCING

- § 12:1 Sentencing process
- § 12:2 Enhanced penalties due to “aggravating circumstances”
- § 12:3 Cost of incarceration
- § 12:4 Statutory penalties for convicted drivers under the age of
21 and under the age of 18
- § 12:5 Statutory penalties for first offense—Incarceration and fine
- § 12:6 —License suspension
- § 12:7 —Hardship driver’s license
- § 12:8 — —Effect of refusal to take alcohol or drug test
- § 12:9 — —Prerequisites
- § 12:10 —Community labor
- § 12:11 —Treatment program
- § 12:12 Statutory penalties for second offense—Incarceration
- § 12:13 —Fine
- § 12:14 —Community labor
- § 12:15 —Treatment program
- § 12:16 —Hardship license; ignition interlock
- § 12:17 Statutory penalties for third offense—Incarceration
- § 12:18 —Fine
- § 12:19 —Community labor
- § 12:20 —Treatment program
- § 12:21 —Hardship license; ignition interlock
- § 12:22 Statutory penalties for fourth offense—Incarceration
- § 12:23 —Fine
- § 12:24 —Community labor
- § 12:25 —Treatment program
- § 12:26 —Hardship license; ignition interlock
- § 12:27 Credit for time served—Treatment
- § 12:28 Home incarceration
- § 12:29 Payment and collection of fines, fees, and costs
- § 12:30 —Payment of fine discharges contempt sentence
- § 12:31 —Service of jail time discharges fine
- § 12:32 —Incarceration of indigent defendant

TABLE OF CONTENTS

§ 12:33	—Payment of court costs; “poor person”
§ 12:34	—Service fee
§ 12:35	— —Waiver
§ 12:36	License suspension procedures
§ 12:37	Prior convictions—Enhancement provisions
§ 12:38	—Use of out-of-state convictions for enhancement
§ 12:39	—Attacking
§ 12:40	Juveniles
§ 12:41	License plate confiscation
§ 12:42	Ignition interlock devices—Generally
§ 12:43	—Costs
§ 12:44	—Use of non-interlock employer vehicles
§ 12:45	—Appeals
§ 12:46	—Installation of Interlocks for Conviction or Acquittal Suspensions
§ 12:47	Ignition interlock device—Ex post facto
§ 12:48	Hardship driver’s license
§ 12:49	—Affidavit—Form
§ 12:50	—Order—Form
§ 12:51	Notice to attend alcohol driver education program—Form
§ 12:52	Confiscation order for operators’ license or license plate(s)—Form
§ 12:53	Application and order for hardship vehicle registration— Form
§ 12:54	Ignition interlock—Indigency guidelines
§ 12:55	Financial Statement, Affidavit of Indigency and Request for Reduced Ignition Interlock Device Cost
§ 12:56	Ignition Interlock Removal Request-Form TC 94-189

CHAPTER 13. COLLATERAL CONSIDERATIONS

§ 13:1	Introduction
§ 13:2	Point system for motor vehicle violations
§ 13:3	—Records of traffic-related offenses
§ 13:4	—Assessment of points
§ 13:5	—Multiple offenses
§ 13:6	—Warning letter
§ 13:7	—State traffic school
§ 13:8	—Point suspensions and appeal
§ 13:9	Habitual violator status
§ 13:10	Reinstatement of license
§ 13:11	Expungement
§ 13:12	Department of Transportation suspension for out-of-state DUI convictions
§ 13:13	Considerations for commercial driver’s license
§ 13:14	Expungement forms

CHAPTER 14. IMPLIED CONSENT

§ 14:1	Introduction
§ 14:2	Scope of statute—Requirements

- § 14:3 —Implementation
- § 14:4 Implied consent-defendants who don't speak English
- § 14:5 Arrest requirements
- § 14:6 —Reasonable grounds of violation
- § 14:7 Test compliance with implied consent and administrative regulations
- § 14:8 Refusal of test
- § 14:9 —Obstruction of testing process
- § 14:10 Refusal of blood testing
- § 14:11 Refusal of test—Retraction
- § 14:12 —Preliminary breath test as satisfying implied consent
- § 14:13 —Right to counsel prior to testing
- § 14:14 Advice of consequences of refusal or submission to test
- § 14:15 Pretrial license suspension procedure—Refusal of chemical tests
- § 14:16 Judicial review—Hearings
- § 14:17 —Pretrial license suspension
- § 14:18 —License suspension upon acquittal of DUI
- § 14:19 Restoration of license—Pretrial
- § 14:20 —After conviction
- § 14:21 Effect of DUI conviction upon pretrial refusal/suspension
- § 14:22 Implied consent for boaters
- § 14:23 Refusal hearing—Checklist
- § 14:24 Denial statement—Form
- § 14:25 Implied Consent Warning

APPENDICES

- Appendix A. Kentucky Revised Statutes
- Appendix B. Rules of Criminal Procedure
- Appendix C. Kentucky Rules of Evidence

Table of Laws and Rules

Table of Cases

Index