

Telephone: (513) 929-9333
 Facsimile: (513) 929-9337

www.notguiltyadams.com

KENTUCKY DUI PENALTIES

**OPERATING OR IN PHYSICAL CONTROL OF A MOTOR VEHICLE¹
 WHILE UNDER THE INFLUENCE [KRS 189A.010(a)-(d).
KENTUCKY DUI PENALTIES**

**OPERATING OR IN PHYSICAL CONTROL OF A MOTOR VEHICLE¹
 WHILE UNDER THE INFLUENCE [KRS 189A.010(a)-(d).**

Number of Offense	Degree of Offense	Incarceration ²	Fines	Treatment ³	License Suspension	Driving Privileges	Immobilization/ Forfeiture	Restricted Plates for Privileges
1 st in 5 years ⁴	Unclassified Misdemeanor	0-30 days ⁵	\$250-5500	Required ⁶	30-120 days	After 30 days ⁷	No	Decal and Permit card ⁸
1 st in 5 years + aggravator ⁹	Unclassified Misdemeanor	Min. 4 days Max. 30 days ¹⁰	\$250-5500	Required See n. 5	30-120 days	After 30 days	No	Decal and Permit card
2 nd in 5 years	Unclassified Misdemeanor	7 days to 6 months	\$350-5500	Required ¹¹	12-18 months	None	Mandatory ¹²	Reduction of suspension ¹³
2 nd in 5 years + aggravator	Unclassified Misdemeanor	Min. 14 days Max. 6 months	\$350-5500	Required See n.10	12-18 months	None	Mandatory See n. 5	Reduction of suspension See n. 12
3 rd in 5 years	Unclassified Misdemeanor	30 days to 12 months	\$500-\$1,000	Required ¹⁴	24-36 months	None	Mandatory See n. 5	Reduction of suspension See n. 12
3 rd in 5 years + aggravator	Unclassified Misdemeanor	Min. 60 days Max. 12 months	\$500-\$1,000	Required See n.13	24-36 months	None	Mandatory See n. 5	Reduction of suspension See n. 12
4 th or > in 5 years	Class D Felony	1-5 years Min. 120 days ¹⁵	\$1000 ¹⁶ - \$10000	Required See n. 13	60 months	None	Mandatory See n. 5	Reduction of suspension See n. 12
4 th or > in 5 years + aggravator	Class D Felony	1-5 years Min. 240 days ¹⁷	\$1,000-\$10,000 See n. 14	Required See n. 13	60 months	None	Mandatory See n. 5	Reduction of suspension See n. 12

Motor vehicle is defined in KRS 189.010(19) as: "All agencies for the transportation of persons or property over or upon the public highways of the Commonwealth[.]" Despite this definition, KRS 189A.010 applies even to driving on private property. See Lynch v. Commonwealth, 902 S.W.2d 813 Ky. 1995). Exempted from this definition are, inter alia, vehicles propelled by muscular power (i.e., horses and bicycles). These exempted vehicles may be prosecuted under KRS 189.520, however.

For a first offense, the offender may apply for community service in lieu of fine and jail time. The trial court may impose community service in addition to fine and jail time for second and third offenses.

Reinstatement of driving privileges will not occur until the court ordered alcohol and substance abuse treatment program has been completed.

The five year period is measured from offense date to offense date. KRS 189A.010(10).

For a first offense, fine and /or jail sentence may be imposed. For second and subsequent offenses both fine and jail sentences are imposed.

Offender is required to attend a 90-day alcohol or substance abuse treatment program. KRS 189A.040(1).

A person who has refused alcohol or substance abuse testing and has had a refusal hearing is not eligible for a hardship license. However, a person who refuses testing and is convicted of DUI before the refusal hearing is held is eligible for a hardship license. The court clerk issues a permit card setting forth the restrictions on driving privileges and a decal that must be affixed to the rear window of the vehicle.

There are six aggravating circumstances: (1) driving more than 30 m.p.h. over the speed limit; (2) driving the wrong way on a limited access highway; (3) causing an accident that results in death or serious physical injury; (4) having a BA of .18 or greater; (5) refusing to submit to the test(s) of the officer's choosing (an inadequate sample is not a refusal under KRS 189A.005(5)); and (6) transporting a passenger under the age of 12.

Pursuant to Commonwealth v. Gaitherwright, 70 S.W.3d 411 (Ky. 2002), refusal is not an aggravator for a first offense.

Refusal is an aggravator for second and subsequent offenses.

Under KRS 189A.085(1), plates will be impounded on every vehicle the offender owns solely or jointly unless the court orders an interlock device in lieu of impounding plates.

Under KRS 189A.070(7), offender can move the court to reduce the suspension by one-half but not less than one year. Thus, for a second offense, hardship privileges are available for the final 6 months of an 18-month suspension; for a third offense, for the final year of a 3-year suspension; and for a fourth or subsequent offense for the final 30 months of a 5-year suspension.

Offender is required to attend a 1-year inpatient alcohol or substance abuse treatment program. KRS 189A.040(3).

A fourth or greater offender is eligible for shock probation after 120 days.

Because the fine for a fourth offense is governed by KRS 534.030 (a felony), persons declared to be indigent are exempt from paying a fine.

DOSL/DUI KRS 189A.090

<i>Number of Offense</i>	<i>Degree of Offense</i>	<i>Incarceration</i>	<i>Fines</i>	<i>Treatment</i>	<i>Mandatory License Suspension</i>	<i>Driving Privileges</i>	<i>Immobilization/ Forfeiture</i>	<i>Restricted Plates for Privileges</i>
First	Class B misdemeanor	0-90 days	Up to \$250	None	6 months	None	None	None
First w/ Aggravator ²⁴	Class A misdemeanor	Up to 12 months	Up to \$500	For DUI	1 year	None	None	None
Second	Class A misdemeanor	Up to 12 months	Up to \$500	None	1 year	None	None	None
Second w/ Aggravator See n. 20	Class D Felony	1-5 years	\$1,000-\$10,000	For DUI	2 years	None	None	None
Third or more	Class D Felony	1-5 years	\$1,000-\$10,000	None	2 years	None	None	None
Third or more w/ Aggravator See n. 20	Class D Felony	1-5 years	\$1,000-\$10,000	For DUI	5 years	None	None	None

An aggravated fourth or greater DUI offender is eligible for shock probation after 240 days. However, by statute, a court only has jurisdiction to entertain a motion for shock probation between 30 and 180 days after the offender is incarcerated. Nevertheless, pretrial jail credit may alleviate the problem in most cases.

Underage DUI assumes that the BA lies between .02 and .08. If the BA is .08 or greater the underage person will be treated as an adult and the first chart applies unless the juvenile is under age 16. See Commonwealth v. Reynolds, 136 S.W.3d 442 (Ky. 2004). If the juvenile is under age 16, the matter is dealt with in the juvenile session of district court. If the offender is over age 16, the matter is handled in misdemeanor court.

Instead of a fine, the offender may receive 20 hours of community service. Obviously, since there is no jail time for a KRS 189A.010(e) violation the aggravating circumstances enumerated in n.9 do not come into play for this offense.

Underage DUI cannot be enhanced by a prior offense or used to enhance an adult DUI conviction under KRS 189A.010(5)(e).

The \$325 service fee does not apply to KRS 189A.010(e) violations by virtue of KRS 189A.010(6).

See KRS 189A.040(1).

Operating or being in physical control of a motor vehicle while under the influence of alcohol or drugs aggravates the penalty for driving on a license suspended for a prior DUI.