S.B. 85

Effective July 1, 2020

Requirements of Device

- Prevent operation of vehicle if BrAC is greater than 0.02.

- Must have a camera and log date and time of sample.

Three Types of Licenses

- Standard license

- Hardship license

- Ignition Interlock license

Pre-trial Suspension

- Pre-trial suspensions

  - No suspension for taking the test on a 1st offense.

  - Suspended for refusal on 1st offense and refusal or test over on 2nd or greater offense.

Pre-trial Interlock

- Pre-trial driving privileges are authorized in all instances.

- The wording of the statute is a bit confusing - it would appear to make pre-trial IID privileges discretionary on a 1st offense but mandatory on a 2nd or greater offense or where there was an injury accident.

- All persons should consider applying at arraignment since that will begin the first portion of the Incentive and Compliance period.

- KRS 189A.200(3)

Length of Suspension

- 1st offense: 6 months

- 2nd offense: 18 months

- 3rd offense: 36 months

- 4th or greater: 60 months

Incentive Period

- Suspensions can be reduced if the person has a period of time with no IID violations

    - 1st offense: reduced to 4 months if no violations for 90 consecutive days

    - 2nd offense: reduced to 12 months if no violations for 120 consecutive days

    - 3rd offense: reduced to 18 moths if no violations for 120 consecutive days

    - 4th offense: reduced to 30 months if no violations for 120 consecutive days

When Does the Compliance Period Start?

- According to 601 KAR 2:232, Section 4, 6(a)-(c):

  - The compliance period starts immediately prior to the end of the incentive period.

- In other words - on a first offense, you have to be violation free on days 31-120 and on a second offense months 9, 10, 11, and 12.

- It's the last 90 or 120 days of the incentive period that count - according to the KAR. HOWEVER, this is *not* in the statute.

Offense	DUI Suspension	Ignition Interlock Incentive Period	Start of Compliance Period/Violation Reports
1st Offense	6 month	4 month	1 month after ignition interlock license issuance
2nd Offense	18 month	12 month	8 months after ignition interlock license issuance
3rd Offense	36 month	18 month	14 months after ignition interlock license issuance
4th Offense or Subsequent	60 month	30 month	26 months after ignition interlock license issuance

Employer Exemption

- You can obtain an employer exemption for IID that allows the defendant to operate an employer's motor vehicle without an IID.

- ALERT: the person receives **NO CREDIT** towards their incentive period for the days they utilize the employer exemption **&** drove the employers vehicle without an IID - 601 KAR 2:232, Section 4, 10. KRS.340(5)(a)(2)(c).

- Kentucky Ignition Interlock Program Application," TC 94-175, July 2020;

- Breath Alcohol Ignition Interlock Physician Statement," TC 94-176, July 2020;

- Certificate of Installation for Ignition Interlock Device," TC 94-177, July 2020;

- Certificate of Removal for Ignition Interlock Device," TC 94-178, July 2020;

- "Kentucky Ignition Interlock Program Affordability Application," TC 94-188, July 2020;

- Ignition Interlock Removal Request," TC 94-189, July 2020; and

- "Kentucky Ignition Interlock Program Employer Work Exemption Application," TC 94-190, July 2020.

Choice of Law

- If a client is charged prior to July 1, 2020 but sentenced after, they get to choose which sentencing law applies. Call it player's choice.

- If a client is charged after July 1, 2020 the only option is to be sentenced under S.B. 85.

Resources

- http://drive.ky.gov for IID forms

- https://www.suhrelaw.com/attorney-resources/ for the sentencing 'cheat sheet'

- KACDL.net to register to the September 18, 2020 Advanced DUI Seminar to learn more

You Should be Trying **ALL** Your DUI Cases

NEW DEFENSES TAUGHT

IGNITION INTERLOCK DEVICES

SB85
WE WILL TEACH YOU ALL YOU NEED TO KNOW

September 18, 2020. - KACDL.NET