



**Section 1** would amend KRS 189A.010 to define “prior offense” for the purpose of enhancing consequences for subsequent DUI convictions as:

1. All first offenses no matter when the offense was committed
2. All offenses committed with any aggravating circumstance listed in subsection (10) of KRS 189A.010; and
3. All offenses committed within a ten (10) year period.

The effect would be that a person’s subsequent DUI, whether it occurred eight (8) years later or 16 years later, would be punishable at least as a DUI second offense, including a minimum fine of \$350, minimum jail time of seven (7) days, driver’s license revocation for a minimum twelve (12) months, drug or alcohol education or treatment for 12 months, and a vehicle ignition interlock device for a minimum of 12 months.

**Section 1** would also provide, though, that a first offense conviction may be sealed after 10 years on motion of the defendant. An offense that had been sealed would not appear in a state background check, but would remain as a first offense for purposes of determining the charging level for a subsequent violation of KRS 189A.010.

**Sections 3 and 4** of HB 261 GA would also limit to one first offense in a person’s lifetime failure to have and use a functioning ignition interlock device on his or her car when ordered to have such device and would identify as prior offenses those identified in Section 1, above. That offender’s next failure to have and use an ignition interlock device, no matter when it occurred, would be punishable as a Class A misdemeanor including license revocation for one (1) year. If the person who failed to use an ignition interlock device was also driving under the influence of alcohol or drugs at the time, they would be punished for a Class D felony.

### **Part III: Fiscal Explanation, Bill Provisions, and Estimated Cost**

**The fiscal impact of HB 261 GA on local governments is indeterminable but likely minimal.**

DUI first offense has no mandatory jail time, unless an aggravating circumstance listed in KRS 189A.010 (11)(subsection (11) would be re-numbered subsection (10) under the bill) is present while the person was operating or in physical control of a motor vehicle. It is likely that the bill would result in more DUI second offense convictions and local jails would house some additional DUI defendants who, under current law, would have spent no time in jail because their prior offense occurred more than 10 years before. Those who under current law would have been punished for a DUI first offense and instead are convicted of DUI second offense, a Class A misdemeanor, would spend a minimum of seven days to a maximum of six months in one of Kentucky’s 76 full service jails or five (5) life safety jails. While the expense of housing inmates varies by jail, the estimated impact of \$31.34 per day is based on the per diem and medical expenses that the Department of Corrections pays jails to house felony offenders. While the majority of misdemeanor defendants are granted bail, those who do not will also cost local jails an

average of \$31.34 per day. Therefore, one DUI second offense offender will cost a local jail a minimum \$219.38 for seven (7) days to a maximum \$5641.20 for 180 days (6 months) in jail.

How many additional inmates would be incarcerated and for how long is not determinable.

**Data Sources:** Department of Corrections

**Preparer:** Mary Stephens      **Reviewer:** KHC      **Date:** 3/1/17