

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) (a) Law enforcement agencies may record on film or videotape or by other visual and audible means:
 1. The pursuit of a violator or suspected violator;
 2. The traffic stop; or
 3. a. Field sobriety tests administered at the scene or such tests at a police station, jail, or other suitable facility; or
b. The refusal of a violator or suspected violator to submit to tests under KRS 189A.103;
for a suspected violation of KRS 189A.010.
- (b) Recordings made under paragraph (a) of this subsection shall be subject to the following conditions:
 1. The testing is recorded in its entirety (except for blood alcohol analysis testing);
 2. The entire recording of the field sobriety tests or refusal and the entire recording of the pursuit and traffic stop is shown in court unless the defendant waives the showing of any portions not offered by the prosecution;
 3. 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;
 4. 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;
 5. Recordings shall be used for official purposes only, which shall include:
 - a. Viewing in court;
 - b. Viewing by the prosecution and defense in preparation for a trial; and
 - c. Viewing for purposes of administrative reviews and official administrative proceedings. Recordings shall otherwise be considered as confidential records;
 6. The videotape or film taken in accordance with this section shall, upon

order of the sentencing court, be destroyed after the later of the following:

- a. 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;
 - b. 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;
 - c. 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;
 - d. After all appeals have been exhausted arising from any criminal or traffic case filed as a result of the videotape;
 - e. At the conclusion of any civil case arising from events depicted on the videotape or film; or
 - f. 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
7. 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.

Effective: July 1, 2020

History: Amended 2019 Ky. Acts ch. 103, sec. 8, effective July 1, 2020. -- Amended 2000 Ky. Acts ch. 467, sec. 24, effective October 1, 2000. -- Created 1984 Ky. Acts ch. 165, sec. 10, effective July 13, 1984.