

189A.105 Effect of refusal to submit to tests -- Information required to be provided when tests requested -- Court-ordered testing -- Withdrawal of blood sample -- Right to consult attorney before submitting to tests -- Personal testing option.

- (1) A person's refusal to submit to tests under KRS 189A.103 shall result in suspension of his or her driving privilege as provided in this chapter.
- (2) (a) At the time a breath, blood, or urine test is requested, the person shall be informed:
 1. That, if the person refuses to submit to such tests:
 - a. The fact of this refusal may be used against him or her in court as evidence of violating KRS 189A.010 and will result in suspension of his or her driver's license by the court at the time of arraignment; and
 - b. Is subsequently convicted of violating KRS 189A.010(1):
 - i. For a second or third time within a ten (10) year period, he or she will be subject to a mandatory minimum jail sentence which is twice as long as the mandatory minimum jail sentence imposed if he or she submits to the tests; and
 - ii. His or her license will be suspended by the Transportation Cabinet;
 2. That, if a test is taken:
 - a. The results of the test may be used against the person in court as evidence of violating KRS 189A.010(1); and
 - b. The person has the right to have a test or tests of his or her blood performed by a person of his or her choosing described in KRS 189A.103 within a reasonable time of his or her arrest at the expense of the person arrested; and
 3. That although his or her license will be suspended, he or she may be eligible immediately for an ignition interlock license allowing him or her to drive during the period of suspension and, if he or she is convicted, he or she will receive a credit toward any other ignition interlock requirement arising from this arrest.
- (b) Nothing in this subsection shall be construed to prohibit a judge of a court of competent jurisdiction from issuing a search warrant or other court order requiring a blood or urine test, or a combination thereof, of a defendant charged with a violation of KRS 189A.010, or other statutory violation arising from the incident. However, if the incident involves a motor vehicle accident in which there was a fatality, the investigating peace officer shall seek such a search warrant for blood testing unless the testing has already been done by consent. If testing done pursuant to a warrant reveals the presence of alcohol or any other substance that impaired the driving ability of a person who is charged and convicted of a violation of KRS 189A.010(1), the sentencing court shall require, in addition to any other sentencing provision, that the defendant make restitution to the state for the cost of the testing.

- (c) 1. When directed by a peace officer pursuant to a search warrant or other court order issued under this subsection, a qualified medical professional shall withdraw the sample of blood as soon as practicable and shall deliver the sample to the requesting peace officer, or other peace officer as directed by the requesting peace officer, provided that the collection of the sample does not jeopardize the person's life, cause serious injury to the person, or seriously impede the person's medical assessment, care, or treatment.
 2. The qualified medical professional authorized to withdraw the blood sample and the medical care facility where the blood sample is drawn shall be considered as acting in good faith once presented with a search warrant or other court order issued under this subsection. The qualified medical professional shall not require the person that is the subject of the test or tests to provide any additional consent.
 3. A qualified medical professional who administers any test under this paragraph upon the request of a peace officer, and a medical care facility where any test under this paragraph may be performed, shall not be criminally liable solely for administering the requested test or civilly liable for damages to the person tested solely for administering the requested test except in cases of gross negligence or willful or wanton misconduct.
- (3) During the period immediately preceding the administration of any test, the person shall be afforded an opportunity of at least ten (10) minutes but not more than fifteen (15) minutes to attempt to contact and communicate with an attorney and shall be informed of this right. Inability to communicate with an attorney during this period shall not be deemed to relieve the person of his or her obligation to submit to the tests and the penalties specified by KRS 189A.010 and 189A.107 shall remain applicable to the person upon refusal. Nothing in this section shall be deemed to create a right to have an attorney present during the administration of the tests, but the person's attorney may be present if the attorney can physically appear at the location where the test is to be administered within the time period established in this section.
- (4) Immediately following the administration of the final test requested by the officer, the person shall again be informed of his or her right to have a test or tests of his or her blood performed by a person of his or her choosing described in KRS 189A.103 within a reasonable time of his or her arrest at the expense of the person arrested. He or she shall then be asked "Do you want such a test?" The officer shall make reasonable efforts to provide transportation to the tests.

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History: Amended 2023 Ky. Acts ch. 163, sec. 2, effective June 29, 2023. -- Amended 2022 Ky. Acts ch. 83, sec. 4, effective April 6, 2022. -- Amended 2019 Ky. Acts ch. 103, sec. 9, effective July 1, 2020. -- Amended 2015 Ky. Acts ch. 124, sec. 5, effective June 24, 2015. -- Amended 2010 Ky. Acts ch. 149, sec. 23, effective July 15, 2010. -- Amended 2006 Ky. Acts ch. 116, sec. 2, effective July 12, 2006. -- Amended 2000 Ky. Acts ch. 467, sec. 9, effective October 1, 2000. -- Created 1991 (1st Extra. Sess.) Ky. Acts ch. 15, sec. 7, effective July 1, 1991.