

**189A.103 Consent to tests for alcohol concentration or substance which may impair driving ability -- Test procedures -- Who may administer -- Personal testing.**

The following provisions shall apply to any person who operates or is in physical control of a motor vehicle or a vehicle that is not a motor vehicle in this Commonwealth:

- (1) He or she has given his or her consent to one (1) or more tests of his or her blood, breath, and urine, or combination thereof, for the purpose of determining alcohol concentration or presence of a substance which may impair one's driving ability, if an officer has reasonable grounds to believe that a violation of KRS 189A.010(1) or 189.520(1) has occurred;
- (2) Any person who is dead, unconscious, or otherwise in a condition rendering him or her incapable of refusal is deemed not to have withdrawn the consent provided in subsection (1) of this section, and the test may be given;
- (3) The breath, blood, and urine tests administered pursuant to this section shall be administered at the direction of a peace officer having reasonable grounds to believe the person has committed a violation of KRS 189A.010(1) or 189.520(1).
  - (a) Tests of the person's breath, blood, or urine, to be valid pursuant to this section, shall have been performed according to the administrative regulations promulgated by the secretary of the Justice and Public Safety Cabinet, and shall have been performed, as to breath tests, only after a peace officer has had the person under personal observation at the location of the test for a minimum of twenty (20) minutes.
  - (b) All breath tests shall be administered by a peace officer holding a certificate as an operator of a breath analysis instrument, issued by the secretary of the Justice and Public Safety Cabinet or his or her designee;
- (4) A breath test shall consist of a test which is performed in accordance with the manufacturer's instructions for the use of the instrument. The secretary of the Justice and Public Safety Cabinet shall keep available for public inspection copies of these manufacturer's instructions for all models of breath testing devices in use by the Commonwealth of Kentucky;
- (5) When the preliminary breath test, breath test, or other evidence gives the peace officer reasonable grounds to believe there is impairment by a substance which is not subject to testing by a breath test, then blood or urine tests, or both, may be required in addition to a breath test, or in lieu of a breath test;
- (6) Only a physician, registered nurse, phlebotomist, medical technician, or medical technologist not otherwise prohibited by law can withdraw any blood of any person submitting to a test under this section; and
- (7) After the person has submitted to all alcohol concentration tests and substance tests requested by the officer, the person tested shall be permitted to have a person listed in subsection (6) of this section of his or her own choosing administer a test or tests in addition to any tests administered at the direction of the peace officer. Tests conducted under this section shall be conducted within a reasonable length of time. Provided, however, the nonavailability of the person chosen to administer a test or

tests in addition to those administered at the direction of the peace officer within a reasonable time shall not be grounds for rendering inadmissible as evidence the results of the test or tests administered at the direction of the peace officer.

**Effective:** June 26, 2007

**History:** Amended 2007 Ky. Acts ch. 85, sec. 214, effective June 26, 2007. -- Amended 2000 Ky. Acts ch. 467, sec. 8, effective October 1, 2000. -- Created 1991 (1st Extra. Sess.) Ky. Acts ch. 15, sec. 6, effective July 1, 1991.