

1 AN ACT relating to blood testing.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 189A.105 is amended to read as follows:

4 (1) A person's refusal to submit to tests under KRS 189A.103 shall result in suspension
5 of his or her driving privilege as provided in this chapter.

6 (2) (a) At the time a breath, blood, or urine test is requested, the person shall be
7 informed:

8 1. That, if the person refuses to submit to such tests:

9 a. The fact of this refusal may be used against him or her in court as
10 evidence of violating KRS 189A.010 and will result in suspension
11 of his or her driver's license by the court at the time of
12 arraignment; and

13 b. Is subsequently convicted of violating KRS 189A.010(1):

14 i. For a second or third time within a ten (10) year period, he or
15 she will be subject to a mandatory minimum jail sentence
16 which is twice as long as the mandatory minimum jail
17 sentence imposed if he or she submits to the tests; and

18 ii. His or her license will be suspended by the Transportation
19 Cabinet;

20 2. That, if a test is taken:

21 a. The results of the test may be used against the person in court as
22 evidence of violating KRS 189A.010(1); and

23 b. The person has the right to have a test or tests of his or her blood
24 performed by a person of his or her choosing described in KRS
25 189A.103 within a reasonable time of his or her arrest at the
26 expense of the person arrested; and

27 3. That although his or her license will be suspended, he or she may be

1 eligible immediately for an ignition interlock license allowing him or
2 her to drive during the period of suspension and, if he or she is
3 convicted, he or she will receive a credit toward any other ignition
4 interlock requirement arising from this arrest.

5 (b) Nothing in this subsection shall be construed to prohibit a judge of a court of
6 competent jurisdiction from issuing a search warrant or other court order
7 requiring a blood or urine test, or a combination thereof, of a defendant
8 charged with a violation of KRS 189A.010, or other statutory violation arising
9 from the incident. However, if the incident involves a motor vehicle accident
10 in which there was a fatality, the investigating peace officer shall seek such a
11 search warrant for blood testing unless the testing has already been done by
12 consent. If testing done pursuant to a warrant reveals the presence of alcohol
13 or any other substance that impaired the driving ability of a person who is
14 charged and convicted of a violation of KRS 189A.010(1), the sentencing
15 court shall require, in addition to any other sentencing provision, that the
16 defendant make restitution to the state for the cost of the testing.

17 (c) 1. When directed by a peace officer pursuant to a search warrant or
18 other court order issued under this subsection, a qualified medical
19 professional shall withdraw the sample of blood as soon as practicable
20 and shall deliver the sample to the requesting peace officer, or other
21 peace officer as directed by the requesting peace officer, provided that
22 the collection of the sample does not jeopardize the person's life, cause
23 serious injury to the person, or seriously impede the person's medical
24 assessment, care, or treatment.

25 2. The qualified medical professional authorized to withdraw the blood
26 sample and the medical care facility where the blood sample is drawn
27 shall be considered to be acting in good faith once presented with a

1 search warrant or other court order issued under this subsection. The
2 qualified medical professional shall not require the person that is the
3 subject of the test or tests to provide any additional consent.

4 3. A qualified medical professional who administers any such test upon
5 the request of a peace officer, and a medical care facility where such a
6 test may be performed, shall not be criminally liable for the
7 administration of the test or civilly liable for damages to the person
8 tested except in cases of gross negligence or willful or wanton
9 misconduct.

10 (3) During the period immediately preceding the administration of any test, the person
11 shall be afforded an opportunity of at least ten (10) minutes but not more than
12 fifteen (15) minutes to attempt to contact and communicate with an attorney and
13 shall be informed of this right. Inability to communicate with an attorney during
14 this period shall not be deemed to relieve the person of his or her obligation to
15 submit to the tests and the penalties specified by KRS 189A.010 and 189A.107
16 shall remain applicable to the person upon refusal. Nothing in this section shall be
17 deemed to create a right to have an attorney present during the administration of the
18 tests, but the person's attorney may be present if the attorney can physically appear
19 at the location where the test is to be administered within the time period
20 established in this section.

21 (4) Immediately following the administration of the final test requested by the officer,
22 the person shall again be informed of his or her right to have a test or tests of his or
23 her blood performed by a person of his or her choosing described in KRS 189A.103
24 within a reasonable time of his or her arrest at the expense of the person arrested.
25 He or she shall then be asked "Do you want such a test?" The officer shall make
26 reasonable efforts to provide transportation to the tests.