

**55-10-406. Breath and blood tests to determine alcohol or drug content of a motor vehicle operator's blood.**

(a) A law enforcement officer who has probable cause to believe that the operator of a motor vehicle is driving while under the influence of any intoxicant, controlled substance, controlled substance analogue, drug, substance affecting the central nervous system, or combination thereof as prohibited by § 55-10-401, or committing the offense of vehicular assault under § 39-13-106, aggravated vehicular assault under § 39-13-115, vehicular homicide under § 39-13-213(a)(2), or aggravated vehicular homicide under § 39-13-218, may **request** that the operator of the vehicle **submit to test or tests** for the purpose of determining the alcohol or drug content, or both, of that operator's blood.

(b)

(1) Breath tests may be administered under the following circumstances:

(A) The operator's **implied consent** to submit to breath tests pursuant to subdivision (d)(1);

(B) The operator's consent to submit to breath tests;

(C) A **search warrant**;

(D) **Incident to a lawful arrest** for any of the offenses set out in subsection (a); or

(E) **When breath tests are required** to be administered pursuant to subdivision (c)(1).

(2) Blood tests may be administered under the following circumstances:

(A) The operator's implied consent to submit to blood tests pursuant to subdivision (d)(1);

(B) The operator's consent to submit to blood tests;

(C) A search warrant;

(D) Without the consent of the operator if **exigent circumstances** to the search warrant requirement exist; or

(E) When blood tests are required to be administered pursuant to subdivision (c)(2) and with a search warrant or without a warrant, if exigent circumstances to the search warrant requirement exist.

**(c)**

**(1)**

**(A)** A law enforcement officer shall administer or cause to be administered breath tests for the purpose of determining the alcohol content of the operator's blood if the officer has appropriate testing equipment available and has probable cause to believe that one (1) or more of the events in subdivision (c)(2)(A) have occurred;

**(B)** A law enforcement officer shall administer or cause to be administered blood tests for the purpose of determining the alcohol or drug content of the operator's blood if one (1) or more of the requirements for blood tests set out in subdivision (b)(2) are present and the officer has probable cause to believe that one (1) or more of the events in subdivision (c)(2)(A) have occurred; and

**(C)** A law enforcement officer administering breath or blood tests shall decide whether to administer or cause to be administered breath tests, blood tests, or both tests, for determining the alcohol or drug content of the operator's blood.

**(2)**

**(A)** A law enforcement officer shall administer or cause to be administered breath tests, blood tests, or both tests, pursuant to subdivision (c)(1) if the operator:

**(i)** Has been involved in a **collision resulting in the injury or death** of another and the operator of the vehicle has committed a violation of § 39-13-106, § 39-13-115, § 39-13-213(a)(2), § 39-13-218, or § 55-10-401;

**(ii)** Has committed a violation of § 39-13-106, § 39-13-115, § 39-13-213(a)(2), § 39-13-218, or § 55-10-401; and a **passenger** in the motor vehicle is a child **under eighteen (18)** years of age; or

**(iii)** Has committed a violation of § 39-13-106, § 39-13-115, § 39-13-213(a)(2), § 39-

13-218, or § 55-10-401; and has a **prior conviction** of a violation of § 39-13-106, § 39-13-115, § 39-13-213(a)(2), § 39-13-218, or § 55-10-401; or an offense committed in another state or territory that, if committed in this state, would constitute the offense of **vehicular assault** under § 39-13-106, aggravated vehicular assault under § 39-13-115, **vehicular homicide** under § 39-13-213(a)(2), aggravated vehicular homicide under § 39-13-218, **or driving under the influence** of an intoxicant under § 55-10-401.

**(B)** The blood tests required to be administered under subdivision (c)(1)(B) shall be performed in accordance with the procedure set forth in this section and § 55-10-408, and shall be performed, pursuant to a search warrant as described in subdivision (b)(2)(C) or if exigent circumstances to the search warrant requirement exist as described in subdivision (b)(2)(D), regardless of whether the operator consents to the tests.

**(C)** The results of breath or blood tests required by subdivision (c)(2)(A) may be offered as evidence by either the state or the operator of the vehicle in any court, administrative hearing, or official proceeding relating to the collision or offense, subject to the Tennessee Rules of Evidence.

**(d)**

**(1)** The operator of a motor vehicle in this state is deemed to have given implied consent to breath tests, blood tests, or both tests, for the purpose of determining the alcohol or drug content of that operator's blood. However, no such tests may be administered pursuant to this section unless conducted at the direction of a law enforcement officer having probable cause to believe the operator was in violation of one (1) or more of the offenses set out in subsection (a) and the operator signs a standardized waiver developed by the

department of safety and made available to law enforcement agencies.

**(2)** Any law enforcement officer who requests that the operator of a motor vehicle submit to breath tests, blood tests, or both tests, authorized pursuant to subsection (a), shall, prior to conducting the test, advise the operator that refusal to submit to the tests:

**(A)** Will result in the suspension by the court of the operator's driver license; and

**(B)** May result, depending on the operator's prior criminal history, in the operator being required to operate only a motor vehicle equipped with a functioning ignition interlock device, if the operator is convicted of a violation of § 55-10-401, as described in § 55-10-405.

**(3)** If the operator is not advised of the consequences of the refusal to submit to breath tests, blood tests, or both tests, the court having jurisdiction over the offense for which the operator was placed under arrest shall not have the authority to suspend the license of an operator or require the operator to operate only a motor vehicle equipped with a functioning ignition interlock device pursuant to § 55-10-417 for a violation of this subsection (d).

**(4)** Except as may be required by a search warrant or other court order, if the operator is placed under arrest, requested by a law enforcement officer to submit to breath tests, blood tests, or both tests, advised of the consequences for refusing to do so, and refuses to submit, the operator shall be charged with violating subdivision (d)(1). The determination as to whether an operator violated subdivision (d)(1) shall be made:

**(A)** At the same time and by the same court as the court disposing of the offense for which the operator was placed under arrest, upon an oral or written motion of the state; or

**(B)** At the operator's first appearance or preliminary hearing in the general sessions court, but no later than the case being bound over to the grand jury, if the state

does not make a motion pursuant to subdivision (d)(4)(A).

**(e)**

**(1)**

**(A)** If blood tests of the operator of a motor vehicle are authorized pursuant to this section, a qualified practitioner who, acting at the written request of a law enforcement officer, withdraws blood from an operator for the purpose of conducting tests to determine the alcohol or drug content in an operator's blood, will not incur any civil or criminal liability as a result of the withdrawing of the blood, except for any damages that may result from the negligence of the person so withdrawing.

**(B)** Neither the hospital nor other employer of a qualified practitioner listed in subdivision (e)(2) will incur any civil or criminal liability as a result of the act of withdrawing blood from any operator, except in the case of negligence.

**(2)** For purposes of this section, a "qualified practitioner" is a:

**(A)** Physician;

**(B)** Registered nurse;

**(C)** Licensed practical nurse;

**(D)** Clinical laboratory technician;

**(E)** Licensed paramedic;

**(F)** Licensed emergency medical technician approved to establish intravenous catheters;

**(G)** Technologist;

**(H)** A trained phlebotomist who is operating under a hospital protocol, has completed phlebotomy training through an educational entity providing such training, or has been properly trained by a current or former employer to draw blood; or

**(I)** Physician assistant.

**(f)** Any operator who is unconscious as a result of a collision, is unconscious at the time of arrest or apprehension, or is otherwise in a condition rendering the operator incapable of refusal, shall not

be subjected to blood tests unless law enforcement has obtained a search warrant or exigent circumstance exceptions to a search warrant apply.

**(g)** Provided probable cause exists for criminal prosecution for any of the offenses specified in subsection (a), nothing in this section affects the admissibility into evidence in a criminal prosecution of any analysis of the alcohol or drug content of the defendant's blood that was not compelled by law enforcement but was obtained while the defendant was hospitalized or otherwise receiving medical care in the ordinary course of medical treatment.

**(h)** Nothing in this section affects the admissibility in evidence, in criminal prosecutions for vehicular assault under § 39-13-106, vehicular homicide under § 39-13-213(a)(2), aggravated vehicular assault under § 39-13-115, or aggravated vehicular homicide under § 39-13-218, of any analysis of the alcohol or drug content of the defendant's blood that has been obtained in accordance with this section and tested according to § 55-10-408.

**(i)** Nothing in this section affects the admissibility in evidence, in criminal prosecutions for any of the offenses set out in subsection (a), of any analysis of the alcohol or drug content of the defendant's blood that has been obtained by consent and tested according to § 55-10-408.

**(j)** The results of blood tests or breath tests authorized and conducted in accordance with this section and § 55-10-408:

**(1)** Shall be reported in writing by the person making the analysis, shall have noted on the report the time at which the sample analyzed was obtained from the operator, and shall be made available to the operator, upon request; and

**(2)** Shall be admissible in evidence at the trial of any person charged with an offense specified in subsection (a).

**(k)** The fact that a law enforcement officer failed to request that the operator charged with an offense specified in subsection (a) submit to blood or breath tests is admissible as evidence at the trial of the charged offense.

**(l)** As used in this section, "operator" means any person driving or in physical control of any automobile or other motor-driven vehicle as described and prohibited by § 55-10-401.