

Traffic Safety Facts

Laws

DOT HS 810 723W

February 2007

Blood Alcohol Concentration Test Refusal Laws

Background

NHTSA encourages States to provide for enhanced sanctions for drivers who refuse to submit to a blood alcohol concentration (BAC) test after probable cause for impaired driving is established. Enhanced sanctions for refusal should be stricter than those imposed on offenders who submit to and fail the test to discourage offenders from refusing.

The BAC from a driving-while-impaired (DWI) offender is one of the most valuable pieces of evidence in an impaired driving case. DWI offenders who refuse to submit to tests are able to deny the prosecution this important piece of evidence. Enhanced sanctions for refusal remove a motivation for offenders to refuse.

Key Facts

- There are nearly 1.4 million DWI arrests in the United States each year.

- Inpatient rehabilitation costs for motor vehicle injuries average \$11,265 per patient and \$13,200 per patient for motorcycle injuries.
- All States have some form of implied consent statute. These laws are based on the principle that when people drive, they have implicitly consented to submit to a lawfully-requested test to determine the alcohol content of their blood, breath, urine, or other bodily substance if suspected of impaired driving.
- State laws vary widely with regard to administrative and criminal penalties for refusing to submit to a chemical test. All States but one (Nevada) have administrative sanctions for refusal.
- As of September 2006, 15 States (Alaska, California, Florida, Kansas, Maryland, Minnesota, Mississippi, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Oregon, Rhode Island, and Vermont) have criminal sanctions for refusal to submit to a BAC test for those 21 and older. Four States (Idaho, Iowa, North Dakota, and Virginia) have civil penalties only, and 3 States (Arkansas, Arizona, and Michigan) have penalties only for people under 21. In addition, as of January 2006, 41 States and the District of Columbia have adopted some form

of administrative license revocation for BAC test refusals.

- Refusal is a separate crime in 16 States (Alaska, Arizona, Arkansas, California, Idaho, Iowa, Kansas, Michigan, New Hampshire, New Jersey, New York, North Dakota, Oregon, Rhode Island, Vermont, and Virginia).
- A variety of organizations, including Mothers Against Drunk Driving, the National Transportation Safety Board and the Century Council (which is supported by the Nation's leading distillers) actively support enhanced penalties for offenders who refuse to submit to BAC testing.
- A refusal is admissible in criminal cases in all 50 States and the District of Columbia although 5 states (Hawaii, Massachusetts, Michigan, Rhode Island, and Virginia) allow admissibility under very limited circumstances. A refusal is admissible in civil cases in 16 States (Alabama, Alaska, Arizona, California, Delaware, Illinois, Indiana, Iowa, Louisiana, Missouri, New Mexico, New York, North Dakota, Oregon, Utah, and Wyoming) and the District of Columbia.

The percentage of offenders who refuse a breath test has been a problem in many States. With new, stronger laws and sanctions

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(sometimes triggered by high BAC levels) being enacted across the country, NHTSA is currently studying breath test refusal rates.

In 2005, NHTSA released an interim report of a breath test refusal study. The study included a review of administrative and criminal sanctions for breath test refusal in each State, using the *Digest of State Alcohol-Highway Safety Related Legislation* (National Highway Traffic Safety Administration, 2002) and the *Implied Consent Laws* (American Prosecutor Research Institute, 2002). The key law provisions are summarized in the document.

Incentive Grant Program

In 2005, Congress enacted the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). Section 2007 of SAFETEA-LU continues the alcohol-impaired driving countermeasures incentive grant program (under Section 410 of chapter 4 of Title 23) that encourage States to adopt and implement effective programs, including Administrative License Revocation (ALR) laws, to reduce traffic safety problems resulting from individuals driving while impaired by alcohol. A qualifying State may use these grant funds to implement impaired driving activities in accordance with the Federal statute.

To meet the ALR criterion of the Section 410 grant program, SAFETEA-LU provides that a State's ALR system must impose certain

sanctions on all individuals who fail or refuse to submit to a chemical test, including that:

- ▲ first offenders must be subject to at least a 90-day license suspension, provided that after 15 days a provisional license may be issued so the offender can drive to and from employment, school, an alcohol treatment program, or an interlock service facility and only in a vehicle equipped with an ignition interlock;
- ▲ repeat offenders must be subject to at least a one-year suspension or revocation, provided that after 45 days a provisional license may be issued so the offender can drive to and from employment, school, an alcohol treatment program, or an interlock service facility and only in a vehicle equipped with an ignition; and
- ▲ suspensions or revocations must take effect within 30 days after offenders refuse to submit to a chemical test or receive notice of having failed a breath test.

The statutory provisions of the Section 410 program have been implemented by a NHTSA regulation in 23 CFR Part 1313.

References

Breath Test Refusals In DWI Enforcement: An Interim Report. DOT HS 809 876. T.J. Zwicker, J. Hedlund, and V.S. Northrup,

Pruesser Research Group for National Highway Traffic Safety Administration, Washington, DC, May 2005.

Countermeasures that Work. A Highway Safety Countermeasures Guide for State Highway Safety Offices. DOT HS 809 980. National Highway Traffic Safety Administration, Washington, D.C., 2006.

Enhanced Sanctions for Higher BACs: Evaluation of Minnesota's High BAC Laws. DOT HS 809 677. National Highway Traffic Safety Administration, Washington, D.C., 2004.

Jones, R.K.; Joksch, H.C.; and Willisowski, C.H. (1991). *Implied consent refusal impact.* Final Report, DOT-HS-807-765, National Highway Traffic Safety Administration, Washington, DC.

Rehabilitation Costs and Long-Term Consequences of Motor Vehicle Injury. DOT HS 810 581. National Highway Traffic Safety Administration, Washington, DC, March 2006.



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Reports and additional information are available from your State Highway Safety Office, the NHTSA Regional Office serving your State, NHTSA Headquarters, Impaired Driving and Occupant Protection Office, ATTN: NTI-111, 400 Seventh Street SW., Washington, DC 20590; 202-366-2683; or NHTSA's Web site at www.nhtsa.gov