

Traffic Safety Facts

Laws

DOT HS 810 884W

January 2008

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. To discourage test refusal, sanctions for refusal should be stricter than those imposed on offenders who submit to and fail a test.

The BAC of a driving-while-impaired (DWI) offender is one of the most valuable pieces of evidence in an impaired driving case. 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.
- To date, 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, 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 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 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.
- 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) support enhanced penalties for offenders who refuse to submit to BAC testing.

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

Inside This Issue

- Background
- Key Facts
- Incentive Grant Program
- References

(sometimes triggered by high BAC levels) are enacted across the country, NHTSA continues to study 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* (NHTSA, 2002).

Incentive Grant Program

The alcohol-impaired driving countermeasures incentive grant program (under Section 410 of chapter 4 of Title 23) encourages 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 and enforce alcohol-impaired driving prevention programs.

To meet the administrative license suspension or revocation system criterion of the Section 410 grant program, a State 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, except that after 15 days a provisional license may be issued so the offender may 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, except that after 45 days a provisional license may be issued so the offender may 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 implementing regulations for the Section 410 program are located in 23 CFR Part 1313.

References

- Jones, R.K.; Joksch, H.C.; I Wiliszowski, C.H. (1991). *Implied Consent Refusal Impact*. DOT-HS-807-765. Washington, DC: National Highway Traffic Safety Administration.
- Miller, T., Langston, E., Lawrence, B., Becker, L., Snowden, C., Granger, C., Russell, C., Jeffrey Kreutzer, J., & Marwitz, J. March 2006. *Rehabilitation Costs and Long-Term Consequences of Motor Vehicle Injury*. DOT HS 810 581. Washington, DC: National Highway Traffic Safety Administration.
- NHTSA (2006). *Countermeasures That Work: A Highway Safety Countermeasure Guide for State Highway Safety Offices*. DOT HS 809 980. Washington, DC: National Highway Traffic Safety Administration.
- NHTSA (2004). *Enhanced Sanctions for Higher BACs: Evaluation of Minnesota's High BAC Laws*. DOT HS 809 677. Washington, DC: National Highway Traffic Safety Administration.
- Zwicker, T.J., J. Hedlund, & V.S. Northrup. (2005). *Breath Test Refusals in DWI Enforcement: An Interim Report*. DOT HS 809 876. Washington, DC: National Highway Traffic Safety Administration.



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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, 1200 New Jersey Avenue SE., Washington, DC 20590; 202 366 2683, or NHTSA's Web site at www.nhtsa.gov.