



## Refusing Drunk Driving Tests

*By Jeanne Mejeur*

When I took a course in criminal procedure 20 years ago, the professor asked the class, “What do you tell your client when he calls you in the middle of the night, having been pulled over for drunk driving and asks if he should take the breath test? ‘No! Of course not!’”

*Civil penalties encourage test refusal.*

Why? It’s simple: In most states a driver who refuses the test will have his or her license suspended, which is a civil penalty and an inconvenience that many drivers ignore. On the other hand, a driver who takes and fails the test will be charged with drunk driving. If convicted, he faces a license suspension, fines, potential jail time, probation and more. Beyond the criminal penalties, a drunk driving conviction may increase auto insurance rates, affect employment and serve as a prior offense in terms of sentencing if the person is picked up again for drunk driving.

*Official tests are given after arrest.*

At least 32 states allow preliminary breath tests of drunk drivers to help police determine if they have probable cause for arrest, but the results of those tests are generally not admissible in court. Once a drunk driver is arrested, an official test is required. Drivers are supposed to comply under implied consent laws to a chemical test of their breath, blood or urine. Many drivers, however, refuse that test.

*One out of five drivers refuse to be tested.*

Refusal rates vary by jurisdiction, but, according to data from the Traffic Injury Research Foundation, more than 20 percent of drivers arrested refuse the implied consent test. In some jurisdictions, police report that two out of three refuse testing. Repeat offenders are more likely to refuse the test than first-time offenders because they have learned that it is to their advantage.

*A test result is the most important piece of evidence.*

Without chemical test results, drunk drivers may still be arrested and charged based on other evidence, such as failing a standard field sobriety test. For prosecutors, however, the single most convincing piece of evidence is a BAC test result. Juries want to know how drunk the person was. Without a BAC test result, prosecutors have a more difficult time winning a conviction. Offenders who refuse tests may be more likely to be acquitted, charged with a lesser offense, given a plea bargain or have the charges dropped altogether.

### State Action

*Criminal penalties for refusal make it harder to say no.*

At least 16 states have responded to the problem of chemical test refusals by imposing stronger penalties that make it less attractive to refuse, either in the form of criminal penalties or enhanced civil penalties. In Minnesota, Nebraska and Vermont the penalties for refusal are equal to or substantially similar to the penalties for a drunk driving conviction. In other states, significant penalties have been added to the usual driver’s license suspension. Among the additional sanctions officials can impose on those who refuse to be tested are hefty fines, jail

time, community service, alcohol or drug treatment and vehicle impoundment. By removing the incentive to refuse a chemical test, legislators help law enforcement officers and prosecutors gather the necessary evidence to make arrests and successfully bring drunk driving cases to trial. This ultimately may help reduce the incidence of drunk driving. Bills were introduced this session in Alaska, Florida, Maryland, New Jersey, Rhode Island, South Carolina, South Dakota and Virginia to strengthen penalties for refusal. A number of other states looked at mandatory drug and alcohol testing following accidents.

### CRIMINAL OR ENHANCED CIVIL PENALTIES FOR TEST REFUSAL \*

State	Penalties for Refusal
<b>Alaska</b>	1 <sup>st</sup> : \$250-\$5,000, 72 hours-1 year; 2 <sup>nd</sup> : \$500-\$5,000, 20 days-1 year; 3 <sup>rd</sup> : \$1,000-\$5,000, 60 days-1 year; 4 <sup>th</sup> : \$2,000-\$5,000, 120 days-1 year; 5 <sup>th</sup> : \$3,000-\$5,000, 240 days-1 year; 6 <sup>th</sup> : \$4,000-\$5,000, 1 year.
<b>Arkansas</b> <i>(age 21 &amp; under)</i>	1 <sup>st</sup> : \$100-\$500; 2 <sup>nd</sup> : \$200-\$1,000, 30 days community service; 3 <sup>rd</sup> : \$500-\$2,000, 60 days community service
<b>California</b> <i>(with prior DUI)</i>	1 <sup>st</sup> : \$390-\$1,000, 48 hours-6 months; 2 <sup>nd</sup> : 96 hours; 3 <sup>rd</sup> : 10 days; 4 <sup>th</sup> and subsequent: 18 days.
<b>Delaware</b>	1 <sup>st</sup> : 90 days vehicle impoundment; 2 <sup>nd</sup> : 1-year vehicle impoundment.
<b>Florida</b>	2 <sup>nd</sup> : 1 year, \$1,000
<b>Hawaii</b>	Vehicle registration revoked concurrently with license suspension.
<b>Indiana</b>	Refusal with injury or fatality accident: \$500.
<b>Maine</b>	Vehicle registration may be suspended if on suspended license.
<b>Minnesota</b>	Misdemeanor: \$1,000, 90 days; gross misdemeanor: \$3,000, 1 year; felony: \$10,000, 5 years.
<b>Nebraska</b>	1 <sup>st</sup> : \$500, 60 days; 2 <sup>nd</sup> : \$500, 90 days; 3 <sup>rd</sup> : \$600, 1 year; 4 <sup>th</sup> : \$10,000, 5 years.
<b>New Jersey</b>	1 <sup>st</sup> : \$300-\$500, 12 hours treatment, \$3,000 insurance surcharge; 2 <sup>nd</sup> : \$500-\$1,000, 12 hours treatment, \$3,000 insurance surcharge; 3 <sup>rd</sup> : \$1,000, 12 hours treatment, \$4,500 insurance surcharge.
<b>New York</b>	1 <sup>st</sup> : \$300 (\$350 commercial vehicle); 1 <sup>st</sup> with prior DUI: \$750; 2 <sup>nd</sup> and subsequent: \$750.
<b>Ohio</b>	1 <sup>st</sup> : \$100; 2 <sup>nd</sup> : \$250, 30 days; 3 <sup>rd</sup> and subsequent: \$500, 60 days.
<b>Rhode Island</b>	1 <sup>st</sup> : \$200-\$500, 10-60 hours community service, mandatory treatment; 2 <sup>nd</sup> : \$300-\$500, mandatory treatment; 3 <sup>rd</sup> : \$400-\$500, mandatory treatment.
<b>Tennessee</b>	Refusal on suspended license: \$1,000, 5 days.
<b>Vermont</b> <i>(with prior DUI)</i>	1 <sup>st</sup> : \$750, 2 years; 2 <sup>nd</sup> : \$1,500, 2 years, 200 hours community service; 3 <sup>rd</sup> and subsequent: \$2,500, 5 years, 400 hours community service; serious injury DUI: 1-15 years, \$10,000.
<b>Virginia</b>	Subsequent refusal is a misdemeanor; extended administrative license suspension imposed.

*\*Penalties have been summarized; many additional details apply to sentencing.*

*Sources: Digest of State Alcohol/Highway Safety Related Legislation, 21<sup>st</sup> Edition, March 2004. Bill and statute searches. State legislative Web sites survey.*

### Selected References

- Simpson, Herb M. and Robyn D. Robertson. *DWI System Improvements for Dealing with Hard Core Drinking Drivers: Enforcement*. Ottawa, Ontario, Canada.: Traffic Injury Research Foundation, November 2001.
- Simpson, Herb M. and Robyn D. Robertson. *DWI System Improvements for Dealing with Hard Core Drinking Drivers: Prosecution*. Ottawa, Ontario, Canada.: Traffic Injury Research Foundation, June 2002.

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