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Breath Test Refusals in DWI Enforcement: An Interim Report



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There are nearly 1.5 million DWI (driving while intoxicated) arrests in the United States each year. Although not always required for a conviction, having the driver's BAC (blood alcohol concentration) at the time of arrest can often improve the chances of both court conviction and administrative sanctions for alcohol-related driving offenses.

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.

States vary on how these laws are written and in the severity of the sanction imposed if the driver does not provide a BAC. In many states the punishment for a "refusal" is a license suspension for a longer time period than if the person took and failed the test (had a BAC over the legal limit). However, for many offenders, the risk of a longer license suspension is a much more palatable consequence than taking and failing the breath test, and then possibly facing the consequences of a criminal conviction for a DWI offense (often including jail time and substantial fines).

Also, in many States a refusal is not counted as a prior offense on an offender's record. Thus for those who refuse to take a breath test, the next time they are stopped for impaired driving, they are again treated as first-time offenders rather than face the additional penalties given to multiple offenders. This is another reason why many drivers refuse to take a BAC test.

The percentage of offenders who refuse a breath test has been a problem in many States for years. With new, stronger laws being enacted across the country, and the threat of more severe sanctions (sometimes triggered by high BAC levels), there has been a perception that the rate of breath test refusals has increased as offenders seek to avoid tougher criminal convictions.

The Preusser Research Group is conducting a research study for the National Highway Traffic Safety Administration (NHTSA) examining the issue of breath test refusals. This interim report documents breath test refusal laws and rates across the United States, and whether those rates have increased. The report also discusses possible reasons why some States have high refusal rates.

Findings

Refusal Rates

In 2001, about one-quarter of all drivers arrested for DWI in the United States refused breath tests. The rate across States varies dramatically, from 5.3 percent in California to 84.9 percent in Rhode Island. The average state rate was 25 percent.

The 2001 rates were compared to data from a previous NHTSA study that used 1987 breath test refusal data. In general, the distribution of rates across States is similar, but with slightly higher refusal rates, and more States at the high end of the distribution in the current study. Refusal rates for some States differ markedly from 1987 to 2001, which may be due to real differences in refusal rates, but may also reflect different reporting procedures.

Possible Solutions for High Refusal Rates

Connecticut, Maryland, Louisiana, Oklahoma, and Florida agreed to participate in the second phase of the research, which was to learn more about a few States' laws, policies and procedures, and sanctions related to DWI and breath test refusals. These States were chosen based on their high refusal rates as well as the differences in DWI laws and sanctions between the States. The researchers conducted interviews with prosecutors, judges, defense attorneys, law enforcement officers, and administrative unit officers in each of these States.

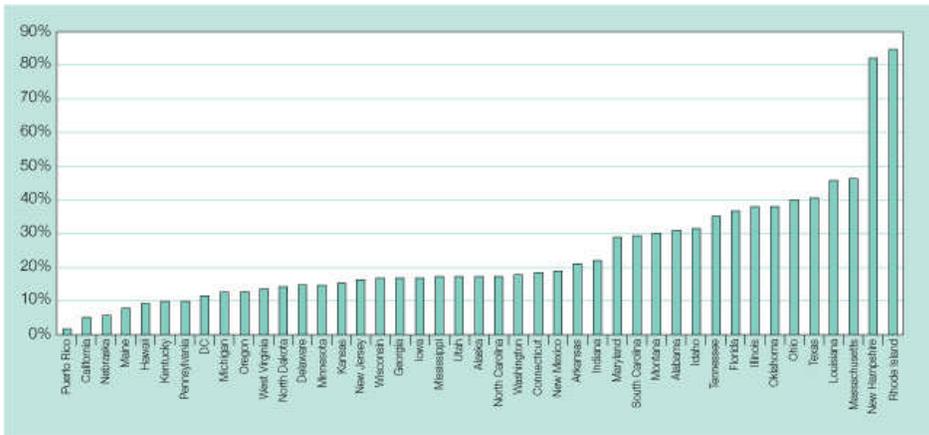
The results of these interviews indicate, as with many aspects of the DWI criminal justice system, it is often difficult to come up with easy "fixes" to a problem. One suggestion is that States review their processes for notifying suspects of both the administrative and criminal consequences of refusing to provide breath samples.

Several States have the ability to allow officers to obtain a warrant, after a breath test is refused, to draw blood for the chemical test. This practice is followed in a few jurisdictions and could be expanded to other communities. Getting the word out that a refusal for a breath test would lead to a warrant for a blood draw may decrease the number of refusals among those who choose to drive while impaired.

A third phase of this study will assess the viability and effectiveness of potential solutions to the chemical test refusal problem.

[Breath Test Refusals By State](#)

2000 data was used for MA and NJ. Complete data was not available from AZ, CO, MO, NV, NY, SD, VA, VT, or WY.



How To Order

For a copy of *Breath Test Refusals in DWI Enforcement: An Interim Report*, including appendices of each State’s penalties for a BAC test refusal (74 pages total), write to the Office of Research and Technology, NHTSA, NHTI-131, 400 Seventh Street, SW., Washington, DC, 20590; or send a fax to 202-366-7096. Amy Berning was the project manager for this study.

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