

Enhanced Sanctions for High-BAC Drivers

Drivers with a high blood alcohol concentration (BAC) have a heightened relative crash risk. Compared with drivers who have not consumed alcohol, drivers with BACs of .15 or above are 380 times as likely to be involved in a single-vehicle fatal crash (Zador et al., 1991). As such, they pose a significant public safety risk. Among the 9,967 alcohol-impaired driving fatalities in 2014, 69% were in crashes in which at least one driver had a BAC of .15 or higher (NHTSA, 2015).

High-BAC offenders can be classified as hardcore drunk drivers. Many of these individuals have driven drunk repeatedly but may not have avoided detection or prosecution for these offenses. As such, the model for enhanced high-BAC sanctions follows those in place in the majority of jurisdictions for repeat offenders.

The specifics of these laws vary by state but typically includes lengthier administrative license suspension/revocation, mandatory installation of an ignition interlock, increased fines, lengthier periods of incarceration, mandatory assessment and treatment, and ineligibility for deferred sentencing or diversion programs. The BAC level at which these sanctions apply also varies, typically ranging from .15 to .20. Several jurisdictions have created a tiered system whereby enhanced sanctions are required at more than one BAC level and are graduated. For example, impaired drivers in Virginia face enhanced penalties at both .15 and .20. In states where there is judicial discretion in sentencing, the presence of a high-BAC is often viewed as an aggravating factor.

Research Highlights:

A 2003 study examined Minnesota's high-BAC law which imposed mandatory minimum administrative and criminal sanctions for offenders who drove with a BAC of .20 or higher. The researchers found that in the two years since the law's implementation, the percentage of high-BAC offenders decreased (21.0% to 20.4%). The severity of case dispositions for high-BAC offenders (both first and repeat) increased, although the severity appeared to decline over time for first offenders (McCartt and Northrup, 2003). With respect to test refusal rates, there was a decline for first offenders from 12.7% in 1997 to 10.5% in 2000, but the rate for repeat offenders remained consistent at 22%.

McCartt and Northrup (2003) further noted that most states they interviewed as part of their review of high-BAC systems reported few problems implementing this type of law and indicated that it had a positive impact on their overall DUI system. The most commonly noted problem was the potential for these laws to increase refusal rates as offenders would look to avoid the enhanced penalties by refusing to submit to a chemical test.

A potential solution to address the refusal problem is to pass laws that 1) criminalize chemical test refusal and 2) ensure that the penalties for refusal are more punitive than those for driving with a high-BAC.

Prevalence:

Forty-six states and the District of Columbia have enhanced penalties for drivers with high BACs. Only Alaska, Arkansas, Hawaii, and Mississippi lack this type of law. To learn what the high-BAC cutoff is in each state, please refer to the Responsibility.org [State Laws Map](#).

Responsibility.org Position:

The Foundation for Advancing Alcohol Responsibility supports enhanced or increased sanctions for high-BAC offenders. In recognition of the heightened risk these offenders pose to public safety, Responsibility.org recommends that one component of the enhanced sanction for this offender population be mandatory assessment for substance use and mental health disorders. Assessment outcomes should guide the criminal justice system in determining the appropriate level of supervision and interventions that are most appropriate based on individual offenders' risk of re-offense and treatment needs.

References:

McCartt, A., & Northrup, V. (2003). *Enhanced Sanctions for Higher BACs: Evaluation of Minnesota's High-BAC Law*. DOT HS 809 677. Washington, D.C.: National Highway Traffic Safety Administration.

National Highway Traffic Safety Association (NHTSA). (2015). *Traffic Safety Facts: Alcohol-Impaired Driving, 2014 Data*. DOT HS 812 231. Washington, D.C.: Author.

Zador, P. (1991). Alcohol-related relative risk and fatal driver injuries in relation to driver age and sex. *Journal of Studies on Alcohol*, 52(4), 302-310.