BAC Test Refusal Penalties

Every state has an implied consent law that stipulates that drivers consent to be tested if they are suspected of driving under the influence of alcohol and/or drugs. Test refusal (breath, blood, urine) is often the first step a drunk driver takes in avoiding prosecution and sentencing. Many DUI suspects do not cooperate with the police by refusing to answer questions, take the standardized field sobriety tests (SFSTs), or take a breath test. When drivers refuse to provide a chemical test, police officers are hindered in gathering the evidence needed to support a DUI charge. Even without the test results, DUI charges may still be brought against the offender, but conviction depends entirely on the law enforcement officer's observations and subsequent testimony. By refusing to submit to a chemical test, drunk drivers can potentially avoid a criminal conviction and may not be identified as a repeat offender the next time they are stopped.

Test refusals are most common among hardcore/repeat drunk drivers, primarily because these individuals know that their test results will be high, they are familiar with loopholes in DUI laws, and they know that sanctions for refusing to cooperate with law enforcement may be far less severe than sanctions for a DUI conviction. In most states, the penalties for refusal involve administrative license suspensions of 90 to 180 days. This is typically less punitive than the criminal penalties for failing a chemical test for DUI.

In response to high BAC test refusal rates, a number of states have implemented No Refusal programs to reduce the number of test refusals. No Refusal programs ensure BAC test results by enabling police officers to obtain a search warrant from a judge or magistrate for blood samples of drunk driving suspects. The use of warrants to obtain a chemical test can successfully reduce the number of test refusals and subsequently, result in more pleas and convictions as well as fewer trials (Hedlund and Beirness, 2007).

A 2013 Supreme Court (SCOTUS) ruling (*McNeely v. Missouri*) established that the natural metabolization of alcohol in the blood stream does not present a per se exigency that justifies an exception to the warrant requirement in all drunk driving cases. Rather, the Court opined that exigency must be determined based upon the totality of circumstances in individual cases. Specifically, the Court said that in "those drunk driving investigations where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so" (Missouri v. McNeely, 133 S.Ct. 1552, 1561 (2013)). This ruling has created a complex situation for law enforcement because it did not identify the precise circumstances under which an officer would be justified in concluding that exigent circumstances existed. Though it does leave some questions unanswered, McNeely clearly allows for warrantless blood draws when exigent circumstances can be shown. Under McNeely, officers should be able to obtain warrantless draws where there has been a crash that will require time to investigate thereby delaying any test (133 S.Ct. at 1560), where they have made repeated unsuccessful attempts to contact a prosecutor or judge (133 S.Ct. at 1562), or where there is evidence that a substantial portion of alcohol consumed is being eliminated based on the time of the suspect's last drink (133 S.Ct. at 1563).

In 2016, SCOTUS will hear oral arguments on three additional cases (Birchfield v. North Dakota; Beylund v. North Dakota; Bernard v. Minnesota) that challenge whether the criminalization of breath test refusal is a violation of Fourth Amendment rights under the U.S. Constitution.

Research Highlights:

- Law enforcement officers reported experiencing test refusals in 1/3 of the cases they processed, with refusal percentages running even higher among hardcore drunk drivers (Robertson and Simpson, 2003).
- Nationwide, an average of 24% of drivers arrested for DUI refuse the BAC test (Jones & Nichols, 2012; Namuswe et al., 2014). Some states report refusal rates of up to 50% for drivers with a prior DUI conviction (Jones and Lacey, 2000).
- In a 2002 study on DUI prosecutions, 3/4 of the prosecutors interviewed said the BAC test was the single most critical piece of evidence needed for a conviction, evidence they are frequently without (Simpson and Robertson, 2002).
- Zwicker et al. (2005) found that chemical test refusal rates tend to be lower in states where the consequences of refusal are greater than the consequences of test failure.
- To date, no study has examined whether stronger test refusal penalties are associated with a reduction in alcohol-impaired crashes (Goodwin et al., 2015).
- The National Committee on Uniform Traffic Laws and Ordinances (NCUTLO) recommends in its DUI model law that the penalty for test refusal should be double the penalty for test failure. It also recommends that a driver's refusal to take a BAC test be admissible in court.

Prevalence:

All states except Wyoming have administrative penalties for chemical test refusal. Currently, 18 states have established criminal penalties in addition to administrative penalties for BAC test refusal (AK, AR, CA, FL, IN, KS, LA, ME, MD, MN, MS, NE, NJ, OH, OR, RI, AND VA).

Responsibility.org Position:

The Foundation for Advancing Alcohol Responsibility supports the efforts of law enforcement and prosecutors to effectively identify and prosecute suspected DUI offenders. In an effort to deter offenders from refusing to submit to a chemical test (and therefore, avoid prosecution), Responsibility.org supports criminalizing test refusal. The penalties for test refusal should be more punitive than those for a DUI conviction.

References:

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