



No Refusal Programs

The refusal of impaired driving suspects to submit to chemical tests is an obstacle in DUI investigations that law enforcement and prosecutors frequently encounter, particularly with individuals who have prior convictions. Many DUI suspects refuse to answer questions, perform standardized field sobriety tests, or provide chemical samples when asked to do so in an effort to hinder the investigation. By refusing to submit to a chemical test, suspects deprive law enforcement of some of the strongest evidence of alcohol impairment. Those who have been through the system in the past know the importance of breath test results and are likely to realize that their blood alcohol concentration (BAC) is over the per se limit (in most instances, well above .08). To deter refusal, law enforcement agencies have devised strategies like the *No Refusal* program.

To deter individuals from refusing to submit to chemical tests, many states have passed laws that attach penalties to [test refusal](#). Unfortunately, in most jurisdictions, these sanctions are far less severe than those associated with a DUI conviction and therefore, impaired drivers have an incentive to refuse a breath test. How refusals are handled depends on the type of sample. In most DUI investigations, law enforcement attempt to obtain breath samples from suspects. Breath tests are easy to administer, are non-invasive, and are considered a search incident to arrest which means that there is no warrant requirement. Unfortunately, law enforcement cannot compel an individual to provide a breath sample and, as such, the test can be refused. This refusal, however, can incur criminal sanctions. Blood tests are different. Recent Supreme Court rulings have found that the invasive nature of blood tests constitute a search and to protect Fourth Amendment rights, a warrant must be obtained in instances where a suspect does not willingly submit to a blood draw. The blood draw can then be performed without the suspect's cooperation thereby eliminating the ability to refuse the test. As such, only administrative penalties can be applied in instances where impaired drivers refuse to willingly submit to a blood test.



NO REFUSAL

Over the years, several states have established criminal sanctions for test refusal, but these statutes are now subject to challenge and modification as most do not differentiate between testing methods (see the [State Map](#)). This leaves law enforcement with a situation where refusal rates remain a significant concern.

The *No Refusal* program was first implemented in Texas in 2005 to address high rates of test refusal. Law enforcement and prosecutors sought to create a program that enables officers to quickly obtain warrants for blood draws, thereby eliminating the ability of suspects to refuse to submit to tests. The program involves a coordinated effort among law enforcement, judges/magistrates, prosecutors, and medical personnel that facilitates expedited processing of DUI cases. No Refusal nights or weekends are a popular approach that can supplement existing [high visibility enforcement](#) initiatives such as sobriety checkpoints or DUI mobilizations. What differentiates the No Refusal program from other mobilizations is the degree of collaboration from key stakeholders. These efforts are coordinated in advance and done so with the intention of streamlining DUI investigations and simultaneously creating general deterrence.

The No Refusal process is simple. Once an officer determines that there is probable cause for a DUI arrest and the suspect refuses to submit to a breath test, the prosecutor assigned to the effort will review the case and

make a warrant application to an on-call judge. If the judge grants the warrant (typically over the phone or via other electronic means), a blood sample can be quickly collected by qualified medical personnel who are on-site. In counties that have mobile DUI processing vehicles, the entire process can be handled from start to finish at a checkpoint location. This collaborative and efficient approach ensures that blood draws are performed without delay and assists in building a strong impaired driving case.

Similar to other high visibility enforcement efforts, the No Refusal program is effective due to the general deterrence it creates. To maximize impact, media coverage in advance of No Refusal weekends is necessary. The goal of coverage is two-fold: 1) make the public aware of the increased law enforcement presence, thereby increasing the perception that DUI will result in arrest; and, 2) make the public aware that refusing to submit to a breath test or blood draw will result in law enforcement quickly obtaining a warrant for a forcible blood draw. Furthermore, the public should also be made aware that refusal will only lead to additional sanctions. Stakeholders involved in No Refusal initiatives consistently report that once it becomes apparent that officers can easily obtain a warrant for blood draws, many individuals who initially refuse to provide a breath sample will eventually choose to submit to the less invasive breathalyzer.

In the years since the creation of the No Refusal model, [electronic warrant systems](#) have proliferated among law enforcement agencies. These systems make it easier and faster to submit, review, and approve warrants. In addition to reducing error rates and streamlining an important aspect of the DUI investigative process, these systems also facilitate greater coverage and access to judges/magistrates. These systems can make it easier to implement No Refusal initiatives on a consistent basis across multiple jurisdictions.

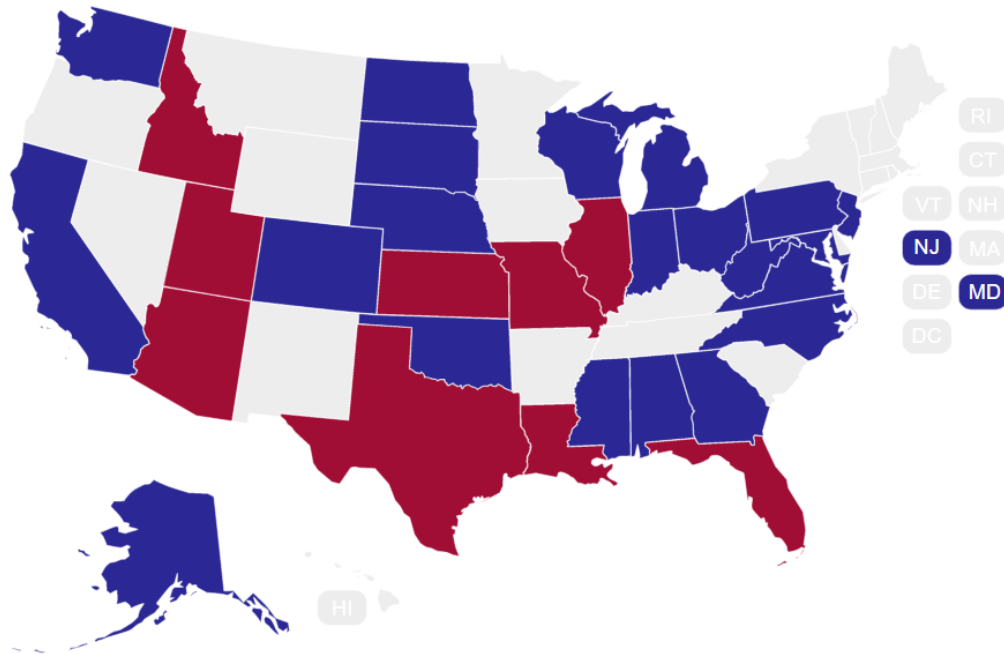
Research Highlights:

- NHTSA gathers data on state BAC test refusal rates and identifies national average based on available data. In 2011, data was collected from 34 states and NHTSA determined that the average BAC test refusal rate was 24%. This is a slight increase from 2005 when data collected from 28 states revealed an average refusal rate of 22.4% (Berning et al., 2008; Namuswe, et al., 2014).
- Three-fourths of prosecutors interviewed indicated that blood alcohol tests are the single most critical piece of evidence needed for convictions; evidence they frequently lack (Simpson & Robertson, 2002).
- In Montgomery County, TX, the average BAC of individuals who refused to submit to a breath test was significantly higher than those who voluntarily complied (.19 compared to .13). After implementation of the program, Montgomery County reduced refusals at sobriety checkpoints from 50% in 2005 to 10% in 2010 (NHTSA, n.d.). Conviction rates have increased, and DUI case dismissals have decreased since No Refusal Weekends have been implemented in Texas (NHTSA, n.d.).
- The Phoenix Police Department reported a decrease in the refusal rate from 40% to 5% after implementation of the No Refusal program (Berning et al., 2007).
- Arizona, Michigan, and Utah found repeat offenders were most likely to refuse breath tests and the BAC data collected has led to fewer trials and more convictions (Berning et al., 2007).
- In a study of test refusals effect on DUI prosecutions, Jones and Nichols (2012) found that there was a reasonably strong and negative relationship between the DUI conviction rate in selected study counties and the overall refusal rate for that state. In other words, in states with high refusal rates, DUI conviction rates are likely to be low.
- A significant challenge that states encounter is being able to consistently track BAC tests on account of shortages in personnel and administrative resources; this limits the ability to determine refusal rates (Namuswe, et al., 2014). The establishment of a centralized system for BAC test records could address this problem.
- In a recent survey of states conducted by NHTSA, stakeholders noted that refusal rates are likely to remain high if the sanctions that individuals face for failing a BAC test are more severe than those for refusing to submit to the test (Namuswe, et al., 2014).

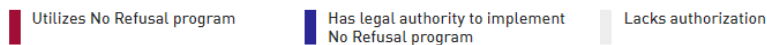
Prevalence:

States that have previously/continue to conduct No Refusal nights or weekends include: Arizona, Florida, Idaho, Illinois, Kansas, Louisiana, Missouri, Texas, and Utah.

In addition, many other states have the legal authority to conduct No Refusal-type programs and could integrate this strategy into existing high visibility enforcement efforts. These states include: AK, AL, CA, CO, GA, IN, MD, MI, MS, NC, ND, NE, NJ, OH, OK, PA, SD, VA, WA, WI, and WV.



STATE LAW: NO REFUSAL PROGRAMS



Access Responsibility.org's interactive [State Laws Map](#) to stay up-to-date on No Refusal programs.

Responsibility.org Position:

Responsibility.org supports the efforts of law enforcement and prosecutors to effectively identify and prosecute suspected DUI offenders. No Refusal programs provide law enforcement with a tool to increase compliance with BAC testing and strengthen impaired driving cases. In addition to this approach, Responsibility.org also supports the development and use of electronic warrant systems which facilitate timely acquisition of warrants for blood draws and streamline an important component of DUI investigations.

References:

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Berning, A., Compton, R., Vegega, M., Beirness, D., Hedlund, J., Jones, R., & Nichols, J. (2008). *Refusal of Intoxication Testing: A Report to Congress*. (DOT HS 811 098). Washington, D.C.: National Highway Traffic Safety Administration.

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