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Implied Consent Laws

After stopping a motorist on suspicion of DUI, the officer typically checks for signs of impairment and may ask the driver to submit to a breathalyzer test to determine his or her blood-alcohol concentration (BAC).

But not everyone willingly provides a breath sample and police officers cannot force DUI suspects to blow into a tube. More than 20 percent of drunk driving suspects in the U.S. refuse to take a breathalyzer or other BAC test when an officer suspects drunk driving, according to the National Highway Traffic Safety Administration (NHTSA). It varies greatly from state to state, from 2.4 percent in Delaware to 81 percent in New Hampshire (based on 2005 data cited by NHTSA).

DUI attorneys generally have more leverage defending their clients in the absence of breathalyzer test results. The act of refusal, though, comes with its own penalties.

Implied Consent Laws

Under "implied consent" laws in all states, when they apply for a driver's license, motorists give consent to field sobriety tests and chemical tests to determine impairment. Should a driver refuse to submit to testing when an officer has reasonable suspicion that the driver is under the influence, the driver risks automatic license suspension along with possible further penalties.

Consequences for breathalyzer refusal vary by state, which may explain the wide variance in statewide refusal rates, but most states impose an automatic six- or 12-month driver's license suspension upon refusal of a BAC test. Suspensions usually increase for a refusing motorist with past DUI convictions, sometimes including jail time. License suspension following a refusal may also cause your car insurance company to cancel your policy. In many states, if the driver is found guilty of DUI, having refused the breathalyzer can result in enhanced penalties.

Penalties for Refusing a Breathalyzer

Here is just a sample of state DUI laws with respect to breathalyzer test refusal:

- *California*: Can result in a citation for refusing a chemical BAC test; consenting to a blood draw after initially refusing a breathalyzer test exempts the suspect from a refusal charge
- *New York*: Automatic six-month license suspension plus a possible \$500 fine
- *Massachusetts*: Six-month automatic license suspension, but refusal cannot be used to imply guilt in a DUI case; lifetime suspension for refusal after three prior DUI offenses
- *Ohio*: Mandatory minimum 6-day jail sentence or three days in jail plus a 72-hour driver intervention program, and a fine, for those with a prior DUI conviction (20-day sentence if it's the second DUI charge in six years)

Ask a DUI attorney in your state for more specific information about refusing a breathalyzer test.

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