



Issue Brief: Refusal of Implied Consent

Issue Brief 3: Refusal of Implied Consent Tests (March 2015)

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In almost every state plus Washington, D.C., people arrested for impaired driving are permitted by law to refuse chemical testing of their blood, breath, or urine.ⁱ Forty-six states plus the District of Columbia permit such a refusal to be admitted into evidence in legal proceedings against these arrestees (though some states limit this to just criminal prosecutions). Of these forty-six states, three states (Maryland, Michigan, & Virginia) constrict the scope of the admissibility of this refusal. These three states permit the refusal of a chemical test to be introduced into evidence to explain why the test results are unavailable, rather than just as proof of guilt or innocence. Rhode Island permits the evidence of refusal to be admitted only if the defendant chooses to testify—otherwise, it remains inadmissible. Three states (Massachusetts, New Mexico, and Wyoming) simply do not permit an individual's refusal to submit to testing into the

record under any circumstances.



While individuals are permitted to refuse these chemical tests, forty-nine states plus D.C. impose some sort of penalty for doing so. Having repealed the relevant statutes in 2011, Wyoming is the only state not to punish drivers for refusing to submit to tests to determine their intoxication. Forty-one states plus Washington, D.C. impose a civil penalty upon drivers who do not submit to testing. This penalty almost always takes the form of a license suspension or revocation. Some states also include (either in addition to the suspension or in lieu of it) measures such as fines (numerous states), community service (Rhode Island), and alcohol education or rehabilitation programs (see Kentucky’s statute, among others). Seven states (Alaska, Indiana, Louisiana, Mississippi, Oregon, Rhode Island, & Virginia) impose both criminal and civil penalties for refusing a test, and Kansas only imposes a criminal penalty for doing so. In the states that impose some sort of criminal penalty for refusing to comply with testing, first-time offenses are just considered to be an “offense” or an “infraction”; refusal to comply with testing does not become a misdemeanor until the offender repeats a refusal or has a prior DWI conviction and refuses testing.ⁱⁱ

Thirty-nine states (and Washington, D.C.) of the forty-nine (plus D.C.) states that punish people for refusing to submit to chemical testing have provisions by which the penalty for refusing after a prior refusal or DWI conviction increases the offender’s penalty for doing so. States have a wide range of punishments for first refusals; in Kentucky, it is possible to receive as little as 30 days of license suspension for refusing to submit to chemical testing, while in Hawaii, the minimum punishment for refusal is two years of revocation. Some states eventually provide for a lifetime suspension, while

other states cap their punishment at two or three years. Many states allow for the mitigation of a sentence by installing an ignition interlock in the offender's car, while other times, the interlock will be installed concurrently with the offender's license suspension or other penalty.

For more information on refusal statutes see the accompanying spreadsheet.

Online legal research provided by LexisNexis.



ⁱ Nevada seems to be the only exception to this rule—law enforcement there may seize someone's license and arrest them for purposes of a chemical test.

ⁱⁱ Ohio may be an eighth state that also imposes some sort of criminal penalty for refusing to comply with testing, but its statutory language is circuitous and unclear.