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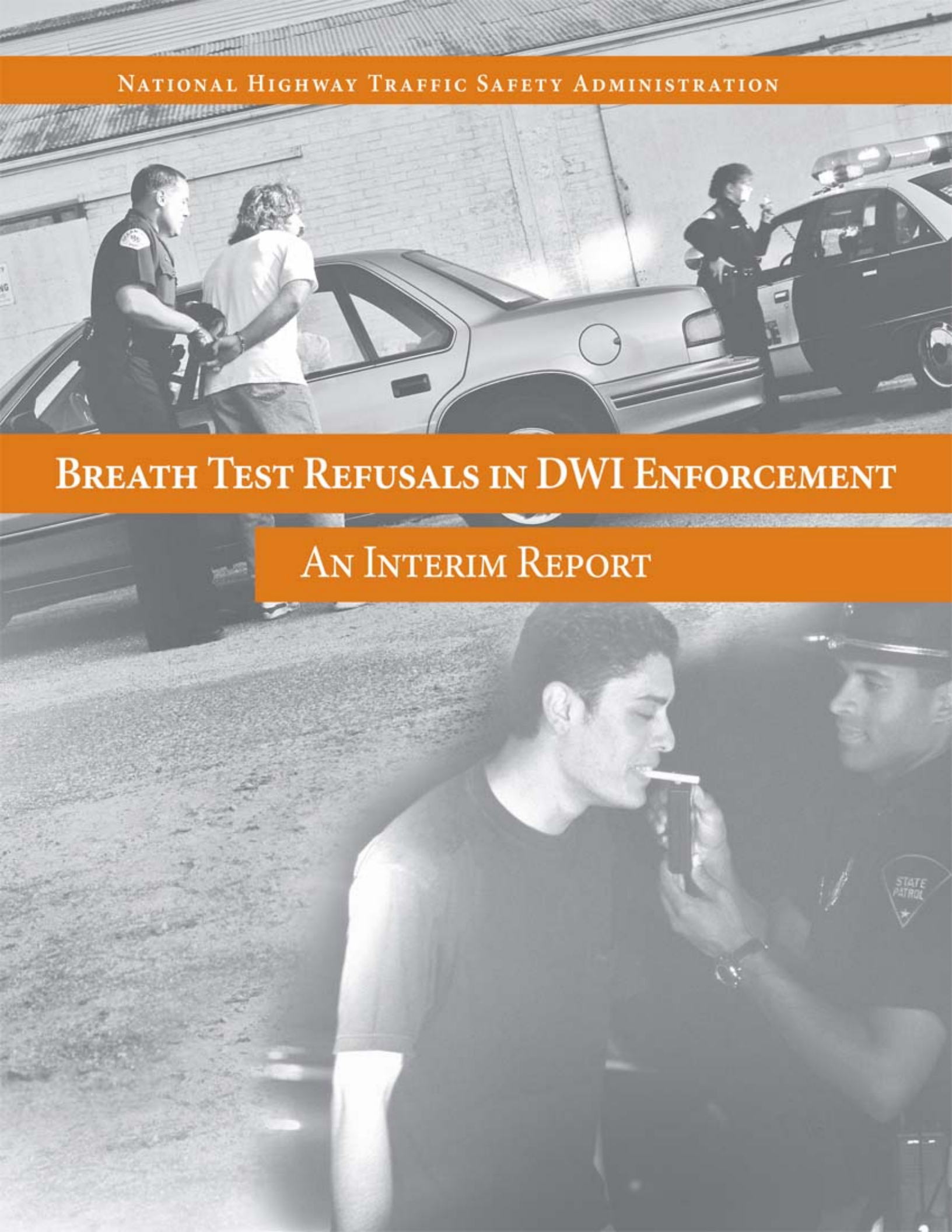

Breath Test Refusals in DWI Enforcement

An Interim Report

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16. Abstract

Breath test refusal rates nationwide have remained stable at about one-quarter of all drivers arrested for DWI from 1996 to 2001. States with statistically significant changes in refusal rates are split evenly between those with increases and those with decreases. In five case-study States, first-time offenders generally constitute the majority of those arrested for DWI and a majority of those refusing the breath test, even in those States where it is to their advantage to take the test. First-time offenders often do not understand the consequences of taking or refusing the test. In many States, repeat offenders refuse the test more frequently than first-time offenders. In all 5 case-study States, consequences of refusal are less for repeat offenders than the consequences of taking and failing the test. In Connecticut and Maryland, submitting to the breath test is usually beneficial for first-time offenders. The report discusses possible strategies States and jurisdictions can implement to decrease breath test refusals.

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This is an interim report for the study titled "Determine Whether There Is an Increase in Breath Test Refusals and Develop and Evaluate a Promising Program to Deter Refusals." The project is being conducted by Preusser Research Group under contract number DTNH22-98-D-45079 Task Order 11.

Background

The number of alcohol-related fatalities decreased 37 percent from 25,165 in 1982 to 15,935 in 1998. However, recent numbers of alcohol-related fatalities for 2000 (16,653), 2001 (17,400), 2002 (17,419), and 2003 (17,013) indicate that fatalities continue to exceed the numbers seen in the mid-1990's. It appears that new initiatives are required to achieve additional reductions.

New initiatives to achieve additional reductions in alcohol-related fatalities require an understanding of the problem and efforts to affect it so far. In two recent studies, researchers have identified States that achieved the largest reductions in alcohol-related fatalities from 1982 to 1996 (Ulmer, Hedlund, and Preusser, under review) and examined the reductions as a function of driver age, with a particular emphasis on youth (Hedlund, Ulmer and Preusser, 2000). It appears that stronger laws have been effective in reducing the number of people who choose to drink and drive, but some believe that these same laws have produced an unwanted consequence of higher breath test refusal rates in some States. Offenders receive implied consent penalties for refusal in most States, but refusals may help offenders avoid a DWI conviction, which carries more severe penalties.

A reduction in the number of test refusals will increase the effectiveness of the administrative and criminal systems so offenders can no longer avoid penalties, may help to identify more problem drinkers, and may help identified problem drinkers get some help.

Objective

The three goals of this study are (1) to document the extent of the breath test refusal problem, (2) to investigate the reasons for breath test refusals or lack of a significant percentage of refusals in selected States, and (3) to develop, implement, and evaluate effective and efficient countermeasures to deal with the problem. The first and second goals are covered in this report. A later report will detail the results of the program implementation and evaluation.

Method

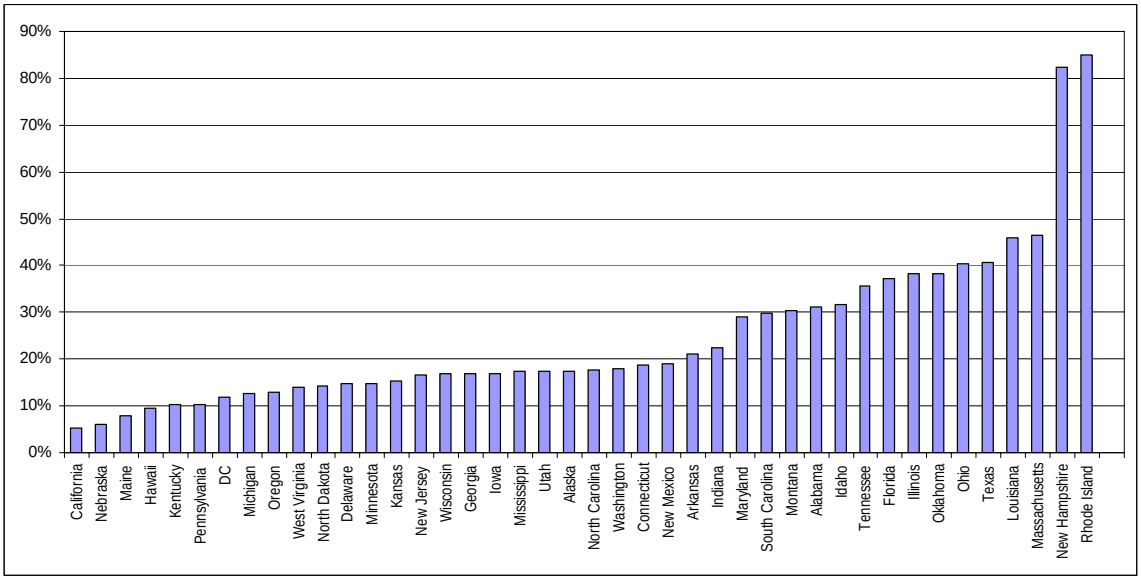
A review of the administrative sanctions and criminal penalties for breath test refusal in each State, DC, and Puerto Rico was conducted. After the review, each State, the District of Columbia, and Puerto Rico were contacted to obtain breath test refusal data for the period from 1996 to 2001. Five case-study States were selected to learn more about the causes for refusals. Connecticut, Maryland, Florida, Louisiana, and Oklahoma were selected because they all had rates above the national average and provided a mix in terms of the magnitude of refusal rates and variations in impaired driving laws and practices. Refusal rates ranged from slightly above average to far above the national average. Laws pertaining to test refusals ranged from moderately weak to good. The case studies consisted of interviews with prosecutors, judges, defense attorneys, police officers, police supervisors, and administrative unit officers to (1) evaluate the arrest, breath test, administrative, and judicial processes, and (2) identify refusal problems, barriers, and potential solutions.

Results

State laws vary widely with regard to administrative and criminal penalties for refusal. All States but one have administrative sanctions for refusal. Depending upon the State, the administrative sanctions are sometimes more stringent than those for failing a breath test. Most States do not criminalize refusal, but many admit refusals in criminal cases. Most of those that admit refusals in criminal cases do not permit refusals to be used as evidence of guilt. Some States have provisions to force a blood alcohol concentration (BAC) test after a refusal.

The distribution of refusal rates amongst States is depicted below in figure 1. The rates shown for 2001 are somewhat higher than rates reported for 1987 in an earlier study (Jones, Joksch, and Wiliszowski, 1991).

Figure 1. 2001* Breath Test Refusal Percents by State



*2000 data were used for Massachusetts and New Jersey

Refusal rates for some individual States differ markedly from 1987 to 2001, which may be due to real differences or due to real differences combined with differences produced by different data collection methods used by these States for assessing refusal rates in 1987 and in 2001. Refusal rates nationwide remained stable at about one-quarter of all drivers arrested for DWI from 1996 to 2001. States with statistically significant changes in refusal rates during this period were split evenly between those with increases and those with decreases. In general, the States where refusal rates decreased already had low rates, and States where rates increased already had high refusal rates. No State with a significant increase in refusals criminalizes refusal. Six of the eight States with statistically significant decreases in refusals have hard license suspensions in which no hardship or work permits are available during the suspension period.

Case Study Results

In Connecticut, 75 percent of those refusing the test are first-time offenders who would receive much less severe administrative penalties and the same criminal penalties for taking and failing a breath test. They become eligible immediately for a work permit during the entire administrative suspension period if they fail a BAC test and almost always receive the Pretrial Alcohol Education program, which results in dismissal of their criminal cases after one year. First-time offenders reportedly often refused based on a lack of understanding of these consequences.

In Maryland, the majority of the refusals are reportedly from first-time offenders. First-time offenders who fail breath tests can receive permission to drive during their entire administrative suspensions, while those who refuse and want to continue driving must have an interlock device installed for one year. First-time offenders almost always have their cases

pled down to a lesser impaired driving charge and receive Probation Before Judgment (PBJ), which results in the dismissal of their criminal cases and no record of a DWI, regardless of whether they take or refuse the test. The consensus advice for first-time offenders was to take the breath test because of the reduced administrative penalties and the same PBJ outcome for their criminal cases. As in Connecticut, many first-time offenders in Maryland do not understand these consequences.

In Florida, refusal benefits all offenders arrested for DUI. The increased severity of the administrative suspension for refusal is mitigated by the availability of hardship permits that can be obtained if the person does not have a prior BAC test refusal. Both defense attorneys and prosecutors agreed that the consequences for refusal are less severe than the consequences of conviction, even for a first offense. A new law in Florida criminalizing the second refusal may lead to a reduction in refusals by repeat offenders, but the law has not been in effect long enough for State officials to determine its impact.

In Louisiana, first-time offenders have a high rate of breath test refusal. Refusing the breath test benefits the criminal cases of all offenders arrested for DWI. Without a test result, district attorneys have a much more difficult time getting a DWI conviction and usually reduce the charges to obtain a guilty plea. Refusal has the added benefit of avoiding the sanctions contained in Louisiana's high-BAC law if the offender's test result would have been .15 or higher. In at least one jurisdiction, a judge has issued warrants to order blood tests for those who refuse. The strategy may be the best solution to reduce refusals without new legislation.

In Oklahoma, repeat offenders usually refuse the breath test, but most first-time offenders reportedly take it. All those interviewed agreed that it is to the advantage of any offender to refuse the test. The administrative penalties are essentially the same for those who fail and those who refuse a breath test, which means that the criminal case outcome affects refusal more than the administrative sanctions. First-time offenders almost always have their charges pled down regardless of whether they refuse or fail the test.

Conclusions

In many States across the country officers are instructed to read verbatim to suspects from an Administrative License Revocation (ALR) card - the information on this card is read to the suspect when the officer requests a breath sample, and this provides the suspect with information regarding the consequences of refusing to provide the sample. Officers are often instructed to read this information verbatim to ensure that each suspect receives the same information in a uniform manner that limits any possible coercion on the part of the officer.

In Connecticut and Maryland first-time offenders typically receive less severe penalties for failing the test, even with a high BAC, than for refusing the test. It is believed that many first-time offenders refuse the test because they do not understand these

consequences. For States such as these, State officials may want to review their process for notifying suspects of both the administrative and criminal consequences of refusing to provide a breath sample. However, States such as Connecticut and Maryland must then consider the consequences of these offenders receiving less severe sanctions. In addition, if these offenders are not convicted of an alcohol-related offense and are later stopped for DWI, they will not be considered repeat offenders.

Louisiana, and 11 other States with similar laws or case law (e.g., Arizona, California, and Wisconsin), could reduce breath test refusals by encouraging officers to obtain a warrant, when needed, to draw blood for a chemical test. Warrants could be obtained for as many types of DWI arrests as judges would be willing to issue warrants, such as cases in which the arrested driver had a minor in the vehicle, cases where the driver is suspected of having a BAC above .15, or in cases of driver involvement in an injury crash. Judges who may not be willing to issue warrants to draw blood for a chemical test for the standard first-time DWI offenders may be more willing to issue a warrant for more egregious offenders. Warrants are already used in at least one jurisdiction in Louisiana. The extent of their use is not known, but they have reportedly eliminated the problem of refusals in cases where they are issued.

It is believed that Oklahoma and Florida are unlikely to reduce refusal rates substantially without new legislation. In each State, the administrative and criminal penalties for refusal are less severe than those for taking and failing the breath test.

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I. Introduction

This interim report is organized into five chapters that contain the results to date for the breath test refusal study. Chapter I consists of the background information about breath test refusal rates in the Unites States over the past 20 years and describes the extent known about the breath test refusal problem resulting from recent changes in laws. Chapter II includes a review of the refusal and DWI laws for each State, breath test refusal rates for the past five available years for States, and information about trends found in breath test refusal rates. Chapter III contains the rationale for selecting each case-study State and describes the method used for the case study. Chapter IV includes a detailed description of the systems in five case-study States and identifies the problems and potential reasons for breath test refusal in those case-study States. Chapter V consists of a discussion of two recommended strategies for reducing breath test refusals.

A. Background

From 1982 to 1996, the population of the United States increased by 15 percent, the number of licensed drivers increased by 20 percent, vehicle miles driven increased by 56 percent, and the number of non-alcohol traffic fatalities increased by 32 percent. Yet, remarkably, the number of alcohol-related fatalities decreased 37 percent from 25,165 in 1982 to 15,935 in 1998. This decrease has variously been attributed to: broad societal influences such as overall attitudes toward drinking and driving and the work of advocacy groups; legal initiatives including minimum age 21, illegal per se and administrative per se; enforcement including the use of well-publicized sobriety checkpoints; and public information and education (Ulmer, Hedlund and Preusser, 2000).

Further reductions in the number of alcohol-related fatalities have been difficult to achieve. Before the decline in alcohol-related crashes from 2002 (17,524) to 2003 (17,013), the number of alcohol-related fatalities increased from 2000 (16,653) to 2001 (17,400) and from 2001 to 2002 (17,524). The most recent reduction may represent some success for renewed efforts to combat drinking and driving, but fatalities continue to remain well above the reductions achieved over a 14-year period ending in 1996. The continued high number of fatalities compared to the lows seen in the mid-1990s highlights the difficulties faced in renewing the downward trend in alcohol-related fatalities. New initiatives are required to achieve additional reductions in alcohol-related fatalities.

Identifying new initiatives to achieve additional reductions in alcohol-related fatalities must begin with an understanding of the current state of knowledge. Understanding current knowledge requires understanding whether the problem has changed over time and how it has been affected by efforts to reduce it. There are two recent studies in which researchers have identified States that achieved the largest reductions in alcohol-related fatalities from 1982 to 1996 (Ulmer, Hedlund and Preusser, under review) and examined the reductions as a function of driver age, with a particular emphasis on youth (Hedlund, Ulmer and Preusser, 2000).

One of the conclusions appears to be that stronger laws have been effective in reducing the number of people who choose to drink and drive. Unfortunately, strong laws can sometimes have unwanted consequences. Some States have believed that one such consequence has been an increase in the number of people who refuse the breath test. While such a decision may subject these people to serious implied consent penalties, it may also have the effect of avoiding a DWI conviction, which carries its own serious penalties.

B. Study Goals

The three goals of this study are (1) to document the extent of the breath test refusal problem, (2) to investigate the reasons for breath test refusals, and (3) to develop, implement, and evaluate effective and efficient countermeasures to deal with the problem.

II. State Law Review

A review of the administrative sanctions and criminal penalties for breath test refusal in each State, the District of Columbia, and Puerto Rico was conducted using the *Digest of State Alcohol-Highway Safety Related Legislation* (National Highway Traffic Safety Administration, 2002) and the *Implied Consent Laws* (American Prosecutor Research Institute, 2002). For each State, the following were determined: (1) the administrative sanctions and criminal penalties for test refusal, (2) whether test refusal is a criminal offense, (3) whether a refusal is admissible in court, (4) whether a BAC test can be forced under certain circumstances, (5) whether drivers with a high BAC are subject to additional criminal penalties, and (6) the circumstances that may reduce these penalties.

The administrative and criminal provisions and penalties for breath test refusals for each State are summarized in Appendix A. The provisions and penalties for failing a BAC test and for DWI convictions are summarized in Appendix B. These summaries include what must, should, or may happen following a breath test refusal or DWI conviction. The summaries can best be considered as the upper limits for penalties that can be imposed for administrative and criminal systems. During efforts to obtain refusal data for each State, discussions with personnel from each State's legal and administrative systems confirmed that "mandatory" actions may often be reduced or ignored.

A. Administrative Sanctions and Criminal Penalties for Refusal

All but one State, Nevada, have administrative license sanctions for refusing an alcohol test. State administrative sanctions include license suspensions and revocations for varying periods of time. The suspensions and revocations include restrictions varying

from a "hard" suspension period in which no driving is allowed for a specified period (in 38 States and the District of Columbia) to a "soft" suspension period in which drivers can obtain a temporary driving permit for purposes such as work and church (available in 9 States). Louisiana, Maryland, and West Virginia have provisions for hard license suspension, but allow for restricted licenses/temporary driving permits in cases where an ignition interlock is installed in the car.

B. Refusal as a Criminal Offense

Eight States consider a test refusal as a criminal offense. The manner in which refusal is criminalized varies among the 8 States. Refusal is considered a misdemeanor in Alaska, Minnesota, Nebraska, and Ohio. It is considered an infraction in Indiana. In California, refusal becomes a criminal offense if the driver is convicted of DWI after refusal. In Vermont, refusal is criminalized for drivers with a prior DWI. In New Jersey, traffic law violations, including violations of the implied consent law, are considered "quasi-criminal." All 8 States impose a fine and/or a jail sentence for the crime of refusing a breath test.

C. Refusal Admissibility in Court

Thirteen States and the District of Columbia admit a test refusal in civil and criminal cases. Thirty-four States admit a test refusal in criminal cases only. Michigan admits a refusal, but the refusal cannot be used as evidence of guilt. Hawaii considers a test refusal only during an administrative license revocation hearing. Rhode Island and Massachusetts do not admit a test refusal in either a civil or criminal case.

D. Forcing a BAC Test

Ten States have laws that either prohibit or do not address the issue of forcing a test when a driver refuses to submit to a test. Eleven States allow for a mandatory or a forceful submission to a test via a court order or search warrant. The remaining States and the District of Columbia specify circumstances under which a test becomes mandatory. For example, a test can be forced in 33 States if a driver is involved in a collision that resulted in a serious injury or a fatality. Some of the States permitting forced tests for serious injury and fatal crashes require evidence of probable cause/reasonable grounds that alcohol or another substance was involved or that a driver had a prior impaired driving offense.

E. Additional Criminal Penalties for Drivers with a High BAC

As of January 2002, 31 States and the District of Columbia had a law or a regulation that provides for enhanced sanctions for drivers with high BACs. The high-BAC threshold ranges from .15 - .20%. The enhanced sanctions include longer and more

intensive education and/or treatment; limitations on deferred judgment provisions or deferred prosecution; limitations on plea reductions; enhanced driver sanctions, such as jail sentence, driver license suspension, community service, electronic home monitoring, and fine; enhanced vehicle sanctions, such as ignition interlock device (IID) and administrative plate impoundment; and court consideration of high BAC as an aggravating factor at sentencing. At least theoretically, the availability of additional sanctions for high-BAC offenders should negatively influence a suspect's willingness to submit to a BAC test. However, this was not the case in Minnesota. Minnesota enacted its "high-BAC" law in 1998, and defines a high BAC as .20 or higher. An evaluation of the effects of this law indicated that the rate of refusals actually declined significantly among first-time offenders and was essentially unchanged for those with a prior conviction. This may be due to Minnesota's strong law regarding test refusals (McCartt and Shabanova, 2003).

F. Circumstances That May Reduce Penalties and Affect Refusal Rates

There are several factors that may affect refusal rates. For example, if the penalty for a refusal is less than a penalty for failing an alcohol test, more drivers may refuse to submit to a test. Each State's administrative sanctions, criminal penalties for failing a BAC test for first time, and subsequent offenses were reviewed to identify common factors that may affect refusal rates. The administrative and criminal penalty information from each State is presented in Appendix B.

1. Administrative License Action for Failing a BAC Test

Forty-two States either administratively suspend or revoke the driver's license of an offender who fails an alcohol test. State provisions for administrative license actions vary in terms of revocation and suspension periods, as well as whether a driving permit or a restricted license is available immediately ("soft" suspension or revocation period) or after a specified period of time ("hard" suspension or revocation period). Eight States (Kentucky, Michigan, Montana, New Jersey, Pennsylvania, Rhode Island, South Dakota, and Tennessee) do not have any administrative license actions for failing an alcohol test. In South Carolina, an administrative license action provision is not applicable to offenders with BACs < .15.

2. Penalties for DWI Conviction

Court-ordered license suspensions or revocations following a DWI conviction can also be "hard" or "soft". In addition to a license action, post-conviction court penalties may also include fines (substantial in some States, for example, up to $2,500 for a first DWI conviction in Illinois); jail terms up to two years for a first DWI conviction in some States (e.g., Washington and Vermont); and community service which can be served in

lieu of a certain number of hours of a jail term or in addition to a jail term. Judges may impose additional sanctions as well.

III. State Breath Test Refusal Rates

In October and November 2002, each of the 50 States, the District of Columbia, and Puerto Rico were contacted to obtain their breath test refusal information. The information included the number of breath tests requested and the number refused for each of the six prior years, 1996-2001. Additional information gathered included whether test refusal was considered a crime, whether licensing actions for refusal were "hard" (mandatory) or "soft" (hardship licenses could be granted under certain circumstances), whether refusals were reported to insurance companies, and a relative comparison of DWI and refusal sanctions. Five States that did not have 2001 breath test refusal data available in November were contacted in July 2003 to obtain the 2001 data. Three of the five States were then able to provide 2001 data. Massachusetts and New Jersey were only able to provide 2000 data.

Table 1 presents a summary of results. When possible, each State provided data from a "central," responsible authority in charge of collecting test refusal data. The central authorities in many States depended upon the completeness and consistency of reporting from other agencies in the State, so the breath test request and refusal data, at least in some States, represent best estimates of breath test refusal rates. Three States (Colorado, New York, and Wyoming) were unable to provide any data on refusals. Nevada had refusal data only on drivers involved in fatal crashes. Five States (Arizona, Missouri, South Dakota, Virginia, and Vermont) were able to provide the number of refusals but not the number of tests requested.

The remaining 41 States, the District of Columbia, and Puerto Rico provided both tests refused and tests requested for at least one year. In four of these States (Delaware, Maryland, Pennsylvania, and Texas) the highway patrol served as the only data source. The Maryland highway patrol covers the entire State, so its data represents a central source. For the three other States, the highway patrol was responsible for a substantial portion of DWI arrests statewide, so their test request and refusal data served as the best statewide estimates.

Table 1.
Breath Test Refusal Percents by State

State	2001	2000	1999	1998	1997	1996
Alabama*	31.1%					
Alaska*	17.4%	18.0%	15.9%	15.6%	15.9%	
Arkansas*	21.2%					
California*	5.3%	5.5%	5.4%	5.5%	6.3%	6.7%
Connecticut*	18.7%	18.2%	17.4%	17.1%		
DC*	12.0%	13.2%	14.0%	13.5%		
Delaware[HP]	14.7%					
Florida*	37.1%	37.1%	35.9%	36.7%	36.1%	
Georgia*	17.0%	17.5%	18.8%	19.3%	23.2%	23.2%
Hawaii*	9.4%					
Idaho*	31.6%	31.0%	30.0%	27.0%	28.3%	25.7%
Illinois*	38.3%	38.1%	38.0%	37.5%	39.1%	39.2%
Indiana*	22.5%	21.5%				
Iowa*	17.0%	16.2%	16.6%	17.7%	18.6%	
Kansas*	15.2%	15.2%	15.4%	16.0%	15.6%	15.8%
Kentucky*	10.2%	9.7%	8.1%	7.7%	7.6%	8.1%
Louisiana*	45.9%	42.4%	40.6%	39.6%	40.8%	41.3%
Maine*	7.8%	7.8%	9.2%	9.0%	9.6%	10.1%
Maryland*	29.1%	28.4%	26.7%	25.3%	25.6%	26.0%
Massachusetts*		46.5%	49.9%	63.0%	60.8%	54.9%
Michigan*	12.8%	13.2%	14.2%	15.5%	14.8%	
Minnesota*	14.8%	14.4%	14.4%	15.3%	16.5%	17.6%
Mississippi*	17.3%	18.3%	17.6%	18.4%	21.7%	22.8%
Montana*	30.3%	35.0%	36.0%	NA	33.1%	29.4%
Nebraska*	6.2%	7.0%	6.7%	6.8%		
New Hampshire*	82.3%	81.9%	81.7%	79.5%	74.7%	71.6%
New Jersey*		16.7%				
New Mexico*	19.0%	19.0%	19.0%	21.0%	22.0%	22.0%
North Carolina*	17.8%	18.6%				
North Dakota*	14.2%	14.2%	14.5%	15.7%	14.7%	14.0%
Ohio*	40.4%	34.0%	32.9%	31.3%		
Oklahoma*	38.3%	38.3%	37.6%	35.0%	35.5%	35.2%
Oregon*	13.0%	12.2%	13.1%	13.8%	16.3%	17.8%
Pennsylvania[HP]	10.2%	9.2%				
Rhode Island*	84.9%	96.4%	91.7%	92.2%	89.9%	
South Carolina*	29.9%	28.3%	26.2%	25.5%		
Tennessee*	35.5%					
Texas[HP]	40.6%	40.2%	42.5%	42.0%		
Utah*	17.3%	18.9%	19.8%	22.0%	18.1%	51.8%
Washington*	17.9%	18.4%	18.2%	18.4%	17.8%	19.1%
West Virginia*	14.0%	12.8%	14.3%			
Wisconsin*	18.9%	14.2%	14.5%	13.8%		
Puerto Rico*	1.9%	1.8%	1.8%	2.4%	1.2%	1.4%

Source: * = Central
HP = Highway Patrol

A. Analyses of 2001 Breath Test Refusal Data

Using the last year of available data (2001 for most States, but 2000 for Massachusetts and New Jersey), the average refusal rate, with each State counted equally, but excluding Puerto Rico, is 25 percent. As indicated in table 2, when the States are weighted by their populations, the average refusal rate is 24 percent. The distribution of 2001 breath test refusal rates (using 2000 data for two States) is skewed, due to a few States with very high refusal rates. California had the lowest refusal rate for 2001 at 5 percent, while Rhode Island had the highest at 85 percent. Figure 1 shows this distribution graphically. For such a skewed distribution, the quartiles and the median are more descriptive than either the weighted or unweighted means:

- First quartile 14%
- Median 18%
- Third quartile 32%.

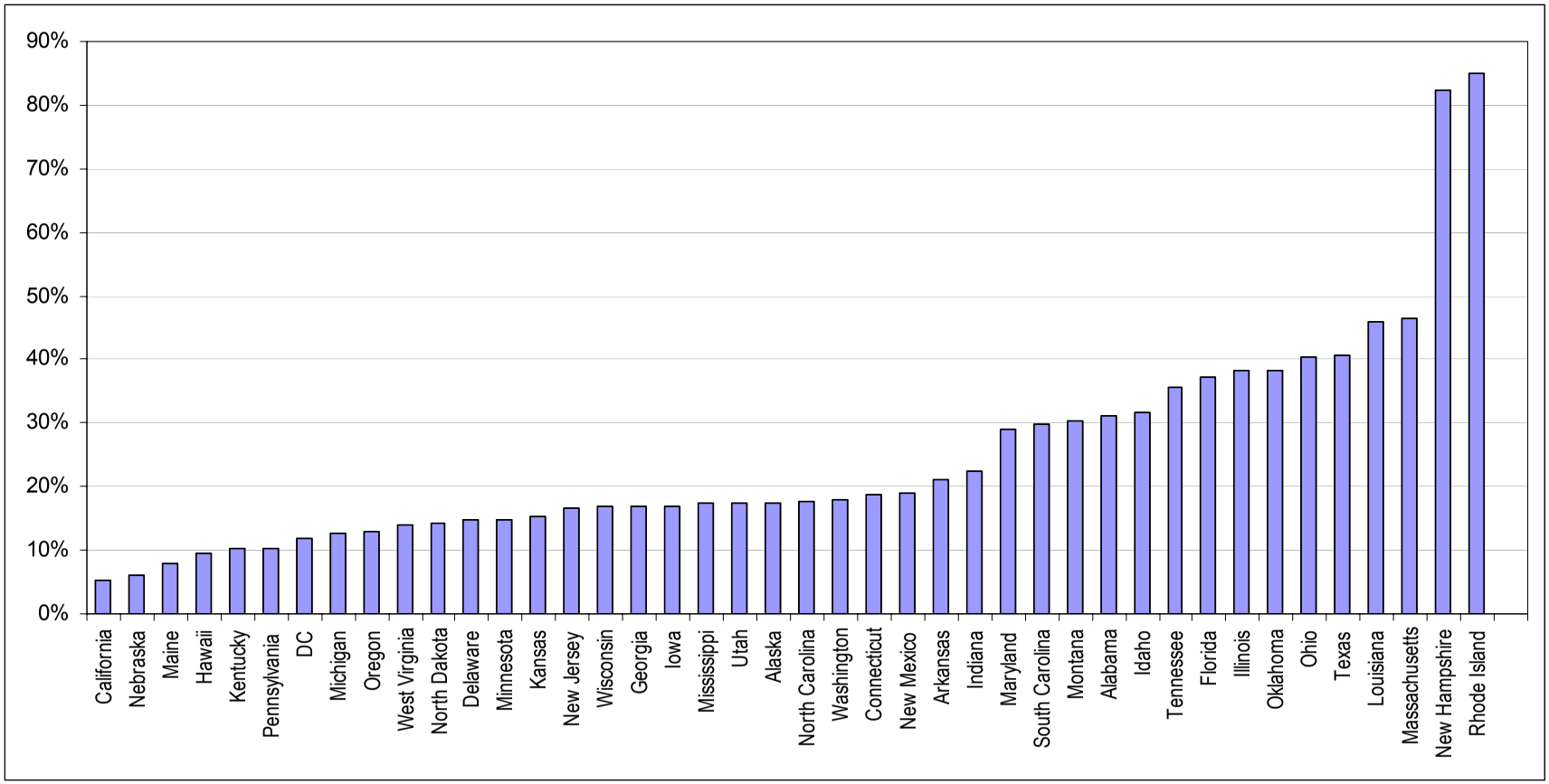
Several comparisons between States were made to determine if any differences existed in their average refusal rates related to differences in their administrative and criminal sanctions. First, States that have high-BAC laws had higher average refusal rates (M=26%) than those without high-BAC laws (M=22%), but the independent samples t-test indicated that the differences were not significant $t(40)=.785$, $p>.45$. Second, States with soft license suspension periods had higher average refusal rates (M=28.46%) than those with hard suspension periods (M=23%), but again the independent samples t-test indicated that the difference was not significant $t(40)=.785$, $p>.45$. Third, States that criminalize refusal had a lower average refusal rate (M=17.61%) than those that do not criminalize refusal (M=26%), but the difference was not significant according to the results of the independent samples t-test $t(40)=-1.178$, $p.>.20$. Overall, results from comparisons of these three types of laws showed differences in the average refusal rate that were consistent with the intent of the laws, but not large enough to approach significance.

Table 2.
2001* Average Reported Refusal Rate by State and
2001 Average Refusal Rate Weighted by 2001 Population Size

State	Reported	Population	Population Weight	Weighted
Alabama	31.1%	4,464,356	0.019	0.6%
Alaska	17.4%	634,892	0.003	0.0%
Arkansas	21.2%	2,692,090	0.011	0.2%
California	5.3%	34,501,130	0.144	0.8%
Connecticut	18.7%	3,425,074	0.014	0.3%
DC	12.0%	571,822	0.002	0.0%
Delaware	14.7%	796,165	0.003	0.0%
Florida	37.1%	16,396,515	0.069	2.5%
Georgia	17.0%	8,383,915	0.035	0.6%
Hawaii	9.4%	1,224,398	0.005	0.0%
Idaho	31.6%	1,321,006	0.006	0.2%
Illinois	38.3%	12,482,301	0.052	2.0%
Indiana	22.5%	6,114,745	0.026	0.6%
Iowa	17.0%	2,923,179	0.012	0.2%
Kansas	15.2%	2,694,641	0.011	0.2%
Kentucky	10.2%	4,065,556	0.017	0.2%
Louisiana	45.9%	4,465,430	0.019	0.9%
Maine	7.8%	1,286,670	0.005	0.0%
Maryland	29.1%	5,375,156	0.022	0.7%
Massachusetts	46.5%	9,990,817	0.042	1.9%
Michigan	12.8%	6,379,304	0.027	0.3%
Minnesota	14.8%	4,972,294	0.021	0.3%
Mississippi	17.3%	2,858,029	0.012	0.2%
Montana	30.3%	904,433	0.004	0.1%
Nebraska	6.2%	1,713,235	0.007	0.0%
New Hampshire	82.3%	1,259,181	0.005	0.4%
New Jersey	16.7%	8,484,431	0.035	0.6%
New Mexico	19.0%	1,829,146	0.008	0.1%
North Carolina	17.8%	8,186,268	0.034	0.6%
North Dakota	14.2%	634,488	0.003	0.0%
Ohio	40.4%	11,373,541	0.048	1.9%
Oklahoma	38.3%	3,460,097	0.014	0.6%
Oregon	13.0%	3,472,867	0.015	0.2%
Pennsylvania	10.2%	12,287,150	0.051	0.5%
Rhode Island	84.9%	1,058,920	0.004	0.4%
South Carolina	29.9%	4,063,011	0.017	0.5%
Tennessee	35.5%	5,740,021	0.024	0.9%
Texas	40.6%	21,325,018	0.089	3.6%
Utah	17.3%	2,269,789	0.009	0.2%
Washington	17.9%	5,987,973	0.025	0.4%
West Virginia	14.0%	1,801,916	0.008	0.1%
Wisconsin	16.9%	5,401,906	0.023	0.4%
Total Average	25.32%	239,272,876	1.000	24.4%

*2000 data were used for Massachusetts and New Jersey

Figure 1.
2001* Breath Test Refusal Percents by State



*2000 data was used for Massachusetts and New Jersey

B. Comparison of 2001 and 1987 Breath Test Refusal Rates

A previous survey of State refusal rates, with 1987 data, obtained data from 40 States (Jones and Wiliszowski, 1991). As indicated in table 3, the lowest refusal rate was 4 percent lower in 1987 than 2001 and the highest refusal rate was 13 percent lower in 1987 as compared to 2001. The State at the highest end of the range was the same, Rhode Island, for both comparison years. The table also indicates that the median refusal rate for 2001 was 4 percent higher than the median refusal rate for 1987. The first and fourth quartiles also indicate that the refusal rates were higher for 2001 as compared to 1987. There were also fewer States with refusal rates above 40 percent in 1987 as compared to 2001. The 2001 distribution appears very similar to the 1987 distribution, but with slightly higher refusal rates and more States at the high end of the distribution. Refusal rates for some individual States differ markedly from 1987 to 2001, suggesting potentially serious limitations on any comparisons of the data from these two studies.

Table 3.
Comparison of 1987 and 2001 Breath Test Refusal Distributions

	1987	**2001**
Number of States Reporting	40	42
Range of Rates	1% - 72%	5% - 85%
Mean Refusal Rate	19%	25%
Median Refusal Rate	14%	18%
First Quartile	11%	14%
Third Quartile	22%	32%
Number of States over 40% Refusal Rate	3	6
Highest Refusal Rate among States	71%	85%

C. Trend Analyses of 1996-2001 Breath Test Refusal Data

To analyze refusal rate changes in recent years, simple linear regressions were calculated for each of the 32 States with at least three years of refusal rate data. Table 4 presents the results.

Refusal rates increased in 13 States. Seven States had statistically significant increases ($p < 0.05$). Rates decreased in 18 States and the District of Columbia. Eight of the 13 States had statistically significant decreases ($p < 0.05$).

The States that had significant decreases in refusal rates had low rates to begin with, and the States where rates increased began with high refusal rates. For example, eight States that reduced their rates had a mean rate of 13 percent and a median of 14

percent in the last available year, while the seven States whose rates increased had a mean of 34 percent and median of 30 percent.

Among States with significant decreases in test refusals, two (California and Minnesota) criminalize test refusals. Six out of 8 States with significant decreases have hard license suspension periods. Two of the 8 States (Michigan and New Mexico) allow for a court order or a search warrant to force a test. Mississippi and Georgia prohibit a forceful test. The remaining States with significant decreases allow force to be used to obtain a BAC test result if a driver was involved in a serious/fatal injury crash (in some States, reasonable grounds/probable cause of driver impairment is required).

None of the States with significant increases in test refusals criminalize test refusals. Five out of these 7 States have hard license suspension periods. South Carolina does not have ALR for offenders with BAC < .15%. None of the States in this group have statutory provisions for a court order or a search warrant to force a test. Connecticut is the only State in the group that allows for blood to be drawn to the extent provided by law while the other States allow for a forced BAC test if a driver was involved in a crash that resulted in a serious/fatal injury (in some States, reasonable grounds/probable cause of driver impairment is required).

According to the results of the simple linear regressions, there is no recent increasing or decreasing trend for refusal rates across all States combined. The 15 States with significant trends are split evenly between increases and decreases. The reduction in refusal rate is less than 2 percent for these States. New Hampshire experienced a 10 percent increase, which added to its already high refusal rate compared to other States. The greatest change across the remaining States was 6 percentage points or about 1 percentage point each year.

Table 4.
Trend Analysis of Breath Test Refusal Data by State

Trend	State	reg +/-	std err	t-stat	p value
Statistically Significant Increase	New Hampshire	0.0221	0.0044	4.9657	0.0077
	South Carolina	0.0153	0.0020	7.8179	0.0160
	Idaho	0.0116	0.0023	5.1399	0.0068
	Oklahoma	0.0076	0.0019	4.0365	0.0156
	Maryland	0.0072	0.0021	3.4739	0.0255
	Connecticut	0.0056	0.0006	8.6410	0.0131
	Kentucky	0.0049	0.0016	3.0253	0.0390
Increase	Ohio	0.0284	0.0086	3.2921	0.0812
	Louisiana	0.0082	0.0043	1.9210	0.1271
	Alaska	0.0054	0.0023	2.2984	0.1051
	Montana	0.0033	0.0069	0.4797	0.6565
	Florida	0.0024	0.0015	1.6036	0.2071
	Wisconsin	0.0090	0.0091	2.1330	0.1660
Statistically Significant Decrease	California	-0.0027	0.0007	-3.7899	0.0193
	Maine	-0.0048	0.0008	-5.8593	0.0042
	Minnesota	-0.0061	0.0017	-3.6390	0.0220
	Michigan	-0.0063	0.0018	-3.4663	0.0405
	New Mexico	-0.0070	0.0065	-4.8010	0.0090
	Oregon	-0.0106	0.0025	-4.1899	0.0138
	Mississippi	-0.0110	0.0028	-3.9172	0.0173
	Georgia	-0.0139	0.0023	-5.9985	0.0039
Decrease	North Dakota	-0.0005	0.0016	-0.2985	0.7802
	Washington	-0.0013	0.0011	-1.1734	0.3057
	Kansas	-0.0014	0.0005	-2.5392	0.0640
	Nebraska	-0.0015	0.0015	-0.9785	0.4310
	West Virginia	-0.0015	0.0078	-0.1925	0.8790
	Illinois	-0.0020	0.0061	-1.3690	0.2430
	Iowa	-0.0047	0.0022	-2.1765	0.1177
	DC	-0.0053	0.0028	-1.9187	0.1950
	Rhode Island	-0.0058	0.0148	-0.3906	0.7222
	Texas	-0.0065	0.0039	-1.6700	0.2369
	Utah	-0.0492	0.0260	-1.8927	0.1313

IV. Case Study of Five States

Another objective of the study was to learn as much as possible about the causes for low refusal rates in some States and high refusal rates in other States. Five States were selected for case study to determine the likely causes for their refusal rates. The case studies involved in-depth evaluation of the arrest, breath test, administrative, and judicial processes to identify refusal problems, barriers, and potential solutions.

1. Characteristics of the 5 Selected States

The 5 States selected all had refusal rates above the national average and provided a mix in terms of the magnitude of refusal rates and variations in impaired driving laws and practices. Refusal rates ranged from slightly above the national average to far above the national average. Laws pertaining to test refusals ranged from moderately weak to good. The impaired driving laws in these States reflected a mix of the following: none have criminalized refusal; 2 States have hard suspension periods for a test refusal and 2 States have hard suspension periods without an ignition interlock device; 4 States have .08 BAC per se laws, 4 States have a high BAC law, and all States have Administrative License Revocation provisions and with test refusal admissible in court.

a) Connecticut

Connecticut's 2001 test refusal rate of 19 percent is near the national median point of 18 percent and has risen slightly from 17 percent in 1998. Review of Connecticut law, as well as discussions with State representatives, revealed that test refusal is not a crime; it is admissible in court; and administrative penalties for refusal are more severe than those for DUI. For example, for a first-time refusal, the license suspension period is hard for 90 days, whereas for a first-time alcohol test failure a temporary driving permit is available to the offender immediately. The State has ALR provisions, a .08 BAC per se law, and a high-BAC (.16) law.

b) Maryland

Maryland's 2001 test refusal rate of 29 percent is well above the 18 percent of the national median. The rate has risen gradually from 26 percent in 1996. Maryland's law has a longer hard license suspension period for a test refusal than for failing a breath test, but a hardship license is available immediately if an ignition interlock is installed for one year. Test refusal is not criminalized. The State has ALR provisions and a .08 BAC per se

law. Interviews with the State representatives revealed that penalties for refusal frequently are not applied and that test refusal is a problem.

c) Florida

Florida's 2001 refusal rate of 37 percent ranks tenth highest of the 46 States with known rates. The State's refusal rate has remained at this level since 1997. Florida has a hard license suspension period for a test refusal, though test refusal is not criminalized. Florida has ALR provisions, .08 BAC per se law, and a high-BAC law (.20). Interviews indicated that test refusal is a known major problem in Florida and the State has been trying to find a solution.

d) Louisiana

Louisiana's 2001 test refusal rate of 46 percent ranks it fourth highest among States with known rates. The rate has risen from 41 percent in 1996. Louisiana has a shorter soft license suspension period if an ignition interlock is installed. Test refusal is not criminalized. Interviews with the State representatives revealed that offenders are willing to accept the administrative penalty for a test refusal in order to avoid the criminal DWI charge. Louisiana has ALR provisions and a high-BAC law (.15) and has a .08 per se law effective September 30, 2003.

e) Oklahoma

Oklahoma's 2001 test refusal rate of 38 percent is high, considering its low rate of .61 persons fatally injured per 100 million vehicle miles traveled for alcohol-related crashes. The refusal rate has risen from 35 percent in 1996. Oklahoma has a soft license suspension period and similar penalties for a test refusal and DUI. Test refusal is not criminalized. Oklahoma has ALR provisions, .08 BAC per se law, and a high-BAC law (.15).

B. Case Study Data Collection Method

The first goal of data collection for the case studies was to understand the entire system, from arrest to conviction. To collect data on the system, interview protocols for prosecutors, judges, defense attorneys, police officers, police supervisors, and administrative unit officers were developed. The purpose of the interviews was to ask about the system, how the system operated in practice, discover problems with the system, and identify potential solutions for improving breath test submission rates. Each set of questions asked for specific types of information.

The following lists identify the types of information sought during interviews with each specialty.

Prosecutors:

- Typically imposed penalties for first and subsequent DWIs
- Typical administrative sanctions for first and subsequent DWIs
- The factors affecting how refusal cases are prosecuted
- Evidence needed to prosecute refusal cases
- Success rates for prosecuting refusals
- Characteristics of those refusing breath tests
- Differences in court jurisdictions with regard to how breath test refusal cases are adjudicated
- Training prosecutors receive for DWI cases
- Suggestions, within existing legislation, to decrease the number of drivers who refuse the breath test.

Judges:

- Typically imposed penalties for first and subsequent DWIs
- Typical administrative sanctions for first and subsequent DWIs
- Impact of particulars on a case and penalties
- The factors affecting how and when refusal cases are prosecuted
- Evidence needed to prosecute refusal cases
- Prospects of prosecutors bringing more refusal cases to court
- Additional evidence police need to collect for successful prosecution of refusal cases
- Characteristics of those refusing breath tests
- Differences in court jurisdictions with regard to how breath test refusal cases are adjudicated
- Training that prosecutors receive for DWI cases and the judge's experience with DWI cases
- Suggestions, within existing legislation, to decrease the number of drivers who refuse the breath test.

Defense Attorney:

- Typical penalties imposed for first and subsequent DWIs
- Typical administrative sanctions for first and subsequent DWIs
- The factors affecting how refusal cases are prosecuted
- Advice given to clients concerning breath test refusal
- Success rate for defending cases with a BAC test refusal
- Differences in court jurisdictions with regard to how breath test refusal cases are adjudicated

- Training defense attorneys receive for DWI cases
- Suggestions, within existing legislation, to decrease the number of drivers who refuse the breath test.
- Suggestions, excluding legislative changes, that would make it more likely for defense attorneys to encourage clients to take rather than refuse the breath test

Police Officer/State Trooper:

- Describe the arrest process
- Number of DWI arrests made by the officer/trooper each year
- Number of individuals who consent to take the breath test
- Process for administering breath tests
- Typically imposed penalties for first and subsequent DWIs
- Typical administrative sanctions for first and subsequent DWIs
- The factors affecting how refusal cases are prosecuted
- Defense community advise concerning test refusal
- Differences in collecting evidence for refusal cases
- Success rates for prosecuting refusals
- Characteristics of those refusing breath tests
- Differences in court jurisdictions with regard to how breath test refusal cases are adjudicated
- Training police officers receive for implied consent and gaps that need to be filled
- Suggestions, within existing legislation, to decrease the number of drivers who refuse the breath test.

Police Supervisor:

- Describe the arrest process
- Number of DWI arrests made under the person's command each year
- Number of individuals who consent to take the breath test
- Process for administering breath tests
- Typically imposed penalties for first and subsequent DWIs
- Typical administrative sanctions for first and subsequent DWIs
- The factors affecting how refusal cases are prosecuted
- Defense community advice concerning test refusal
- Differences in collecting evidence for refusal cases
- Success rates for prosecuting refusals
- Characteristics of those refusing breath tests
- Differences in court jurisdictions with regard to how breath test refusal cases are adjudicated
- Training police officers receive for implied consent and gaps that need to be filled
- Suggestions, within existing legislation, to decrease the number of drivers who refuse the breath test.

Administrative Unit Officers/DMV

- Administrative Consequences for DWI/DWI arrest
- Factors affecting refusal rates
- Description of what happens at the administrative hearings
- Description of how administrative license suspensions are applied.
- Suggestions, within existing legislation, to decrease the number of drivers who refuse the breath test.

C. Case Study Results

Breath Test Refusal System, Problems, and Barriers

The interview results are organized into the following sections for each of the 5 case study States: (1) the system, (2) how the system works, (3) how BAC tests are requested and administered, (4) advantages of taking or not taking a breath test, (5) who takes and who refuses the BAC test, (6) benefits of BAC test results, and (7) potential strategies to reduce BAC test refusals.

1. Connecticut

Connecticut's breath test refusal rate was 18.7 percent for 2001.

1) The System

Connecticut's impaired driving legislation identifies two methods for determining that a person committed the offense of operating a motor vehicle under the influence of intoxicating liquor, any drug, or both (DUI). The first method specifies that a person can be considered to be operating a vehicle under the influence if the person is found to be under the influence of intoxicating liquor, any drug, or both. This method does not identify any criteria for making the determination. The second method specifies that a person can be considered operating a motor vehicle under the influence if found to have an "elevated blood alcohol content," which means a BAC ≥ .08 percent.

After arrest, the person must submit to a BAC test within two hours of operating the motor vehicle. The BAC test consists of two tests of the same type, done no less than 30 minutes apart. The second test is used to determine whether the first test was an accurate measurement of BAC. The person under arrest must have an opportunity to contact a lawyer during a 15-minute period before deciding whether to submit to the BAC test. Refusing either test constitutes a refusal. If the person does not provide an adequate breath or urine sample when requested and refuses to submit to a blood test, the officer or trooper records it as a refusal.

Connecticut offers a Pretrial Alcohol Education Program for first-time offenders. Those with a DUI arrest in the previous 10 years are not eligible. If the offender completes the program, the court dismisses the DUI charges. The record of participation in the program remains as part of the person's driving record for 7 years.

Connecticut has an administrative "per se" license suspension for anyone with a BAC ≥.08 percent. Offenders who want a hearing at the Department of Motor Vehicles (DMV) administrative "per se" unit to get their licenses back must schedule one and have it within 30 days of arrest. If the offender does not schedule a hearing, the administrative "per se" unit issues the appropriate license suspension. If there is a hearing, the administrative hearing officer uses the hearing to gather information necessary to decide whether the preponderance of evidence establishes the following four points: (1) the officer had probable cause to arrest the person for operating a motor vehicle under the influence, (2) the person was placed under arrest, (3) the BAC test was administered properly, and (4) the person was operating the motor vehicle.

If the four points are met, the person's license is suspended. The suspension period is 90 days if the person submitted to a BAC test and six months if the person refused to submit to a BAC test.

First-time offenders who submit to a BAC test are immediately eligible for a work permit, which means they can continue driving during the entire administrative suspension period. First-time offenders who refuse the test must wait 90 days of their six-month administrative suspension period before they can get a work permit. Administrative license suspensions are separate from those that are court-determined or mandated after a conviction. If a person is caught operating a motor vehicle under the influence while using the permit, the person can be jailed for a period of one month to one year and fined $500.

Connecticut has criminal penalties and administrative sanctions that increase with the number of offenses and vary for those under 21 (zero tolerance law), those with a BAC ≥.16, and those with a BAC greater than .08 but less than .16.

Tables 5 and 6 summarize the administrative sanctions and criminal penalties.

Table 5.
Connecticut Administrative Driver's License Sanctions

Blood Alcohol Level	**First Offense**	**Second Offense**	**Third Offense**
Refusal to submit to a blood, breath or urine test	6 month suspension	1.5 year suspension	1.5 year suspension
Test results of .02 or higher and you are under 21 years of age	180 day suspension	9 month suspension	2 year suspension
Test results of .08 or higher; up to, but not including, .15	90 day suspension	9 month suspension	2 year suspension
Test results of .15 or higher	120 day suspension	10 month suspension	2.5 year suspension

Table 6.
Connecticut Criminal Penalties

Type of Penalty	First Offense Test results of .08 or higher	Second Offense (within 10 years) Test results of .08 or higher	Third Offense (within 10 years) Test results of .08 or higher
Fine	$500 to $1,000	$1,000 to $4,000	$2,000 to $8,000
Jail	6 months; 48 hrs. minimum mandatory or 6 months suspended with 100 hrs. community service	2 years; 120 days minimum mandatory and 100 hrs. of community service	3 years; 1 year minimum mandatory and 100 hrs. of community service
Driver's License Suspension	One year	Three years (or until you are 21, whichever is longer)	Permanent

2) How the System Works

The administrative sanctions are fairly certain and do not vary much across the State because all administrative sanctions are controlled by the Administrative Per Se Unit of the Department of Motor Vehicles. The head of the Administrative Per Se Unit reported that half of all offenders do not request an administrative hearing, which means that the applicable license suspension penalty is automatically applied. For those who do request hearings, many do not show up. In such cases, the suspension is automatically applied as well. Administrative sanctions are also generally applied to those few who schedule and show up for an administrative hearing.

Defense attorneys use the administrative hearings to find out the strength of the case against their clients, which often puts the arresting officers and troopers on the spot without much preparation.

The certainty of criminal penalties varies with different judges and prosecutors. If prosecutors have heavy caseloads, or lack police reports with detailed behavioral descriptions supporting a strong case, they often permit the offender to plea the charges down to reckless driving or simply "nolle" the case, which means that the State chooses to end prosecution of the case, or go no further with the case. Some jurisdictions are much harder on DUI cases than others.

Many repeat offenders fight their cases vigorously because the penalties can be severe. Judges in many jurisdictions do not impose the maximum penalties for the first or repeat offenses. They may take the administrative penalties into account when considering criminal penalties by running court-imposed license suspensions

concurrently with administrative license suspensions instead of consecutively. Most repeat offenders receive longer license suspensions, but no jail time.

Generally, if a person refuses the BAC test, that person is more likely to contest the case. The lack of BAC test results clouds the case just enough to give the defense an advantage it does not have when there are test results. Defense attorneys usually attack the police reports and the behavioral cues reported by the officer or trooper. Without a BAC test, these reported cues are the only evidence the State has of the person's intoxication at the time of arrest.

3) How BAC Tests are Requested and Administered

Officers and troopers use a standard form called the A-44, located in Appendix C, to inform those under arrest of their implied consent to take the BAC test. The form explains the request for the BAC test and their right to refuse the test. After reading the form to the individual, the person must be allowed to try contacting a lawyer for advice on whether to take the test. Most are not able to get in touch with a lawyer before deciding whether to take the test.

In addition to reading the A-44, some officers and troopers try to calm offenders before sitting them down in front of the Intoxilyzer 5000 so the individuals are not as defensive. It is believed that these officers have much lower refusal rates because officer rapport with the driver helps. Those interviewed indicated that refusals are likely higher in cases where an officer is not experienced at developing rapport with offenders or are in a hurry to get through all the paperwork involved in the arrest process.

Offenders must take two BAC tests of the same type. The first test must be administered within two hours of the person operating a motor vehicle. The breath test must be administered by a certified officer or trooper. Almost all officers and troopers in the State are trained and certified on the Intoxilyzer 5000. Thus, the arresting officer most often administers the test.

4) Advantages of Taking or Not Taking a Breath Test

From the vantage point of the offender, first-time offenders benefit by taking the test because it benefits them more than refusing, but repeat offenders benefit more by refusing the BAC test because they benefit more from refusing than taking and failing a BAC test. First-time offenders are eligible for the Pretrial Alcohol Education Program through the courts and a work permit from the DMV, so they can keep driving, on a restricted basis, throughout their suspension period and get the charges dismissed when they complete the alcohol education program. First-time offenders definitely benefit more by agreeing to take the BAC test than refusing it. Repeat offenders gain a slight advantage by refusing to take the test. If an offender has already gotten a work permit and taken the alcohol education class for a prior arrest, the offender is not eligible for either. Repeat offenders cannot avoid the administrative suspension unless they contest the arrest at the administrative hearing. The focus of most repeat offenders is on improving

their chances at a successful criminal defense. Refusing the test provides an advantage to their case and increases the likelihood of a plea bargain, nolle, or reduced criminal penalty.

Repeat offenders often benefit from refusing the BAC test because it clouds the case just enough to give them a slight advantage in court proceedings. The administrative penalties are not severe enough to deter refusals by repeat offenders.

5) Who Takes and Who Refuses a BAC Test

First-time offenders constitute 75 percent of those who refuse to submit to the BAC test. According to the DMV's Administrative Per Se Unit's data 2,731 (75 percent) of the total 3,622 individuals who refused the BAC test in 2002 were first-time offenders. Assuming the ratio of first-time offenders to repeat offenders arrested remains the same each year and that the proportion of first-time refusers among all refusals remains consistent as well, data from 2001 DUI arrest records indicate that first-time offenders refuse the breath test 28 percent of the time while repeat offenders refuse the BAC test a slightly higher rate of 35 percent of the time. First-time offenders reportedly refuse often because they tend to be defensive at the time of their arrest and they are generally uninformed of the administrative consequences for refusal. Officers and defense attorneys as well as prosecutors report that first-time offenders generally do not know that the alcohol education program is available. They also do not know that after a first-time offender completes the alcohol education program, the court will dismiss the criminal case a year later.

6) Benefits of BAC Test Results

The BAC test results remove any doubt about the person's intoxication while operating a motor vehicle. Cases with BAC test results are far less likely to be contested. When contested, cases with BAC test results are more likely to result in conviction than those without BAC test results. As several interviewees noted, it is easier to challenge testimony than the test. Obtaining BAC test results helps convict intoxicated drivers.

7) Potential Strategies to Reduce BAC Test Refusals in Connecticut

- Reduce the paperwork involved in DUI arrests as the current lengthiness of the process, which often takes two to three hours, encourages officers to rush through the BAC testing process so they can finish their paperwork.

- It may also be possible to revise the A-44 form to include a description of the administrative sanctions for first-time offenders who take and refuse the BAC test and the option for the alcohol education program that results in dismissal of the charges.

- Make refusal more severe for a repeat offender than taking the BAC test. The additional three months of administrative suspension for refusal for a repeat

offender is not enough to deter refusals. The repeat offender stands a better chance against the criminal penalties by refusing the test, which currently outweighs any difference in sanctions imposed by the DMV.

- Train and encourage officers to gather a broader set of evidence to support their DUI cases with the knowledge that the person could refuse the test. This includes getting more behavior indicators and following up the arrest with a more in-depth investigation. For example, officers could go to the locations where the person may have been drinking and interview bartenders and hosts of parties for information on how many drinks the person had and what they looked like when leaving. In addition, videotape the breath testing process to provide judges and prosecutors with supporting evidence of the person's behavior. Better evidence will mean that BAC test refusal provides no advantage to the defendant in court.

2. Maryland

Maryland's breath test refusal rate was 29.1 percent for 2001.

1) The System

Maryland has a two-tier system for impaired driving offenses: driving under the influence (BAC ≥.08; called "A" offenses) and driving while impaired (BAC <.08; called "B" offenses).

Maryland allows Probation Before Judgment (PBJ), under which offenders may be given one year of probation with alcohol education; upon successful completion the driver's record is cleared so there is no record of a prior alcohol offense.

Cases are prosecuted and adjudicated at the county level. Practices vary substantially by county and sometimes by individual judges and prosecutors within a county.

Maryland has administrative per se with license suspension for BAC ≥.08. Offenders have the right to a hearing before an Administrative Law Judge (ALJ). The ALJ can dismiss the suspension or can modify the suspension to allow driving to work, school, alcohol treatment, or other purposes.

Test refusal results in administrative license suspension for 120 days for first-time offenders and 1 year for repeat offenders, which again can be appealed to an ALJ. Driving to work or other purposes may be allowed under the condition that the driver uses an alcohol interlock. Test refusal suspensions are in addition to any criminal penalties that may be applied.

Penalties increase for repeat offenders (defined as a second or subsequent offense within 5 years) and for drivers transporting a minor. Penalties are not increased for drivers with high BAC levels -- Maryland does not have a high-BAC aggravated DWI law.

Tables 7 and 8 summarize the administrative and criminal penalties. The only "mandatory" minimum penalty is 5 days in jail or 30 days community service for a second "A" offense within 5 years.

Table 7.
Maryland Administrative Driver's License Sanctions

Blood Alcohol Level	First Offense	Second Offense	Third Offense
Refusal to submit to a blood, breath or urine test	120 days or 1 year interlock	1 year	1 year
Test results under .08 (B)	None	None	None
Test results of .08 or higher (A)	45 days; may get modification for work, etc.	90 days; may get modification for work, etc.	90 days; may get modification for work, etc.

Table 8.
Maryland Criminal Penalties

Type of Penalty	First Offense	Second Offense	Third Offense
Fine	Under .08(B) - $500 .08 or over(A)-$1,000	Under .08(B) - $500 .08 or over(A) - $2,000	Under .08(B) - $500 .08 or over(A)-$2,000
Jail	Under .08(B)-60 days .08 or over(A)-1 year	Under .08(B)- 1 year (5 days and, if within 5 years of first, or community service) .08 or over(A) - 2 years	Under .08(B)- 1 year .08 or over(A) – (10 days mand. If within 5 years or community service) 3 years
Driver's License Suspension	Under .08(B) – 60 days suspension .08 or over(A) – 6-month revocation	Under .08(B) - 120 days suspension .08 or over(A) – 1-year revocation	Under .08(B) – 120 days suspension .08 or over(A) – 1-year revocation
Probation Before Judgment	Yes	No	No
Community Service	None	30 days in lieu of jail	60 days in lieu of jail

2) How the System Works

Both criminal and administrative consequences of a DWI arrest vary considerably by jurisdiction. It is believed that drivers generally receive more severe sanctions in rural counties.

First offenders almost always have their criminal charges pled to "B" regardless of whether or not they took a BAC test or what their BAC level was. They then almost

always receive PBJ. This means they will have no DWI prior record if they complete their probation satisfactorily, only a record of the PBJ. Administratively, first time offenders receive no suspensions with a BAC < .08 (unless they have 4 or more points on their driving records already); a 45-day suspension with a work modification with a BAC ≥ .08. If a first-time offender refuses the breath test, they receive either a 120-day suspension or a 1-year interlock requirement.

Since PBJs are not recorded as DWI priors, a second offense within 5 years of a PBJ is thus considered a first DWI offense. In theory, drivers cannot receive a second PBJ, but some do. Usually, though, these second offenses are pled down to a "B" and receive a fine and probation. Only with a third offense are jail or community service typically imposed. Administratively, the second offense will in fact be identified as a second offense. Drivers over .08 will receive a 90-day suspension, perhaps with a work permit modification and perhaps not. Drivers who refuse will receive a 1-year suspension, perhaps with the option of driving with an interlock, perhaps not.

The administrative portion of the system appears to work well, with fairly certain penalties. The criminal portion is driven by the PBJ option. Some believe that PBJ is applied far too frequently. PBJ's most contentious feature is that the offender has no record of this "first" offense. This feature of PBJ would be far more acceptable to its critics if it was permanently recorded as a prior alcohol-related offense, so that a subsequent arrest could be charged as a second offense.

3) How BAC Tests are Requested and Administered

Drivers arrested on an impaired driving charge are taken to a police station or equivalent facility where they are asked to provide a breath test. A breath test is used unless the driver is injured and unable to provide a breath test or unless breath test equipment is not available. The driver must take the test within two hours of the request. A driver who fails to take the test within the two-hour period is considered to have refused. A driver who fails to cooperate with testing procedures, such as by not providing a satisfactory breath sample, also is considered to have refused. A driver has the right to consult with an attorney before deciding whether or not to take the test.

Maryland has a form DR-15, Advice of Rights, located in Appendix D, which attempts to explain the implied consent law and the consequences of taking or refusing the test. Arresting officers must read or explain the form to arrested drivers when they request the test, and both the officer and the driver must sign the form. The form is a full page of about 9-point type and is difficult to understand; it is detested by almost everyone. However, if officers attempt to explain the form and the possible consequences of taking or refusing the test in their own words, they can be attacked in court, so many officers just read the form.

4) Advantages of Taking or Not Taking a Breath Test

From their vantage point, first-time offenders benefit from taking the breath test because of the relative outcomes. Even if they fail the test, they almost always will receive a PBJ with at most a 45-day suspension and a work permit compared to the 120-day suspension they would receive if they refuse. In addition, their insurance companies will find out about refusals and will raise insurance rates about $2,000 a year for three years. PBJs have no effect on insurance rates because insurance companies do not learn about them. Many defense attorneys advise first offenders to take the test.

Second offenders benefit from refusing the test unless they are sure they are under .08. If they refuse, they typically will be pled to a B (under .08) and charged as though they were a first offender. They cannot (in theory) receive a PBJ, but they will receive relatively light B-level penalties. If they take and fail the test, they may face the more severe A-level penalties.

5) Who Takes and Who Refuses a BAC Test

It is believed that many first-time offenders are scared, confused, not thinking straight (they have been drinking, perhaps quite a lot), perhaps intimidated by law enforcement, and do not clearly understand the consequences of refusing or taking the test. The DR-15 form doesn't help. Most first-time offenders do not have an attorney they can call in the two-hour window after they've been asked for a test. As a result, some first-offenders refuse the test out of confusion or general suspicion of authority. Repeat offenders have more knowledge of the system, the possible consequences of taking or refusing the test, and the likelihood that the penalties will in fact be applied. Repeat offenders are more likely to get an attorney's advice. Repeat offenders also face more severe criminal penalties and may have learned that license suspensions for refusal are difficult to enforce. So many repeat offenders refuse the test.

Attorneys' advice varies. Some will advise first offenders to take the test and repeat offenders to refuse. Some will advise everyone to refuse on the grounds that drivers should not cooperate in any way with the arresting officer. Others may advise everyone to take the test and then attack the testing process (chain of custody, breath test instrument calibration and function, etc.).

6) Benefits of BAC Test Results

BAC test results assist in obtaining DWI convictions and may help to identify problem drinkers. Many, perhaps most, prosecutors will plea a DWI down to a "B" offense if there is no BAC result: conviction is far easier with a high BAC test result in evidence. High BACs also allow judges to include alcohol problem screening and treatment as part of the driver's sentence. Some judges assume that repeat offenders are likely to have an alcohol problem and should be screened, but first offenders with alcohol problems likely are not identified without a BAC test and a high BAC reading.

7) Potential Strategies to Reduce BAC Test Refusals in Maryland

- Provide better information to drivers, especially first-time offenders and drivers under the age of 21, on the consequences of refusing or taking the test.

  First-time offenders are almost always better off taking the test than refusing it, even if they have a high BAC. If first-time offenders knew that refusal likely would result in a 120-day suspension and $6,000 additional insurance costs, while taking the test probably would result only in a 45-day suspension with a work permit, no criminal record after PBJ, and no insurance costs, then virtually all first-time offenders would take the test.

  The issue is how to convey this information accurately since it describes "what usually happens," not "what the law allows," and might be interpreted as saying that "first offenders always get off with PBJ and escape any meaningful penalties." To avoid this, the message could emphasize the penalties for refusal. Some possible methods for publicizing these penalties include:

  a. Revise the DR-15 form so it is clear, understandable, and written in plain English.
  b. Advise newly-licensed drivers in driver education classes, driver licensing ceremonies, and perhaps even on the driver's license itself, that they have consented to a BAC test if requested and that refusal will result in a long license suspension.

- Provide incentives and training to law enforcement to encourage more tests.

- Strengthen the DWI code to increase test refusal penalties for repeat offenders. First offenders face, and typically receive, substantially greater penalties for refusal than for taking and failing the test. But second and subsequent offenders do not, which is why most repeat offenders refuse the test. This is unlikely to change unless the penalties are increased.

3. Florida

Florida's breath test refusal rate was 37.1 percent for 2001.

1) The System

In Florida, DUI is punished by both pre-conviction administrative and post-conviction criminal sanctions.

Pre-conviction licensing actions for DUI are 6 months' mandatory minimum suspension for a first offense and 12 months for second and subsequent offenses. There are no post-conviction minimum revocation periods for a first offense, but drivers receive 12 months for a second conviction within five years, 24 months for a third conviction within 10 years, and permanent revocation for the fourth conviction. A hardship license is available following mandatory minimum suspensions. A DWI offender's vehicle is subject to forfeiture if, at the time of the offense, the person is driving on a suspended or revoked license for a prior DUI offense.

Florida has no diversion programs for DWI first offenders nor does it have anything like probation before judgment (PBJ).

At the time of conviction, there are mandatory minimum fines of $250 for a first, $500 for a second and $1,000 for third and subsequent DUIs. There is no mandatory minimum period of incarceration for a first offense, but it is 10 days (with 48 consecutive hours) for a second offense within 5 years, and 30 days for a third within 10 years (also with 48 consecutive hours). Enhanced penalties are available for high-BAC offenders (.20 or higher), although mandatory minimums are the same as for regular offenders. Additional sanctions include community service (50 hours minimum, although the court may substitute a fine of $10 an hour), substance assessment and treatment, victim impact panel (at the judge's discretion), DWI school, and other assessments and surcharges.

Until July 2001, the only penalties for breath test refusal were administrative license suspensions. BAC test refusal now carries an administrative license suspension of 12 months for a first refusal (instead of 6 months for the DUI) and 18 months for second and subsequent refusals. Since July 2001, second refusals are a class 1 misdemeanor, and offenders can receive additional court-ordered sanctions upon conviction. It is difficult to predict what the penalties will be for misdemeanor refusal because there are no mandatory minimums and very little case law.

Tables 9 and 10 summarize the administrative and criminal penalties.

Table 9.
Florida Administrative Driver's License Sanctions

Blood Alcohol Level	First Offense	Second Offense	Third Offense
Refusal to submit to a blood, breath, or urine test	12 month suspension (same for under 21)	18 month suspension (misdemeanor)	18 month suspension (misdemeanor)
Test results of .08 or higher	6 months	1 year	1 year

Table 10.
Florida Criminal Penalties

Type of Penalty	First Offense	Second Offense	Third Offense	Fourth Offense
Fine	$250-$500	$500-$1,000; BAC .20 or higher up to $5,000	$1,000 -$2,500; BAC .20 or higher up to $5,000	$1,000; mandatory. BAC .20 or higher up to $5,000
Jail	Up to 6 months; BAC of .20 or higher, up to 9 months	10 days mandatory (with 48 consecutive hours)-9 months if BAC .20 or higher, up to 12 months	30 days mandatory (with 48 consecutive hours)	30 days minimum; BAC .20 or higher, up to 1 year
Driver's License Suspension	None; Can receive 10-day vehicle impoundment	1 year revocation; 30-day vehicle impoundment	2 year revocation; 90-day vehicle impoundment	Permanent revocation; 90-day vehicle impoundment
Community Service, etc.	Up to 50 hours or fine of $10 an hour), substance assessment and treatment, etc. If BAC .20 or higher, above mandatory	Up to 50 hours or fine of $10 an hour), substance assessment and treatment, etc. If BAC .20 or higher, above mandatory	Up to 50 hours or fine of $10 an hour), substance assessment and treatment, etc. If BAC .20 or higher, above mandatory	Up to 50 hours or fine of $10 an hour), substance assessment and treatment, etc. If BAC .20 or higher, above mandatory

2) How the System Works

The administrative suspension process starts when the law enforcement officer lifts the suspect's license after the suspect either refuses a breath test or takes it and fails. The case is then classified either as a Refusal or DUBAL (Driving with Unlawful Blood or Breath Alcohol) and is entered into the Department of Highway Safety and Motor Vehicles (DHSMV) system as one or the other. Before offenders are released by police, they are given a packet that contains a citation and suspension (including a 10-day driving permit), a Probable Cause Affidavit, and a Refusal Affidavit. The packet instructs the subjects that they may request a review of the license suspension, but must make the request within 10 days. The offender is given a choice of either an informal or formal review.

Offenders represent themselves at informal reviews. The offender and the hearing officer examine the paperwork submitted by police for errors in fact, and the hearing officer decides whether to sustain or overturn the suspension. Informal reviews, by law, must be completed within 20 days of the arrest. Generally, the reviews are scheduled within 10 days because the driver cannot legally drive after that period.

Formal reviews are more intense, and must be completed within 30 days of the arrest. The offender may be (and usually is) represented by an attorney. The offender is allowed to request subpoenas of material witnesses, who can be cross-examined at the hearing by the defense attorney. One defense attorney says he always advises clients to request a formal review, because he is able to overturn the suspension in 7 of every 10 cases and he gets "free discovery" of the case police have against the client. The DHSMV estimates that 25 to 30 percent of suspended drivers request formal reviews and that about 35 percent of the formal reviews result in the overturn of the suspension. The overall impact is that 10 to 12 percent of DUI-related suspensions are overturned. The DHSMV generally grants a hardship permit allowing the subject to drive until 12 days past the date of review. If there has been a prior breath test refusal, however, the subject is not entitled to a hardship permit under any circumstance.

While the administrative suspension process proceeds, the DUI prosecution takes an independent course through the courts. The administrative hearing has no bearing on the criminal process.

Because the volume of DUI cases is huge, a high proportion of cases are resolved pretrial. There is general agreement that almost all cases charged by police are prosecuted. Most are resolved by guilty pleas, some are pled down to reckless driving, a few are tried in court and very few are dismissed. (Statistics were not available.) Prosecutors and defenders agree that the overall strength of the State's case is the primary factor that determines pretrial disposition. The skill and level of effort by defense counsel also are acknowledged by both prosecutors and defenders as major factors. There also is agreement that presence or absence of breath test evidence is not very important in the pretrial phase, because there are many other factors that can weaken a case. In Miami, which is not necessarily representative of the rest of the State, there is a powerful

incentive for first-time offenders to plead guilty, since a 30-day jail sentence is generally imposed at trial and it is suspended if the defendant pleads guilty.

Misdemeanor refusal for repeat offenders is charged separately from DUI. In the year since the law became effective, few second refusal cases have come to trial. At present, no statistics are available on how many people have been charged with a second refusal. Police may miss some repeat offenders who qualify for the charge, because the driving record information the police routinely access does not show prior refusals. However, prosecutors do get the information that would identify prior refusals and the charges could be initiated by prosecutors if they chose to do so. At the time of this report, the state attorney who drafted the law was trying a case in which motions had been filed citing fourth, fifth, and sixth amendment issues as well as Miranda problems. All of these issues had been researched prior to the passage of the legislation. The original intent of the bill's sponsors was that the law should apply to all refusals. It was amended in the legislative process to cover only second and subsequent refusals.

3) How BAC Tests are Requested and Administered.

Breath tests are administered only after the suspect has been placed under arrest for DUI. Usually the suspect is asked to take the test after having performed a roadside Field Sobriety Test and having been transported to a central testing facility. There are exceptions when a mobile breath testing facility is available for checkpoints, or when there has been a crash that caused serious injuries to the suspect and/or someone else. In an injury crash involving others, police may force a blood test.

Breath tests may be administered only by operators certified by the Florida Department of Law Enforcement. In many cases the breath test operator is not the arresting officer, and in a few cases, the breath test operator is a civilian. Either the arresting officer or the breath test operator can request the breath test. In most places, the implied consent warning is read to the suspect only if the offender refuses. After being read the warning statement, the offender is asked again. The offender and the police officer who read it must sign the form to acknowledge that the warning was read. At least one county court requires that the implied consent warning be read before asking the suspect to agree to the test. The law enforcement officers in that jurisdiction, as well as State troopers, read the implied consent form first as a matter of standard procedure. Some officers feel they would get fewer refusals by just asking. The language of the warning is about as simple and clear as a legal document can be. It emphasizes the license suspension penalties for refusing and advises that a second refusal is a crime.

4) Advantages of Taking or Not Taking a Breath Test

From the vantage point of the offender, the only circumstance in which it is certain that it will be to an adult driver's advantage to submit to a BAC test is when the driver is sure that the BAC is under .08. A first-time offender that agrees to the test and fails it will, upon conviction, be suspended for 6 fewer months, but will usually need to pay fines and fees, be put on probation, required to perform community service, sent to

DUI school, and required to pay for alcohol assessment and perhaps treatment. The severity of the longer refusal suspension is diminished by the possibility that it can be overturned and that a hardship permit will be granted. (Hardship permits are available only when there is no prior refusal in the record.) Both prosecutors and defense attorneys agree that the consequences of refusal are less severe than the consequences of conviction, even for a first offense.

Addition of a misdemeanor refusal charge for defendants with a prior refusal could possibly equalize the penalties somewhat for repeat offenders, but it is too early to tell whether the penalties actually imposed upon conviction will approach those for repeat DWI convictions.

Minors who take the breath test and fail get a 6-month suspension while refusals result in a 1-year suspension, making it relatively more attractive to take a breath test. Also, suspension might be viewed as being a more important consequence relative to other sanctions by youthful drivers than by adults. The significantly reduced penalties for taking and failing a BAC test compared to refusal may be the reason why refusals are significantly lower among minors than adults.

5) Who Takes and Who Refuses BAC Tests?

As noted, there is a vast difference in the refusal rate between minors and adults. In 2002, the refusal rate was only 6 percent for minors versus 38 percent for adults.

There are no statistics on demographic or economic characteristics of people who refuse versus people who submit to the test. Some experts venture that people who refuse tend to be upscale economically and generally more educated and sophisticated. Others say you just can't predict who will submit and who will refuse. Everyone seems to agree that most of the people who refuse have been advised to do so by a defense lawyer or the advice has passed on by someone they know who has been arrested for a DUI.

Defense attorneys complain that the implied consent statement does not give defendants the full information they need to make an informed decision, saying nothing about the consequences of a DWI conviction, concentrating only on the sanctions for refusal.

6) Benefits of BAC Test Results

With the exception of defense attorneys, everyone involved in the DUI sanctioning process agrees that a higher rate of breath test submittal would have great benefit. Law enforcement officials feel that more breath tests will assure that a higher percentage of offenders are punished. Prosecutors would like a higher proportion of defendants to be tested because it probably will increase the proportion of guilty pleas as it is more difficult for defenders to win at trial when the level of intoxication is known. That means fewer trials, and prosecutor's offices are always overworked and understaffed. It is believed that alcohol tests also help judges to make the right sentencing

decisions upon conviction, helping to identify problem drinkers and mandate the most appropriate combination of sanctions and treatment.

7) Potential Strategies to Reduce BAC Test Refusals in Florida

Increase the public's perception that the relative penalties for refusing a BAC test are more severe than the penalties for taking and failing a BAC test. If the public has the view that administrative license suspensions are easy to beat, the deterrent value of the increased administrative sanctions for refusal is greatly diminished.

Therefore, the recommendations are to:

- Upgrade the knowledge and confidence of suspension hearing officers. Florida's DUI Technical Advisory Committee has discussed the administrative hearing process in the past. Part of the problem appears to be that many hearing officers are non-lawyers, and some may be intimidated by highly qualified defense attorneys. The only educational qualification for the position is a high school diploma. DHSMV has made an increased effort to train hearing officers in the relevant law to ameliorate the situation, but it has a way to go. Perhaps increasing funding and revising the requirements for hearing officers to hire attorneys as hearing officers and increased resources or more legal training for current hearing officers would be money well spent. Some States hire qualified attorneys to become hearing officers on an hourly basis. That solution may work in Florida.

- Increase police training to effectively represent DUI and refusal cases in suspension hearings. The arresting officers are the only individuals allowed in DHSMV license suspension reviews who represent the State's interest. Although Institute of Police Technology and Management has made an effort to train police officers on how to represent their cases in administrative license suspension hearings, not enough officers are trained. Increased funding to make the training more widespread might also be a good investment. The added training could be more specialized, along the lines of trial advocacy training for new prosecutors. Added training could turn arresting officers into "police prosecutors" when they appear in formal license suspension hearings.

There is some hope that the recently passed law making second refusals a misdemeanor will evolve into an effective deterrent to breath test refusal among repeat offenders, who probably are more likely to refuse than first offenders. Certainly, when the constitutional issues have been tested, a misdemeanor refusal case will be much easier to prosecute than a DUI. If the courts impose penalties for second refusals that are as severe as the penalties imposed by the court for an actual DUI conviction, the increase in the relative benefits of taking and failing the test as compared to refusing the test will likely lead to defense attorneys advising their clients to take the test.

Police and prosecutors should make special efforts to bring as many misdemeanor refusal cases to trial as possible to reinforce its effect as an effective penalty and deterrent. Changing the driving record information system to make it easier for police to identify and charge offenders with second refusals would also increase the efficacy of the new law.

4. Louisiana

Louisiana's breath test refusal rate was 45.9 percent for 2001.

1) The System

After arrest, the person must submit to a BAC test within a reasonable amount of time after operating the motor vehicle. There is a 15-minute observation period before administering the breath test. The person has no right to contact a lawyer before either submitting or refusing to take the breath test. The arresting officer is required to inform the person of the consequences of refusing to submit to a BAC test. The offender is permitted to refuse the test unless the offender was involved in a crash where a fatality or bodily injury occurred. If the person does not provide an adequate breath or urine sample when requested and refuses to submit to a blood test, the officer or trooper records it as a refusal. Refusals are admissible in court, but not criminalized. There was a bill introduced, but not passed, in 2003 at the State legislature to criminalize BAC test refusal. It will reportedly continue to be introduced each year during regular sessions until passage.

Louisiana had an administrative per se license suspension for anyone with a BAC ≥ .10. As of September 30, 2003, the per se BAC decreased to ≥.08. Offenders must schedule a hearing with the Department of Motor Vehicles (DMV) regarding administrative license suspension within 15 days of arrest. If the offender does not schedule a hearing, the DMV issues the appropriate license suspension.

Louisiana offers a pretrial diversion program for those arrested for DWI. The law relating to pretrial diversion programs does not restrict pretrial diversion to first-time offenders. Entrance into the program is at the discretion of the district attorney and the court. There are 35 pretrial diversion programs operating in Louisiana. The Grant parish district attorney-run program includes a 1-year probation and requires activities such as community service, counseling (e.g., anger management, alcohol, drug counseling, going to talk to a victim impact panel put together by MADD), and/or restitution. If the offender completes the program, the prosecuting authority maintains a record for five years of the person's successful participation in the program and makes that record publicly available.

First-time offenders who submit to a BAC test are eligible for a work permit within 30 days of their 90-day administrative suspension. First-time offenders who refuse the BAC test must wait 90 days of their 6-month administrative suspension before they can get a work permit. The court has no jurisdiction over mandatory license suspensions in Louisiana resulting from convictions, but it does issue recommendations regarding suspensions. All suspensions, whether administrative or criminal, are under the control of the DMV. The courts can recommend actions regarding suspensions mandated by law that accompany convictions. In addition, the court can make violation of a suspension a violation of probation, which makes the suspension carry more weight.

Louisiana has criminal penalties and administrative sanctions that increase with the number of offenses and vary for those under 21 (zero tolerance law), and those with a BAC ≥.15. First- and second-time offenders fall under the jurisdiction of local courts while third- and subsequent offenders fall under the jurisdiction of State courts.

Tables 11 and 12 summarize the administrative and criminal penalties and table 13 summarizes the criminal penalties for those under 21.

Table 11.
Louisiana Administrative Driver's License Sanctions

Blood Alcohol Level	First Offense	Second Offense	Third Offense	Fourth Offense
Refusal to submit to a blood, breath, or urine test	6-month suspension	1-year suspension	1.5-year suspension	1.5-year suspension
Refuse to submit and you are under 21	180-day suspension	1.5-year suspension	1.5-year suspension	1.5-year suspension
Test results of .02 or higher and you are under 21	180-day suspension	1-year suspension	1-year suspension	1-year suspension
Test results of .10 or higher (.08 as of September 30, 2003)	90-day suspension	1-year suspension	1-year suspension	1-year suspension

Table 12.
Louisiana Criminal Penalties for those 21 or older

Type of Penalty	First Offense	Second Offense (within 10 years)	Third Offense (within 10 years of last conviction)	Fourth Offense (within 10 years of last conviction)
Fine	$300 - $1,000	$750 - $1,000	$2,000	$5,000
Jail	10 days - 6 months; suspension if probation with minimum 2 days in jail (If .15 or higher, mandatory 48 hours in jail)	48 hrs mandatory jail of a 1-6 month jail term	1-5 years with or without hard labor (6 months mandatory)	2 years mandatory
Driver's License Suspension	90 days (hardship provision)	90 days (hardship provision)	24 months (no hardship provision)	2 years (no hardship provision)
Substance abuse Program	Yes	Yes	Yes	Yes
Driver Improvement Program	Yes	Yes	Yes	Yes
Community Service Program	4 8-hr. days (minimum)	30 8-hr. days	Auto may be seized and sold	Auto may be seized and sold

Table 13.
Louisiana Criminal Penalties for those under 21

Type of Penalty	First Offense Test results of .02 or higher	Second Offense Test results of .02 or higher
Fine	$100-250	$150-$500
Jail/Community Service	No	10 days – 3 months (48 hours mandatory)
Driver's License Suspension	No	No
Substance abuse Program	Yes	Yes
Driver Improvement Program	Yes	Yes

2) How the System Works

The administrative sanctions are fairly certain when the Department of Motor Vehicles (DMV) gets the arrest information from a parish and the paperwork is complete and accurate. Parishes do not always send DWI arrest information to the DMV, which means that administrative license suspension may not always occur. Local courts often do not share arrest and conviction information with each other or the DMV, so some first offense administrative suspensions could be the person's second or third suspension.

The criminal penalties vary widely, with those cases where the person has refused the BAC test most frequently resulting in a reduction of the DWI charges and a plea to lesser charges. Most district attorneys want to get a guilty plea to at least one charge when a DWI arrest is made, so in cases where the offender has refused the BAC test, they often reduce the DWI charges to reckless driving or a first DWI offense for someone facing a second or third DWI offense.

Parish courts do not share information on DWI convictions, so some individuals can be convicted in several counties for a first offense. In addition, because local courts keep the fines for the first and second DWI convictions but do not have jurisdiction over third DWI offenses, they have an incentive to charge offenders with a first or second offense multiple times rather than charging the person with a third or subsequent offense and sending the person to a State court.

3) How BAC tests are Requested and Administered

Officers and troopers use a standard form to inform those under arrest of their implied consent to take the BAC test. They explain the person's right to refuse the test.

They use a form to provide the information, but the form has changed quite a few times recently, which makes it difficult for officers to accurately communicate the implications of implied consent to offenders.

The BAC test must be administered in a reasonable amount of time after the operation of the motor vehicle. Although there are no requirements that the person administering the breath test be certified on the machine, most officers and troopers in the State are trained and certified on the Intoxilyzer 5000. The arresting officer usually administers the test unless a blood test is requested.

In one parish, the judge has reportedly issued warrants in some cases to force offenders refusing to submit to the breath test to either submit to the breath test or have blood drawn for BAC testing.

4) Advantages of Taking or Not Taking a Breath Test

From the vantage point of an offender, all offenders, regardless of whether it is their first time, benefit from refusing the BAC test. Without test results, the district attorney has a much more difficult time getting a conviction for DWI. Police often rely upon the test results and do not always write reports that provide district attorneys with a good case without the BAC test results.

When an offender submits to a test and "fails," prosecution is automatic in most cases. Refusals are sometimes reduced to reckless driving or careless driving if there is little behavioral evidence of DWI. Prosecutors rarely dismiss cases completely, but they are far more likely to agree to guilty pleas to lesser offenses.

Repeat offenders often benefit from refusing the BAC test because it clouds the case just enough to give them a slight advantage in court proceedings. The administrative penalties are not severe enough to deter refusals by repeat offenders and their refusal greatly increases the likelihood of the charges being reduced in order to obtain a guilty plea.

Those who believe their BAC will be above .15 also stand to benefit from refusing because they cannot be convicted of DWI with a high BAC without the test results. Such convictions mean 48 hours of mandatory jail time on first and second DWI convictions.

5) Who Takes and Who Refuses a BAC Test

Repeat offenders are somewhat more likely to refuse the BAC test, but first-time offenders refuse at a high rate as well. First-time offenders refuse the test 31 percent of the time and second offenders refuse 36 percent of the time. However, some offenders charged with a first-time offense in a parish may be repeat offenders who have a prior arrest, BAC test refusal, and DWI conviction in another parish. The lack of information sharing between parishes regarding DWI arrests, test refusals, and convictions means that

when a person is arrested for DWI in a parish, that parish may not know of the offender's DWI arrest, test refusal, and conviction history in other parishes. Affluent individuals and those over 29 are also more likely to refuse to submit to a BAC test.

6) Benefits of BAC Test Results

BAC test results make prosecution much easier and are far less likely to be pled down to lesser offenses. Judges want to know the BAC results because it helps inform their rulings and makes the case easier to decide.

7) Potential Strategies to Reduce BAC Test Refusals in Louisiana

- Issue a standing warrant in each jurisdiction for a blood sample for BAC testing for anyone who refuses to submit to the breath test. One judge has issued warrants frequently enough that the parish has a standard standing warrant template that they use for requesting forced BAC tests when necessary. The approach could be systematized and expanded to serve as a standing warrant for use when needed to force a BAC test.

- Provide officers with more training on what to observe with regard to behavioral cues and require officers to write more extensive reports identifying all the behavioral cues that indicated intoxication at the time of arrest. Currently, officers rely largely on the BAC test results for their cases and do not submit complete behavioral descriptions.

- Criminalize the BAC test refusal. There is currently a bill in the State legislature to criminalize the third refusal.

- Take refusal cases to trial and publicize the case instead of reducing the DWI charges in cases of refusals in return for a plea of guilty to a lesser charge. Many district attorneys and judges do not take refusal cases to court because they stand less chance of a conviction.

- Standardize the arrest paperwork involving the information that officers must provide to offenders before requesting the BAC test. The information varies across parishes and changes frequently.

- Train district attorneys and judges on the subtleties of clinical cases of intoxication, those with BACs that are not high, but can involve impairment. The subtle behavioral cues in these cases make district attorneys less likely to try them and judges less likely to convict when a case is tried.

5. Oklahoma

Oklahoma's breath test refusal rate was 38.3 percent in 2001.

1) The System

Oklahoma has a three-tier system for impaired driving offenses. Driving under the influence (DUI), with a BAC of .06-.07 is often used to plea down DWI charges to some lesser charge such as reckless driving. Drivers with BACs < .06 are not charged unless they are under 21 or drugs other than alcohol are involved. Driving while intoxicated (DWI), with a BAC ≥.08 is called an "A" offenses. Finally, there is aggravated DWI, with a BAC ≥ .15. All DWI charges and first-time DWI charges are misdemeanors. A second-time DWI offense is a felony, permitting more severe penalties.

Oklahoma has 77 district courts and almost 400 municipal courts. District courts and Oklahoma City, Tulsa, and Lawton municipal courts are courts of record; the other municipal courts are not. The two systems operate independently and do not share records. Non-record municipal courts hear only misdemeanors. This means that for all practical purposes, any impaired driving arrest heard in a non-record court is considered a first offense regardless of whether the driver has been arrested or convicted of previous impaired driving offenses. Some drivers have accumulated more than 10 DUI convictions in one or more non-record courts without being charged with a second offense in a court of record. The arresting officer decides where to file charges. Municipal courts keep driver records for three years, while district courts keep them indefinitely.

Oklahoma has administrative per se with license suspension for BAC ≥.08. Offenders have the right to a hearing before a Department of Public Safety (DPS) attorney. The DPS attorney can dismiss the suspension or in some instances can modify the suspension to allow driving to work, school, alcohol treatment, or other purposes with the requirement that the driver use an interlock.

Test refusal results in administrative license suspension, which can be appealed to a DPS attorney. Again, the suspension may be modified in some instances to allow driving to work or other purposes if the driver uses an interlock. Test refusal suspensions are in addition to any criminal penalties that may be applied.

Tables 14 and 15 summarize the administrative and criminal penalties available in law for DWI and DUI.

Table 14.
Oklahoma Administrative Driver's License Sanctions

Blood Alcohol Level	First Offense	Second Offense	Third Offense
Refusal to submit to a blood, breath, or urine test	180-day suspension	1-year suspension	3-year suspension. Work permit allowed after 1 year with interlock
Test results under .08 (DUI)	None	None	None
Test results of .08 or higher (DWI)	180-day suspension; work permit allowed with interlock	1-year revocation; work permits not allowed	3-year revocation; work permit allowed after 1 year with interlock

Table 15.
Oklahoma Criminal Penalties

Type of Penalty	First Offense	Second Offense	Third Offense	High BAC-Aggravated Driving Under the Influence
Fine	Under .08 -$500 .08 or higher - $1,000	Under .08 -$500 .08 or higher - $2,500	Under .08 - $500 .08 or higher - $5,000	No additional fines
Jail	Under .08 – 6 months .08 or higher- 10 days – 1 year	Under .08 – 6 months .08 or higher- 1-5 years	Under .08 – 6 months .08 or higher- 1-7 years	None
Driver's License Suspension	Under .08- 30 days .08 or higher- 180 days	Under .08 – 6-month suspension .08 or over – 1-year revocation	Under .08 – 6-month suspension .08 or over – 3-year revocation	30-day interlock
Substance abuse Program	None	28-day treatment; 30-day aftercare	28-day treatment; 90-day aftercare	28-day inpatient treatment; 1-year aftercare and periodic testing
Community Service Program	None	None	.08 or higher – 240+ hours	480 hours following aftercare

2) How the System Works

The administrative consequences of an impaired driving arrest are fairly uniform across the State and are essentially the same for drivers who refuse and drivers who fail (BAC ≥ .08) the test: 180 days suspension for the first offense, with work permits possible if the driver uses an interlock; 1 year for the second offense with no work permits; and 3 years for the third with an interlock work permit allowed after 1 year. Previously the suspension for first-offense test failure was 90 days compared to 180 days for refusal. Now, the results of failing a BAC test are the same as those for refusing to take the test.

About 25 percent of the drivers whose licenses are suspended or revoked for refusing or failing the BAC test request an administrative hearing. The suspensions or revocations are upheld about 80 percent of the time a hearing is requested. Work permits are granted in about half of the hearings, which results in many drivers with suspended or revoked licenses receiving a work permit. Interlocks are required for most, but not all, drivers who receive work permits.

Administrative hearings have become an opportunity for defense attorneys to gather information from the arresting officer that can be used to defend the driver in the criminal action. Hearings are only authorized to explore specified subjects relevant to the administrative action, such as establishing that the driver was in fact driving the car and that law enforcement had appropriate justification to stop the car. But many of the DPS attorneys who run the administrative hearings often allow questioning outside these areas.

Criminal charges and penalties vary considerably depending on whether the case is heard in a municipal or district court or in a rural or urban area. In some rural areas, impaired drivers may routinely be charged only with reckless driving rather than DUI or DWI.

First-offenses are almost always pled down. Test failures are often pled to reckless driving, which is not recorded as an alcohol-related offense so it does not count as a prior. However, the DWI arrest is recorded. Thus, if the driver is arrested again, a good arrest record search may lead to the discovery of the previous DWI arrest and allow a repeat offense charge to be placed. First-time offenders who refuse the test often have their cases pled to DUI or to reckless driving. Penalties typically involve a fine, perhaps with an alcohol assessment and possible additional requirements such as community service or victim impact panel sessions.

Second and subsequent offenses also frequently are pled down in municipal courts. For example, in Tulsa City Court, refusals are pled to reckless and test failures are pled from DWI to DUI. In district courts, impaired driving is a low-level offense compared to other cases, so may be pled down or even dismissed. Some prosecutors are said to dismiss all test refusal cases.

Impaired-driving cases rarely go to trial. Experienced law enforcement officers report testifying in impaired driving cases “twice in 32 years” or “never in 13 years.” Officers testify in administrative hearings fairly frequently.

3) The BAC Testing Process

After a driver has been placed under arrest, the arresting officer requests a breath test. Requesting the breath test usually happens in the field, in the arresting officer's patrol car, but the breath test is not given until the person reaches the police station or jail. While in their vehicles, officers read an implied consent card to a driver after the drivers have been placed under arrest. The card informs the driver that a test is required and describes the penalties for refusing and for failing the test. The officer chooses whether to request a breath or blood test. In practice, officers request a breath test unless the driver has been taken to a hospital or emergency room and a blood test is more convenient. A test can be obtained by force from drivers involved in crashes with a serious injury or fatality, but this appears to be applied very rarely. The driver has the right to request an independent test.

The breath test is given in the police station or jail if the offender agreed to submit when asked at the scene of arrest. Most patrol officers are certified to operate the breath test equipment. If a driver refuses a test when first requested at the arrest scene, officers often will ask again at the station, and if the driver agrees at that point, the test is conducted. The test requires two separate breath test samples taken three minutes apart. If the driver gives the first sample but refuses the second, this is considered a refusal. Failure to cooperate with the test, for example by not providing a satisfactory breath sample, also is considered a refusal. Courts generally accept the officer’s word that the driver refused the test or was uncooperative during the test.

If an injured driver is taken to an emergency room or hospital, a law enforcement officer will go to the facility. Unless the driver is to be released immediately, the officer usually requests a blood sample. Hospitals routinely provide the sample.

A recent policy in Oklahoma jails requires a medical evaluation before admitting a person with a BAC over .25. This can be a substantial problem at night if medical personnel are not available. Even if they are, it adds another step and more time to the impaired driving arrest. To avoid it, some officers may not request a test if they suspect the driver is over .25.

4) Advantages of Taking or Not Taking a Breath Test

From the vantage point of the offender, the administrative penalties are essentially the same for drivers who refuse and drivers who fail the BAC test. This means that a rational decision on whether or not to take the test depends on how the test result or the refusal may affect criminal proceedings.

Properly-licensed drivers over age 21 with a BAC less than .06 definitely benefit more by taking the test. With the BAC evidence to show that they are below the .06 limit, they will not be charged. If they refuse the test, their driver's license almost certainly will be suspended.

First-time offenders with a relatively "low" BAC that is above .06 may benefit more if they take the test. If their BAC is less than .08 their license will not be suspended administratively. They may get a better deal in court since they have been cooperative and have demonstrated that they are "not too drunk," while refusers may be seen as uncooperative and perhaps high-BAC. However, in jurisdictions where first offenders are routinely pled to reckless or to DWI, the results of taking or refusing the test may be about the same.

Drivers over the BAC limit of .08 probably would likely benefit by refusing. First offenders almost always will have their charges pled down, whether they refuse or fail. For drivers with a prior offense in a court of record, who face a second-offense felony charge, some prosecutors will plea down refusals more readily than cases with BAC evidence. Other prosecutors will proceed with refusal cases (one noted that about 70 percent of impaired driving cases that go to trial have no BAC results). They note that the cases are harder to present without BAC evidence, especially if the arresting officer has not carefully recorded other evidence of impairment. Judges will treat refusal and BAC cases similarly, but juries will convict more easily with BAC data than with a refusal. Finally, refusals do not face aggravated DUI charges (BAC $\geq$ .15), which some jurisdictions use. (Many jurisdictions apply the aggravated DWI rarely or never.)

When asked for their personal advice if they or a friend were arrested for impaired driving, the law enforcement officers, prosecutors, and judges interviewed were virtually unanimous in advising anyone whose BAC might exceed .08 to refuse the test. Defense attorney advice was mixed. Some, probably the majority, would advise everyone to refuse, for the reasons noted above. Others would advise taking the test because the process of requesting and administering the test provides many opportunities to attack the prosecution: the "attack the breath test machine" strategy.

5) Who Takes and Who Refuses a BAC test

It is believed that most first-time offenders take the test and most repeat-offenders refuse. Beyond this generalization, drivers who refuse the test tend to fall into one or more of the following categories:

- Drivers with high BAC levels who fear the aggravated DUI penalties;
- Unlicensed drivers or illegal aliens, for whom a license suspension is irrelevant;
- Drivers who have been advised by an attorney to refuse the test, or who are suspicious of law enforcement;
- Drivers who are confused, uncooperative, or too impaired to function properly.

6) Benefits of BAC Test Results

BAC test results help in charging drivers properly, in obtaining convictions, and identifying problem drinkers who should be assigned to treatment. In particular, BAC test results are essential to charging a driver with aggravated DUI.

However, BAC test results do not appear to be critical to Oklahoma's impaired-driver control system. They appear to influence plea bargains and court verdicts somewhat, but not substantially. Many prosecutors and judges dislike the aggravated DUI statute and will not apply it. The general feeling is that a higher testing rate would not change Oklahoma's DUI prosecution, adjudication, or sentencing much. Unlicensed driving -- drivers with a suspended or revoked license, or illegal aliens who have never been licensed -- is seen as a substantially greater problem than BAC test refusals.

7) Potential Strategies to Reduce BAC Test Refusals in Oklahoma

Law enforcement, prosecutors, judges, and defense attorneys alike had two main recommendations.

- Reduce the amount of time required to process a DUI arrest. One officer noted that "DUI is the most labor-intensive misdemeanor, all the way from the arrest to the court." The new Intoxilyzer machines being introduced statewide may reduce processing time somewhat as they will check for errors and print affidavits.

  One specific obstacle to BAC tests for high-BAC drivers is the requirement for a medical evaluation before admitting a person with a BAC over .25 to jail. Law enforcement officers need to know where to go for this evaluation at any time of the day or night.

- Change Oklahoma's laws so that the penalties for refusing the test are again greater than the penalties for taking and failing the test.

  Most people interviewed pointed out that test failure penalties are now "the same" as test refusal penalties -- 180 days' suspension for a first offense -- while previously the penalties for failure were less -- 90 days' suspension. The standard comment was "There's now no incentive to take the test." Everyone's first recommendation to reduce refusals was to change the law so that refusal penalties are again more severe than failure penalties. If law changes are considered, they should be examined very carefully to avoid unintended consequences. Many people interviewed felt that the current one-year hard suspension or revocation (no work permits allowed) for second-felony offenders was unreasonably harsh: it prevents offenders from driving to work and consequently encourages driving with a suspended license.

V. Conclusions

It is believed that many first-time offenders refuse the test because they do not understand the consequences – State officials may want to review their process for notifying suspects of both the administrative and criminal consequences of refusing to provide a breath sample to ensure that suspects fully understand the implications of not providing a breath sample.

There are three States, Maryland, Connecticut, and Louisiana, for which specific recommended strategies are likely to reduce the breath test refusal problem within existing legislation. There are no specific recommendations for Oklahoma and Florida likely to reduce refusal rates without new legislation.

A. Connecticut and Maryland

The administrative benefit of submitting to a breath test in each State is getting a work permit during the entire license suspension period instead of waiting 90 days in Connecticut or 120 days in Maryland, after which the offender must install and use an ignition interlock device for a year. Both States offer alcohol education programs and probationary periods after which the criminal cases are dismissed for first-time offenders. First-time offenders get much easier treatment from the administrative system if they submit to a breath test. With a hardship permit, they can continue driving throughout their suspensions. In addition, they receive the same, minimal criminal penalties as those who refuse.

First-time offenders constitute 75 percent of all those who refuse the breath test in Connecticut and reportedly constitute a large proportion of those who refuse the breath test in Maryland. Decreasing refusals for this population would have a major impact on breath test refusal rates in the State. Some small number of individuals with BACs well under .08 would be identified if submission rates increase because they likely constitute a small proportion of those refusing the breath test. Thus, the number of individuals released from custody after a breath test may increase slightly when refusals decrease.

Explaining the benefits of submitting to the breath test to those impaired by drugs other than alcohol is not likely to decrease their refusal rates. Officers generally ask for a urine test if an offender appears impaired but the person does not produce breath test results close to or over .08. In such cases, officers immediately suspect non-alcohol drug impairment.

When first-time offenders submit to the breath test, they receive fewer penalties than those who refuse. Reducing the refusal rates raises the consideration of whether it is better that they receive less severe penalties for submitting than for refusing the test. There certainly are several benefits of knowing the BAC results for those arrested for drinking and driving. The benefits include: 1) more efficient and effective prosecution of

cases, 2) a better understanding of the drinking and driving problem both locally and statewide to inform legislation and public policy, and 3) possible identification of problem drinkers so they can be helped.

B. Louisiana

The solution most likely to reduce breath test refusals for Louisiana, and any other States with similar laws permitting forced blood tests, is obtaining a warrant from a judge, when needed, to draw blood for a BAC test. Warrants could be obtained for as many types of DWI arrests as judges would be willing to issue a warrant. Such types of cases could include cases where the driver had a minor in the vehicle, cases where the driver is suspected of having a BAC above .15, or cases where a driver under arrest was in a crash in which there was a possible injury. Warrants are already used in at least one jurisdiction in Louisiana. The extent of their use within that jurisdiction is not known, but they have the potential for more widespread use in cases where they were issued. Louisiana has a very high refusal rate and many cases without breath test results do not result in first and subsequent DWI convictions.

The criminal cases of all offenders, whether first-time offenders or repeat offenders, currently benefit greatly from refusing to submit to a breath test. Therefore, the solution most likely to effectively reduce refusal rates for at least some portion of those refusing the test is to obtain a warrant to force a BAC test if the person refuses.

C. Oklahoma and Florida

There do not appear to be any specific, viable strategies to reduce breath test refusal rates in Oklahoma and Florida without new legislation. Both States have less-severe combined administrative and criminal penalties for refusal than for those who submit to a breath test and fail. The parity of the administrative sanctions for those who submit and those who refuse, combined with the increased likelihood that refusals lead to plea bargains, makes refusal the more beneficial option for any offender in Oklahoma and Florida.

The current refusal rate would most likely change with a legislative change with new legislation that increases the severity of administrative and criminal penalties for refusing as compared to the penalties for taking and failing a BAC test. Such changes would tip the balance of benefits to the side of those taking the BAC test rather than those who refuse the test. For now, offenders in Florida and Oklahoma currently benefit far more by refusing a BAC test.

VI. REFERENCES

Hedlund, J.H., Ulmer, R.G. and Preusser, D.F. (2001). *Determine Why There Are Fewer Young Alcohol Impaired Drivers.* Final Report, contract no. DTNH22-97-D-05018. National Highway Traffic Safety Administration, Report Number DOT-HS-809 348. Washington, DC.

Implied Consent Laws. American Prosecutor Research Institute, National Traffic Law Center. (2002). Retrieved July 2002 from http://www.ndaa.org/apri/programs/traffic/ntlc_home.html

Jones, RK; Joksch, HC; and Wiliszowski, CH. (1991). *Implied consent refusal impact.* Final Report, contract no. DTNH22-89-C-07008. National Highway Traffic Safety Administration, Report Number DOT-HS-807-765. Washington, DC.

McCartt, A.T., and Shabanova, V. (2003). *Evaluation of Minnesota's High-BAC Law*. Final Report, Contract No. DTNH22-98-D-45079. National Highway Traffic Safety Administration, Report Number DOT HS 809 677. Washington, DC.

National Highway Traffic Safety Administration. (2002). Digest of State Alcohol-Highway Safety Related Legislation (20th Edition). Washington, DC.

Ulmer, R.G., Hedlund, J.H. and Preusser, D.F. (under review). *Determine Why Alcohol-Related Fatalities Decreased in Five States.* Final Report, contract no. DTNH22-97-D-05018. National Highway Traffic Safety Administration. Washington, DC.

APPENDIX A
Criminal Provisions and Penalties for BAC Test Refusal

Provisions									
						License S-Suspension/R-Revocation for Test Refusal			
State	Can Test be Forced?	Is Test Refusal a Crime?	Is Test Refusal Admissible as Evidence?	Administrative Action for Test Refusal	Is License Revoked/ Suspended for Refusal?	Adm or Court Suspension; Hard or Soft (1st Refusal)	1st Refusal	2nd Refusal	3rd+ Refusal
Alabama	Yes: Court Order +Death/Injury crash	No	Civil & Criminal Cases	Yes	Suspended	Adm/Hard	S-90 days (mand)	S-1 yr (mand)	S-1 yr (mand)
Alaska/ May forfeit car for subsequent refusals	Yes: DWI+Death/ Injury Crash	Class A Misdemeanor	Civil & Criminal Cases	Yes: 90 days (1st)	Revoked	Court/Hard	R-90 days (mand)	R-1 yr (mand)	R-3 yrs (mand) - 5 yrs
Arizona	Yes: Search Warrant	No	Civil & Criminal Cases	Yes	Suspended	Adm/Hard	S-12 months (mand)	S-2 yrs (mand)	S-2 yrs (mand)
Arkansas	Yes: DWI+Death/ Injury Crash	No	Criminal Cases	Yes	Suspended	Adm/Hard	S-90 days (mand)	S-2 yrs (mand)	R-3 yrs (mand) to lifetime
California	Yes: DWI+prompt testing	If convicted of DWI then the refusal is a criminal offense	Civil & Criminal Cases	Yes: 1 yr (1st)	Suspended/ Revoked	Adm/Hard	S-1 yr (mand)	S-2 yr (mand)	S-3 yr (mand)
Colorado	Yes: DWI+Death/ Injury Crash	No	Criminal Cases	Yes	Revoked	Adm/Hard	R-1 yr (mand)	R-2 yrs (mand)	R-3 yrs (mand)
Connecticut	Yes: DWI+Death/ Injury Crash	No	Criminal Cases	Yes	Suspended	Adm/Hard	90 days (mand) - 6 months (special permit available)	S-1 yr (mand)	S-3 yr (mand)
Delaware/ Ignition Interlock Diversion for 1st DWI	Yes: DWI + Death/Injury	No	Civil & Criminal Cases	Yes	Revoked	Adm/Hard	R-6 months (mand) - 1 yr	R-18 months (mand)	R-24 months (mand)
DC	Yes: DWI+Death/ Injury Crash	No	Civil & Criminal Cases	Yes	Suspended	Adm/Hard	S-12 months (mand)	S-12 months (mand)	S-12 months (mand)
Florida	Yes: DWI+Death/ Injury Crash	No	Criminal Cases	Yes	Suspended	Adm/Hard	S-90 days (mand)	S-18 months (mand)	S-18 months (mand)
Georgia	No	No	Criminal Cases	Yes	Suspended	Adm/Hard	S-1 yr (mand)	S-1 yr (mand)	S-1 yr (mand)
Hawaii/ Vehicle registration revoked for Refusal	Yes: DWI+Death/ Injury Crash	No	Adm hearing abt revocation	Yes	Revoked	Adm/Hard	R-30 days (mand) - 1 yr	R-2 yrs (mand)	R- 4 yrs (mand) to life

Provisions									
						License S-Suspension/R-Revocation for Test Refusal			
State	Can Test be Forced?	Is Test Refusal a Crime?	Is Test Refusal Admissible as Evidence?	Administrative Action for Test Refusal	Is License Revoked/ Suspended for Refusal?	Adm or Court Suspension; Hard or Soft (1st Refusal)	1st Refusal	2nd Refusal	3rd+ Refusal
Idaho	Yes: DWI+Death/ Injury Crash	No	Criminal Cases	Yes	Suspended	Adm/Hard	S-180 days (mand)	S-1 yr (mand)	
Illinois	Yes: DWI+Death/ Injury Crash	No	Civil & Criminal Cases	Yes	Suspended	Adm/Soft	S-6 months (judicial permit available)	S-2 yrs (mand) - 3 yrs	S-2 yrs (mand) - 3 yrs
Indiana	Yes: DWI+Death/ Injury Crash	Class C infraction if deadly/serious injury crash	Criminal Cases	Yes	Suspended	Adm/Soft	S-1 yr (may suspend if DWI conv)	S-1 yr (may suspend if DWI conv)	S-1 yr (may suspend if DWI conv)
Iowa	Yes: Search warrant, DWI+Death/ Injury	No	Civil & Criminal Cases	Yes	Revoked	Adm/Hard	R-90 days (mand) - 1 yr	R-1 yr (mand) - 2 yrs	R-1 yr (mand) - 2 yrs
Kansas	Yes: DWI+Death/ Injury Crash	No	Criminal Cases	Yes	Suspended	Adm/Hard	S-1 yr (mand)	S-2 yrs (mand)	3 yrs (mand) - life
Kentucky	Yes: Search warrant, DWI+Death/ Injury	No	Criminal Cases	Yes	Suspended	If a person is not convicted of a DWI offense and refused to submit to a chemical test under the law, he/she is subject to the same administrative licensing actions as if had been convicted for the offense.			
Louisiana	Yes: DWI+Death/ Injury Crash	No	Criminal Cases	Yes	Suspend	Adm/Hard or Soft	90 days (mand if no interlock) - 180 days with interlock	545 days (mand if no interlock) - can drive with interlock	545 days (mand if no interlock) - can drive with interlock
Maine/ vehicle registration may be suspended for refusal	Yes: DWI+Death/ Injury Crash	No	Criminal Cases	Yes	Suspended	Adm/Soft	S-275 days (may have hardship license)	S-18 months (mand)	S-4 yrs (mand)
Maryland	Yes: Death/Injury Crash	No	Criminal Cases	Yes	Suspended	Adm/Hard or Soft	S-120 days (restricted license with interlock)	S-1 yr (restricted lic with interlock)	S-1 yr (restricted lic with interlock)
Massachusetts	No	No	No	Yes	Suspended	Hard/Adm	S-120 days (mand)	S-180 days (mand, 1 Prior DWI)	S-1 yrs (mand, 2+ Prior DWI)

Provisions									
						License S-Suspension/R-Revocation for Test Refusal			
State	Can Test be Forced?	Is Test Refusal a Crime?	Is Test Refusal Admissible as Evidence?	Administrative Action for Test Refusal	Is License Revoked/ Suspended for Refusal?	Adm or Court Suspension; Hard or Soft (1st Refusal)	1st Refusal	2nd Refusal	3rd+ Refusal
Michigan	Yes: Court Order	No	Criminal cases, but not evidence of guilt	Yes	Suspended	Adm/Soft	6 months (hardship lic available)	S-1 yr (mand)	S-1 yr (mand)
Minnesota	Yes: Death/Injury Crash	Misdemeanor	Criminal Cases	Yes	Revoked	Hard/Adm	R-15 days (mand) - 1 yr	R-180 days (mand) - 1 yr	R-180 days (mand) - 1 yr
Mississippi	No	No	Criminal Cases	Yes	Suspended	Adm/Hard	S-90 days (mand)	S-90 days (mand, 1 prior DWI)	S-90 days (mand, 1 prior DWI)
Missouri	Yes: DWI+Death/ Injury Crash	No	Criminal cases, involuntary manslaughter or assault	Yes	Revoked	Hard/Adm	R-90 days (mand) - 1 yr	R-1 yr (mand)	R-1 yr (mand)
Montana	No	No	Criminal Cases	Yes	Suspended/ Revoked	Hard/Adm	S-6 months (mand)	R-1 yr (mand)	R-1 yr (mand)
Nebraska	May Be: DWI+Death/ Injury Crash	Class W Misdemeanor	Criminal Cases	Yes: 6 months (1st)	Revoked	Hard/Court; Adm: 1 yr (mand) for 1st + Refusals	R-6 months (if no probation) 60 days (on probation)	R-1 yr (mand)	R-4 (mand)
Nevada	Yes: DWI or DWI+Death/ Injury Crash	No	Criminal Cases	No	No: R-90 days repealed in 1995				
New Hampshire	Yes: Death/Injury Crash	No	Civil & Criminal Cases	Yes	Suspended	Adm/Hard	S-180 days (mand)	S-2 yrs (mand)	
New Jersey	Yes: Case Law; Fatal Crash	Yes (Case Law: quasi criminal)	Criminal Cases	Yes	Revoked	Adm/Hard	R-6 months (mand)	R-2 yrs (mand)	10 yrs (mand)
New Mexico	Yes: Search warrant, DWI+Death/ Injury	No	Criminal Cases	Yes	Revoked	Adm/Hard	R-1 yr (mand)	R-1 yr (mand)	R-1 yr (mand)
New York	Yes: Court Order, DWI+Death/ Injury	No	Civil & Criminal Cases	Yes	Revoked	Adm/Hard	R-6 months (mand)	R-1 yr (mand)	R-1 yr (mand)

Provisions									
						License S-Suspension/R-Revocation for Test Refusal			
State	Can Test be Forced?	Is Test Refusal a Crime?	Is Test Refusal Admissible as Evidence?	Administrative Action for Test Refusal	Is License Revoked/ Suspended for Refusal?	Adm or Court Suspension; Hard or Soft (1st Refusal)	1st Refusal	2nd Refusal	3rd+ Refusal
North Carolina/ BAC-Restricted License Available	May be: Applicable Procedures of Law	No	Criminal Cases	Yes	Revoked	Adm/Hard	R-10 to 30 days + Substance Training - 12 months	R-30 days (mand) - 12 months	R-30 days (mand) - 12 months
North Dakota	Yes: DWI+Death/Injury Crash	No	Civil & Criminal Cases	Yes	Revoked	Adm/Hard	R-1 yr (mand, no prior DWI)	R-2 yrs (mand)	R-3 yrs (mand)
Ohio	May be (based on Case Law)	Minor Misdemeanor	Criminal Cases	Yes	Suspended	Adm/Hard	S-30 days (mand) - 1 yr	S-90 days (mand) - 2 yrs	S-1 yr (mand) - 5 yrs
Oklahoma	Yes: DWI+Death/ Injury Crash	No	Criminal Cases	Yes	Revoked	Adm/Soft	S-180 days (hardship license available)	R-1 yr (mand)	R-3 yrs (mand)
Oregon	Yes: DWI+Death/ Injury Crash	No	Civil & Criminal Cases	Yes	Suspended	Adm/Hard	S-90 days (mand) - 1 yr	S-1 yr (mand) - 3 yrs	
Pennsylvania	No	No	Criminal Cases	Yes	Suspended	Adm/Hard	S-12 months (mand)	S-12 months (mand)	S-12 months (mand)
Rhode Island/ Vehicle registration may be suspended for Refusal	No	Yes	No	Yes	Suspended	Adm/Hard	S-3 months (mand) - 6 months	S-1 yr (mand) - 2 yrs	S-2 yrs (mand) - 3 yrs
South Carolina	Yes: DWI+Death/ Injury Crash	No	Criminal Cases	Yes	Suspended	Adm/Soft	S-90 days (temp dr privilege)	S-180 days (temp dr privilege)	S-180 days (temp dr privilege)
South Dakota	Yes: 3rd DWI or Death/Injury Yes: Case Law	No	Criminal Cases	Yes	Revoked	Adm/Soft	1-yr (can get hardship)	1-yr (can get hardship)	1-yr (can get hardship)
Tennessee	Maybe in Fatal Crash	No	Criminal Cases	Yes, depending on prior DWI	Revoked	Adm/Soft	R-1 yr (mand, no prior DWI)	R-2 yrs (mand, prior DWI)	R-2 yrs (mand, prior DWI)
Texas / DWI acquittal = No Refusal Susp	Yes: DWI+Death/ Injury Crash	No	Criminal Cases	Yes	Suspend	Adm/Soft	S-180 days (hardship license	S-90 days (mand) - 2 yrs	

Provisions									
						License S-Suspension/R-Revocation for Test Refusal			
State	Can Test be Forced?	Is Test Refusal a Crime?	Is Test Refusal Admissible as Evidence?	Administrative Action for Test Refusal	Is License Revoked/ Suspended for Refusal?	Adm or Court Suspension; Hard or Soft (1st Refusal)	1st Refusal	2nd Refusal	3rd+ Refusal
							available)		
Utah	No	No	Civil & Criminal Cases	Yes	Revoked	Adm/Hard	R-18 months (mand)	R-24 months (mand, prior DWI)	
Vermont	Yes: Search warrant, DWI+Death/ Injury	Yes: if has Prior DWI or death/injury (sanctions same as DWI)	Criminal Cases	Yes	Suspended	Hard/Adm	S-6 months (mand)	S-18 months (mand)	S-3 yrs (mand) - Life
Virginia	May be required	No	Criminal Cases	Yes	Suspended	Hard/Adm	S-1 yr (mand)	S-1 yr (mand)	S-1 yr (mand)
Washington / License actions run conseq for DWI conv and Refusal; Refusal sanctions same for high BAC sanctions	Yes: DWI+Death/ Injury Crash	No	Criminal Cases	Yes	Revoked	Adm/Hard	R-1 yr (mand)	R-2 yrs (mand)	R-2 yrs (mand)
West Virginia / Refusal for secondary, evidentiary testing only, not preliminary testing	No	No	Criminal Cases	Yes	Revoked	Adm/Hard or Soft	R-30 days (with interlock) - 1 yr (no interlock)	R-18 months (with interlock) - 5 yrs (mand with no interlock) - 10 yrs	R-18 months (with interlock) - 10 yrs (mand with no interlock) - Life
Wisconsin/ 2nd Refusal - vehicle is immobilized (not mand) or interlock required (1 yr after revoc); 3rd Refusal - forfeiture (not mand)	Yes: lawful means	No	Criminal Cases	Yes	Revoked	Adm/Hard	R-30 days (mand) - 1 yr	R-1 yr (mand) - 2 yrs	R-1 yr (mand) - 3 yrs
Wyoming	Yes: DWI+Death/ Injury Crash	No	Civil & Criminal Cases	Yes	Suspended	Adm/Hard	S-6 months (mand)	S-18 months (mand)	S-18 months (mand)

State	Imprisonment for Test Refusal			Fine ($) for Test Refusal			Community Service for Test Refusal			Circumstances that May Reduce Penalties for Test Refusal		
	1st Refusal/ No Prior	1 Prior Conv.	2+ Prior Conv.	1st Refusal/ No Prior	1 Prior Conv.	2+ Prior Conv.	1st Refusal/ No Prior	1 Prior Conv.	2+ Prior Conv.	Attend DWI Class/ Treatment	Ignition Interlock installed	Pleads Guilty at 1st Arraignment
Alabama	No	No	No	No	No	No	No	No	No	No	No	No
Alaska/	72 conseq hours- 1 yr	20 conseq days - 1 yr	60-360 conseq days	$250 to $5,000 + cost of imprison	$500 to $5,000 + cost of imprison	$1,000 to $2,000+ cost of imprisonment	24 hrs	160 hours		May reduce part of sentence	May reduce cost of fines	
Arizona	No	No	No	No	No	No	No	No	No	No	No	No
Arkansas	No	No	No	Under 21 y/o: $100 to $500	Under 21 y/o: $200 to $1,000	Under 21 y/o: $500-$2,000	Under 21 y/o: 60 days	Under 21 y/o: 60 days	Under 21 y/o: 60 days	No	1st Refuse: reduce to 90-day suspension	No
California	if convicted of DWI	No	No	If convicted of DWI	No	No	Possible in lieu of jail term	No	No	No	No	Reduced to 90-day suspension
Colorado	No	No	No	No	No	No	No	No	No	No	Reduce to 3-months, 6 - months, 9-months suspension	No
Connecticut	No	No	No	No	No	No	No	No	No	No	No	No
Delaware	No	No	No	No	No	No	No	No	No	No	No	No
DC	No	No	No	No	No	No	No	No	No	No	No	No
Florida	No	No	No	No	No	No	No	No	No	No	No	No
Georgia	No	No	No	No	No	No	No	No	No	No	No	No
Hawaii	No	No	No	No	No	No	No	No	No	No	No	No
Idaho	No	No	No	No	No	No	No	No	No	No	No	No
Illinois	No	No	No	No	No	No	No	No	No	No	No	No
Indiana	No	No	No	$500 in lieu of jail term	No	No	No	No	No	No	No	No
Iowa	No	No	No	No	No	No	No	No	No	No	No	No
Kansas	No	No	No	No	No	No	No	No	No	No	No	No
Kentucky	No	No	No	No	No	No	No	No	No	No	No	No

State	Imprisonment for Test Refusal			Fine ($) for Test Refusal			Community Service for Test Refusal			Circumstances that May Reduce Penalties for Test Refusal		
	1st Refusal/ No Prior	1 Prior Conv.	2+ Prior Conv.	1st Refusal/ No Prior	1 Prior Conv.	2+ Prior Conv.	1st Refusal/ No Prior	1 Prior Conv.	2+ Prior Conv.	Attend DWI Class/ Treatment	Ignition Interlock installed	Pleads Guilty at 1st Arraignment
Louisiana	No	No	No	No	No	No	No	No	No	No	No mandatory licensing action	No
Maine	96 hrs if refused + DWI conv	12 days if refused + DWI conv	40 days if refused + DWI conv	$500 if refused + DWI conv	$800 if refused + DWI conv	$1,300 if refused + DWI conv	No	No	No	Mandatory suspension can be reduced for 1st Refuse	No	No
Maryland	No	No	No	No	No	No	No	No	No	No	Suspension reduction & restricted license	No
Massachusetts	No	No	No	No	No	No	No	No	No	No	No	No
Michigan	No	No	No	No	No	No	No	No	No	No	No	No
Minnesota	90 days	No	No	700	No	No	No	No	No	No	No	No
Mississippi	No	No	No	No	No	No	No	No	No	No	No	No
Missouri	No	No	No	No	No	No	No	No	No	No	No	No
Montana	No	No	No	No	No	No	No	No	No	No	No	No
Nebraska	7 days (mand) - 60 days	30 days (mand) - 90 days	10 days (mand) - 1 yr	$400-$500	$500	$600-$10,000	No	No	480 hrs in lieu of jail and fine	No	No	No
Nevada	No	No	No	No	No	No	No	No	No	No	No	No
New Hampshire	No	No	No	No	No	No	No	No	No	No	No	No
New Jersey	No	No	No	$250-$500	No	No	No	No	No	No	No	No
New Mexico	No	No	No	No	No	No	No	No	No	No	No	No
New York	No	No	No	$300	$750	$750	No	No	No	No	No	No
North Carolina	No	No	No	No	No	No	No	No	No	No	No	No
North Dakota	No	No	No	No	No	No	No	No	No	No	No	No

State	Imprisonment for Test Refusal			Fine ($) for Test Refusal			Community Service for Test Refusal			Circumstances that May Reduce Penalties for Test Refusal		
	1st Refusal/ No Prior	1 Prior Conv.	2+ Prior Conv.	1st Refusal/ No Prior	1 Prior Conv.	2+ Prior Conv.	1st Refusal/ No Prior	1 Prior Conv.	2+ Prior Conv.	Attend DWI Class/ Treatment	Ignition Interlock installed	Pleads Guilty at 1st Arraignment
Ohio	No	up to 30 days	up to 60 days	$425	$425	$425	No	No	No	Treatment in lieu of jail for 1st Refusal	No	Suspension due to Refusal is terminated
Oklahoma	No	No	No	No	No	No	No	No	No	No	No	No
Oregon	No	No	No	No	No	No	No	No	No	No	No	No
Pennsylvania	No	No	No	No	No	No	No	No	No	No	No	No
Rhode Island	No	No	No	$200-$500 (+$500 assessment fee)	$300-$500 (+$500 assessment fee)	$400-$500 (+$500 assessment fee)	10-60 hrs	No	No	No	No	No
South Carolina	No	No	No	No	No	No	No	No	No	No	No	No
South Dakota	No	No	No	No	No	No	No	No	No	No	No	Guilty to DWI or DWI charge dismissed - not revoked for refusal
Tennessee	No	No	No	No	No	No	No	No	No	No	No	No
Texas	No	No	No	No	No	No	No	No	No	No	No	No
Utah	No	No	No	No	No	No	No	No	No	No	No	No
Vermont	Criminal Refusal (same sanctions as for DWI): 0-2 yrs or 1-15 yrs (injury or death); $160 assessment fee			Criminal Refusal (same sanctions as for DWI): $750 or $5,000-$10,000 (injury or death)			Criminal Refusal sanctions are same as sanctions for DWI conv			No	No	No
Virginia	No	No	No	No	No	No	No	No	No	No	No	Guilty to DWI or DWI charge, dismissed - not suspended for refusal
Washington	No	No	No	No	No	No	No	No	No	No	No	No
West Virginia	No	No	No	No	No	No	No	No	No	No	Provided ignition interlock installed	No
Wisconsin	No	No	No	No	No	No	No	No	No	No	No	No
Wyoming	No	No	No	No	No	No	No	No	No	No	No	No

APPENDIX B
Provisions and Penalties for Failing a BAC Test and for DWI Conviction

Provisions For Failing a BAC Test & Administrative Sanctions & DWI Fines							
State	Is there a High BAC provision?	S-Suspension/R-Revoke- Administrative Per Se			Fine ($) - DWI Conv		
		1st Offense	2nd Offense	3rd Offense	1st DWI	2nd DWI	3rd DWI
Alabama	No	S-90 days	S-1 yr	S-3 yrs	$600 - $2,100	$1,100 - $5,100	$2,100 - $10,100
Alaska	No	R-30 days	R-1yr	R-3 yrs	$250	$500 - $5,000	$1,000 - $50,000
Arizona	Yes: .15 (per se)/ no tiered sanctions	S-30 days	S-90 days	S-90 days	$250 - $2,500	$500 - $2,500	$500 - $2,500
Arkansas	Yes: .15 adm. tiered sanctions	120 days/ hardship license available	S-24 months/ 1yr with interlock	S-30 months/ 1 yr with interlock	$150 - $1,000	$400 - $3,000	$900 - $5,000
California	Yes: .20 (court sanctions)	S-30 days	S-1 yr	S-1 yr	$390 - $1,000	$390 - $1,000	$390 - $1,000
Colorado*	Yes: .20 (court sanctions)	R-3 months/ 1 month with interlock	R-1yr/ 3 months with interlock	R-1yr/ 3 months with interlock	$300- 1,000	$450 - $1,500	$500 - $1,500
Connecticut*	Yes: .16 adm. tiered sanctions	90 days/ special permit available	S-9 months	S-2.5 yrs	$500 - 1,000	$1,000 - $4,000	$2,000 - $8,000
Delaware/ Interlock Diversion for 1st DWI	Yes: .16/.20 (1st DWI diversion)	R-3 months	R-1 yr	R-18 months	$230 - $1,150	$575 - $2,300	$1,000 - $3,000
DC*	Yes: .20 & .25 (court sanctions)	Under the Influence of Intoxicating Liquor or Drugs: 1st - S 2 to 90 days or R 6 months; sub - S 2 to 90 days or R (varies)			$300	$1,000 - $5,000	$2,000 - $10,000
Florida	Yes: .20 (fine, jail, no lesser plea)	S-30 days (mand) - 6 months	S-11months to 1 yr	S-11 months to 1 yr	$250 -$500	$500 - $1,000	$1,000 - $2,500
Georgia	Yes: .15 (no *nolo contendere*)	S-30 days (mand) - 1 yr	S-12 months (mand) - 3 yrs	S-2 yrs (mand) - 5 yrs	$300 – $1,000	$600 - $1,000	$1,000 - $5,000
Hawaii	No	R-30 days (mand) - 1 yr	R-1 yr (mand) - 2 yrs	R-2 yrs (mand) - 4 yrs	$150 – $1,000	$500 - $1,500	$500 - $2,500
Idaho	Yes: .20 (court sanctions)	S-30 days (mand) - 90 days	S-1 yr	S-1 yr	$1,000	$2,000	$5,000
Illinois	Yes: .15/.20 (risk category for treatment)	S-3 months (not mand)	S-1 yr	S-1 yr	up to $2500	up to $2500	up to $25,000
Indiana	Yes: .15 (per se)/ tiered sanctions	S-180 days	S-180 days	S-180 days	up to $500	up to $10,000	up to $10,000
Iowa	Yes: <.15 (eligible for deferred judgment)	R-30 days (mand) - 180 days	R-1 yr	R-1 yr	$500 - $1,000	$1,500 - $5,000	$2,500 - $7,500
Kansas	No	S-30 days (mand) - 330 days	S-1 yr + 1yr interlock	S-1 yr + 1yr interlock	$500 - $1,000	$1,000 - $1,500	$1,500 - 2,500
Kentucky	Yes: .18 (jail & fine)	No administrative per se law sanctions, but court shall suspend those who refused, have a prior DWI conv or refusal, or involved in serious-injury crash.			$200 -$ 500	$350 - $500	$500 - $1,000

Provisions For Failing a BAC Test & Administrative Sanctions & DWI Fines							
State	Is there a High BAC provision?	S-Suspension/R-Revoke- Administrative Per Se			Fine ($) - DWI Conv		
		1st Offense	2nd Offense	3rd Offense	1st DWI	2nd DWI	3rd DWI
Louisiana	Yes: .15 (court jail term)	S-30 days (mand if no interlock) - 90 days can drive with interlock	S-365 days (mand if no interlock) - 365 days can drive with interlock	S-365 days (mand if no interlock) - 365 days can drive with interlock	$300 - $1,000	$750 - $1,000	up to $2,000
Maine	Yes: .15 (jail term)	S-60 days (no mand period)	S-18 months	S-4 yrs	$400 - $2,000	$600 - $2,000	$1,000 - $2,000
Maryland**	No	S-45 days (no mand period)	S-90 days (less with 1 yr interlock)	S-90 days (less with 1 yr interlock)	up to $1,000	up to $2,000	up to $2,000
Massachusetts	No	S≤90 days	S≤90 days	S≤90 days	$500-$5,000	$600-$10,000	$1,000-$15,000
Michigan*	No	If refused or submitted and BAC is illegal, police confiscate & destroy license; drive on temp permit until end of DWI criminal proceedings			$100 - $500	$200 - $1,000	$500 - $5,000
Minnesota	Yes: .20 (tiered sanctions)	R-15 days (mand) - 90 days	R-90 days(mand) - 180 days	R-90 days (mand) - 180 days	$210 - $700	$900 - $3,000	$900 - $3,000
Mississippi	No	License is not taken at arrest; offender schedules a trial: if BAC is illegal, license is seized and sent to DMV; offender is issued a 30-day driving permit until court proceedings			$250 - $1,000	$600 - $1,500	$2,000 - $5,000
Missouri	Yes: .15 (substance abuse program)	S-30 days (mand) - 60 days	R-1 yr	R-1yr	up to $500	up to $1,000	up to $5,000
Montana	Yes: .18 ignition interlock cannot be waived	None			$100 - $500	$300 - $500	500 - $1,000
Nebraska	No	R-30 days (mand) -90 days	R-1 yr	R-1 yr	$400 - $500	$500	$600
Nevada	Yes: .18 (alcohol/drug abuse eval)	R-90 days/ cancelled with DWI conv	R-90 days/ cancelled with DWI conv	R-90 days/ cancelled with DWI conv	$400 - $1,000	$750 - $1,000	$2,000 - $5,000
New Hampshire	Yes: .16 (tiered sanctions)	S-6 months	S-2 yrs	S-2 yrs	$350 - $1,000	500 - 2,000	$500 - $2,000
New Jersey	No	DMV issues preliminary suspension without hearing			$250 - $400	500 - 1,000	$1,000
New Mexico	Yes: .16 (jail term)	R-30 days (mand) - 90 days	R-30 days (mand) - 1 yr	R-30 days (mand) - 1 yr	up to $500	$500 - $1,000	$750 - $5,000
New York***	No	License is suspended by the court at the time of arraignment - hardship license available immediately			$500 - $1,000	$1,000 - $5,000	$1,000 - $5,000
North Carolina/ BAC Restricted License Available	Yes: .15/.16 (subst abuse program, aggravating factor at sentencing)	R-10 days (mand) - 30 days	R-10 days (mand) - 30 days	R-10 days (mand) - 30 days	up to $1,000	up to $2,000	up to 5,000
North Dakota	No	S-30 days (mand) - 90 days	S-365 days	S-2 yrs	$250 - $1,000	$500 - $1,000	$1,000

Provisions For Failing a BAC Test & Administrative Sanctions & DWI Fines							
State	Is there a High BAC provision?	S-Suspension/R-Revoke- Administrative Per Se			Fine ($) - DWI Conv		
		1st Offense	2nd Offense	3rd Offense	1st DWI	2nd DWI	3rd DWI
Ohio	Yes: .17 (tiered sanctions)	S-15 days (mand) - 90 days	S-30 days (mand) - 1 yr	S-180 days (mand) - 2 yrs	$250 - $1,000	$350 - $1,500	$550 - $2,500
Oklahoma*	Yes: .15 (inpatient treat., interlock)	up to 180 days (less with interlock)	R-1 yr	R-1 yr - 3 yrs	up to $1,000	up to $2,500	up to $5,000
Oregon	No	S-30 days (mand) - 90 days	S-1 yr	S-1 yr	$1,000 - $5,000	$1,500 - $5,000	$2,000 - $5,000
Pennsylvania	No	None			$300 - $5,000 (+surcharge $50)	$300 - $5,000 (+ surcharge $100)	$300 - $10,000 (+surcharge $200)
Rhode Island	Yes: .15 (tiered sanctions)	License may be suspended for up to 1 yr, if committed offense that requires court license suspension/revocation (e.g., DWI)			$100 - $500	$400 - $1,000	$400 - $5,000
South Carolina	No	BAC ≥ .15 : 30 days (soft)	BAC ≥ .15 : 60 days (soft)	BAC ≥ .15 : 60 days (soft)	$300	$1,000 - $5,000	$3,500 - $6,000
South Dakota	Yes: .17 (alcohol evaluation)	None			up to $1,000	up to $1,000	up to $2,000
Tennessee	Yes: .20 (jail term)	None			$350 - $1,500	$600 - $3,500	$1,100 - $10,000
Texas	No	S-90 days (can get occup license)	S-90 days (mand) - 1 yr	No	up to $2,000	up to $4,000	up to $10,000
Utah	Yes: .16 (Electronic Home Monitoring)	S-90 days	S-1 yr	S-1 yr	$700 - $1,000	$800 - $1,000	$1,500 - $5,000
Vermont	No	S-90 days	S-18 months	S-3 yrs (mand) - Life	up to $750	up to $1,500	up to $2,500
Virginia	Yes: .20 (Alcohol Safety Action Program)	S-7 days	S-7 days	S-7 days	up to $2,500	up to $2,500	up to $2,500
Washington	Yes: .15 (tiered sanctions)	S-30 days (mandatory) - 90 days	R-2 yrs	R-2 yrs	$350 - $5,000	$500 – 5,000	$1,000 - $5,000
West Virginia	No	R-30 days (mand with interlock) - 90 days (mand with no interlock) - 6 months	R-9 months (mand with interlock) - 5 yr (mand with no interlock) - 10 yrs	R-1 yr (mand with interlock) - 10 yrs (mand with no interlock) - Life	$100 - $500	$1,000 - $3,000	$3,000 - $5,000
Wisconsin	Yes: .17, .20, .25 (Subsequent Offenses - fines & jail term)	S- 6 months (not mand)	S-6 months (not mand)	S-6 months (not mand)	$150 - $300	$350 - $1,100	$600 - $2,000
Wyoming	No	S-90 days (can get occup license)	S-90 days (mand)	S-90 days (mand)	up to $750	$200-750	$750-$3,000

* Mandatory sanctions for the offenses of driving while under the influence and illegal per se
** Mandatory sanctions for the offenses for driving while under the influence of alcohol/illegal per se
*** Mandatory sanctions for the offenses of driving while intoxicated and illegal per se

Penalties for DWI Conviction									
State	Imprisonment - DWI Conv			Community Service - DWI Conv			Licensing Action - DWI Conv R-Revoked/S-Suspended		
	1st DWI	2nd DWI	3rd DWI	1st DWI	2nd DWI	3rd DWI	1st DWI	2nd DWI	3rd DWI
Alabama	0 days-1yr	5 days-1yr	60 days-1 yr	None	30 days - in lieu of jail	None	S-90 days	R-1 yr	R-3 yrs
Alaska	72 hours-1 yr	20 days - 1 yr	60 days - 5 yrs	24 hours + jail term	160 hours + jail term	discretionary with court	R-30 days & interlock	R-1 yr	R-3 yrs
Arizona	24 hours - 6 months	30 days - 6 months	4 months - 6 months	discretionary with court	discretionary with court	not eligible	S-90 days	R-1 yr	R-3 yrs
Arkansas	24 hours - 1 yr	7 days - 1 yr	90 days - 1 yr	discretionary with court - in lieu of jail	30 days in lieu of jail	90 days in lieu of jail	via administrative per se law; plus add 6 month-suspension via court DWI conviction		
California	0 to 6 months	96 hours - 1 yr	30 days - 1 yr	10 days + 48 hours of jail	10 days + 48 hours of jail	10 days + 48 hours of jail	restricted driving	restricted driving	R-18 months
Colorado*	5 days - 1yr	48hrs - 10 days com service	48hrs - 10 days com service	48 hours + jail term	60 hours + jail term	60 hours + jail term	R-3 months	R-1 yr	R-1 yr
Connecticut*	48 hours - 6 months	120 days - 2 yrs	1 yr - 3yrs	100 hours in lieu of 48 hours of jail	100 hours + jail term	100 hours + jail term	S-1 yr	S-3 yr	R-permanent
Delaware/ Interlock Diversion for 1st DWI	60 days (may suspend) to 6 months	60 days - 18 months	1 yr (may suspend aft 3 mo) to 2 yrs	discretionary to court	discretionary to court	discretionary to court	R-1y	R-1 yr	R-18 months
DC*	5 days - 90 days	10 days - 1 yr	10 days - 1yr	none	30 days + jail term	60 days + jail term	R-6 months	R-1 yr	R-2 yrs
Florida	0 - 6 months	10 days - 9 months	30 days - 12 months	50 hours +jail term + fine	None	None	R -180 days	R-12 months	R-24 months
Georgia	24 hours - 12 months	72 hours - 12 months	15 days - 12 months	40 hours +jail term	30 days + jail term	30 days + jail term	S-12	S-12 months	R-2 yrs
Hawaii	48 hours - 5 days	5 days - 14 days	10 days - 30 days	72 hours + jail term	240 hours in lieu of jail	None	S-30 days (mand) - 90 days	S-1 yr	R-1 yr (mand) - 5 yrs
Idaho	0 - 6 months	10 days - 1 yr	30 days - 5 yrs	condition of probation			S-30 days (mand) - 150 days	S-1 yr	S-1 yr (mand) - 5 yrs
Illinois	0- 1 yr	5 days - 1 yr	10 days - 3 yrs	None	30 days in lieu of 5 days of jail	60 days in lieu of 10 days of jail		R-1 yr	R-1 yr
Indiana	0 to 60 days	5 days - 2 yrs	10 days - 4 yrs	None	30 days in lieu of jail	60 days in lieu of jail	S-30 days (mand) - 2 yrs	S-1 yr (mand) - 2 yrs	S-1 yr (mand) - 2 yrs
Iowa	48 hours - 1 yr	7 days - 1 yr	30 days - 5 yrs	in lieu of fine	in lieu of fine	None	R-30 days (mand) - 1 yr	R-1 yr (mand) - 2 yrs	R-1 yr (mand) - 6 yrs
Kansas	48 hours - 6 months	5 days - 1 yr	90 days - 1 yr	100 hours in lieu of jail	in lieu of fine	None	S-30 days (mand) - 330 days	S-1 yr	S-1 yr

Penalties for DWI Conviction									
State	Imprisonment - DWI Conv			Community Service - DWI Conv			Licensing Action - DWI Conv R-Revoked/S-Suspended		
	1st DWI	2nd DWI	3rd DWI	1st DWI	2nd DWI	3rd DWI	1st DWI	2nd DWI	3rd DWI
Kentucky	48 hours - 30 days	7 days - 6 months	30 days - 12 months	48 hours + jail term	10 days - 6 months + jail terms	10 days - 12 months + jail term	S-30 days (mand) - 120 days	R-12 months (mand) 18 months	R-24 months (mand) - 36 months
Louisiana	0 to 6 months	48 hours - 6 months	30 days - 5 yrs	4 days as terms of probation	None	None	90 days (no mandatory with interlock)	12 months (mand without interlock) - can drive with interlock	S-12 months (mand without interlock) - 24 months can drive with interlock
Maine	48 hours - 1 yr	7 days - 1 yr	30 days - 1 yr	as a condition of probation	as a condition of probation	as a condition of probation	S-60 days (mand) - 90 days	S-18 months	S-4 yrs
Maryland**	0 to 1 yr	5 days– 2 yrs	10 days - 3 yrs	none	30 days in lieu of 5 days of jail	60 days in lieu of 10 days of jail	R-6 months (no any prior revs)	R-1 yr (1 any prior revoc)	R-1 yr (2 any prior revoc)
Massachusetts	0- 2.5 yrs	30 days - 2.5 yrs	150 days - 2.5 yrs	min 30 hrs via court order + jail term			S-45 days (mand) - 1 yr	R-6 months - 2 yrs	R-2 yrs - 8 yrs
Michigan*	0- 93 days	5 days - 1yr	30 days - 1 yr	0-45 days in lieu of jail	30 days (mand) to 90 days in lieu of jail	60 days (mand) to 180 days +jail term	S-30 days	R-1 yr	S-5 yrs
Minnesota	48 hrs - 90 days	48 hours - 1 yr	60 days - 1 yr	8 hrs for each of 30 days of jail	80 hours + jail term	80 hours + jail term	R-15 days (mand) - 30 days	R-90 days (mand) - 180 days	R-90 days (mand) - 180 days
Mississippi	0-48 hours	5 days - 1 yr	1 yr - 5 yrs	victim impact panel in lieu of jail	10 days to 1 yr + jail term		S-30 days - 1yr	S-1 yr - 2 yrs	S-3 yrs - 5 yrs
Missouri	0- 6 months	5 days - 1yr	10 days - 5 yrs	None	30 days in lieu of jail	60 days in lieu of jail	S-30 days (mand) - 60 days	R-2 yrs	R-3 yrs
Montana	24 hours - 10 days	3 days - 6 months	10 days - 1yr	As part of deferred sentencing. However, not in lieu of mandatory jail term.			S- 0 to 6 months	R-3 months - 1 yr	R-3 months - 1 yr
Nebraska	7 days (if no probation) - 60 days	30 days (if no probation), 5 days (on probation) - 90 days	10 days - 1 yr	none	240 hours in lieu of jail	480 hours in lieu of jail	R-6 months (if no probation), 60 days (on probation)	R-1 yr	R-7 yrs (if no probation), 1 yr (on probation)
Nevada	2 days - 6 months	10 days - 6 months	1 yr - 6 yrs	48 hours (mand) - 96 hrs in lieu of jail	100 hours + jail term	None	R-45 days (mand) - 90 days	R-1 yr	R-1.5 yrs (mand) - 3 yrs
New Hampshire		10 days (mand) - 1 yr	10 days (mand) - 1 yr	For a felony or Class A misdemeanor. - conditional discharge and 50 hrs			R-90 days (mand) - 2 yrs	R-3 yrs	R-3 yrs - 5 yrs

Penalties for DWI Conviction									
State	Imprisonment - DWI Conv			Community Service - DWI Conv			Licensing Action - DWI Conv R-Revoked/S-Suspended		
	1st DWI	2nd DWI	3rd DWI	1st DWI	2nd DWI	3rd DWI	1st DWI	2nd DWI	3rd DWI
New Jersey	30 days (12-48 hrs mand treatment)	48 hours - 90 days	90 days - 180 days	none	30 days+ jail term	90 days + jail term	R-6 months (mand) - 1 yr	R-2 yrs	R-10 yrs
New Mexico	0-90 days	72 hours - 1 yr	30 days - 1 yr	48 hrs in lieu of fine	48 hrs + jail term		R- up to 1 yr	R-30 days (mand) - 1 yr	R-30 days (mand) - 10 yrs
New York***	up to 1 yr	up to 4 yrs	up to 7 yrs	As a condition of probation			R- up to 6 months	R-1 yr	R-1 yr
North Carolina/ BAC Restricted License Available	72 hrs - 6 months	7 days - 12 months	30 days - 24 months	up to 72 hrs	None	None	R- up to 1 yr	R-2 yrs (mand) - 4 yrs	R-3 yrs (mand) - Permanent
North Dakota	0-30 days	5 days - 30 days	60 days - 1 yr	None	30 days in lieu of jail	None	S-30 days - 91 days	S-365 days	S-2 yrs
Ohio	3 days - 6 months	10 days - 6 mnths	30 days - 1 yr	Possible, as a condition of probation			S-15 days (mand) - 3 yrs	S-30 days (mand) - 5 yrs	S-180 days (mand) - 10 yrs
Oklahoma*	10 days - 1 yr	5 days - 5 yrs	10 days - 7 yrs	None	None	240 hrs + jail	up to 180 days	R-1 yr	R-1 yr (mand) – 3 yrs
Oregon	48 hours - 1 yr	48 hours - 1 yr	48 hours - 1 yr	80 hours in lieu of jail	80 hours in lieu of jail	80 hours in lieu of jail	up to 1 yr	S-90 days (mand) - 3 yrs	S-1 yr (mand) - 3 yrs
Pennsylvania	48 hours - 2 yrs	30 days - 2 yrs	90 days - 5 yrs	Possible under pretrial diversion program- Accelerated Rehabilitative Disposition (ARD)	None	None	S-1 month (ARD) - 1 yr	S-12 months	S-12 months
Rhode Island	up to 1 yr (high BAC)	10 days - 1 yr	1 yr - 3 yrs	10 hours (mand) - 60 hours	10 hours (mand) - 60 hours		S-3 months (high BAC)	S-1 yr (mand) - 2 yrs	S-2 yrs (mand) - 3 yrs
South Carolina	48 hours - 30 days	48 hours - 1 yr	60 days - 3 yrs	48 hours in lie of jail	10 days in lieu of jail		S-6 months (can get hardship)	S-1 yr (mand) - 2 yrs	S-2 yrs (mand) - 4 yrs
South Dakota	Limited to subs offender and not having license at the time of DWI arrest			May be condition of probation			R-30 days - 1 yr (can get hardship)	R-1 yr (mand)	R-1 yr (mand)
Tennessee	48 hours - 11 months 29 days	45 days - 11 months 29 days	120 days - 11 months 29 days	200 hrs in lieu of jail (Population >100,000)			R-1 yr (not mand)	R-2 yrs	R-3 yrs

Penalties for DWI Conviction									
State	Imprisonment - DWI Conv			Community Service - DWI Conv			Licensing Action - DWI Conv R-Revoked/S-Suspended		
	1st DWI	2nd DWI	3rd DWI	1st DWI	2nd DWI	3rd DWI	1st DWI	2nd DWI	3rd DWI
Texas	72 hrs - 180 days	5 days - 1yr	10 days - 10 yrs	24 - 100 hours + jail term	80-200 hours + jail term	160-600 hours + jail term	S-90 days - 1 yr (can get interlock + license)	S-1 yr (mand) - 2 yrs (interlock)	S-1 yr (mand) - 2 yrs (interlock)
Utah	48 hours - 6 months	240 hours - 6 months	1,500 hours - 5 yrs	24 hours in lieu of jail	240 hours lieu of jail		S-90 days	R-1 yr	R-1 yr
Vermont	0- 2yrs	60 hours - 2 yrs	100 hours - 5 yrs	Possible	200 hours in lieu of jail	400 hours in lieu of jail	S-90 days	S-18 months	R-3 yrs (mand) - Permanent
Virginia	0-12 months	5 days - 1 yr	30 days - 1 yr	None			S-1 yr (can get hardship license)	R-1 yr (mand) - 3 yrs	R-3 yrs (mand) - 10 yrs
Washington	24 hours - 1 yr	30 days - 1 yr	90 days - 1 yr	Possible			S-30 days (mand) - 90 days (R -1 yr for high BAC)	R-2 yrs (R-900 days for high BAC)	R-3 yrs (R-4 yrs for high BAC)
West Virginia	24 hours - 6 months	6 months - 1 yr	1 yr - 3 yrs	When there is no injury			R-30 days (mand with interlock) - 90 days (mand with no interlock) - 6 months	R-9 months (mand with interlock) - 5 yr (mand with no interlock) - 10 yrs	R-1 yr (mand with interlock) - 10 yrs (mand with no interlock) - Life
Wisconsin	none	5 days - 6 months	30 days - 1 yr		30 days in lieu of jail		R-6 - 9 months (not mand)	R-60 days (mand) - 18 months	R-90 days (mand) - 3 yrs
Wyoming	0-6 months	7 days - 6 months	30 days - 6 months	Possible, as a condition of probation			S-90 days (can get hardship)	S-1 yr (mand)	R-3 yrs (mand)

APPENDIX C
Connecticut Implied Consent Form A-44

OFFICER'S DUI ARREST AND ALCOHOL TEST
REFUSAL OR FAILURE REPORT
A-44 REV. 10-99

STATE OF CONNECTICUT
DEPARTMENT OF MOTOR VEHICLES
ADMINISTRATIVE PER SE UNIT
On The Web at http://dmvct.org

FOR POLICE USE ONLY

CASE NUMBER:

SUMMONS NUMBER:

TEMPORARY LICENSE NUMBER | ☐ NOT ISSUED

LICENSE TRANSMITTED TO DMV ☐ YES ☐ NO

This report is issued under Section 14-227b of the Connecticut General Statues.

INSTRUCTIONS:
1. Please **type** or **print clearly.**
2. Forward completed form to the address below **within 72 hours.** Include (a) the CT operator's motor vehicle license, (b) a copy of the temporary license form (Form No. A-45) and (c) the chemical analysis test results.
3. Attach additional sheets or materials necessary to explain portions of this Report. Such attachments are considered part of this Report and are approved by the Commissioner. The statements and information contained therein are subscribed and sworn to under penalty of false statement.

TO: ADMINISTRATIVE PER SE UNIT, DEPARTMENT OF MOTOR VEHICLES, WETHERSFIELD, CT 06161-4010

SECTION A: OPERATOR AND VEHICLE INFORMATION

LICENSING STATE	OPERATOR LICENSE NUMBER	NAME OF OPERATOR *(Last, First, M.I.)*	DATE OF BIRTH

ADDRESS *(Number and Street)*	*(City or Town)*	*(State)*	*(Zip Code)*	SEX	RACE
				☐ M ☐ F	

VEHICLE INFORMATION	YEAR	MAKE	MODEL	BODY TYPE	REGISTRATION NUMBER	REG. STATE

☐ COMMERCIAL MOTOR VEHICLE AND OPERATOR HOLDS COMMERCIAL DRIVER'S LICENSE
☐ VEHICLE TRANSPORTING HAZARDOUS MATERIAL

WORK PERMIT ☐ YES

☐ Operation during authorized hours of a work permit ☐ Operation while under suspension ☐ Operation on school property ☐ Operation on public road ☐ Operation in parking lot for ten or more cars

SECTION B: PRE-ARREST INFORMATION

TIME *(Military)*	DATE	LOCATION *(Number and Street)* *(City or Town)*

DOES OPERATOR HAVE ANY PHYSICAL HANDICAP INJURY OR ILLNESS WHICH WOULD PREVENT THE OPERATOR FROM PERFORMING ANY PART OF THE FIELD PERFORMANCE TEST?

☐ REFUSED TO ANSWER ☐ NO ☐ YES *(Explain)*

STANDARDIZED FIELD SOBRIETY TESTS

TYPE OF TEST	CHECK APPROPRIATE BOXES DESCRIBING CONDITION OBSERVED			☐ Refused to Perform
HORIZONTAL GAZE NYSTAGMUS	☐ Distinct Jerkiness at Maximum Deviation ☐ Lack of Smooth Pursuit	☐ Onset of Jerkiness prior to 45 Degrees ☐ Other *(Explain)*		☐ Passed Test ☐ Refused to Perform
WALK-TURN	☐ Loses Balance ☐ Raises Arms	☐ No Heel To Toe ☐ Incorrect Number of Steps	☐ Steps Off Line ☐ Stops To Steady Self	☐ Starts Too Soon ☐ Turns Incorrectly	☐ Passed Test ☐ Refused to Perform
ONE LEG STAND	☐ Sways While Balancing ☐ Hopping	☐ Uses Arms For Balance, Raising Over Six Inches ☐ Cannot Perform Test, Puts Foot Down Three Times		☐ Puts Foot Down ☐ Bends Knee	☐ Passed Test ☐ Refused to Perform
OTHER TESTS					

PROBABLE CAUSE TO ARREST *(Check all applicable)*
☐ OBSERVED ERRATIC DRIVING ☐ ODOR OF ALCOHOLIC BEVERAGE ON OPERATOR'S BREATH ☐ FIELD PERFORMANCE *(Sobriety)* TESTS
☐ OTHER *(Explain)*:

SECTION C: ARREST

DATE OF ARREST	TOWN CODE	LOCATION OF ARREST *(Number and Street)* *(City or Town)*

POLICE DEPARTMENT NAME	NAME OF ARRESTING OFFICER	BADGE NUMBER

☐ **OPERATOR WAS APPRISED OF CONSTITUTIONAL RIGHTS** *(MIRANDA WARNINGS)* **AT** _____ **HRS.** *(MILITARY)*

SECTION D: INTERVIEW ☐ Refused to Answer *(RTA)*

ARE YOU INJURED?	IF YES, DESCRIBE YOUR INJURY	ARE YOU ILL?	IF YES, DESCRIBE YOUR ILLNESS
☐ YES ☐ NO ☐ RTA		☐ YES ☐ NO ☐ RTA	

ARE YOU A DIABETIC?	DO YOU TAKE INSULIN?	IF YES, WHEN DID YOU LAST TAKE INSULIN?	DO YOU TAKE MEDICATION?	IF YES, WHAT TYPE OF MEDICATION?
☐ YES ☐ NO ☐ RTA	☐ YES ☐ NO ☐ RTA	☐ RTA	☐ YES ☐ NO ☐ RTA	☐ RTA
WHEN DID YOU LAST TAKE THIS MEDICATION?		DO YOU NEED MEDICATION NOW?	IF YES, WHICH TYPE?	
☐ RTA		☐ YES ☐ NO ☐ RTA	☐ RTA	
YOUR WEIGHT?	WHEN DID YOU START DRINKING?	WHEN DID YOU STOP DRINKING?	WHAT TYPE OF ALCOHOLIC BEVERAGE DID YOU DRINK?	
☐ RTA	☐ RTA	☐ RTA	☐ RTA	
HOW MUCH DID YOU DRINK?		WHERE DID YOU DRINK?		
☐ RTA		☐ RTA		
WHEN DID YOU LAST EAT AND WHAT DID YOU EAT?				
☐ RTA				
DID YOU TAKE DRUGS?	IF SO, WHAT KIND AND HOW MUCH?			
☐ YES ☐ NO ☐ RTA	☐ RTA			

SECTION E: IMPLIED CONSENT ADVISORY

OPERATOR WAS INFORMED OF THE FOLLOWING:

You are requested to submit to a blood, breath, or urine test chosen by the police officer. You may refuse a blood test, in which case another test will be selected. If you elect to submit to the test, you will be required to take two tests of the same type at least thirty (30) minutes apart. If you refuse to submit, the tests will not be given. Your refusal will result in the revocation of your operator's license for twenty-four (24) hours and the suspension of your operator's license for at least six (6) months. If you submit to the tests, and the results indicate that you have an elevated blood alcohol content, your operator's license will be revoked for twenty-four (24) hours and will be suspended for at least ninety (90) days. If you hold an operator's license from another state other than Connecticut, your driving privilege in Connecticut is subject to the same revocation and suspension penalties. The results of the tests or the fact of a refusal shall be admissible in evidence against you in a criminal prosecution for driving while impaired or under the influence of alcohol and/or drugs, and evidence of a refusal may be used against you in any criminal prosecution.

☐ **OPERATOR WAS AFFORDED REASONABLE OPPORTUNITY TO TELEPHONE AN ATTORNEY AT** _____ **HRS.** *(MILITARY)*

Which test was selected by the officer? ☐ BREATH ☐ BLOOD ☐ URINE

SECTION F: CHEMICAL ALCOHOL TEST DATA *(Breath Test)*

COPY OF TEST RESULTS PROVIDED TO OPERATOR. IF YES, DATE AND TIME PROVIDED TO OPERATOR

☐ YES ☐ NO

	TIME *(Military)*	DATE	RESULT
FIRST BREATH TEST			
SECOND BREATH TEST			

STAPLE COPIES OF TEST RESULTS HERE

NAME OF TESTING OFFICER *(Please print)*	POLICE DEPARTMENT NAME

SECTION G: CHEMICAL ALCOHOL TEST DATA *(Blood or Urine Test)*

☐ CERTIFIED COPY OF ANALYSIS OF BLOOD OR URINE SAMPLE BY STATE TOXICOLOGY LABORATORY ATTACHED.

☐ CERTIFIED COPY OF ANALYSIS OF BLOOD OR URINE SAMPLE BY HOSPITAL ATTACHED. SAMPLE WAS TAKEN AND ANALYSIS OBTAINED IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 14-227a (I) OF THE CONNECTICUT GENERAL STATUTES.

SECTION H: CHEMICAL ALCOHOL TEST REFUSAL *(Must Complete If Refusal)*

The operator named above refused to submit to such test or analysis when requested to do so. The refusal occurred in my presence and my endorsement appears below.

NAME OF WITNESS TO REFUSAL *(Please print)*	SIGNATURE OF WITNESS TO REFUSAL	BADGE NUMBER *(If applicable)*
	X	

SECTION I: OATH *(Must Complete)*

This report of chemical alcohol test or refusal and the attachments hereto, if any, are subscribed and sworn to by me, the arresting officer, under penalty of false statement as provided in Section 53a-157b of the Connecticut General Statutes, before the undersigned official duly authorized to administer oaths.

SIGNATURE OF ARRESTING OFFICER	DATE SIGNED
X	

SIGNATURE OF PERSON ADMINISTERING OATH	TITLE
X	

A-44 REV. 10-99 *(BACK)*

APPENDIX D
Facsimile of Maryland Form DR-15:
ADVICE OF RIGHTS

ADVICE OF RIGHTS -(§16-205.1 of the Maryland Vehicle Law)

You have been stopped or detained and reasonable grounds exist to believe that you have been driving or attempting to drive a motor vehicle while under the influence of alcohol; impaired by alcohol; so far impaired by any drug, any combination of drugs, or a combination of one or more drugs and alcohol; or impaired by a controlled substance that you could not drive a vehicle safely; in violation of an Alcohol Restriction, or in violation of §16-813 of Maryland Transportation Article.

In this state, any person who drives or attempts to drive a motor vehicle, including a commercial motor vehicle, on a highway or on any private property that is used by the public in general, is deemed to have consented to take a test to determine the alcohol concentration, or test to determine the drug or controlled dangerous substance content of the person. The test shall be at no cost to you. The test to determine alcohol concentration shall be a breath test. However, a test of blood shall be administered if the breath test equipment is unavailable. A test is required to determine the drug or controlled dangerous substance content, or if your injuries require medical attention. The results of such test or tests, or a refusal of any such test, may be admissible as evidence in any criminal prosecution.

- **Mandatory Test:**

If you are involved in a motor vehicle accident resulting in the death of, or life threatening injuries to, another person, you must take a test.

- **Submission to the test. If your test results in an alcohol concentration of 0.08 or more:**

The MVA will be notified of your test results; your Maryland driver's license shall be confiscated; an Order of Suspension issued: and if eligible, a temporary license issued valid for 45 days. An Administrative suspension shall be imposed by the MVA against your Maryland driver's license or privilege. The suspension shall be 45 days for a first offense and 90 days for a second or subsequent offense. Modification of the suspension may occur in certain circumstances.

- **You have the right to refuse to submit to the test. If you refuse:**

The Motor Vehicle Administration (VMA) will be notified of your test refusal; your Maryland (MD) driver's license shall be confiscated; an Order of Suspension issues, and if eligible, a temporary license issued, valid for 45 days. The MVA shall suspend your MD driver's license or driving privilege if you are a non-resident. The suspension shall be 120 days for a first offense and 1 year for a second or subsequent offense. You will be ineligible for a modification of the suspension or issuance of a restrictive license, except in certain circumstances, a test refusal suspension may be modified at a hearing if you agree to participate in the Ignition Interlock Program for at least 1 year.

- **Administrative Hearings:**

You may request an Administrative Hearing, at any time within 30 days of the date of the Order of Suspension, to show cause why your driver's license or privilege should not be suspended. You may request a hearing within 10 days of the date of the Order of Suspension to insure that your privilege to drive is not suspended prior to your hearing. Your request for a hearing must be made in writing. You may use the "Hearing Request" form if available. Send your request to the Office of Administrative Hearings at 11101 Gilroy Rd., Hunt Valley, MD 21031-1301. You must include a check or Money Order for $15.00, which is the required filing fee, made payable to the "Maryland State Treasurer." Your request for a hearing will be invalid if submitted without the required $15.00 filing fee.

- **Violation of Restriction:** The MVA may also suspend or revoke your license upon satisfactory evidence of a violation of an alcohol restriction.

- **Disqualification of CDL**: In addition to any suspension for a test failure or refusal, your Commercial Driver's License (CDL) may be disqualified. If you were operating a commercial motor vehicle and you refuse to submit to a test, or your test result indicates an alcohol concentration of 0.04 or more, your CDL or privilege will be disqualified for 1 year for a first offense; 3 years for a first offense while transporting hazardous materials required to be placarded; and lifetime for a second or subsequent offense.

- **Your driver's license or privilege will be suspended on the 46th day after the date of the Order of Suspension if:**

(1) You do not request a hearing with 10 days of the date of the Order of Suspension; (2) You fail to appear for a hearing; (3) At the conclusion of the hearing, a decision is rendered against you. Your request for a hearing will be invalid if submitted without the required $15.00 filing fee.

- **Certification:**

I, the undersigned police officer, certify that I have advised the driver of the above stated Advice of Rights. This included advising the driver of the sanction to be imposed for ☹1) A refusal to take a test; (2) A test resulting in an alcohol concentration of 0.08 or more, and (3) Advising of sanction for a test refusal or a test resulting in an alcohol concentration of 0.04 or more while operating a commercial motor vehicle.

Read Before Signing:

I, the undersigned driver, acknowledge that I have been read or have read the above stated Advise of Rights as certified by the police officer. I understand that this requested test is in addition to any preliminary tests that were taken.

Having been advised, do you now agree to submit to a test? (This is not an admission of guilt.)
(Officer check reply)

☐ Yes-Agree to submit to an alcohol concentration test ☐ Yes-Agree to submit to a test for drug or controlled dangerous substance (CDS)

☐ No-alcohol concentration test refused ☐ No-drug or CDS test refused (DRE must complete & submit DRE Certification Form)

Driver Signature _____ Date _____ Time _____ Dr-15 control # _____

Signature of Officer _____ I.D. No. _____ Police Agency _____

APPENDIX E
Florida Implied Consent Warning

IMPLIED CONSENT WARNING
STATE OF FLORIDA

DEFENDANT'S NAME	AGENCY CASE NUMBER

❑ **BREATH TEST**
I am now requesting that you submit to an approved test of your breath for the purpose of determining the alcoholic content of your breath.

OR

❑ **URINE TEST**
I am now requesting that you submit to a test of your urine for the purpose of determining the presence of any chemical or controlled substance.

OR

❑ **BLOOD TEST**
I am now requesting that you submit to an approved test of your blood for the purpose of determining its alcoholic content and/or the presence of any chemical or controlled substance.

Will you take the test? ❑ YES ❑ NO
If you fail to submit to the test I have requested of you, your privilege to operate a motor vehicle will be suspended for a period of one (1) year for a first refusal, or eighteen (18) months if your privilege has been previously suspended as a result of a refusal to submit to a lawful test of your breath, urine or blood. Additionally, if you refuse to submit to the test I have requested of you and if your driving privilege has been previously suspended for a prior refusal to submit to a lawful test of your breath, urine or blood, you will be committing a misdemeanor. Refusal to submit to the test I have requested of you is admissible into evidence in any criminal proceeding.

Do you still refuse to submit to this test knowing that your driving privilege will be suspended for a period of at least one year and that you will be charged criminally for a subsequent refusal?
❑ YES ❑ NO

DATE	TIME	DEFENDANT'S SIGNATURE (YOUR SIGNATURE IS NOT AN ADMISSION OF GUILT)
ARRESTING OFFICER (PRINT NAME AND ID#)		BREATH TEST OPERATOR (PRINT NAME AND ID#)

DOT HS 809 876
May 2005

www.nhtsa.dot.gov

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people saving people

U.S. Department of Transportation

National Highway Traffic Safety Administration