Effects of Breath Test Refusals on Prosecution of DWI Cases

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In section 2003 of  SAFETEA-LU, Congress directed NHTSA to examine the frequency with which persons arrested for DWI refuse to take a test to determine BAC levels, and the effect such refusals have on the ability of states to prosecute those cases. The objectives of this study were to 1) determine the effect of breath test refusals on prosecution, specifically determining the effect of breath test refusals on prosecutors’ decisions to pursue a DWI case; and 2) determine the effect of breath test refusals on court decisions (e.g., conviction rates) on DWI cases, including sanctions given to offenders.

We obtained refusal data from all states, to update the 2001 data. We also sought to obtain arrest and court data from five jurisdictions (each in different states); and data on two categories of DWI offenders, those that provided a breath test and those that did not. The analyses would then match cases from each of these categories on several variables (e.g., gender, age range) and determine whether the offender’s action of taking the breath test (and thus the prosecutor having a BAC available) was critical in the prosecutor’s decision to pursue the case and pursue a DWI conviction, or alternatively if the prosecutor decided to instead plea bargain the case, or even drop the case. The contractor shall also examine whether the offender’s BAC was a determining factor in the number and severity of sanctions received.

NHTSA included data collected during the course of this study in our:  
Refusal of Intoxication Testing: A Report to Congress (2008) which can be found on NHTSA’s website.

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