



# Breath Test Refusals and DWI Prosecution

There are typically about 1.4 million DWI (driving while impaired) arrests each year in the United States. An officer's request to a driver for a breath (or blood, or urine) test is an important part of the arrest process. The percentage of drivers refusing to provide a blood alcohol concentration (BAC) sample has varied widely across States.

As part of a 2008 Report to Congress (see DOT HS 811 098), the National Highway Traffic Safety Administration examined States' refusal rates. It also examined the relationship between refusals and impaired driving convictions in three States.

Although it is widely assumed that a BAC is needed for a strong DWI court case, and will greatly enhance the chances for conviction, the relationship is not clear. NHTSA contracted with the Mid-America Research Institute to examine the effect that BAC refusals have on the prosecution and adjudication of impaired driving cases. Some of the information from this study was included in the Report to Congress, but this current report provides more in-depth information and includes prosecution and conviction data from two additional States.

## Refusal Rates

Figure 1 provides the BAC refusal rates from the 37 States, the District of Columbia, and Puerto Rico. Data from the remaining 13 States could not be obtained, and given differences in how States collect and report their own data, direct comparisons across States may not be appropriate. However,

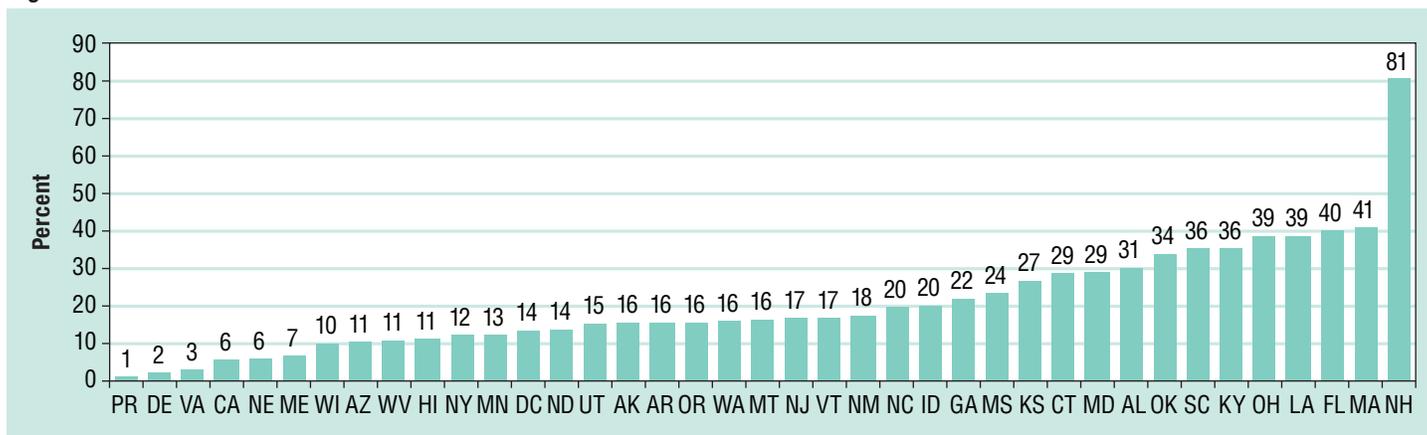
clear differences can be seen across the States. Delaware had the lowest refusal rate amongst the States reporting, with only 2% of those arrested for driving while impaired not providing a breath test. New Hampshire has the highest rate, at 81%. The national average, using these jurisdictions and weighting for population, is about a 20% refusal rate. Although some States have lowered their rates, and other States are experiencing higher rates, this general pattern was seen in previous NHTSA studies using data from 2001 and 1987.

## Relationship of Refuals and Conviction

Mid-America obtained data on the arrests, prosecution, and adjudication of drivers arrested for DWI in the following five sites: Ramsey County, Minnesota; Bernalillo County, New Mexico; Omaha, Nebraska; Montgomery County, Maryland; and King County, Washington. These sites were chosen because of a diversity of refusal rates, variety of laws and practices pertaining to refusals, size (i.e., large enough population to provide a sufficient sample size), availability of arrest and court data, and cooperation of local and State officials.

NHTSA's objective was to match drivers arrested for DWI on factors such as demographics and prior arrests, and then to determine whether the variable of breath test "refusal" (or conversely "compliance") affected the chances of a conviction for the impaired driving offense. Additionally, we were interested in learning whether the sanctions that refusers and compliers received differed.

**Figure 1: BAC Test Refusal Rates 2005**



Due to limitations in jurisdictions' data, Mid-America was unable to conduct all analyses in a similar manner for each jurisdiction, and jurisdictions may calculate conviction rates differently from each other. However, the resulting analyses provide insight into the complexities of impaired driving arrests and legal systems. Mid-America also examined whether demographic characteristics such as age or gender affected the likelihood of conviction.

## Results

**Within study sites**, there was not a clear relationship between refusing a BAC test and the probability of conviction for DWI. In one site (Ramsey County), refusers had a substantially higher conviction rate than non-refusers; in three sites (Montgomery County, Omaha, and Bernalillo County) conviction rates among refusers and non-refusers were more similar, and in the remaining site (King County) there was a substantially lower conviction rate among refusers. However, there appeared to be a reasonably strong and negative relationship between the overall conviction rate at each site and the statewide refusal rate for that State. As statewide refusal rates increased, overall conviction rates (as measured in the individual sites) decreased linearly. For example, Montgomery County had a relatively low conviction rate and it is within Maryland, which has a relatively high statewide refusal rate. Omaha, on the other hand, had a relatively high overall conviction rate and it is within Nebraska, with a relatively low statewide refusal rate.

In examining offender demographics and convictions, there were no consistent trends across the sites in regard to age or

gender. However, for the two sites for which we had data, having a prior conviction was positively related to receiving a conviction on the current offense. Another consistent result across sites with data was that the average fine and jail time for refusers was higher than for drivers who complied and provided a breath test.

## Conclusions

The relationship between refusals and conviction rates is complex. This may be because the criminal justice system is complex, and State laws and local jurisdictions' prosecution practices can vary widely. If an officer has the probable cause to initiate an impaired driving stop and then make the arrest, then the BAC serves as additional, but not the only, evidence of impaired driving. Furthermore, many DWI cases never get to trial – the suspect pleads guilty (or not) based on his or her own belief about strength of the case. As the data indicate that those who refuse often receive stronger sanctions, many drivers who have experience with the court system may choose to provide a BAC rather than face additional sanctions. It is also possible that a prosecutor may be even more motivated to present a strong case when there is a refusal, and devote increased attention to this kind of case.

## How to Order

For a copy of *Breath Test Refusals in the United States and Their Impact on Prosecution*, prepared by Mid-America Research, Inc., download from [www.nhtsa.gov/staticfiles/nti/pdf/811551.pdf](http://www.nhtsa.gov/staticfiles/nti/pdf/811551.pdf). Amy Berning was the project manager for this study.

### Key Outcomes of DWI Prosecutions by Site

	Ramsey	Bernalillo	Omaha	Montgomery**	King
<b>Refusal Rate*</b>	13%	18%	6%	29%	16%
<b>DWI Conviction Rate</b>					
Refusers	86%	66%	98%	38%	45%
Compliers	80%	64%	98%	41%	55%
<b>Mean Fine, \$</b>					
Refusers	1,099	74	720	n/a	n/a
Compliers	794	51	502	n/a	n/a
<b>Mean Jail, Days</b>					
Refusers	55	42	27	163	n/a
Compliers	21	23	19	160	n/a

\* Rate is for the entire State.

\*\* Probation Before Judgment is not considered a conviction; fines may be imposed administratively.



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