

Traffic Safety Facts

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The Use of Warrants for Blood Draws: One Promising Solution to the Issue of Breath Test Refusals in DWI Cases

The National Highway Traffic Safety Administration (NHTSA) has been studying the DWI arrest and adjudication process, including breath test refusals. This Traffic Tech reports on one promising approach for reducing refusals - the use of warrants for obtaining blood samples from drivers arrested for DWI.

As part of the evidence-gathering for an impaired driving investigation, an officer typically requests a breath sample from the driver to determine the person's blood alcohol concentration (BAC). Not all drivers comply with these requests even though all States have some form of an implied consent law, which provides that as part of accepting the agreement for receiving a license, a driver agrees to provide a breath, blood, or urine sample when properly requested.

In 2005, NHTSA released a study that examined States' breath test refusal rates (see Traffic Tech #300). Overall, the rates varied dramatically among States, from 5% to 85%. The study included interviews in five States to learn about the refusal issue and identify potential solutions for high rates. One strategy that emerged is the use of warrants to obtain blood samples from drivers who refuse to provide breath samples.

To learn more about this approach, NHTSA contracted with the Preusser Research Group (PRG) to examine the use of warrants to obtain blood samples from drivers arrested for DWI. Our objective was to examine the policies, procedures, and experiences in selected States.

The researchers conducted case studies in Arizona, Michigan, Oregon, and Utah. They obtained additional information from California and Nevada, two States in which officers can obtain blood samples without warrants.

Not all of the jurisdictions within our selected States seek warrants; nor do officers use this approach in all impaired driving cases. Officers in other States may also seek warrants in DWI cases, although at this time it is not considered to be common practice across the country.

In each case study State, PRG conducted interviews with about 15 people, including officers, prosecutors, defense attorneys, and judges. These individuals provided information on policies and procedures, as well as opinions on the warrant process.

Procedures for Requesting a Warrant

The procedures vary between States. However, in general if a driver arrested for DWI has refused to provide a breath sample, an officer can call an available judge (the jurisdictions typically have a few judges "on call" at all times of the day and night) and request a warrant. The judge then swears in the officer over the phone, and the officer faxes the warrant forms to the judge. The judge then reviews the information and can sign the warrant and fax it back to the officer. In some jurisdictions, if the officer does not have access to a fax, warrants can be obtained by phone. The officer then takes the arrested driver to a physician, nurse, or phlebotomist (a person trained in drawing blood) to obtain the sample. In a few jurisdictions, law enforcement officers are trained as phlebotomists.

Conclusions

In general, the people interviewed for this study were supportive of the use of warrants for blood draws, even when the use of a warrant required additional processing time and (for judges) late-night calls. Many strongly believe that the BAC is a valuable piece of evidence and

can make the difference between a guilty plea and a trial. And BAC evidence is critical in the prosecution of “high” DWI cases (when there are enhanced sanctions for BACs over a threshold such as .15).

A disadvantage of the warrant system is that it can take 2 hours for the officer to complete forms, contact a judge and wait for warrant approval, and transport the offender for the blood draw and then wait for the sample. Much of this time can be reduced if, as in Arizona and Utah, officers are trained as phlebotomists. Another issue with blood draws, although considered rare, is the possibility of a medical complication. Not all judges support the use of warrants for impaired driving crimes.

There are monetary costs involved with obtaining blood samples, either paying qualified people to draw the blood sample, or phlebotomy training for officers. There are also the costs of blood kits and lab fees for analyzing the samples. These costs could be paid through offender fees.

The use of warrants to obtain blood samples appears to be a promising strategy in obtaining BAC evidence in DWI cases. NHTSA is continuing to examine this topic with research on the effect of refusals on DWI prosecution, and whether the use of warrants can reduce refusals.

NHTSA also has a Research Note available that both summarizes the information from this study, as well as providing data on States’ refusal rates.

How to Order: To order the report, *Use of Warrants for Breath Test Refusal: Case Studies*, or to order the research note *Breath Test Refusals* write to the Office of Behavioral Research, NHTSA, NTI-130, 1200 New Jersey Avenue SE., Washington, DC, 20590, fax 202-366-7096, or download from www.nhtsa.dot.gov. Amy Berning was the project manager for this study.



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