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## You can be charged with a crime for refusing a drunk driving breath test, court rules

Certain states charge people with a misdemeanor for refusing to submit to a blood alcohol content test

The Supreme Court ruled Thursday that those laws are constitutional for breath tests but not blood tests

The majority argued that blood tests are intrusive searches, but breath tests are not

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Minnehaha County Deputy Sheriff Elliott Crayne shows off a breathalyzer in his patrol vehicle. Jay Pickthorn AP

By Kate Irby  
The Bellingham Herald

The U.S. Supreme Court [ruled](#) Thursday that states can legally require people to take a blood alcohol content breath test, but not a blood test.

In 12 states (Alaska, Hawaii, Florida, Kansas, Louisiana, Minnesota, Nebraska, North Dakota, Rhode Island, Tennessee, Vermont, and Virginia) plus the National Parks, officers can pull you over if they suspect you of drunk driving and tell you if you don't take a BAC test, you are committing a crime. In some states the crime of refusing to submit to a BAC test can even result in jail time.

And even if you're charged with refusing to take the BAC test, in some cases you can still be charged with driving under the influence due to "consciousness of guilt," which means by refusing the test you have admitted to your own guilt.

Other states have less severe penalties, such as suspending your license or fines, if you refuse to take a BAC test. The first suspension is usually a period of around three to six months, while second and subsequent suspensions can be a year or longer.

The three people involved in the case were all suspected of driving drunk, and all three were told if they didn't submit to either a breath or blood BAC test then they would be charged with a misdemeanor under state law. They challenged these laws and eventually took their cases to the Supreme Court, which ruled 5-3 that those laws are constitutional for breath tests, but not for blood tests.

"Requiring an arrestee to insert the machine's mouthpiece into his or her mouth and to exhale 'deep lung' air is no more intrusive than collecting a DNA sample by rubbing a swab on the inside of a person's cheek or scraping underneath a suspect's fingernails," Justice Samuel Alito wrote in the majority opinion. "Breath tests, unlike DNA samples, also yield only a BAC reading and leave no biological sample in the government's possession."

But blood tests are a different story.

"They 'require piercing the skin' and extract a part of the subject's body, and thus are significantly more intrusive than blowing into a tube," Alito wrote. "A blood test also gives law enforcement a sample that can be preserved and from which it is possible to extract information beyond a simple BAC reading. That prospect could cause anxiety for the person tested."

Officers who want to coerce suspected drunk drivers do not need to obtain a warrant for breath tests, the court also ruled, because officers have an interest in obtaining the BAC level before the body metabolizes the alcohol and evidence is lost.

Justices Sonia Sotomayor and Ruth Bader Ginsburg dissented, saying both types of tests should be unconstitutional without a warrant or permission. Justice Clarence Thomas also dissented, but on different grounds.

Sotomayor argued in her dissent that officers could easily obtain a warrant for those who refused the tests. She said there is typically a lag time of 45 minutes to two hours between when a person is arrested and their breath test is conducted. Officers should be able to obtain a warrant within a two-hour time span, she said.

Justice Thomas wrote in his dissent that both breath and blood tests are constitutional without a warrant due to the time-sensitive nature of BAC testing.

“The Court’s choice to allow some (but not all) BAC searches is undeniably appealing, for it both reins in the pernicious problem of drunk driving and also purports to preserve some Fourth Amendment protections,” Thomas wrote. “But that compromise has little support under this Court’s existing precedents.”

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