

Wednesday, September 13, 2006

Sanctions for refusing a blood alcohol test.

It is becoming a distant memory when Maryland law (1) imposed a blanket prohibition against prosecutors' introducing evidence at trial of a drunk driving defendant's refusal to take a blood alcohol test, and (2) did not turn particular blood alcohol levels into per se violations of the criminal law. Unfortunately, the United States Supreme Court has issued numerous decisions that throw extra obstacles in the way of a defendant's fight against a drunk driving prosecution. Following are some of the available criminal court sanctions for refusing to take such a test in Maryland, Virginia, and the District of Columbia when the police officer has sufficient legal basis for requesting such a test: - Maryland law this year added jail exposure up to two months for knowingly refusing a test for alcohol or drugs arising out of the same circumstances as the violation that leads to a guilty finding, if any. Md. Transp. Code Â§ 27-101(x). I contend that this statute is worded in such a way as to make it unenforceable, in part because it prohibits all refusals, rather than unreasonable refusals. See, e.g., *Quinn v. Virginia*, 9 Va. App. 321, 388 S.E.2d 268 (1990) (confirming that, in Virginia, the refusal must be unreasonable). Furthermore, the statute reads as a sentencing enhancement provision, rather than as requiring a trial on the matter with the requirement that the refusal be proven beyond a reasonable doubt as opposed to a lower standard of proof. By comparison, Virginia requires a trial on the matter. Va. Code Â§ 18.2-268.3. - Virginia law imposes penalties for "unreasonably refusing" a test for alcohol or drugs when arrested for drunk or drugged driving, and for having a 0.02 blood alcohol concentration when under twenty-one years old or when driving with restricted, suspended or revoked driving privileges. Va. Code Â§ 18.2-268.3. - In Virginia, except as follows, a first violation of this refusal statute is a civil offense, and subsequent violations are criminal offenses. For a first offense, the court shall suspend the defendant's privilege to drive for a period of one year, consecutive to any suspension for a parallel drunk driving conviction. Where a violation of this refusal statute comes within ten years after a previous violation of the same statute or of drunk driving, the defendant is guilty of a Class 2 misdemeanor (up to six months in jail -- Va. Code Â§ 18.2-11), and the court shall suspend the defendant's driving privileges for three years, consecutive to any suspension for a parallel drunk driving conviction. - If the foregoing were not bad enough, where a violation of this refusal statute comes within ten years after two violations of this refusal statute and/or the drunk driving laws -- arising out of separate occurrences -- the defendant is guilty of a Class 1 misdemeanor (up to one year in jail -- Va. Code Â§ 18.2-11), and the court shall suspend the defendant's driving privileges for three years, consecutive to any suspension for a parallel drunk driving conviction. The Virginia appellate courts generally have upheld this draconian state of affairs. - The District of Columbia, like Maryland and Virginia, permits introduction of evidence of a defendant's refusal to take the blood alcohol test for drunk driving prosecutions under D.C. Code Â§ 50-2201.05. Arguments against such evidentiary introduction include failure of the prosecutor to show that the defendant was given sufficient warnings about the administrative and legal consequences of not taking the test, and failure to give the defendant sufficient opportunity to take the test. - Additionally, by practice, prosecutors in the District of Columbia Superior Court do not offer diversion (dismissal after succeeding in a drunk driving program) to defendants who refused the test. Jon Katz.

Posted by Jon Katz in Drunk driving/DWI/DUI at 00:00