

DUI suspects increasingly refuse testing, put driver's license at risk

02/26/02

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Country music stars and average motorists alike are increasingly taking the advice of criminal defense lawyers, who routinely tell their clients not to agree to any test that might help convict them of drunken driving.

Some recent high-profile examples:

- Country singer Deana Carter refused a Metro officer's request that she take a breath test when he stopped her for speeding early Dec. 21 and smelled alcohol. She was charged with drunken driving after, the officer said, she did poorly on a series of field sobriety tests.
- Singers Terri Clark and Trace Adkins also refused to submit to breathalyzer tests when they were charged with DUI last year.

Assistant District Attorney Deb Smith, who prosecutes DUI cases in Davidson County General Sessions Court, says that "fewer and fewer" people charged with drunken driving seem to be submitting to blood or breath tests.

Lawyer V. Michael Fox, who has a Web site called duimike.com, even advises clients to carry a copy of a form that they can hand to a police officer, refusing to answer any questions, perform any field sobriety exercises or "consent to any chemical test — be it blood, breath or urine."

Criminal defense lawyer Wendy Tucker said she advises people not to take a breath test "if they have had anything to drink at all.

"That's because I question the accuracy of the test. There are issues with inhalers, with chewing gum, with people who are diabetic."

Tucker said that a person stopped on suspicion of drunken driving "who hasn't had anything to drink or has just had one drink" should ask police to let him take an independent blood test. "I think blood tests are much more accurate."

The refusals are increasing, despite a Tennessee statute that says any driver "is deemed to have given consent" to be tested for alcohol or drug consumption if a law enforcement officer has "reasonable grounds to believe" that the person is intoxicated.

The "implied consent" law has been on the books for years, with a provision that a driver's license "shall" be suspended for a year if he or she refuses to take a blood or breath test.

But many people choose to risk refusing the test, hoping that will help them avoid a DUI conviction.

The state Safety Department, which issues driver's licenses, reports that about 2,100 people each year have their licenses suspended for refusing to take the tests, compared with about 25,000 DUI convictions each year across the state. Lt. Col. Mark Fagan said the Safety Department does not keep data on how many people refuse to take the test, but it is Highway Patrol policy to file an "implied consent" charge against anyone who refuses.

The legislature voted in 2000 to add a stiffer penalty, a mandatory five-day jail sentence, if a person caught driving on a license that has been revoked on a DUI or alcohol-related vehicular assault refuses to submit to a test.

Prosecutors statewide pressed for the tougher penalty because many DUI suspects, especially repeat offenders, were refusing to take the test, said James W. Kirby, executive director of the Tennessee District Attorneys General Conference. "The purpose was to encourage everybody to take the test."

But Kirby and other state officials say it's too soon to tell if the additional penalty, which took effect July 1, 2000, has had any effect on the number of DUI suspects agreeing to take the test.

The law provides that a jail sentence be imposed only if a driver was "advised of the consequences" of refusing to take the test.

Attorney Jack Butler said he tells clients to take an alcohol breath test if they think it would help them, and not to take it if they think it won't.

Butler said he advises clients, as a general rule, "Don't give evidence against yourself."

But, he said, "If you've had no more than two drinks over a period of a couple of hours, then take the test. A lot depends on what you've had to eat. On an empty stomach, you're going to register higher."

Attorney Roger May, who has defended a large number of DUI cases, said there is "no foolproof piece of advice" that he would give to all drivers in all situations.

"I think any prudent lawyer, if asked in advance, would tell clients that if they have any doubt whether they could pass the test, don't take it. But if you take it and you don't register above 0.10%, then you've helped yourself."

Nashville lawyer and legal scholar David Raybin, however, said he generally advises people to take the breath test because "it can exonerate you if you are a casual drinker and alcohol has a more apparent effect on you."

Statistics from Davidson County Criminal Court Clerk David Torrence's office show that the local General Sessions Courts dealt with 2,984 DUI arrests and 1,105 "implied consent" violations in 2001.

Those charges resulted in 1,996 convictions for DUI or less serious offenses (reckless driving or driving while impaired) and 317 license suspensions under the "implied consent" law.

Torrence's office reported a similar ratio for each of the past three years.

Also during 2001, 345 DUI charges and 143 "implied consent" violations were sent on to the local trial courts when they could not be settled at the General Sessions level. They resulted in 311 convictions for DUI or lesser offenses and 18 license suspensions for refusing to take the breath test.

The clerk's office found records of three people sent to jail in Davidson County, under the 2000 amendment, for refusing to take alcohol tests while driving on a license that had been revoked for DUI.

As for the celebrities who refused to submit to alcohol tests last year, Deana Carter's DUI charge is set for a hearing March 12 in General Sessions Court.

Trace Adkins received a two-day jail sentence when he pleaded guilty in Williamson County to driving under the influence of alcohol. He also lost his driver's license for a year, but he was allowed to drive as needed for his work.

Court records show that Terri Clark pleaded guilty in Davidson County General Sessions Court to a reduced charge of reckless driving and to violating the "implied consent" law. Her driver's license was suspended for one year.

Drinking, driving and the law

The minimum penalty for a first-offense conviction of driving under the influence of alcohol or drugs is two days in jail, a \$350 fine and revocation of your driver's license for one year.

If you refuse a law enforcement officer's request to take a breath or blood test, you can be charged with violating Tennessee's "implied consent" law, which could result in suspension of your driver's license for a year regardless of whether you are found guilty of DUI.

The legislature added a stiffer penalty to the "implied consent" section in 2000: a "mandatory minimum" five-day jail term for anyone who refuses to take a breath or blood test while driving on a license that has been revoked for DUI or alcohol-related vehicular assault.

But many people risk a charge under the "implied consent" law because they think that taking the test would make it more likely they would be convicted of driving under the influence. The minimum sentence for a second DUI conviction is 45 days in jail, and the minimum jail term for a third DUI conviction rises to 120 days.