CONSTITUTIONAL ASPECTS OF AN INVESTIGATIVE BREATH TEST

Andrew R. Hricko
General Counsel
Insurance Institute for Highway Safet
August 1, 1969

THE ISSUE

A state or municipality enacts a law which would require that each driver involved in an automobile collision or who is charged with a violation of a law or ordinance regulating the use of an automobile shall submit to a chemical test of his breath to determine the alcohol content of his blood. The police officer requesting the test must also have a reason to believe that such driver has consumed alcohol. An unreasonable refusal to submit to such a test would result in a fine and/or imprisonment.

The results of such a preliminary test would not be admitted in evidence in any proceeding relating to a charge of operating a motor vehicle while under the influence of alcohol. The results of the test along with other observations of the officer may be grounds for requesting another test. The subsequent test would be requested after an arrest under the current procedures used in the various states.

THE QUESTION

Would such a law violate the provisions of the Constitution of the United States?

DISCUSSION

The three constitutional guarantees which are involved are those which relate to the 4th, 5th and 14th amendments of the Constitution.

In this discussion an essential point must be kept in mind: the statute or ordinance in question does not pertain to the gathering of evidence which could be used in court to convict a person of driving while under the influence of alcohol, while impaired by alcohol, or for negligent homicide. That evidence would be obtained after a lawful arrest and from a subsequent quantitative test. This means that the line of cases which deal with the "exclusion of evidence" obtained from an unreasonable search is not strictly on point. Therefore, the question of the validity of the law appears to center on its intrinsic nature rather than on its use in a trial.

The constitutional issue would probably not be raised as an appeal from a DWI conviction or license revocation involving the exclusionary rule. Rather, it is more likely to arise on appeal from a conviction for refusing to take the preliminary test. Since its constitutionality would be determined by the court's view of the issues as they are raised, collateral questions of admissibility would not be present to confuse the crucial issue of the validity of the law per se.

FIFTH AMENDMENT

This amendment provides in part:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury ... nor shall be compelled in any criminal case to be a witness against himself ..."

The question whether the results of a chemical test violates the constitutional privilege against self-incrimination appears to have been answered in a case decided by the U.S. Supreme Court.

In Schmerber v. California, 384 U.S. 757 (1966), the defendent had been arrested (in a hospital) for DWI while being treated for injuries sustained in an auto crash. He refused to take either a breath test or blood test. However, at the direction of a police officer a blood sample was withdrawn by a physician at the hospital. The results of the test, which indicated intoxication, was admitted as evidence and he was convicted.

On the issue of self-incrimination the Supreme Court states:

> "... We hold that the privilege protects an accused only from being compelled to testify against himself, or otherwise provide the State with evidence of a testimonial or communicative nature, and that the withdrawal of blood and use of the analysis in question in this case did not involve compulsion to these ends."

Although this case involved a blood sample rather than a sample of breath, the principal involved should apply equally to both.

The court's decision in this case was 5-4. Some writers have suggested that a slight change in the factual situation might have garnered a different result. However, two of the dissenting Justices, Warren and Fortas, no longer sit on the Court. How their successors would rule is a matter of conjecture.

There are a number of state supreme court decisions to the same effect that the fifth amendment relates to "testimonial" or "communicative" evidence. [State v. Harold, 246 P.2d 178 (Arizona, 1952); People v. Haeussler, 260 P.2d 8 (Calif., 1952); People v. Ward, 120 N.E.2d 211 (N.Y., 1954).]

FOURTH AMENDMENT

In Schmerber v. California,[1] the Supreme Court declared that blood testing procedures plainly constitute searches of persons, and depend antecedently upon seizures of persons, within the meaning of the Fourth Amendment. Other courts have extended this holding to other chemical testing devices including the breathalyzer test.[2] Thus, the proposed statute must meet the Fourth Amendment standards for search and seizure.

The Fourth Amendment provides that "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated .. Over the years, two main areas have developed which have been held to be reasonable circumstances for search and seizure, these are with a valid warrant and when incident to a lawful arrest. The proposed statute contemplates neither of these situations. Therefore, to establish its reasonableness under the Fourth Amendment, another justification for its procedures must be found.

In certain circumstances, it is well established that a warrant is unnecessary. This is the case of a search of a vehicle for contraband, since the vehicle can be quickly moved out of the locality before a warrant could be obtained. Thus, in Carroll v. United States,[3] the Supreme Court stated: "... the guaranty of freedom from unreasonable searches and seizures by the Fourth Amendment has been construed, practically since the beginning of the Government, as recognizing a necessary difference between a search of a store, dwelling house or other structure in respect of which a proper official warrant readily may be obtained, and a search of a(n) ...automobile ... where it is not practicable to secure a warrant ..."

But this line of cases cannot be used to support the proposed statute since the court requires the police officers to have probable cause that a vehicle is carrying contraband before it can be stopped and searched. As the court went on to say in the Carroll case, "(i)t would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the chance of finding liquor and thus subject all persons to the inconvenience and indignity of such a search ..." The objection may be overcome by the requirement that the police officer have a reasonable suspicion of alcohol consumption coupled with a crash or other violation.

In discussing the Fourth Amendment's application to the States, the Supreme Court has stated that "the States are not thereby precluded from developing workable rules governing arrests, searches and seizures to meet 'the practical demands of effective criminal investigation and law enforcement' in the States, provided that those rules do not violate the constitutional proscriptions of unreasonable searches and seizures ..."[4]

One such state seems to be California. A good statement of the law was given by the Supreme Court of California in the case of People v. Michelson.[5]

> "In this state we have consistently held that circumstances short of probable cause to make arrest may still justify an officer's stopping pedestrians or motorists on the streets for questioning. If the circumstances warrant it, he may in self-protection request a suspect to alight from an automobile or to submit to a superficial search for concealed weapons. Should the investigation then reveal probable cause to make an arrest, the officer may arrest the suspect and conduct a reasonable incidental search."

> ". . . We do not believe that our rule permitting temporary detention for questioning conflicts with the Fourth Amendment. It strikes a balance between a person's interest in immunity from police interferences and the communities' interest in law enforcement."

New York adopted a similar procedure with the enactment of its so-called "stop and frisk" law. In upholding the statute, a Federal District Court discussed the law's "reasonableness" in not requiring probable cause.

> "The adjective 'unreasonable' chameleon-like adopts coloration from its surroundings . . . Common sense would seem to dictate that as we diminish the concept of 'seizure' from one of arrest with the heavy burden that it carries to one of the briefest stopping entailing at most minor inconvenience, the Constitution should not be offended if simultaneously fewer and less weighty reasons are required to justify the police action. Sparse circumstances sufficient to render a stopping 'reasonable' may well be found 'unreasonable' justification for the more lasting inconvenient and significant arrest."[6]

Here again there appears to be a lack of authority for a wholesale search of a class of individuals. The California courts have been careful to insist that, at the very least, there must be some suspicious circumstances to justify even such a limited interference with an individual's freedom of movement,[7] and the New York statute requires reasonable suspicion. As the Supreme Court has put it, "(t)he Constitutional validity of a warrantless search is pre-eminently the sort of question which can only be decided in the concrete factual context of the individual case."[8]

This line of cases may indicate that any statute or ordinance should provide that the officer have at least a suspicion that the individual may be under the influence before requesting the

preliminary test. The Schmerber case, although not on point since the individual was under arrest, also leads in this direction. The court stated:

> "...We begin with the assumption that once the privilege against self-incrimination has been found not to bar compelled intrusions into the body for blood to be analyzed for alcohol content, the Fourth Amendment's proper function is to constrain, not against all intrusions as such, but against intrusions which are not justified in the circumstances, or which are made in an improper manner. In other words, the questions we must decide in this case are whether the police were justified in requiring petitioner to submit to the blood test, and whether the means and procedures employed in taking his blood respected relevent Fourth Amendment standards of reasonableness." (Emphasis added)

Thus an officer must be "justified in the circumstances," and the test made in a proper manner. Being involved in a collision or committing another violation may not qualify as "justifiable circumstances," however, coupled with reasonable suspicion of the presence of alcohol should fulfill that requirement. The use of breath testing devices, of whatever type selected, would appear to fulfill the "proper manner" requirement since the intrusion would be slight compared to a withdrawal of blood.

Although not discussing the Fourth Amendment, a recent Iowa Supreme Court case draws an interesting parallel. The defendant was observed operating a motor vehicle in an erratic manner. He was stopped and the patrolman was confronted with alcoholic breath. Defendant was asked to get out of the car and attempt roadside sobriety tests which he was unable to complete successfully. He was then placed under arrest and later convicted of DWI for the fourth time. Several issues were raised including the request for an attorney, the fifth amendment and the failure to warn defendant of his rights.

The Court in upholding the conviction stated:

> "The erratic path of the car and the smell of alcohol on defendant's breath furnished good cause to suspect defendant might be guilty of operating a motor vehicle while intoxicated. The tests were reasonably necessary to enable the patrolman to decide whether defendant should be arrested.
>
> "Such tests are more nearly akin to the taking of blood samples, fingerprints or handwriting exemplars. Requiring defendant to furnish such evidence does not violate his privilege against self-incrimination." State v. Heisdorffer, 164 N.W.2d 173, 175 et seq. (Iowa, 1969).

If a roadside sobriety test, touching the nose, etc., is held reasonably necessary to enable the patrolman to decide whether the defendant should be arrested, a preliminary breath test which is no more than a scientific substitute for the roadside test, should also be permitted. Although not directly on point the case gives some indication of what a state Supreme Court may hold on the issue of "reasonableness."

Constitutional privileges can be waived and this type of law could be sustained under an extension of the waiver or consent theory. This has been the basis for upholding motor vehicle code requirements that a driver involved in an accident resulting in injury or death to another person must stop and give certain information.[9] Courts have had little trouble with the Fifth Amendment problems that this type of statute poses, and the reasoning could be extended to include the Fourth Amendment. A sampling of opinions:

> "Common observation and experience show that unrestricted use of motor vehicles on public streets would be extremely dangerous to life and limb and the property of the public. Their use thus becomes a fit subject for state regulation. Every person who operates or uses a motor vehicle must be regarded as exercising a privilege, and not an unrestricted right. It being a privilege granted by the Legislature, a person enjoying such privilege must take it subject to all proper restrictions."[10]

> "...Because of the size and weight, great power and speed, and the fatalities caused by them, the Legislature might absolutely prohibit the use of a motor vehicle on a public highway, and therefore, assuming that the statute impairs the Constitutional privilege, the Legislature has the power to require a waiver of that privilege as a condition to the use of the highways by a motor vehicle, at least to the extent to which it has required such waiver."[11]

> "The statute is a simple public regulation. It does not make the accident a crime...It does not attempt in terms to authorize the admission of the information as evidence in a criminal proceeding. We have several statutes which require persons to give information which would tend to support possible subsequent criminal charges, if introduced into evidence. Persons in charge are required to report accidents in mines and factories. Physicians must report deaths and their causes, giving their own names and addresses...Dealers must deliver for inspection foods carried in stock. ...if the law which exacts this information is invalid, because such information...might possibly lead to a charge of crime against the informant, then all police regulations which involve identification may be questioned on the same ground. We are not aware of any constitutional provisions designed to protect a man's conduct from judicial inquiry, or aid him in fleeing from justice."[12]

The courts have used the same rationale to uphold the implied consent statutes. As stated by the Supreme Court of Nebraska; "(T)he essence of the 'implied consent law' is that by driving a motor vehicle on the public highway, the operator consents to the taking of a chemical test to determine the alcoholic content of his body fluid. By the act of driving his car, he has waived his constitutional privilege against self-incrimination."[13]

This leaves open the possibility of extending this waiver to a motorist's Fourth Amendment rights, or some form of implied or expressed consentual arrangement to implement the proposed statute.

Another requirement of all motor vehicle codes which has been upheld in the courts is the duty to display one's driver's license upon demand of a police officer while operating a motor vehicle.[14] The language of the court in Lipton v. United States[15] is instructive:

> "...it was lawful for the officer to stop the car to investigate the driver's possession of a license...The momentary detention of appellant for this limited purpose was not an arrest of appellant since under California law arrest is defined as 'taking a person into custody.' If stopping appellant for the sole purpose of inquiring whether he held a license for the activity in which he was engaged, was in any sense a 'seizure' it was not an 'unreasonable' one, and did not violate any right given appellant by the Fourth Amendment, made applicable to the State by the Fourteenth."

This police power can also be exercised in some cases without any suspicion that the law is being violated. Thus, in City of Miami v. Aronovitz[16], the Supreme Court of Florida refused to enjoin a municipality from operating road blocks for the purpose of checking automobile driver's licenses and went on to hold that such practice did not amount to an illegal search and seizure contrary to the State and Federal Constitutions. Again the language of the court bears repeating:

> "The owner of such a license exercises the privilege granted by it subject to reasonable regulations in the use of the highways common to all citizens...so long as the regulations themselves are reasonable and are reasonably executed in the interest of the public good, the courts should not interfere.
>
> "...Giving recognition to our established judicial viewpoint that an automobile is a dangerous instrumentality, we must conclude

> that any procedure lawfully directed toward the effective prevention of the negligent operation of the automobile and the imposition of requirements of competency on the part of the driver thereof, should meet with judicial approbation."

Two other vehicle code provisions require mention, one which allows a police officer to stop and inspect a vehicle when he has reason to believe it is unsafe or that its equipment is not in proper adjustment or repair[17], and those which allow a police officer to require vehicles to stop and submit to weighing when he believes weight of vehicle and load to be unlawful. Both provisions have been held not to constitute unlawful searches and seizures.

The laws relating to stopping and weighing vehicles is a close parallel to the proposed statute or ordinance. The Uniform Vehicle Code provision on this subject, which has been adopted in substance in most states provides:

> 14-111--Officers may weigh vehicles and require removal of excess loads
>
> > "(a) Any police officer having reason to believe that the weight of a vehicle and load is unlawful is authorized to require the driver to stop and submit to a weighing of the same by means of either portable or stationary scales and may require that such vehicle be driven to the nearest public scales in the event such scales are within two miles...
> >
> > "(c) Any driver of a vehicle who fails or refuses to stop and submit the vehicle and load to a weighing or who fails or refuses when directed by an officer upon a weighing of the vehicle to stop the vehicle and otherwise comply with the provisions of this section, shall be guilty of a misdemeanor."

Probable cause to require a driver to submit to a weighing is not necessary, only <u>a reason to believe</u> that the weight of the load is unlawful is required. In addition, failure or refusal to stop and submit to the weighing is in itself a misdemeanor.

In a case decided by the Illinois Supreme Court, People v. Munziato[18], the defendant was convicted of operating an overweight vehicle on a toll road. He appealed on grounds that the state statute which requires the operator of the vehicle to stop and submit to a weighing violates the state constitution relating to unlawful search and seizure, the due process clause of the federal constitution and the privilege against self incrimination. The statute provides that failure to stop and submit is a misdemeanor and also contains the phrase "having reason to believe that the weight of the vehicle and load is unlawful."

The court upheld the conviction, it stated:

> "When a vehicle is driven onto a public highway of the state, its weight becomes a matter of public interest and, as we mentioned, subject to regulation by the state. The investigation authorized by section 132 [authority to weigh vehicles] is limited to relevant inquiry as to the weight of the vehicle, and is essential to effectuate section 131 [establishes gross weights for vehicles], and is therefore reasonable." (at P. 202)

Since laws of this nature have been upheld to permit investigation of overweight vehicles, the reasoning need not be unduly stretched to permit investigation of persons suspected of driving while under the influence of alcohol, an offense proven much more serious in its consequences than on overweight vehicle.

It appears that a sound legal position can be made for holding that such a law would not violate the provisions of the Fourth Amendment.

FOURTEENTH AMENDMENT

Due Process of Law Generally

Due process of law is found in two places in the Constitution. The Fifth Amendment prohibits the federal government from depriving any person "of life, liberty, or property, without due process of law." In similar words the same proscription was applied to the states by the Fourteenth Amendment. The same meaning is to be given to each provision.[19]

There is no precise meaning or definition of due process. It is "an elusive concept. Its exact boundaries are undefinable, and its content varies according to specific factual contexts."[20] Since the concept has been a part of Anglo-American jurisprudence throughout history, certain attributes have attached to it and have, thereby, given it some definition. For example, its essence has been described as being fair play. Put in the negative, due process prohibits conduct that denies "fundamental fairness, shocking to the universal sense of justice."[21]

Due Process of Law in Application

There are three aspects of a screening test law where due process questions arise. These involve the pre-request part of the law, the imposition of a penalty for refusal to take the test, and the test itself.

The first encompasses the facts leading up to the request. In other words, has due process been violated by the focusing of attention upon a particular driver culminating in a request to take the test? At this point a screening test law must not run afoul of the due process of law aspect that prohibits vagueness, arbitrariness, and

overbreadth. A narrowly drawn ordinance that requires such a test in specific and well-delineated situations could overcome questions of vagueness and arbitrariness without any problem. However, it cannot be overbroad in application. For example, a law requiring the test for drivers involved in an auto crash (without more) may be found to be overbroad since it makes no distinction between those persons who are suspected of drinking and those who have not been drinking. Although the Department of Transportation's Alcohol and Highway Safety Report to Congress indicates that alcohol may be a factor in 800,000 crashes a year, this is only about 6 per cent of the estimated 13.7 million annual collisions in the United States. To require testing of all drivers involved may be interpreted as too broad a coverage. There must be a reasonable connection or nexus between the goal the law is aimed at -- safety under the police power -- and the means used to attain that end. A law may be overbroad, and thus violate due process of law, although it is aimed at reaching lawfully punishable conduct.[22] By focusing attention on drivers that the officer has reason to suspect of drinking, the problem of overbreadth can be overcome. Reasons to suspect are not difficult for an officer to substantiate. Such reasons as voice, speech, eyes, breath, and gait are sufficient.[23]

The second aspect which imposes a penalty for refusal to take the test presents a different question. Does the imposition of a penalty -- which involves depriving a person of liberty or property -- violate due process of law since the person is being punished for not performing an affirmative act which could provide evidence against him?

There are several types of statutes concerning the operation of motor vehicles which require affirmative action on the part of a driver which may lead to prosecution for a violation of the law. Failure to perform this affirmative act also carries a separate penalty. Uniformly these statutes have been upheld as not being violative of the due process clause.

A driver must show his license at the request of a police officer, failure to do so is a misdemeanor in some states.[24] The use of road-blocks for the purpose of checking licenses has also been held valid even if the police officer did not suspect the driver would be in violation of the law.[25]

A driver can be requested to drive a vehicle on a scale to determine if it is in violation of the weight laws, failure to do so carries a penalty. In People v. Munziato[26], the Illinois Supreme Court held that such a statute did not violate the due process clause of the federal constitution. Drivers are also required to stop and permit inspection of their vehicles for equipment deficiencies.[27]

Statutes also impose duties on persons involved in crashes; they must stop, give identification, and render aid. These also have been held not to violate due process in several states.[28]

The third issue is the test itself; is it of such a nature as to "shock the conscience" of the court and violate its "sense of justice" as was stated in the Rochin v. California[29] case? In that case a stomach pump was used to secure evidence of a violation of the narcotics laws.

The U. S. Supreme Court in the Schmerber[30] case held that the extraction of blood, despite the refusal of the driver to consent, did not offend their "sense of justice" since it was done in a proper manner.

The statute under consideration does not envision the forceable extraction of breath. Thus the issue might only arise if the court found that a criminal penalty was being imposed for refusing to take a test which offended their sense of justice. It is highly questionable that the court would find that blowing into a balloon was comparable to having ones stomach pumped against his will.

Therefore, it appears that a properly drafted statute or ordinance would not violate the due process clause of the Constitution.

CONCLUSION

The constitutional issues -- self incrimination, unreasonable search and seizure, and due process -- are judicial questions determined on considering a set factual situation. It is therefore difficult to predict their application unless the factual situation is known.

However, a properly drawn statute or ordinance which would provide for an investigative breath test after a collision or traffic law violation in which the police officer has at least a reasonable suspicion, or a reason to believe, that the driver may be under the influence of alcohol does not appear to present insurmountable constitutional barriers. However, since the case will be one of first impression, care should be used in selecting a case which gives the prosecution the most favorable factual circumstances.

FOOTNOTES

1. 384 U.S. 757 (1966)
2. State v. Swiderski, 226 A.2d 728 (Superior Ct. of N.J., 1967)
3. 267 U.S. 132 (1967)
4. Ker v. California, 374 U.S. 23 (1963)
5. 380 P.2d 658 (1963)
6. United States v. Thomas, 250 F. Supp. 771 (S.D.N.Y., 1966)
7. People v. Russell, 66 Calif. Rptr. 594 (1968)
8. Sibron v. New York, 392 U.S. 40 (1968)
9. See Uniform Vehicle Code (U.V.C.) Sec. 10-104
10. Ule v. State, 194 N.E. 140 (Ind., 1935)
11. People v. Rosenheimer, 102 N.E. 530 (N.Y., 1913)
12. Ex parte Kneedler, 147 S.W. 983 (Mo., 1912)
13. Prucha v. Department of Motor Vehicles, 110 N.W.2d 75 (Neb., 1961)
14. See U.V.C. Sec. 6-112
15. 348 F.2d 591 (9th Cir., 1965)
16. 114 So.2d 784 (1959)
17. Clark v. Commonwealth, 388 S.W.2d 622 (Ky., 1965)
18. People v. Munziato, 182 N.E.2d 199 (Ill., 1962)
19. Hiblein v. Smith, 191 U.S. 310 (1903)
20. Hannah v. Larch, 363 U.S. 420, 442 (1959)
21. Betts v. Brady, 316 U.S. 455, 462 (1942)
22. Thornhill v. Alabama, 310 U.S. 88 (1940; Aptheker v. Secretary of State, 378 U.S. 500 (1964); Edwards v. South Carolina, 372 U.S. 229 (1963); Cox v. Louisiana, 379 U.S. 536 (1961)
23. Taylor v. Kelly, 171 N.Y.S.2d 909 (1958)
24. Rucker v. State of Indiana, 77 N.E.2d 355 (1948)

25. City of Miami v. Aronovitz, supra n. 16

26. Supra, n. 18

27. People v. Galceran, 2 Calif. Rptr. 901 (1960)

28. State v. Mead, 102 P.2d 915 (Idaho, 1940); People v. Bowlin, 65 P.2d 840 (Calif., 1937); Lashley v. State, 180 So. 720 (Ala., 1938)

29. 342 U.S. 165 (1952)

30. Supra, n.1; see also Breithaupt v. Abram, 352 U.S. 432 (1957)

SUPPLEMENTAL MATERIAL

1. States which allow municipal ordinances relating to the operation of motor vehicles

2. Model ordinance

3. State chemical test and implied consent laws

POWER OF MUNICIPALITIES TO ENACT ORDINANCES RELATING TO THE OPERATION OF MOTOR VEHICLES

The following listing indicates that municipalities in 30 states have authority to enact ordinances affecting the operation of motor vehicles within their jurisdiction. The remaining states have pre-empted the right to govern such operation and have restricted the power of municipalities to ordinances regulating parking, establishing one-way streets, etc.

The vehicle code, municipal code and other state statutes were checked in addition to case law where available. In some states the legislative intent is quite clear, in other states judgement interpretations had to be made.

POWER OF MUNICIPALITIES TO ENACT ORDINANCES RELATING TO THE OPERATION OF MOTOR VEHICLES

	Authority	No Authority
Alabama	X	
Alaska	X	
Arizona		X
Arkansas		X
California		X
Colorado		X
Connecticut		X
Delaware	X	
Florida	X	
Georgia		X
Hawaii	X	
Idaho	X	
Illinois	X	
Indiana		X
Iowa		X
Kansas	X	
Kentucky	X	
Louisiana	X	
Maine		X
Maryland		X
Massachusetts		X
Michigan	X	
Minnesota	X	
Mississippi	X	
Missouri	X	
Montana	X	

	Authority	No Authority
Nebraska	X	
Nevada	X	
New Hampshire		X
New Jersey		X
New Mexico	X	
New York		X
North Carolina		X
North Dakota	X	
Ohio	X	
Oklahoma	X	
Oregon	X	
Pennsylvania		X
Rhode Island		X
South Carolina	X	
South Dakota	X	
Tennessee		X
Texas	X	
Utah	X	
Vermont		X
Virginia	X	
Washington	X	
West Virginia	X	
Wisconsin		X
Wyoming	X	

MODEL BREATH TEST ORDINANCE

An ordinance regulating traffic upon the public streets of the city of _____.

Section 1. Any person who operates a motor vehicle within the corporate limits of the city of _____ shall [be deemed to have given his consent to] submit to a chemical test of his breath, for the purpose of determining the alcoholic content of his blood, if he is either involved in any collision which results in property damage, personal injury or death, or is charged with a violation of any state law or ordinance of this city relating to a moving vehicle, upon the request of a law enforcement officer who has reason to believe [reasonable cause to suspect] such person was driving a motor vehicle while under the influence of alcohol in violation of

_____
(cite appropriate section of state law or local ordinance)

If such person refuses to submit to such test, none shall be given, but such refusal shall constitute a violation of this ordinance.

Section 2. Every person convicted of a violation of this ordinance shall be punished by a fine of not more than $_____ or by imprisonment for not more than ___ days or by both such fine and imprisonment.

[The bracketed phrases are suggested alternatives. The exact wording of the ordinance could be altered to conform to the style and form used in existing ordinances of the municipality.]

STATE CHEMICAL TEST AND IMPLIED CONSENT LAWS

	Chemical Test Laws Presumptive Limits Defining Intoxication	Implied Consent Law
Alabama	No	No
Alaska	0.10	Yes
Arizona	0.15	Yes
Arkansas	0.10	Yes
California	0.10	Yes
Colorado	0.10*	Yes
Connecticut	0.10	Yes
Delaware	0.10	Yes
Florida	0.10	Yes
Georgia	0.10	Yes-BR/BL
Hawaii	0.15	Yes
Idaho	0.10	Yes
Illinois	0.10	No
Indiana	0.15	Yes
Iowa	0.10	Yes
Kansas	0.15	Yes
Kentucky	0.10	Yes
Louisiana	0.10	Yes
Maine	0.15*	Yes-BL/UR
Maryland	0.15-BL/BR* 0.20-UR	Yes[1]
Massachusetts	0.15	Yes-BR
Michigan	0.15*	Yes
Minnesota	0.10	Yes-BL

	Chemical Test Laws Presumptive Limits Defining Intoxication	Implied Consent Law
Mississippi	No	No
Missouri	0.15	Yes
Montana	0.15	Yes
Nebraska	0.15	Yes
Nevada	0.15	Yes
New Hampshire	0.15	Yes
New Jersey	0.15*	Yes
New Mexico	No	Yes-BR/BL
New York	0.15*	Yes
North Carolina	0.10	Yes
North Dakota	0.10	Yes
Ohio	0.15	Yes
Oklahoma	0.15	Yes
Oregon	0.15	Yes
Pennsylvania	0.10	Yes
Rhode Island	0.10	Yes
South Carolina	0.10	Yes
South Dakota	0.15	Yes
Tennessee	0.15	Yes-BL/UR
Texas	No	Yes-BR
Utah	0.08	Yes-BL/UR
Vermont	0.10	Yes
Virginia	0.15*	Yes
Washington	0.10	Yes
West Virginia	0.10	Yes
Wisconsin	0.15	No
Wyoming	0.15	No

(BR-Breath; BL-Blood; UR-Urine)

1. Express Consent Law

*State also has a driving while impaired law with lower presumptive limit.