



SENATE JUDICARY

COMMIT NO. 7

DATE 2/17/11

American Civil Liberties Union SB308  
of Montana

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**RE: Senate Bill No. 308, a bill for an act entitled: "An act creating the offense of refusal to submit to a blood or a breath test for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body when requested by a peace officer; providing penalties; and amending section 61-8-402, MCA."**

The American Civil Liberties Union of Montana respectfully opposes Senate Bill 308 to apply a criminal sanction for a refusal to submit to a breath or blood test. While reducing impaired driving is a laudable goal, we are troubled by the prospect that motorists who have a presumption of innocence will be labeled as criminals merely for asserting their constitutional right to refuse a police search.

As in the vast majority of states, Montana imposes an administrative penalty on drivers who refuse a breath or blood test, instead of making a refusal a separate crime. Under Montana state law, motorists must give implied consent to submit to a breath or blood test as a condition of receiving a driver's license. If a motorist later revokes his or her consent and refuses to submit to such a test, the state then revokes the license for six months to a year.

**This bill raises substantial concerns about its constitutionality.** Montanans enjoy a right to be free from unreasonable police searches. It is well-established that taking a breath or blood sample is a search under the Fourth Amendment to the United States Constitution. As a result, both the federal and state constitutions generally prohibit the government from conducting a breath or blood test without either a warrant or the person's consent. Threatening to charge a person with a crime unless he or she submits to a test calls into serious question whether that person's consent would ever be voluntary and valid.

**Refusing to waive a constitutional protection should never become a criminal act.** Refusals do not, in and of themselves, harm anyone or pose a risk to public safety, especially when a driver is not even impaired.

Instead, the real harm comes from a motorist who is driving while impaired. **This bill does not deter or punish the crime of driving under the influence and will likely have little effect on increasing criminal convictions.** Under this bill, the police are still prohibited from taking a test of a person who does not consent, and any consent that is given will be questionable.

There is no reason to believe that a person who is willing to give up his or her license for six months will be any more likely to consent to a test simply because there is now a monetary penalty involved. Evidence shows that many refusals are made by repeat offenders, indicating that criminal penalties have already proven ineffective in curbing their behavior. In fact, the State of Alaska imposed a criminal penalty in the mid-80s, yet it still has a refusal rate that is well above the national average. Refusal statutes in other states have not proven to be any more effective at reducing impaired driving than other types of deterrents, such as treatment and education.

For all of these reasons, we respectfully urge you to vote “no” on this proposed bill.

Submitted by:  
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