



KNOW YOUR M.I.P. RIGHTS: FREQUENTLY ASKED QUESTIONS¹

Q. What does “M.I.P.” mean?

A. M.I.P. stands for “minor in possession” of alcohol. If you are under the age of 21, it is illegal to consume or possess any amount of alcohol in Michigan.²

Q. If I am a minor, can a police officer make me take a breathalyzer test?

A. Not without a court order.³ Usually the police cannot search you unless they first get a judge to sign an order called a search warrant. Since a breathalyzer is a bodily search, the police can’t force you to take one without a search warrant. Also, the police usually can’t give you a ticket, arrest you, or detain you for refusing to take the breathalyzer test. But there are some exceptions to this rule, so keep reading....

Q. What if I’m driving?

A. This is the major exception to the search warrant requirement. If you are driving and you are pulled over, the police do not need a warrant to make you take a breathalyzer test. Under Michigan’s “implied consent” law, you can be charged with a civil infraction and receive points on your license for refusing to take a breathalyzer test. If the police have probable cause to believe you are driving while intoxicated, they can place you under arrest and require that you provide a blood or urine sample. If you refuse, your license can be suspended.⁴

Q. What if I “consent” to the breathalyzer test?

A. If you freely agree to take a breathalyzer test, you give up your right to complain later (in court, for example) that the police officer did not have a warrant.⁵

¹ These FAQs are a summary of sometimes complex constitutional principles and should not be relied upon as legal advice. If you have a specific question or problem, you may wish to seek the advice of a lawyer.

² M.C.L. § 436.1703.

³ *People v. Chowdhury*, 285 Mich. App. 509 (2009); *Platte v. Thomas Twp.*, 504 F. Supp. 2d 227 (E.D. Mich. 2007); *Spencer v. Bay City*, 292 F. Supp. 2d 932 (E.D. Mich. 2003).

⁴ M.C.L. § 257.625a-.625o.

⁵ *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973).

Therefore, if you do not want the results of the breathalyzer test to be used against you, you should politely decline to take the test.

Q. What does “consent” mean?

A. Consent means that you freely and voluntarily chose to take the breathalyzer without being coerced by a police officer. If you submit to a breathalyzer test only because the police threatened you with a citation, fine, arrest, or prolonged detention for refusing, then that is not true consent.⁶

Q. Are the police required to inform me that I have a right to refuse?

A. Probably not. Although the police cannot coerce you into taking the breathalyzer test by threatening you with penalties for refusing, they are not necessarily required to explain that you have a constitutional right to say no.⁷ Therefore, it is up to you to know your rights and assert them.

Q. So how do I refuse consent to a breathalyzer search?

A. Politely but clearly tell the police officer that you do not agree to take the breathalyzer test. If possible, make sure that the people around you hear you saying no. If the police officer insists that you take one anyway, or tells you that you have no choice, do not physically resist. A judge will have to decide later whether your rights were violated.

Q. If I refuse to take a breathalyzer test, won't the police know I'm guilty?

A. You are presumed innocent under the Constitution, and it is the government's burden to prove that you've done something wrong. By asking you to take a breathalyzer test, the police are challenging you to prove your innocence by blowing into a machine. There's nothing wrong with asserting your right to privacy, just like there's nothing wrong with asserting your right to remain silent. Your decision not to take a breathalyzer test cannot be used against you by the police or in a court of law.⁸

⁶ *Chowdhury*, supra, 285 Mich. App. at 524-26.

⁷ *Schneckloth*, supra, 412 U.S. 218; but see *United States v. Barkovitz*, 29 F. Supp. 2d 411 (E.D. Mich. 1998) (police violated Fourth Amendment where defendant was young, scared, and not told that he may withhold consent).

⁸ See, e.g., *Gasho v. United States*, 39 F.3d 1420, 1439 (9th Cir. 1994) (“It is clearly established that a person’s Fourth Amendment rights are violated if the sole basis for his arrest is his challenge to the officer’s authority absent a warrant.”).

Q. Can the police charge me with an M.I.P. without giving me a breathalyzer test?

A. Only if you are in possession of alcohol, drinking, or appear visibly drunk. The police are not allowed to arrest you or charge you with an offense for refusing to take a breathalyzer test.⁹ But if there is other evidence that you are drinking—for example, if you are visibly intoxicated or holding a bottle of beer in your hand—the police can arrest you or charge you with an M.I.P. without a breathalyzer test.

Q. What if I'm on private property?

A. Being on private property is not a defense to an M.I.P. Although you cannot be charged with the separate offense public intoxication if you are on private property,¹⁰ the M.I.P. law applies everywhere.

Q. So the police can just barge into a private house party and start issuing M.I.P. citations?

A. No, the police cannot normally enter a private residence uninvited unless they have a search warrant.¹¹ However, if you are outdoors in the front yard, no warrant is required.¹² And if the police come to the door and someone who appears to live there decides to let them inside, they can walk around and arrest people who are committing crimes—including minors who are visibly intoxicated, drinking alcohol, or serving it to others.¹³ But to administer a breathalyzer test to a minor inside the house, they would still need a search warrant specifically authorizing the breathalyzer, or they would need the minor's consent.

⁹ See *Gasho*, *supra*.

¹⁰ *People v. Favreau*, 255 Mich. App. 32 (2003).

¹¹ *Payton v. New York*, 445 U.S. 573 (1980).

¹² *United States v. Santana*, 427 U.S. 38 (1976).

¹³ *Illinois v. Rodriguez*, 497 U.S. 177 (1990).