

Ohio Supreme Court Ruling Could Change State Breathalyzer Test Laws

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COLUMBUS, Ohio

Defense attorneys are calling it a major blow to alcohol breath machines used to convict people of driving under the influence.

For the first time, the Ohio Department of Health must turn over all data captured by a machine that helps to determine if a person is driving under the influence. The ruling by the Ohio Supreme Court is a considered a victory by defense attorneys. Many have argued for years that denying that information to clients makes it difficult to prove if the alcohol breath machines are reliable.

Defense attorneys believe the ruling will give them a better chance of helping prove their clients were not above the legal limit when they blow into the state's two approved breathalyzer machines.

10TV put one of the machines to the test to see what really happens, and the results were surprising.

The Ohio Health Department says the machine is scientifically proven to accurately measure a person's alcohol level in their lungs. It's the breathalyzer police use to determine if someone is guilty of driving over the limit.

"Clearly, if you have a situation where a breath test machine shows a lot of issues, then the folks who blessed it really ought to be re-thinking that decision," says attorney Tim Huey.

It's called the Intoxylizer 8000. It's one of two machines approved by ODH and used to convict people of DUI.

A Cincinnati man challenged the machine's data. He believed his breath test was inaccurate and that he was denied that information.

The Ohio Supreme Court was also puzzled, and later ordered the state to turn over the information.

"You're telling me that if a defendant is about to go to jail, and a physicist from Harvard that wanted to say these machines are voodoo and they don't work... you're saying that would be improper and not admissible," said Justice William O'Neill.

"Correct," answered Jennifer Bishop, an attorney representing the city of Cincinnati.

Huey says the court's ruling restores fairness to the legal system.

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"We're not trying to get people off. We're talking about making it fair. If you can't challenge the accuracy of the test, it's not fair - it's just ridiculous," he says.

10TV put the I-8000 to the test. Reporter Kevin Landers swished some gin in his mouth and blew into the machine.

".169 - a valid sample, you're twice the legal limit," said Dr. Al Staubus, Ph.D. and an expert on breathalyzer machines.

The test showed that Landers blew more than twice the legal limit based on the alcohol in his mouth - not lung alcohol which determines if someone is guilty of driving over the limit.

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Experts say this proves this machine isn't reliable, raising the question - Should law enforcement continue to use them?

"My opinion is no", said Huey.

Landers did blow into the machine a second time and had a lower reading of .07, nearly the legal limit.

Police are required to administer the test 20 minutes after observing the person so they do not ingest any foreign substance. However, defense attorneys argue the waiting period does not account for those who belch or have stomach reflux, which could taint the test results.

The state's other breathalyzer machine, called the Datamaster, doesn't require a second reading - and that's what has DUI attorneys concerned.

When contacted by 10TV for reaction to the court ruling, an ODH official said, "We are reviewing the court decision to determine what its impact will be."

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