

NO 2ND CHANCES IN OLD DUI CASES

BREATH TESTS: Machine is no longer accepted, but convictions will stand

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SARASOTA COUNTY — The breath-alcohol tests used for years to help convict tens of thousands of DUI defendants across the state might not have been as reliable as prosecutors portrayed.

Two top experts have said that the Intoxilyzer 5000 breath-test machines — used for about two decades before the state changed to updated machines in 2006 —

could not meet today's scientific requirements for ensuring accurate results.

The Intoxilyzer 5000 was only checked once a month to see if the machine was working properly. The state's newest machine, the Intoxilyzer 8000, runs two control tests during every alcohol breath test — one right before and one right after.

The testimony of those experts means prosecutors cannot present the Intoxilyzer 5000 breath tests in court in the small number of remaining cases where that older machine was used.

As a result, dozens of DUI defendants in Sarasota and Manatee

counties have had charges dropped or reduced to reckless driving. But it is too late for anyone already convicted with results from the Intoxilyzer 5000 to benefit.

Prosecutors say the Intoxilyzer 5000 machines were reliable, even if the scientific community now calls for better safeguards to make sure the machine is accurate.

But defense attorneys say it is scary to think people might have been convinced to plead guilty, or lost their driver's licenses, based on a test whose reliability is now in question.

"Those machines were paraded
See MACHINES on 5B

Older DUI convictions will not be thrown out

MACHINES from 1B

into court as the gospel, and we now know it wasn't," said Venice attorney Robert Harrison, who has led the fight for years against the machines. "It's sad it came to this in the sunset of its life."

About 70 times each month in Florida, the new Intoxilyzer 8000 rejects a breath test because the control tests were not acceptable, Sarasota defense attorney Derek Byrd said.

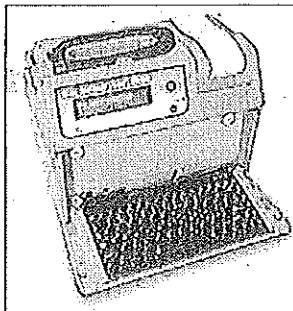
"If that happens 70 times a month on a newer, better machine, just by sheer logic you know on the 5000 it was happening there too," Byrd said. "You know people were blowing into a machine that there were problems with the results."

In depositions in DUI cases this year, two state experts say the currently accepted practice is that a control test must be performed during each actual test to ensure accurate results.

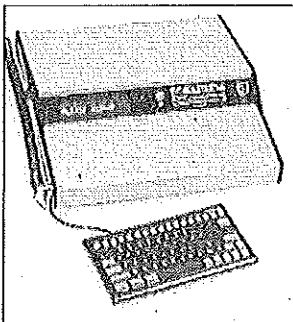
Scientists used to believe control tests once a month were sufficient, but the scientific community changed its opinion in the past few years.

"Just because the process doesn't meet the ideas of the general scientific community doesn't mean it's not reliable," said Assistant State Attorney Cliff Ramey, the supervisor of the misdemeanor division in Sarasota County.

But Ramey said the expert opinions now prevent them from introducing the Intoxilyzer 5000 breath test



About 70 times a month in Florida, the new Intoxilyzer 8000, above, rejects a breath test because control tests were not acceptable, Sarasota defense attorney Derek Byrd said. He argues that "by sheer logic" problems were also occurring in the older Intoxilyzer 5000, below.



results in court.

Prosecutors can still pursue DUI charges without breath tests. Without a test, however, they must depend on testimony from officers or videos of the driver.

Ramey said his office is still prosecuting cases where they cannot use the results from Intoxilyzer 5000, but had to dismiss some of the cases since they date back to 2003 and offic-

ers have no memory of the case.

The question about whether the results of the Intoxilyzer 5000 were scientifically credible came up during the ongoing battle about the computer code that runs the machines.

Defense attorneys in about 450 DUI cases questioned the reliability of the machines, and judges have ruled that the defendants should have access to the computer code inside the Intoxilyzer 5000 and 8000.

After the manufacturer declined to disclose the code, county judges ruled prosecutors would only be able to introduce the results if they proved it was scientifically accurate.

They brought in Laura Barfield, alcohol testing program manager at the Florida Department of Law Enforcement, and Bruce Goldberger from the University of Florida, long considered top experts on the breath tests.

Both said the breath-test industry has become more rigorous with controls to make sure the individual tests are accurate.

Harrison said that with monthly testing only, there is no way to know if ambient conditions affected the test or the machine was working incorrectly for a week.

"You think about how many people went into court and said, 'I'm going to plead guilty because the machine can't be wrong,'" Harrison said.