

"Challenges in Court Against Blood Alcohol Test "

By Alicia Williamson on 05/14/08

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For years, DUI attorneys have tried to exclude blood alcohol tests from DUI prosecutions, challenging their validity primarily because there are often errors in blood tests. And recently, the challenges have grown, with case after case impacting on hundreds and even thousands of DUI cases. For example, in an Ohio blood-testing incident, blood drawn for medical purposes could not be introduced as evidence in a DUI case unless the state demonstrated that the hospital had substantially complied with the state health director's DUI testing standards. Even when blood had been drawn at the request of law enforcement, if the results are challenged, the state has to prove substantial compliance.

Blood Testing

When we address Blood Alcohol Content (BAC) it means the number of grams of alcohol present per 100 milliliters of blood in a person's system. By way of illustration, a BAC of 0.10% would mean that the person has 1/10 of a gram of alcohol per every 100 milliliters of his blood. Yet, the amount of blood actually tested as opposed to the amount that is drawn from the arm is quite different. The laboratory usually draws an entire vial full of blood from a person's arm, but it tests less than a tenth of an ounce, which is a very small amount of measurable alcohol. Because of this fact, the smallest error during the testing procedure can lead to a huge error in the final result. And if there is a possibility that the blood was contaminated during the time it was drawn, it could lead to an artificially high reading of alcohol.

Why Attorney's Challenge Blood Alcohol Tests

Although blood tests tend to be the most accurate from the various tests given for a DUI, inaccuracies in blood alcohol tests occur often. Sometimes, equipment is not used properly. Other times, testing equipment is not sanitized. There have even been many reports where blood samples get mixed up. It is for these reasons that attorneys challenge the results of blood alcohol tests as they find vulnerabilities in the blood testing method. As an example, during a trial of State Representative Charles Portwood from Missouri, his attorney succeeded in getting his DUI charge dismissed because the nurse who had drawn blood used an alcohol wipe to clean his skin. While testing seems to indicate that alcohol on the skin has no impact on the results of a blood test, Missouri law requires that the skin be cleansed with a "non-alcoholic antiseptic." The dismissal of Rep. Portwood's DUI charge has made the challenges of blood testing even greater. As a result, the challenges of blood testing will either require a different law or the procedures will have to change.

Other Challenges to Blood Alcohol Tests

In the same way that wine ferments in a sealed bottle, so too does blood ferment in a sealed vial. When blood ferments in the vial, the alcohol level will be higher at the time of testing than it was at the time it was actually drawn from the arm. This can

lead to blood results that are 2 to 3 times higher than they were at the time the blood was actually drawn from a person's arm. In order to minimize the risk of an artificially high blood alcohol reading, a laboratory must meet certain criterion. For example, the correct type and amount of preservative powder and anticoagulant powder must be added to the vial and after the drawing of blood, the blood and chemicals must be sufficiently mixed or the chemicals will have little effect. The sample must also be kept in a controlled refrigerated environment in order to preserve the quality of the sample. If any of these steps are missed, the blood alcohol test can be challenged.

Defendant's Rights

A good DUI attorney will challenge a blood test because of the mistakes often made. Some of the mistakes can include an ill-trained person drawing the blood. Sometimes it's a matter of records not being kept properly. Therefore, any misstep in a blood alcohol test can invalidate a result. And just because a police officer has gotten a blood test that shows that alcohol is over the limit, is no indication that the case is a done deal. The reason? If the results of a DUI blood test accurately reflect the true alcohol content in the blood it only indicates that the blood contained a certain BAC at the time the blood was drawn. It does not show what the alcohol content of the blood was at the time of driving. It is not against the law to have a BAC of .08% or above at the police station when they took your blood, but it is against the law to have a BAC of .08% or above at the time you were actually driving. It is because of these discrepancies that it's important to hire a good DUI attorney who can help protect your rights. If you are facing a DUI charge, it's very important that you consult with a DUI attorney before taking any action.

About the DUI Attorneys at Straight DUI

We at Straight DUI do everything we can to help you when it comes to DUI. To get you off, keep your record clean and prevent you from losing your license to drive, we start by believing that you shouldn't have been arrested, so with that uppermost in our minds, we fight for you. When you place yourself in the hands of the knowledgeable [DUI attorneys](#) at www.straightdui.com, you know you will be treated fairly and will receive the best defense possible. We understand how important a good defense is to your case and so we do everything to protect your rights. Call us today at (800-353-6348) and let us help.