

Lawyers label Intoxilyzer 5000 inaccurate

By John Stevenson : The Herald-Sun
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DURHAM -- Marcus Hill took a small swig of bourbon and swished it in his mouth.

He spit the liquor into a cup, then blew into the Intoxilyzer 5000, a machine police and the Highway Patrol commonly use to help determine whether a driver is drunk.

Despite not swallowing a drop of the bourbon, the Durham lawyer registered 0.25 -- more than three times the legal threshold for intoxication.

Hill recently spent \$8,000 on the machine so he could educate himself and other attorneys about its inner workings -- and potential flaws.

"The state wouldn't let me play with their machines, so I bought one," he said.

Based on what he has learned so far, Hill says he believes the machine is riddled with problems that violate the rights of many DWI suspects. The recent experiment in his office was designed to illustrate the point.

Hill said the machine was supposed to screen out alcohol or alcohol residue in a person's mouth and register only the amount of ethanol in a person's breath, which can be translated into blood concentration.

A mouth reading is always higher, he says, because dentures, partial bridges and other foreign objects can trap alcohol.

Since he didn't actually drink the bourbon and or any other alcohol, the Intoxilyzer should have registered 0.00 when he blew into it, he said.

Hill sees another problem with the machine. It is calibrated on the premise that everyone has the same body temperature of 34 degrees Celsius (about 98.6 Fahrenheit).

But some people have a higher temperature, particularly when they are under stress, he said. And the higher a person's temperature, the higher the Intoxilyzer reading will be. On the other hand, if a person's temperature is lower than 34 degrees Celsius, it will work in his favor.



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Marcus Hill, a Durham attorney who specializes in DWI cases, purchased an Intoxilyzer 5000, which is the North Carolina certified alcohol breath tester, to study the machine's flaws.
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"Everyone is not average. Why do we test everyone as if they were?" Hill asked.

Some states require taking a DWI suspect's temperature before a breath test. North Carolina doesn't.

Hill said he routinely checked his Intoxilyzer at three blood-alcohol levels to make sure it was accurate. Those levels are 0.04, 0.08 and 0.15.

But police and the Highway Patrol test their machines only at 0.08, which is North Carolina's legal standard for impairment, he said.

"I know mine is working exactly right," he said. "How come mine is more rigorously tested than the state's?"

Hill and other lawyers say breath tests are not the best way to determine a person's blood-alcohol concentration anyway.

"There's a better way to do it," Hill said. "Take blood and test the blood. Why don't we do that? It's not as convenient. It's more expensive. It takes longer to get the results."

Lawyer Bill Thomas, who has handled many DWI cases, agreed.

"The breath test to determine blood-alcohol concentration is used primarily because it is inexpensive and gives instant results," he said. "But it is clearly not an accurate method of determining blood ethanol level. A number of variables affect the readings. In my opinion, it is a very inaccurate method."

Thomas said that, in an apparent attempt to save money, North Carolina did not equip its Intoxilyzer machines with options that would make them more reliable.

One of those options is a radio frequency interference filter. It is needed because signals from cell phones, pagers and other devices can cause Intoxilyzer readings to be higher, Thomas says.

Another available option that North Carolina overlooked was a low-voltage indicator, Thomas added.

"The state calls these things instruments," he said of the Intoxilyzer. "I call them machines. They only come with a one-year warranty. Even the manufacturer won't guarantee them longer than that. It is hard to have abiding faith in this machine. There is too much at stake in DWI cases to be using such a fallible device."

Late last month, Hill invited about 10 other lawyers from around the state to his office for a seminar on the workings of the Intoxilyzer. One of them was Durham attorney Kerry Sutton.

"I'm sure glad I went," she told The Herald-Sun. "We were basically looking for ways to take the machine down. Knowing how fallible this machine is certainly makes it easier to cross-examine police officers in DWI cases."

During the seminar, Sutton put two drops of bourbon into her mouth for less than a second before spitting them out. The Intoxilyzer gave her a reading of 0.35, more than quadruple the legal threshold.

"The manufacturer says that's impossible," Sutton added.

She called the breath-test machine "a hunk of junk" that's an "interesting tool."

"But I don't think it deserves anywhere near the credibility the courts give it," she said.

Other disagree.

Ollie Jeffers, president of the local Mothers Against Drunk Driving chapter, was dismayed when she learned about Hill's recent seminar.

"I'm just appalled," Jeffers said. "I really feel the Intoxilyzer is credible."

She said the lawyers were looking for loopholes to allow drunk drivers to stay on the road.



"Is there no end to what they will do?" she said. "If you look hard enough, you can find flaws in anything. This is unfair. Nothing is 100 percent perfect. But drunk driving is 100 percent preventable."

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