

# THE ALCOHOL BREATH TEST:

To blow or not to blow?



By: Jim Medley

(713) 779-5004  
www.jimmedley.com

Thousands of drivers are stopped every year by law enforcement officers in the Houston area. Many of these drivers consume some amount of alcohol before they get into their cars to drive. When a law enforcement officer smells an alcoholic beverage or is told drinking has occurred, the encounter often results in someone being arrested and asked to take a breath test. Driving after drinking is completely legal for anyone 21 years of age or older.

The law doesn't allow law enforcement officers to arrest someone just for smelling like an alcoholic beverage. Officers typically will subject someone in this situation to physical tasks they call "field sobriety tests." An in-depth discussion of these tests is beyond the scope of this article, but let's say very few people make it

through these tasks without being arrested and taken in for the breath test.

The police are required to read a warning called a DIC-24 after arresting a driver for DWI. This warning explains to the driver that if they refuse to give a breath specimen their license to drive can be sus-

"There is no way to predict how many drinks it takes"

ended for at least 180 days.\* The warning provides further that if a specimen is given and it is .08 or higher, the license can be suspended anyway for at least 90 days.\* The bottom line is that the only way a driver can know that they will not lose their license is to know the machine is going to print out a number less than .08 after they blow. How likely is that? Keep reading...

In addition to license suspension, a driver who submits a breath specimen that the machine says is .08 or higher has then also given the government a single piece of evidence needed to convict them of the crime of Driving While Intoxicated for life- EVEN IF THERE IS NO

EVIDENCE THAT THEY ARE IMPAIRED TO THE SLIGHTEST DEGREE. In Texas, the Government doesn't even have to allege impairment or any effect of alcohol if they have a breath test printout of .08 or more.

## WHAT DOES .08 MEAN?

Texas law mandates that if a person operates a motor vehicle in a public place while having either a blood alcohol concentration of greater than .08 grams of alcohol per 100ml of blood, .08 grams of alcohol per 67 liters of urine, or .08 grams of alcohol per 210 liters of breath, is "intoxicated." The breath test machine purports to measure the amount of alcohol in about a liter of breath and estimates the grams of alcohol that would be in 210 liters (about 55 - gallons) of breath. To help with the math, if the machine says there is .08g/210 liters of breath, it is claiming to have detected exactly 0.000380952g of alcohol in the actual breath sample- it multiplies that number times 210 to express its measurement in grams/210 liters.

## HOW MANY DRINKS IS .08?

There is no way to predict with precision how many drinks it takes for any individual to have an actual blood-alcohol level of .08. The time taken to drink, the alcohol content per drink, the amount of food in someone's stomach at the time, the individual's metab-

olism, the ratio of water in that person's body, whether the person is ill or if the stomach is upset for any reason, the person's gender, body weight, and even race can all effect how many drinks

"Very few people make it through without being arrested"

it takes to get to true .08 blood-alcohol level. A very general rule of thumb is that the 'average' person will only process one drink per hour, so any more than one drink per hour will lead to an elevated blood-alcohol level. Most people will be over the limit with 5-7 typical drinks in two hours.

## IS THE BREATH TEST ACCURATE?

Alcohol breath measurement in Texas is conducted almost exclusively using a machine



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sively using a machine called the Intoxilyzer 5000. When an arrested driver blows into the machine, the device shines infrared (IR) light through the moving stream of air. The machine has a sensor on the other end that measures the amount of light that makes it through the stream of air. The Intoxilyzer converts the amount of light absorbed into a measurement of grams of alcohol. The theory is that the IR light will only be absorbed by alcohol molecules at certain wavelengths, and that the machine measures the absorption of just those wavelengths of IR light.

In order for the measurement of alcohol to be accurate, there are a series of assumptions that have to be made that are all of questionable validity: 1. that the alcohol level in the breath sample is reliably based on the amount of alcohol in the blood, 2. that the person's breath temperature is exactly 34 degrees centigrade, 3. the person did not blow harder into the machine than the machine assumes (this places more alcohol molecules into the chamber during the time of the test), 4. that no alcohol gases entered the tube from the person's mouth or stomach, 5. that the person didn't hold their breath too long before blowing into the tube, 6. that only alcohol absorbs IR light at the measured wavelengths (hint: there are hundreds of molecules that absorb IR light at those same wavelengths), 7. that the Intoxilyzer 5000 can accurately measure alcohol at the 1/10,000 of a gram level by absorption of IR light, 8. that the machine functions flaw-

lessly and makes no errors in measurement or calculation (and we know any error in measurement is going to be multiplied by ... that's right, 2 1 0 ). If all of these assumptions proved to be true, then the breath measurement is likely to be reasonably accurate at the time the test is taken.

### CAN'T THE TEST BE CONFIRMED?

The breath sample itself cannot be confirmed or retested. The sample passes right through the Intoxilyzer and out an exhaust port on the back side of the machine as the test subject blows. There is no way to re-test it or get a second analysis by a more reliable testing method.

Should someone arrested for DWI take the breath test? If a person knows what their breath alcohol level is, knows that it is under .08, and trusts the Intoxilyzer 5000 to measure that level accurately, then blow your brains out. If a person isn't sure about any of those facts, then they shouldn't be surprised when blowing into the machine ends up meaning a permanent criminal conviction record, up to 180 days in jail, a fine of up to \$2000, driver's license suspension for 1 year, and a minimum of \$1000 per year for three years just to keep a driver's license... and that's if it's just their first time to be dragged through the process.

*\* Note: Driver's license suspension is not automatic and can be challenged, even if the test is refused. Many people who refuse or fail the breath test and retain qualified counsel do not get their license suspended at all.*

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*Bicycles, continued from page 10*

suggested that bicycle riders wear an approved helmet. When riding on pedestrian facilities, reduce speed and exercise caution. Do not weave in and out of parked cars. Move off the street to stop, park, or make repairs to your bicycle. A bicyclist should select a route according to the person's own bicycling skill and experience. It is not required by law, but bicycles should be equipped with a mirror.

### WET WEATHER RIDING

The visibility of motorists is greatly decreased. Wear highly visible clothing when riding on a bicycle. Water makes certain surfaces slick. Be aware of manhole covers and painted stripes on the road. Water obscures some haz-

ards. Watch for potholes filled with water.

### COMMON MOTORIST MISTAKES

The most common motorist caused car-bicycle collision is a motorist turning left in the face of oncoming bicycle traffic. Oncoming bicycle traffic is often overlooked or its speed misjudged. The second most common motorist caused car-bicycle collision is a motorist turning right across the path of the bicycle traffic. The motorist should slow and merge with the bicycle traffic for a safe right-hand turn. The third most common motorist caused car-bicycle collision is a motorist pulling away from a stop sign, failing to yield right-of-way to bicycle cross traffic. At intersections, right-of-way rules apply equally to motor vehicles and bicycles.

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