

Common Legal Challenges and Responses in Forensic Breath Alcohol Determination

REFERENCE: Gullberg RG: Common legal challenges and responses in forensic breath alcohol determination; *Forensic Sci Rev* 16:91–101; 2004.

ABSTRACT: No other single criminal/civil offense connects the forensic science community together with the legal community more than driving while under the influence of alcohol (DUI). Statutory changes along with political pressure have caused DUI to be a very serious and expensive offense. The result has been an enormous increase in DUI defense challenges in recent years with the primary focus on breath alcohol measurement. This paper addresses several of the more common DUI defense challenges regarding breath alcohol analysis, along with suggested responses. Common DUI defense challenges include: uncertainty in breath alcohol results near statutory limits; interfering substances; storage of alcohol simulator solutions; simulator thermometer uncertainties; instrument repair history; Widmark computations; instrument software; program records; pre-exhalation observation time period; and concurrence between the officer's report and breath alcohol results. Most of these issues are addressed with the prudent construction of administrative rules and employing a forensically sound breath test protocol.

KEY WORDS: Breath alcohol, DUI defense challenges, quality control.